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Uber—Brave New Service or Unfair Competition

Legal Analysis of the Nature of Uber
Services

Ius Gentium: Comparative Perspectives on Law and Justice

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Editors

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Preface

Inasmuch as it is said today that modern everyday life may not be imagined without advanced technology and gadgets which have become indispensable both for work and pleasure, we often neglect that, nowadays, a notoriously taken-for-granted thing has dramatically changed the history: a wheel. The invention of the wheel made it possible to improve agriculture, develop the industry, and allow us to transfer from one point to the other much faster and on every possible surface; let us not forget that wheels are indispensable in almost every mode of transport.

Even before the introduction of automobiles as a means of transportation, there has existed a service of hiring a vehicle with a driver. With the arrival of automobiles, there came a simultaneous service of taxi cabs. At a certain point in history, taxi services were quite popular as there were a lot of people who could not afford to own a car. In modern days, taxis have become indispensable, notably in some big cities, because they relieve us of the burden of bearing the maintenance costs, finding a parking place, and storing a car in a garage. And for a long time, this service of hiring a car with a driver has been basically monopolized by taxis. Traditionally, this monopolization, although unwelcome from the point of view of competition, has been defended as necessary to ensure the quality of service and protection of consumers. In many areas, this kind of regulations and barriers to entry the market has become almost a tradition.

From the point of view of consumers and their logical interest in services which are affordable, it is no surprise that the appearance of competition such as Uber was most desired. Today, Uber is not the only entity competing with the traditional forms of taxi services, but it has been elevated to the status of a metaphor. At the same time, the notion of “competition” as introduced by Uber and similar companies bares various caveats, one of which is a tendency to operate under conditions contrary not just to law, but also to public policies aimed at ensuring the safety of transportation and public health.

This monograph explores certain aspects of Uber’s services, many of which are of general and universal importance, at the same time analyzing a state of the play in several countries. The immediate stimulus to gather different contributions to this book was the fact that some of us have been asked by the Croatian government to

research various legal aspects of Uber's services. However, it has been immediately concluded that one has to go beyond that local focus and explore not only national but also the global context. We are, therefore, very happy that our colleagues from France, Germany, Italy, Spain, and Switzerland agreed to join us and send their national contributions, whereas our Croatian colleagues' (researching under the auspices of "New Croatian Legal System" project run by the Faculty of Law, University of Zagreb) contributions to this monograph are purposely covering issues beyond the boundaries of national law.

More concretely, the monograph analyzes issues such as the nature of Uber's services, including particularities with regard the type of service offered, legal relationships between various actors interconnected through Uber's services, price determination, and impact of Uber's general terms and conditions on the overall service. Furthermore, the monograph examines the impact of several relevant public policies and role of insurance mechanisms when considering how to regulate the transportation services, analyzing several different regulatory approaches and their impact on the market of carriage of passengers by road. Additional topics covered include the evaluation of Uber's service in line with competition law, consumer protection, and digital services' regulation. A special focus is devoted to financial and taxation issues connected to the Uber's business model. Finally, the monograph offers an overview and summary of several chosen jurisdictions, detailing the impact of the different legislature and judicial activities in connection to the appearance of Uber and similar companies in particular markets.

There is no doubt that the topics analyzed in the monograph do not cover every possible aspect of Uber's services; one example being the issue of the use of autonomous vehicles and their impact on the development of both the traditional taxi services and transport in general. The very notion of autonomous vehicles opens various questions: legal issues, safety, insurance, future of car industry, technology, just to mention a few.

We do sincerely hope that the readers will find the book and individual contributions useful and interesting.

Zagreb, Croatia
August 2019

Jasenko Marin
Siniša Petrović
Mišo Mudrić
Hrvoje Lisičar

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Introduction



Mišo Mudrić

Abstract The following chapter introduces the overall subject of analysis. The first part offers basic information on what sort of an enterprise Uber and similar companies represent, placing such companies into the context of global competition. A special focus is placed on whether Uber's business model represents a true disruption of traditional models of carriage of passengers' services in general, or whether it represents a disruption in terms of a law violation. Similarly, the Introduction chapter examines to what extents the term "Uberification" represents positive appearances in the transportation market, and in what cases it connotes negative manifestations in commercial and consumer practices (such as monopoly aspirations, labor-related issues, forced arbitration issues, security issues, data protection issues, traffic, and public transport related issues, taxation issues and similar). Finally, a separate section is devoted to the issue of legal sanctions in general.

