

FOR A FACTS-BASED ANALYSIS OF UBER'S ACTIVITIES IN THE EU: ADDRESSING SOME MISCONCEPTIONS



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I. INTRODUCTION

When Uber launched its activities in Europe, it met rapid commercial success. People enjoyed the convenience of booking a ride through their smartphone, as well as a service that was cheaper, more reliable and of a higher quality than what was traditionally offered by taxis. As its success grew, Uber was, however, subject to harsh criticism by taxi companies and trade associations, which launched massive demonstrations² and filed lawsuits in multiple Member States to have Uber banned from the streets.³ These legal challenges often argued that Uber engaged in “unfair competition” because it did not comply with the regulatory requirements that were imposed on taxis.⁴ Where these actions were successful, they effectively deprived people from the ability to use Uber services or at least UberPOP,⁵ which relies on non-professionally licensed drivers.

While disruptive technologies or business models are often a subject of controversy, what is still lacking in most EU Member States several years after Uber started its activities is a regulatory framework that accounts for the specificities of its services. Regulatory change is impeded by the emotional nature of the debate where Uber is often characterized as a villain, stealing business away from taxi companies and replacing good jobs by precarious ones.⁶ However, these allegations, which

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² See, e.g. Thomson, Rahn & Rascouet, “Uber Demonstrations Snarl Traffic From London to Berlin,” *Bloomberg*, June 11, 2014, available at: <https://www.bloomberg.com/news/articles/2014-06-10/uber-protests-spread-across-europe-as-taxi-app-backlash-grows>; Rubin & Scott, “Clashes Erupt Across France as Taxi Drivers Protest Uber,” *The New York Times*, June 25, 2015, available at: https://www.nytimes.com/2015/06/26/business/international/uber-protests-france.html?_r=0.

³ Wallace, “Uber’s global ambitions hit roadblocks,” *CNN Tech*, December 12, 2014, available at: <http://money.cnn.com/2014/12/12/technology/uber-ban-global-spain-india-portland-duplicate-2/>.

⁴ Bartunek, “Uber will appeal order to shut Brussels service using non-professional drivers,” *Reuters*, September 24, 2015, available at: www.reuters.com/article/us-uber-brussels-idUSKCNOR01PW20150924; Vitaut “Uber in Italy: A lot of Opposition, but Ultimately It will Take all the Market,” *Medium Corporation*, January 26, 2016, <https://medium.com/@Vitolae/uber-in-italy-a-lot-of-opposition-but-ultimately-it-will-take-all-the-market-15a338fa2a90#eo3ql9ch7>.

⁵ UberPOP is an intermediation service which connects riders with non-professionally licensed drivers in EMEA. UberX is a similar service, but it involves professionally licensed drivers.

⁶ See, e.g. Leonard, “Why Uber must be stopped,” *Salon*, August 31, 2014, available at: www.salon.com/2014/08/31/why_uber_must_be_stopped/.

are largely based on misconceptions about Uber's activities, prevent a constructive, forward-looking debate on how to take advantage of the major opportunities created by Uber and other companies offering online intermediation services in terms of user convenience, affordability and quality of service, road safety, and reduced urban congestion.⁷

Against this background, the key objectives of this paper are to address some of the most common misperceptions about the nature of Uber's services, as well as to encourage a facts-based approach to the regulation of these services. Such a facts-based approach is particularly important at a time where the Court of Justice of the European Union (the "CJEU") has been asked to deliver a preliminary ruling on questions related to the legal nature of Uber's services.⁸ Moreover, the EU seems at a crossroads with innovative, forward-looking regulations being adopted in some Member States, which allow Uber to offer its services, while ensuring that the public interest is preserved.⁹ This paper also seeks to show that Uber services do not have to be labelled as "transport services," which they are not, to be subject to regulation. Under EU law, intermediation services can already be subject to non-discriminatory and proportionate regulatory frameworks designed to protect the public interest.

