

4. Environment

The former Danish Minister of Transportation welcomed initiatives regarding the sharing of private goods such as arrangements where people car pool or otherwise share their cars. This can have a positive effect on the environment.¹⁰ Apparently, he did not regard Uber as a business with these kinds of qualities. Even though Uber promote themselves as ‘fostering a more connected, less congested environment’ it is not clear whether Uber actually entails a better utilisation of our private cars or just enhances the use of cars – maybe to the detriment of busses or trains and hence, worsen the impact on the environment.

5. Competition

As mentioned, the regulation on transportation of persons in Denmark is not productive of competition for various reasons such as protection of the business and for security reasons. However, Denmark has been willing before to set aside such protective regulation in the name of competition. In 2006 the Danish legislators passed a bill repealing a ban against marketing legal counselling where the counselling is not performed by authorised lawyers.¹¹ This means that now anyone can give legal counselling and market themselves with this service regardless of education, without licence and without insurance. There is, however, a certain short listed code of conduct that they are obliged to apply with. Legal counselling is per se an area of great risk and of great importance, and most people might still prefer legal counselling from an authorised person – at least on crucial matters. Thus, the market for these unauthorised legal counsellors is not big and some might argue that the competition against the authorised legal counsellors is insignificant. In regards to taxi driving, one could argue that similar liberal regulation should apply. The competition from unauthorised drivers would however in this case probably be much more substantial as taxi passengers may not necessarily demand the level of security and protection as the current regulation provides. An example of this is the apparently very fast growth of the Uber business. There are no signs yet that Danish legislators are ready to liberate the market of taxi driving to this extent. However, an attempt by a number of political parties was made in the summer of 2014 to loosen the grip a little bit regarding the taxi regulation but it was never proposed as a bill because of political resistance. Even though the Minister of Transportation at the time felt that a change in the Danish regulation eventually was needed in order to meet the technological development, he emphasised that competition on equal terms is a crucial principle.¹² Denmark has just elected a new government, so the future political mood in this area is unknown.

III. Concluding remarks

New winds are blowing with the new business model based on internet platforms. Denmark has like many other countries chosen to attack the Uber specifically and on the legal basis of The Taxi Driving Act. However, we might need to take a step back and look at the business model *in general*. How should the operators in this model be regarded legally? And does this entail a need for a change of the legal framework in general in order to be able to handle the new legal challenges?

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Developments on Uber in Portugal

Following the article published in the first issue of this journal¹, the debate around UBER’s operation in Portugal suffered significant developments, in light of a decision rendered by a district court in Lisbon² regarding a protective order requested by ANTRAL, which is one of the main associations representing the sector of public transport by car, commonly known as taxis.

A protective order is a priority procedure aimed at ensuring the effectiveness of the threatened right, when there is founded fear of serious harm that would be difficult to amend (article 362-1 Code of Civil Procedure).

ANTRAL asked the court to determine the closure of the webpage www.uber.com and of the corresponding app, the termination of the passenger transport activity and the execution of passenger transports contracts, as well as the prohibition to use credit cards and online payment systems to register in the Uber platform and to execute payment orders in this context. To ensure effective compliance with the measures ordered by the court, ANTRAL also requested the notification of all telecommunications operators registered in Portugal, all banking operators and electronic payment service providers, the supervisor of the sector of public transport by car (Mobility and Transports Institute; IMT, in Portuguese), the city councils, the Competition Authority (AdC, in Portuguese), the Directorate-General for Economic Activities (DGAE, in Portuguese), the Authority for Food and Economic Security (ASAE, in Portuguese) and the Authority for Working Conditions (ACT, in Portuguese). ANTRAL also requested for a periodic penalty payment of a daily value of not less than € 10 000 to be imposed on UBER in case it does not comply with the court’s decision on the protective order.

The court dispensed with UBER’s prior hearing and therefore the company was not served prior to the decision on the protective order. This decision to dispense with the hearing was not substantiated, which in our view is open to criticism, as the general rule of article 366-1 Code of Civil Procedure sets forth that the defendant must be heard prior to the decision on the protective order, unless the hearing seriously risks the objective or the effectiveness of the order. It does not seem to be the case in this situation, as the surprise effect has no advantage for the effectiveness of the measures which were requested.

The court ruled in favour of the requested protective order, deciding in the exact terms laid down in the demand.

Once again, this judgment created a broad debate in the Portuguese society, dominated by political and ideological positions rather than by legal arguments. The Parliament even received a petition in favor of Uber³.

Although the telecommunication operators blocked the access to UBER’s site and the Portuguese Central Bank took measures to prevent payments to UBER, the company remains in operation in Portugal⁴, on the basis that the defendant is Uber Technologies Inc., which only operates in the United States, and not the company operating in Portugal, whose headquarters are located

10 Speaking paper to use for answering consultation question P for increased carpooling, car sharing, etc. Transport Committee 2014-15, TRU Alm. del endeligt svar på spørgsmål 308.