It should be noted that certain terms used through-out the monograph have the same meaning (i.e., Uber's application/Uber's digital platform/Uber's digital service; transportation options/transportation services; Uber drivers/Uber partner drivers; Uber's service/Uber service; and similar), whereas some terms are specifically meant as points of differentiation (i.e., public transport refers to transport in general; public transportation refers to both public and private transportation options; public-private or private transportation refer to the providers of taxi services and rent-a-car with driver services; and similar). In addition, some terms, although refereeing to a particular object, have a broader meaning (i.e., when referring to the term Uber's business model, the same is, in general terms, applicable to all other companies (mentioned in the present chapter and other places) offering similar kinds of services and employing a similar business model). Finally, through-out monograph the term Uber service refers to the particular categories of Uber services designed to carry passengers by road. Uber, however, tends to offer a plethora of different services (i.e., "Uber", "UberX", "UberXL", "UberPOP", "UberBLACK", "UberSELECT", "UberSUV", "UberLUX", "UberBERLINE", "UberVAN", "UberEXEC" "UberFRESH", "UberRUSH", "UberEATS", and others), some of which are designated to carry passengers, some goods, whereas others offer totally different kinds of services (such as renting electric bikes and scooters). It should, finally, be stressed that a particular service, for example UberX, offered in one jurisdiction, does not necessarily correspond to a service of the same name offered in another jurisdiction, having in mind that Uber tends to adapt, as much as possible, to particular conditions in particular jurisdictions, in order to (at least try to) fulfill certain goals.

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1 Uber's Business Model

During the period between 2009 and 2013, Uber openly criticized its competition (the main contemporary competitors being Lyft and Sidecar) for providing carriage services without proper licenses and adequate insurance coverage. A quite surprising starting point, having in mind that only four years later exactly the same business model, once fully embraced by Uber, will turn Uber into a mega-player on a global scale, valued in the amount of 68 US\$ billion (primary investors' projection; 50 US\$ billion according to smaller stakeholders) in 2017, around 80 US\$ billion in 2018, and currently preparing the IPO with expectation of increasing its value to up to 120 US\$ billion, despite numerous incidents and scandals, such as the Greyball scandal (Isaac 2017), data breach (Chappell 2018) and others (Taylor 2017; Griswold 2019b). Despite the noted value estimates, Uber operates under a constant turn loss (Horan 2017), irrespective of continuous inflow of new investments (Messamore 2019). Nevertheless, Uber plans further expansions, such as the latest "rumor" with regard buying the Middle-Eastern rival company, Carrem (Nair 2019), despite its regional "failures" in certain other regions, such as is the case with South Asia (Marshall 2018). Additionally, Uber's long-term planning is focused on a projection where ride-hailing will represent only a half of its core business activities in transportation, with the other half centered around other services such as food delivery, cargo transportation, electric bikes and scooters, and similar (Korosec 2019). Similar negative out-flow is to be observed with Lyft (Economist 2019; Marshall and Thurm 2019) that recently jump-started the IPO race with the projected 100 US\$ billion (Edelstein 2019) value estimate after IPO.

Having in mind that companies like Lyft and Sidecar offered the so-called "ride-sharing" non-licensed carriage of passengers by road services without any serious legal sanctions, in 2013 Uber openly introduced (Uber Policy White Paper 1.0, 2013) its new business model—Uber's business model—whereby Uber decided to follow the "good example" of noted companies, stressing its commitment to fulfilling all requirements as to the appropriate standards on safety and quality, as well as the requisite insurance policies. Uber's change of mind and new business policy comes as a direct result of "silent approval" by the legislature and judicial powers during this early era of a global phenomenon that will later be identified as the "*Uberification*". The company openly contested that any new business model should be deemed appropriate if not challenged by courts and legislature within 30 days of its appearance in the market. This claim was never approved by any competent body, and Uber's manifest (White Paper) is no longer available on Uber's portal.