This paper is divided in five sections. Section II discusses the regulatory responses that have been given to the arrival of Uber in the EU. It also discusses the impact of the pending preliminary reference before the CJEU in the *Asociación Profesional Élite Taxi v. Uber Systems Spain, S.L.* case on such responses, as well as the development of some platform-friendly regulatory framework in some EU Member States. Section III addresses some of the most common misconceptions about Uber's services that contribute to impede a meaningful discussion as to the way in which such services should be regulated. With the aim to sow the seeds for a regulatory framework that would allow Uber to compete while ensuring that the public interest is preserved, Section IV comprises my preliminary views on two questions that are particularly important: (i) whether Uber should be labelled a "transport service" to allow Member States to regulate its services, and (ii) what should be the core principles of the regulatory framework that should be applied to Uber and other online intermediation platforms. Finally, Section V concludes.

II. UBER'S ARRIVAL IN THE EU AND THE REGULATORY RESPONSES

Uber's arrival in Europe was met with success in many cities.¹⁰ Both riders and drivers are attracted to Uber's intermediation platform for a variety of reasons. On the rider side, Uber offers a convenient service and reliable service at attractive rates.¹¹ Nothing is easier but to book a ride from one's smartphone, the only thing needed being a credit card. Riders also value the possibility to rate drivers, which in turn increases quality of service as low performing drivers are weeded out from the platform.¹² Drivers are also attracted to the Uber platform as the only thing needed, at least for the UberPOP service, is to own a driving license and a car. This offers job opportunities to low-skilled workers,¹³ but also the ability for people employed in low-paid jobs or students to supplement their revenues by driving a few hours during their free time.¹⁴ Uber's success is thus

7 See Deloitte Access Economics, "Economic effects of ridesharing in Australia, Uber," 2016, <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-economic-effects-ridesharing-australia-010216.pdf>.

8 Case C-434/15: Request for a preliminary ruling from the Juzgado Mercantil No 3 de Barcelona (Spain) lodged on August 7, 2015 — *Asociación Profesional Élite Taxi v. Uber Systems Spain, S.L.*, OJ 2015, C 363/21.

9 See *infra* text accompanying notes 26-29.

10 Megaw, "Uber expansion leaves taxi industry in urgent need of a lift," *Financial Times*, May 16, 2016, available at: <https://www.ft.com/content/c4ded228-1910-11e6-bb7d-ee563a5a1cc1>.

11 Telegraph Staff, "Proof that Uber costs less than black cabs," *The Telegraph*, September 30, 2015, available at: www.telegraph.co.uk/technology/uber/11902613/Proof-that-Uber-costs-less-than-black-cabs.html.

12 Lenzo, "Understanding Uber's five-star rating system," *CNBC*, February 23, 2016, available at: www.cnbc.com/2016/02/23/understanding-ubers-five-star-rating-system.html.

13 Chassany, "Uber: A route out of the French banlieues," *Financial Times*, March 3, 2016, available at: <https://www.ft.com/content/bf3d0444-e129-11e5-9217-6ae3733a2cd1> ("In French suburbs such as Bobigny, however, the rise of Uber and other French minicab services represents something else: a foothold in the job market for thousands of undereducated youngsters of immigrant descent.").

14 See, e.g. Rogers, "Lured by income and flexibility, retirees becoming Uber drivers," *CNBC*, June 17, 2015, available at: www.cnbc.com/2015/06/17/lured-by-income-and-flexibility-retirees-becoming-uber-drivers.html.

explained by the fact that it efficiently connects drivers and riders, while handling the payment for the transaction and ensuring that the overall service runs smoothly.

Taxi companies, however, saw Uber as a major threat to their business. This led them to put pressure (e.g. through demonstrations and lobbying activities) on governments and regulatory authorities to take measures to ban Uber's activities, as well as to file lawsuits to have these activities declared illegal because Uber does not meet the regulatory requirements applying to the taxi industry.¹⁵ UberPOP was thus prohibited in several Member States,¹⁶ obliging Uber to phase out the service and, whenever allowed by local regulations, offer its UberX service instead.¹⁷ In many cities, these limited opportunities for growth as professionally licensed drivers are often in short supply. This not only deprived non-professionally licensed drivers from earning opportunities, but also riders from the innovative and inexpensive service they sought and enjoyed, as well as cities and communities from new mobility solutions.