11 L 09-06-2006 no. 419.

12 Speaking paper to use for answering consultation question P for increased carpooling, car sharing, etc. Transport Committee 2014-15, TRU Alm. del endeligt svar på spørgsmål 308.

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1 Jorge Morais Carvalho, ‘Uber in Portugal’, EuCML (2015).

2 Judgement of the District Court of Lisbon, First Section, of 24 April 2015, Case no. 7730/15.0T8LSB, available at <http://observador.pt/wp-content/uploads/2015/04/decisao-comarca-de-lisboa-uber.pdf> accessed 9 July 2015.

3 <http://observador.pt/2015/06/30/protostos-lideres-detidos-passa-uber-franca/>

4 <http://expresso.sapo.pt/sociedade/2015-06-03-O-tribunal-proibe-o-Banco-de-Portugal-corta-mas-a-Uber-continua-a-funcionar-> accessed 9 July 2015.

in the Netherlands⁵. The decision which granted the protective order has since been confirmed by the court, in 25 June 2015⁶, after hearing UBER⁷.

As I have previously argued in an interview published in the newspaper Público⁸, the use of this argument is possibly abusive. The conduct by Uber, against whom the legal proceedings is clearly addressed, is probably contrary to good faith when it bases the refusal to comply with a judicial decision on questions regarding its organizational structure.

In addition to damages caused to taxi drivers which would be difficult to repair if UBER continued its activity, resulting from a “diversion of customers difficult or virtually impossible to calculate”, the court considered that there is “a serious risk for the public in general”.

The court also stated that the activity of taxi transport is extensively regulated and involves very high costs for those who wish to provide it, with the objective of protecting the user. Among others⁹, Law no. 5/2013 imposes strict rules concerning the existence of taximeters in the taxis, which shall be placed in the upper half of the *tablier* or on top of it, in a visible place for the passengers, and Law no. 6/2013 establishes the legal framework for the access and exercise of the profession of taxi driver and for the certification of the training entities.

The court also added that the companies which operate taxis, in contrast to UBER, are subject to paying taxes, do not have to conclude an insurance contract and are bound to mandatory parking in certain locations.

In my view, the arguments related to the legal requirements for the exercise of the activity of taxi transport seem to provide a solid basis for preventing UBER’s activity.

There is unfair competition on the part of UBER as the non-compliance with the rules regarding the access and exercise of the activity entails a reduction of costs for UBER, which allows, in turn, a reduction in the costs of the service for customers, thus making the offer more appealing compared to that provided by taxis.

In 2015, year of parliamentary elections in Portugal, the question also has a big political impact. According to a report from the end of June¹⁰, the Socialist Party, which is the largest opposition party, wants to know what the Government’s position is on this subject and asks for a swift legislative response. Therefore, it appears that the problem is very far from being solved in Portugal.

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- 5 <http://www.publico.pt/tecnologia/noticia/tribunal-mantem-medidas-cautelares-contra-uber-empresa-recorre-1700599> accessed 9 July 2015.
 - 6 Judgement of the District Court of Lisbon, First Section, of 25 June 2015, Case no. 7730/15.0T8LSB, available at . http://jusjournal.wolterskluwer.pt/Content/DocumentView.aspx?params=H4sIAAAAAAAAAEAO29B2AcSZYlJi9tynt_SvVK1-B0oQiAYBMk2JBAEozBiM3mkuwdaUcjKasqgcplVmVdZhZAzO2dvPfee-999577733ujudTif33_8_XGZkAWz2zkrayZ4hgKrIHZ9-fB8_In7ROq-v3-Tv2s8ePLi387vune_eH-8OXj-skvbK6X1fj68dmbep3_wjabNJ_t_u4Ppnv0_3v0__1fmE3bdVY-raft7eL34jJ_k03o97Zqs_JVTs1_YVXP8vrJ9Wc7v7CZV1cvssvilmuLavkkqwVsMZt99p2vdui5d-_TvYOdX3iZ1w01-Owni4t82ea_cf5czJ_T_1tpnzVN0ZxUJcFu8qyez19mF_inhMN6Qc1_ssvixlmzevcLs7LN62UGpAZalMu39OFrBqK4NF8tqX2Tlf6n0s2TddsSVpN2Kd_9P80-mgc3AQAAWKE accessed 9 July 2015.
 - 7 <http://observador.pt/2015/06/23/uber-ouvida-tribunal/>
 - 8 <http://www.publico.pt/tecnologia/noticia/uber-devera-continuar-activa-tudo-por-causa-de-uma-morada-1698454?page=-1> accessed 9 July 2015.
 - 9 See Jorge Morais Carvalho, ‘Uber in Portugal’, EuCML (2015) 64.
 - 10 <http://ionline.pt/398739?source=social> accessed 9 July 2015.
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