Uber's main advantage compared to traditional carriage of passengers by road service providers (primarily the traditional taxi service providers and providers of rent-a-car with driver services) is reflected through its utilization of private motor vehicles that do not meet various technical and safety standards' specifications, and whose drivers have not procured the necessary permits, licenses or authorizations, nor secured mandatory (and adequate) insurance policies. In addition, one of the main features of Uber's application is the dynamic charge increase model, allowing

significant surge pricing when demand for carriage is higher than the supply, but also a competitive lowering of prices when required. Coupled with additional aspects of Uber's business model, such as tax evasion, labor-related charges' and duties' evasion, continuous training and education of drivers' evasion, quality upkeep of motor vehicles' evasion, and others (Ahmed et al. 2018), Uber's services tend to be (relatively) cheaper than that of those market actors who comply with all regulatory requirements (Gabel 2016). It should be noted that such requirements are primarily enacted to protect public interests such as the safety and security of transport, public health, availability of transport and others. Even Uber asserted its financial-related difficulties in meeting all requirements necessary to respect the above-named public goals in the pre-2013 phase, whereas its contemporary competitors began their "street operations" within 24 h after having been established.

In 2013, literally "overnight", Uber changed everything. Lower business costs enabled lower average carriage prices, which, from the perspective of an average passenger (consumer), represents a key factor when choosing a service provider. Almost in all countries where Uber gradually introduced its services, the price advantage had resulted in an exponential rise in Uber's popularity. Uber further exploited its stature by an aggressive marketing campaign capitalizing on modern-day catch-phrases such as "new technologies", "shared or sharing economy", "digital economy", "gig economy", "disruption" and similar, continuously repeating the main mantra epitomizing Uber as a 21st-century business enterprise (operating completely legally). Drawing from public outrage over traditional taxi industry's natural or limited monopoly (depending on how liberalized a certain taxi market was) and negative side-effects of such state of affairs, Uber proclaimed its supremacy over traditional taxi industry by means of Uber's application and the benefits derived from utilizing digital means of communication, allegedly representing a new type of company with consumers' interest in its forefront. For a long period of time, media praised Uber's business model, and technology-focused portals hailed the digitalization that Uber promotes. Many promoters of Uber's business model, contrary to Uber itself when, prior to 2013, referring to such business conduct as illegal conduct, simply advanced the notions that Uber has successfully identified "loop-holes" and resourcefully circumnavigated the regulation, legally conducting services that are, simply, unregulated.

2 Disruption and Uberification

Uber's digital platform (Uber's application) should not be identified with a new technological paradigm in transportation. The technology, as such, was never in the centerpiece of the traditional taxi industry's opposition to Uber and similar companies, and the traditional taxi industry slowly adapted and incorporated electronic applications into its everyday operations. Rather, with the appearance of Uber, Lyft and similar companies, the transportation sector has entered into a relatively fast-paced transformation driven by the introduction of advanced digital technologies.

The digital services (information society services), incorporated by the named companies as a core of their business models, are already, within the wider context of the shared economy and the digital economy, established in the market and can be observed in various consumer and intermediary related services. Additionally, digital services, such as the ones offered by Uber, Lyft and others, are conceptually inherent to the so-called “*Internet of Things*”, a modern-day phenomenon representing a manifestation of technological and social development whereby everyday life and business activities become inextricably connected with the Internet, and information and possibilities offered through this network media.

In the context of Uber’s business model, it is, despite numerous attempts, incorrect to identify the technological advancement (use of applications) with the sharing economy phenomena. Such a simplistic approach negates the basic principles established with modern law, whereby the market competition and regulation of new business models, irrespective of the terminology utilized, must align with the basic requirements of consumer protection.

In the long-term, the transportation technological advancement aspires to the new paradigm in making—the autonomous vehicles, and the true disruption such undertaking is bound to create. The automobile industry proclaims the transport revolution in all aspects, a part of which is a near-by future where autonomous cars offer carriage of passengers by road as a free service, earning profit exclusively through the use of passengers’ data and in-ride commercials and consumer opportunities’ promotion, cutting variety of other costs, such as partner drivers’ income (Blystone 2018; Economist 2019; Griswold 2019a). Alternatively, the owners of autonomous vehicles compensate their costs by having their cars autonomously provide taxi services while not in use by their owners. The true disruption, among other items, is further reflected in the possible gradual decrease of traditional public transportation options in general, with fleets of autonomous vehicles (both publicly and privately owned) completely taking-over and overhauling the public transport. This, in turn, offers companies like Uber and Lyft the so-called “*path to profitability*”, whereby a significant decline of costs related to, among other factors, driver earnings, may finally enable a yearly profit margin.