This does not mean that Uber and other intermediation services will permanently face a regulatory standstill. History teaches that while incumbents may be initially successful at delaying new technologies and business models, there generally comes a point in time where legal and regulatory hurdles get cleared. For instance, while generic drugs were met with a great deal of resistance from originator drug companies,¹⁸ efforts by pharmaceutical companies to block their market entry have been largely defeated and now many originator companies have developed their own generic brands.¹⁹ Similarly, statutory monopolists in areas such as air transport, energy and telecommunications services fiercely resisted the liberalization of their industry by the EU in the 1980s and 1990s,²⁰ but these services are now entirely liberalized to the benefit of consumers and society as a whole.²¹ In other words, while incumbents may build a dam around their industry, it does not usually take long before cracks start to appear under the combined pressure of innovative companies and consumers seeking to enjoy better and cheaper services. There is no reason to believe that the current backward-looking frame of reference still pursued by regulatory authorities should not evolve in the future to accommodate Uber and other providers of online intermediation services.

In this respect, there are signs that the regulatory regimes Member States are trying to impose on Uber may soon be evolving. First, the CJEU has an opportunity to clarify the legal nature of Uber services and, in the process, to clear the path for sounder regulatory regimes. In *Asociación Profesional Élite Taxi v. Uber Systems Spain, S.L.*,²² the CJEU is asked to clarify whether UberPOP is a "transport service" or an "information society service," which can benefit from the free movement provisions included in the TFEU, particularly Article 49 (free establishment) and 56 (free movement of services), but also from

15 Chassany, "Protection of privilege is driving France's taxi wars," *Financial Times*, December 29, 2015, available at: <https://www.ft.com/content/c5e367b2-a96f-11e5-955c-1e1d6de94879>.

16 See, e.g. Davies "Uber suffers legal setback in France and Germany," *The Guardian*, June 9, 2016, available at: <https://www.theguardian.com/technology/2016/jun/09/uber-suffers-legal-setbacks-in-france-and-germany>; Drozdiak, "Uber's Low-Cost Service UberPop Banned in Brussels," *Wall Street Journal*, September 24, 2015, available at: <https://www.wsj.com/articles/ubers-low-cost-service-uberpop-banned-in-brussels-1443106617>.

17 Bartunek, "Uber to suspend unlicensed UberPOP service in Brussels," *Reuters*, October 13, 2015, available at: www.reuters.com/article/us-uber-tech-belgium-idUSKCNOS71VQ20151013 (reporting that as UberPOP was now banned, the company would "now concentrate on building up its more expensive UberX service, which uses professionally licensed drivers."); Cook, "Uber is suspending one of its services in France after taxi drivers rioted in the streets," *Business Insider*, July 3, 2015, available at: uk.businessinsider.com/uber-suspends-uber-pop-in-france-2015-7?r=US&IR=T (reporting that given the illegality of UberPOP in France the company would "transfer drivers of its uberPOP service to UberX, a more expensive service that will continue to operate.").

18 See, e.g. Rappeport, "Pfizer tactics to combat generic drugmakers," *Financial Times*, December 5, 2011, available at: <https://www.ft.com/content/7219cb50-1d3f-11e1-a134-00144feabdc0>.

19 Baigorry et al, "Novartis Said to Hold Talks to Buy Generics Maker Amneal," *Bloomberg*, November 13, 2016, available at <https://www.bloomberg.com/news/articles/2016-11-13/novartis-said-to-hold-talks-to-buy-u-s-generics-maker-amneal>.

20 State monopolies lobbied their governments and the European Commission to delay liberalization directives because such directives would allegedly harm the viability of their operations and would lead to significant job losses. See, generally, on the liberalization process Geradin, *The Liberalization of State Monopolies in European Union and Beyond*, Kluwer Law International, 1999.

21 There is significant evidence, for instance, that the liberalization of air transport services in the EU has considerably increased the offering for flights and has significantly decreased prices. The arrival of low-cost companies has also increased demand and stimulated regional airports.