Contrary to Uber’s claims with regard their digital exclusivity, in practice many traditional taxi providers do implement digital applications in their everyday business, where such applications (often referred to as commercial transport applications) are simply understood as yet another set of tools for attracting customers and enhancing the core, transportation service (i.e., enhanced methods of matching carriage demand and supply, higher service transparency, faster service, better customer feedback mechanism, ease of use, more flexibility in allocating the best suitable drivers, more efficiency in providing the best suitable drive option, information on driver and passenger available in advance, etc.).

It should be recognized that the appearance of Uber in certain markets did impel and foster the introduction of digital applications among the traditional taxi services providers. Additionally, it must be reaffirmed that the appearance of Uber in certain markets was followed by an initial measurable drop in average prices of the carriage, especially in “closed” markets (regulated and capped access to licenses and permits),

dominated by existing market actors (International Transport Forum 2016). Such occurrences are, in their essence, affirmative and represent the positive aspects of “Uberification”.

The use of applications in the carriage of passengers by road services brings many additional potentials and caveats. For example, the application, when connected with relevant public service providers, such as police, fire department, medical emergency, and others, may serve for the benefit of passengers and drivers in cases of emergencies or distress prior, during and after the service provision. In addition, the data collected through the provision of carriage service could offer additional information to service providers, enhancing their current and future endeavors. Should such data be made, to a certain degree, publicly available (such as is the case with public transportation options), it may be of use to both the current and potential new entrants to the market, as well as consumers in general, as is the case with, for example, the City of Denver where Uber partnered with Denver’s Regional Transportation District offering information on public transportation options, and, additionally, offering various Uber’s services to complement public transportation options (Reid 2019).¹

It is quite common to observe harsh resistance and antagonism by the established market players when new market entrants begin to compete for the market share, especially when the new business circumstances break part with established principles, practices and dogmatic schemes. Whether the noted resistance is valid depends of various factors, and if the new services are touching upon issues of public interest and safety, in addition to evaluating market-related factors such as disloyal completion, monopoly, equal position on the market and similar, the discourse over the issue will very often include aspects of public interest protection, citizens’ protection, consumers’ protection, data privacy protection, data protection, and others. As new commercial activities, such as Uber’s business model, affect to a great extent the established commercial practices, it is to be expected that their appearance opens a plethora of issues and open questions, and, having in mind that such services are present and offered on a global level, this global phenomenon requires a global consideration. Individual decisions made by individual jurisdictions, therefore, should reflect the global deliberations over the noted issue.

Uber, as such, is a good example of a dogmatic disturbance in the market, and points to a plethora of parallel processes arising when a new commercial activity creates a “shock doctrine” effect, whereby the interested stakeholders (market players, national and supranational legislature, judiciary, and others) find it difficult to discern the full scope and reach of this new manifestation. Uber enters the transportation sector on a premise that it, de facto, does not offer the carriage services. Uber highlights its mission devoted to the consumers (passengers), simultaneously eliminating or severely limiting its responsibility and liability towards consumers. Uber continuously fights for equality in and accessibility to the markets all around the world, but the economic indicators point to an exponential rise of this company, asserting monopolistic aspirations. Uber stands as a forerunner of development and

¹There are, however, opposing views on this matter, placing forward arguments with regard possible Uber’s privatization of public transportation options (Buchanan 2015).

industry's betterment, but through its sole existence, to a certain extent, puts the industry's sole existence into question.

A study commissioned by the European Parliament (Azevedo and Maciejewski 2015) enumerates a number of possibly detrimental effects of "Uberification": unfair competition, violation of regulation, violation of tariff models, monopoly tendencies, uninsured and unsafe motor vehicles utilized for carriage, breach of passengers' privacy and data, discrimination of partner drivers (Berger et al. 2018; Shokoohyar 2018; Rogers 2015), discrimination of passengers, violation of labor law, and, potential issues with tax law.

The unhindered and continuous existence of Uber's business model may bring upon a plethora of contested claims, matters for concern and unwanted consequences, one of which is the potential Uber's de facto monopoly in the market (Cooper 2017), with the traditional taxi industry's gradual loss of market share and inability to compete with unfair competition, leading to its collapse. Indeed, data from various countries, such as Norway (Leiren and Aarhaug 2016) and United States (US) (San Francisco Municipal Transportation Agency 2014), indicate a significant drop of traditional taxi industry's share in the taxi market, whereas other studies confirm a significant difference in prices between the two competitors, such as in Australia (Deloitte Access Economics 2016) and US (Bond 2015).

The question of Uber's (and other companies') partner drivers' labor status, continuously battled over in various jurisdictions by individual partner drivers and partner drivers' syndicates and associations, is relevant not just with regard partner drivers' rights, but as a tool for better understanding the nature of Uber's business model as a whole. Companies like Uber and Lyft have been struggling for years to maintain their position on classifying partner drivers as (sub-)contractors or independent contractors, rather than employees (Campbell 2018). Whereas comparative case law is divided on this matter, some jurisdictions have decided to focus on specific issues, such as is the minimum payments for partner drivers,² that serves to supplement the missing minimum wage requirement present in standard labor contracts (Brown 2019). The US case practice has already produced complex criteria for evaluating the distinction between an independent contract and employee, as recently analyzed in the *Dynamex*³ case (McCarthy 2019; JC 2019), and several additional court cases are currently pending (Lichten and Liss-Riordan 2019; Ng 2019; Park 2018). In the United Kingdom (UK), the *Aslam* case, to be analyzed in the current study, paved way for employer classification, whereas similar decisions are slowly beginning to emerge in other European countries, such as France (Lee 2019).

Even if partner drivers are to consider a claim against companies like Uber, the general terms and conditions very often point to arbitration proceedings before arbitration courts and applicable law chosen by Uber and similar companies. This, in

²See, for example: the New York City Council, establishing minimum payments to for-hire vehicle drivers and authorizing the establishment of minimum rates of fare, Law no. 2018/150. 14 August 2018, approved by the New York City Taxi and Limousine Commission on 4 December 2018.

³*Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, No. S222732 (Cal. Sup. Ct. April 30, 2018).

turn, may sway partner drivers from venturing into an unknown and potentially very expensive legal battle. However, the Ontario Court of Appeals has recently allowed a claim to be made in Canada (demanding minimum wage, overtime, and vacation time), irrespective of attempts to move the case to the Netherlands for mandatory arbitration settlement, as required by Uber's general terms and conditions (Claburn 2019).⁴

Furthermore, the inadequate security checks of partner drivers represent not just a question relevant for comparison of taxi drivers and partner drivers, but a *prima facie* issue relevant for the public interest and protection of citizens. Uber's application collects various data on passengers, drivers, traffic and similar, thus adding up to global concerns with regard the data protection, data manipulation, privacy protection (Calo and Rosenblat 2017; Bohorquez and Felz 2014), monopoly over the use of map applications' data (Vincent 2018) or monopoly in general (Kokalitcheva 2016), price fixing (Bytes 2019; Paul 2017), antitrust (Anchustegui and Nowag 2017), and similar. Uber's general terms and conditions tend to favor exclusion of responsibility and liability towards end-consumers (passengers), at the same time enforcing arbitration⁵ and applicable law choices irrespective on where a potential injury or damage may occur. A growing number of studies indicate that companies like Uber significantly affect the increase in traffic congestions, as well as a general decrease of utilizing public transport options (Bliss 2019; Gustafson 2019; Saval 2019; Schmitt 2019). Additionally, the overall earnings in the transportation sector seem to be in a serious (over 50%) decline (Farrell et al. 2018).

Finally, to name just one more global concern, Uber tends to escape value added tax (VAT) payments concerning its share of profits deducted from the carriage price, allocating taxation burdens on the remaining sum to the partner drivers, creating yet another legal conundrum. Even though Uber and similar companies continue to argue that their services are strictly confined to digital services, a growing body of comparative case law begs to differ, explicitly stating that Uber and similar companies are engaged in the provision of transportation services. On this issue, a recently filed case before High Court of Justice in London, *Maugham v Uber London Limited*,⁶ may offer some clarification as to that particular issue, and adjudicate over Uber's claim that it only offers a digital service, thus not being under an obligation to pay VAT connected to the rendered carriage service (Good Law Project 2019). Needless to say, should the Court accept the claim as grounded, this would seriously affect Uber's financial standing, at least within the UK jurisdiction. It should be reminded that Uber is already facing numerous issues in the City of London, with Transport for London having, at one point, rejected Uber's license to operate

⁴David Heller v. Uber Technologies Inc., Uber Canada, Inc., Uber B.V. and Rasier Operation B.V., 2019 ONCA 1, DATE: 20190102, DOCKET: C65073.

⁵See, for example: Spencer MEYER, individually and on behalf of those similarly situated, Plaintiff, v. Travis KALANICK, and Uber Technologies, Inc., Defendants, 291 F.Supp.3d 526 (2018).