22 Case C-434/15, supra note 8.

the guarantees offered in the so-called “Services Directive”²³ and “E-Commerce Directive.”²⁴ As I have argued elsewhere,²⁵ there is every reason to believe that UberPOP should not be labelled a “transport service” as Uber can best be described as an online market-making or intermediation platform that connect “producers” (in this case drivers) with “consumers” (riders) and facilitate their interactions and exchanges. In other words, Uber does not create value by performing transport services (it does not own any cars and employ any drivers), but by enabling interactions between two categories of distinct users of its platform. Should the CJEU decide that UberPOP is an information service, this would clear many of the regulatory obstacles created in the Member States without however, as I will discuss below, preventing Member States from adopting non-discriminatory and proportionate regulatory regimes designed to protect the public interest.

Second, some EU Member States have not been waiting the outcome of the *Asociación Profesional Élite Taxi v. Uber Systems Spain, S.L.* to develop forward-looking regulatory regimes offering Uber a framework under which it can legally operate its services. For instance, Estonia adopted a new Public Transport Act (“PTA”) in February 2015, which comprises a regulatory regime applying to occasional service providers, such as the drivers that typically operate under the UberPOP banner.²⁶ The PTA defines “occasional services” as “the carriage by road, except for regular services and taxi services, and the main characteristic of which is the carriage of groups of passengers constituted on the initiative of the customer or the carrier.”²⁷ Providers of occasional services are subject to a mandatory license comprising requirements, such as obligations to register as commercial or non-commercial entity, to show the absence of criminal convictions, the need to appoint a transport manager, etc.²⁸ Moreover, in September 2016, Lithuania amended its Road Transport code to allow Uber and other competing platforms to operate their services, while ensuring that the public interest would be met.²⁹ For instance, pursuant to these amendments, drivers must declare their intention to provide services through these platforms to their municipality, their cars must be inspected and they must declare their income to the State Tax Inspectorate.³⁰ The Road Transport Code does not, however, subject Uber and other platforms to an authorization or licensing regime.

While such developments are encouraging, it remains a fact that misconceptions about Uber’s activities continue to contribute to regulatory inertia in most Member States, and are used by taxi companies and associations to gain political support for the status quo. In the next section, I seek to clear up some of these misconceptions by providing facts-based evidence of the real nature and impact of Uber and other online intermediation services providers.

III. CLEARING UP MISCONCEPTIONS: FOR A FACTS-BASED ANALYSIS OF UBER’S ACTIVITIES

Since its arrival in Europe, Uber has received considerable media attention. While quality newspapers and magazines tend to provide a fair account of Uber’s activities, in many other instances these activities are mischaracterized. In this section, I seek to address some of the main misconceptions that contribute to impeding a meaningful discussion as to the ways in which Uber’s services should be regulated.

23 Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, O.J. 2006, L 376/36.

24 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce in the Internal Market, O.J. 2000, L 178/1.

25 See Geradin, “Online Intermediation Platforms and Free Trade Principles – Some Reflections on the Uber Preliminary Ruling Case,” in *Internet - Competition and Regulation of Online Platforms*, Ortiz, Ed., *Competition Policy International*, 2016, at p. 119.

26 See: https://www.riigiteataja.ee/en/compare_original?id=505022016010.

27 Id. at § 5.

28 Id. at §§ 41 et seq.

29 Republic of Lithuania, Road Transport Code, Amendments to Articles 7 and 18, September 27, 2016, available at: <https://www.e-tar.lt/portal/legalAct.html?documentId=32caf3508c8111e6b969d7ae07280e89>.

30 Id.

A. Myth No 1: Uber is Another Form of Taxi Service

For the reasons already mentioned above, Uber is not a taxi company. It does not own cars and does not employ drivers. Uber is a software company, which is essentially staffed by software engineers.³¹ The bulk of its expenditures are linked to the maintenance and the development of its software platforms, as well as to the promotion of its intermediation services to both drivers and riders. Unlike in a taxi business, both riders *and* drivers are Uber's customers. As a matter of fact, Uber generates revenues by charging a service fee to the driver on each ride that is intermediated via its platform.