⁶Jolyon Toby Denis Maugham QC v Uber London Limited, High Court of Justice, Chancery Division, Claim No. HC-2017001496, 15 June 2017.

in the City (public safety and security grounds), only to be renewed until September 2019 on a probation period (Topham 2019).

In other jurisdictions, such as is the case with Egypt, Uber (as well as its main competitor in the Middle East, Careem), after several proceedings, voluntarily agreed with the Egyptian Tax Authority to pay VAT (Haitham 2019). In other cases, courts prompted Uber to change its policies, as was the case with the Federal Court of Australia,⁷ that, after having reviewed the nature of Uber services, applied the relevant taxation regulation in order to assess whether Uber is under an obligation to comply with the taxation obligation as a provider of taxi and limousine service, or, in other words, whether Uber is to be considered as a separate tax-payer entity. Reviewing the Uber's business model in line with what constitutes all basic elements of a taxi and limousine service (interestingly, the Australian taxation regulation includes a definition of taxi and limousine service), the Australian Court decided that Uber partner drivers are under an obligation to pay taxes as taxi drivers.

It should be noted that different countries and local administration units have begun, as of late, to consider additional taxation layers for Uber and similar companies. For example, Los Angeles County has been exploring a possibility of introducing a separate tax on Uber and Lyft rides, the so-called "ride-hailing" tax (Nelson 2019), as a part of the overall trends towards establishing various models of congestion pricing (Marshall 2019). As per the transportation officials (Metropolitan Transportation Authority), the companies "exacerbate" congestion in Los Angeles, and do not participate in costs of maintaining public roads (the so-called "comprehensive congestion pricing"). It should be noted that in areas where similarly specialized taxation has already been introduced, such as Chicago, Washington D.C. and New York City (or pending, such as San Francisco), the cost of such taxation is directly added to carriage price.

3 Sanctions

Even though the comparative legislature and judicial practice have begun unwrapping the legal issues concerning the aforementioned and connected issues, the (global) legal opus necessary to fully evaluate and classify Uber's business model is still under heavy construction. Despite Uber's claim on alleged legality, Uber's business model is essentially based on conduct contrary to the law (Edelman 2017). More concretely, Uber defends its position that it, opposite to the traditional taxi service providers, does not offer the carriage services—commercial activities strictly regulated by various international (international conventions on the carriage of passengers and goods in different modes of transport) and national legislation. To the contrary, Uber alleges its sole activity as the provider of digital intermediary services between end-consumers (passengers) and drivers. At the same time, the noted drivers in many cases (on a global level) tend to operate contrary to the law (no proper licenses and qualifications,

⁷Uber B.V v Commissioner of Taxation [2017] FCA 110.

and insurance) and offer services that have been arranged through the aforementioned digital service, thus establishing an obvious discrepancy with Uber's allegations.

One of the prevailing arguments placed forward by Uber is the role of new technology involved in the carriage of passengers by road, making Uber's business model categorically different as opposed to the traditional providers of taxi (and rent-a-car with driver) services. Such arguments, among other things, lead to a case held before the Court of Justice of the European Union (CJ), where the main issue concerned the question on whether Uber's business model falls into a category of transport services or information society services. The CJ classified Uber as providing services in the transportation field, and in one of the subsequent cases before CJ, C-320/16,⁸ Advocate General Szpunar specifically stated that Uber "... *when it developed the UberPOP service, ... deliberately chose an economic model that is reconcilable with the national regulations governing the transportation of passengers*".

During the past several years, due to some of the above-mentioned reasons, Uber has stopped offering its services in several jurisdictions, either by its own choosing or through the virtue of legislative changes and judicial interim restraint measures. Perhaps the biggest in-flow of cases against Uber is experienced in the US, especially with regard the "claim actions" procedures, not too surprisingly exceeding the statistical records of other successful start-up ventures (i.e., exceeding claims against Facebook by 4–5 points margins during the first 6 years of operation). However, Uber adapts quickly, exhibiting enormous agility in adapting to regulatory and market conditions, and even, where appropriate, showing interest in cooperating with the traditional taxi industry.

Various media outlets and other sources offer a plethora of data and information with regard to different kinds of legal sanctions employed against Uber and similar companies during the past several years (Dickinson 2018; Orton 2018). It is often the case that such information is inadequate and simply incorrect, especially with regard the premises pointing to Uber being banned from operating in a certain country (this being recorded only in rare occasions). It should, preliminary, be pointed out that it is correct that Uber suffers continuous inflow of legal sanctions. In countries such as Finland, Denmark, Bulgaria, Netherlands, Germany, Italy, Portugal, Sweden, India, Brazil, New Zealand and others, Uber has repeatedly been fined and sanctioned with interim restraint measures. The most usual reason why such measures have been implemented is the lack of licenses, permits and necessary authorizations that have not been procured by Uber partner drivers. Another most typical case involved Uber partner drivers providing service (taxi services and rent-a-car with driver services) contrary to the issued licenses and the law regulating the provision of such services. In addition, Uber partner drivers, for the same reasons, regularly suffer legal sanctions, typically fines and interim restraint measures, as well as confiscations of motor vehicles utilized in providing such services.

Contrary, however, to the mentioned media captions, Uber, as a general rule, despite different legal sanctions and issues, continues to operate in numerous countries, including jurisdictions where Uber has suffered or continues to suffer legal

⁸C-320/16, Uber France SAS, Nabil Bensalem, ECLI:EU:C:2018:221, p. 33.

sanctions (Pelzer et al. 2018). In some cases, such as the very recent one occurring in Barcelona (Field 2019), Uber single-handedly decides to withdraw from the market (permanently or temporarily), usually following regulatory changes that do not favor its business model or profit expectations (Lomas 2017). In Barcelona, for example, the latest regulatory changes concerning the vehicles for hire (VTC) require the booking to be made at least 15 min prior to the actual ride, as well as that motor vehicle utilized for this service cannot circle the streets between bookings but have to be returned to the original place of business (garage, depot, etc.). Only in certain cases has Uber withdrawn from the market following particular kinds of issued interim distraint measures. One such example was the situation in Hungary⁹ (Keszthelyi 2016) where the legislative changes enabled the interim distraint measures aimed at preventing access to Uber's application in cases where Uber does not comply with regulation requirements (i.e., licenses for partner drivers, licenses for intermediary service, etc.). Another example is the City of Buenos Aires where the criminal court¹⁰ issued identical measure following the determination that Uber's business model, being not aligned with the regulatory framework, constitutes a serious and imminent threat to public health and security.

One explanation to such misinformation with regard media outlets lies in the fact that Uber's business model consists of various kinds of services that are prone to quick changes and adjustments to any given market at any given time, making it difficult to strictly classify particular services. The latter is aggravating when contemplating a legal analysis of Uber's business model as a whole, especially when taking into account that a service called UberX or UberPOP rendered in one country may be totally (legally and content-wise) different from service also called UberX or UberPOP in another country. For that reason, it is necessary to stress that the comparative analysis of regulation and case law (as well as Uber's general terms and conditions) present in the current study reflects a particular type of Uber's service at the time when a particular case has been heard, or particular legislation applied. Nevertheless, the key legal theorems derived from such analysis are crucial for proper understanding of Uber's business model, especially having in mind that, despite legal distinctions between different legal traditions, the public policies concerning the public interest, citizens' and passengers' rights, and the safety and security of transport tend to point to similar or same goals.

Finally, it is worth mentioning that the comparative case practice points to different types of judicial and executive (and other) bodies involved in hearing and deciding on cases concerning Uber and Uber drivers. Thus, various case practice examined or noted in the present analysis will have had been heard before civil, commercial, misdemeanor and criminal courts, constitutional courts, ministries in

⁹2016. évi LXXV. törvény az engedély nélkül, személygépkocsival végzett személyszállító szolgáltatáshoz kapcsolódó jogkövetkezményekről.

¹⁰Incidente de apelación de clausura preventiva art. 29 LPC en autos UBER SRL s/infr. 83 CC, Docket 4790-02-CC/2016, 5 May 2016; followed by the decision of first Instance Court on Contentious Administrative and Tax Matters No. 15 of the City of Buenos Aires, "Federal District's Taxi Drivers Union et al. v. Government of the City of Buenos Aires", Docket C3065-2016/0, decision dated April 13, 2016, directing the City of Buenos Aires to cease all Uber activities in its area.

charge of transportation affairs, internal affairs, finance and commerce, institutions in charge of market competition, consumer protection, data protection, financial transaction supervision, and others. This, in turn, signifies the complexity of legal issues that have emerged with the appearance of Uber's business model.

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