Uber is analogous to the dispatch services that have for a long time existed in the taxi industry where some companies not only provide taxi services, but also dispatch rides to independent taxis against the payment of a fee. The key differences between traditional dispatch centers and Uber's intermediation services relate to the technology at stake and the fact that Uber does not allocate trips to drivers (as usually done by taxi dispatchers), but rather offers riders' booking requests to nearby available drivers that can then accept or reject them. Uber does not rely on telephone operators, but on a software platform that connects riders and drivers more efficiently as it can collect information from the drivers and the riders' smartphones instantaneously. Software platforms like Uber thus offer major improvements in the dispatch task, including increased speed and accuracy. As will be seen below, Uber's software platform also allows the development of new innovative services, such as UberPOOL (allowing a rider to share part or all of her ride with one or more other riders headed in the same direction and thus benefit from reduced cost for her own trip),³² which would not be possible to develop by traditional dispatch centers.

It is also important to note that Uber's intermediation platform is by no means unique. Nothing prevents taxi companies from developing their own platform or using one of the third-party platforms that is available on the market,³³ and many taxi companies are now using their own apps. Moreover, nothing prevents drivers and riders from using more than one platform, and many engage in so-called "multi-homing."³⁴

B. Myth No 2: Uber Hurts Taxi Companies because it Takes Business Away from Them

While the drivers using the Uber platform compete with taxi drivers for riders (and thus inevitably take some business away from them), it would be a mistake to think that this competition is a "zero-sum" game where each rider using Uber's platform would be taken away from the taxi companies. There is evidence that wherever it is present, Uber and other platforms enlarge the market to a considerable extent.³⁵ For instance, an analysis of Taxicab and TNC ("Transportation Network Companies," such as Uber and Lyft) Ridership Data 2013 – 2015 carried out by the City of New Orleans' taxicab regulator (see Figure 1) reveals that the introduction TNC service in New Orleans grew the market considerably in 2015.³⁶

31 See Carson, "You know Travis Kalanick. Meet the 23 other power players of Uber," *Business Insider*, January 29, 2016, available at: uk.businessinsider.com/the-power-players-of-uber-2016-1?r=US&IR=T/#ryan-graves-was-the-companys-first-employee-and-first-ceo-1 (In January 2016, Uber was reported to have 1,200 software engineers).

32 See: <https://help.uber.com/h/5d3fa7d0-9831-4ead-b4f4-0299eb443ea2>.

33 For instance, in Brussels, "Taxi Verts," one of the largest taxi companies, is now using "eCab" to dispatch cars to riders. See: <http://www.taxiverts.be/en/taxi-brussels-app-iphone-smartphone-android/>. The same application is used by G7, the largest taxi company in France, <https://www.e-cab.com/fr/>. This app is also used in Germany, the Netherlands and Canada.

34 On multi-homing, see Evans & Schmalensee, "The Antitrust Analysis of Multi-Sided Platform Businesses," (Coase-Sandor Inst. L. & Econ., Working Paper No. 623, 2013) ("An economic agent single-homes if she uses only one platform in a particular industry and multi-homes if she uses several. In the cases of payments, consumers and merchants both generally use several payment platforms and therefore multi-home in this sense.").

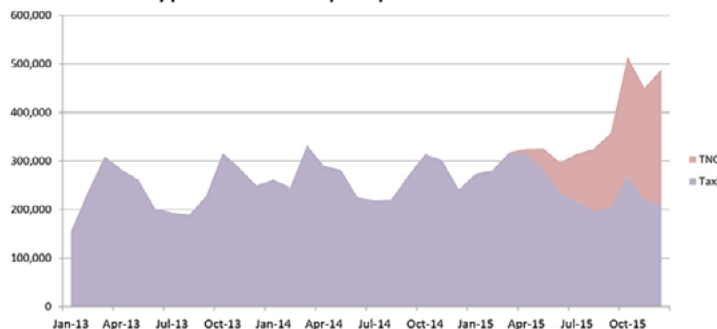
35 Schmidt, "From scarcity to abundance: growing the overall pie," *Uber Under the Hood*, January 12, 2016, available at: <https://medium.com/uber-under-the-hood/from-scarcity-to-abundance-growing-the-overall-pie-by-sophie-schmidt-a2e5a24bbc71#.1mhfwcrsc> ("What's interesting is that rather than simply displacing taxi, apps like Uber appear to be growing the overall transportation pie. It's not a zero-sum game. This is most likely because ridesharing has attracted a whole new group of passengers, people who rarely used taxis and drove themselves instead. In Los Angeles, for example, the for-hire vehicle market (which includes taxis, private cars and ridesharing) grew by nearly 400 percent in Uber's first three years. Of course LA is well known for its basic public transit and limited number of taxis (which are restricted to certain zones), so it may be something of a special case. But according to Portland's own regulator, the total number of taxi and ridesharing trips in the city grew by more than 40 percent in the first three months after Uber and Lyft's arrival."); Gaskell, "Study Explores The Impact Of Uber On The Taxi Industry," *Forbes*, January 26, 2017, available at: <https://www.forbes.com/sites/adigaskell/2017/01/26/study-explores-the-impact-of-uber-on-the-taxi-industry/#10fa46c16b0f> ("In much of the discourse around this issue, the suggestion seems to be that the market is of a fixed size, and therefore Uber drivers are taking income from licensed drivers. I suspect however, that the reality is that Uber et al have significantly increased the size of the market, especially in off-peak times where dissatisfaction with licensed drivers is at its peak.").

36 See Operational Updates on the Taxicab and For-Hire Vehicles Bureau & Analysis of Taxicab and TNC Ridership Data 2013 – 2015, available at: <http://nola.gov/nola/>

Figure 1: New Orleans and Taxicab & For Hire Bureau Data Ride Analysis

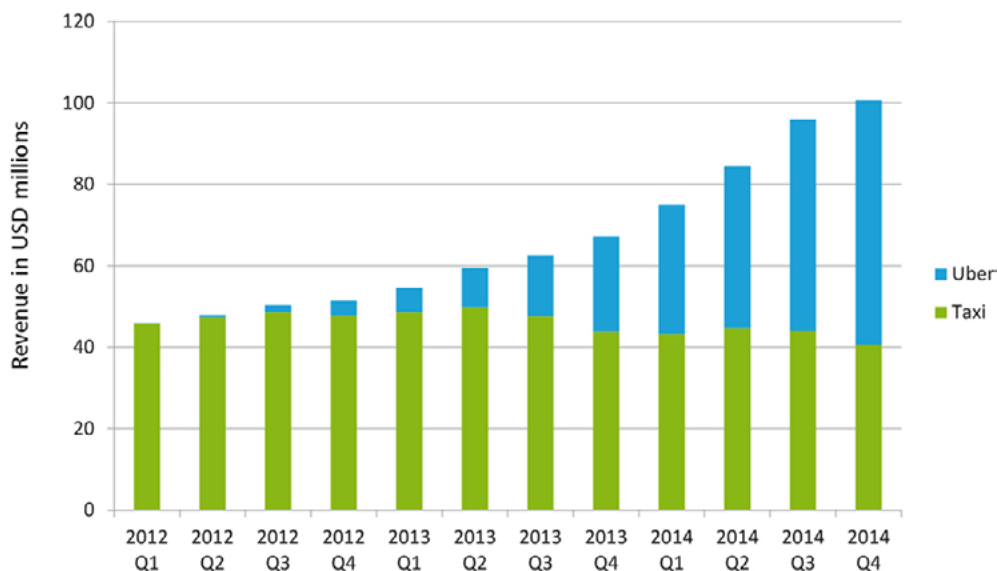
TNCs Grew the Pie

- Introduction of TNC Service increased overall ridership across regulated industry areas by approximately 1,000,000 rides in 2015.
- TNCs appear to have met an untapped consumer demand for a different type of ridership experience.



Similarly, a study conducted by Deloitte Access Economics found that 61 percent of UberX rides are new in the point-to-point transport market, due to either UberX's differentiated service offering (36 percent) or price point (25 percent).³⁷ It also found that in the city of Los Angeles, Uber's market entry more than doubled the size of the market. While the overall size of the point-to-point transport market at the beginning of 2012 – when UberX entered the market – was approximately U.S. \$46 million per quarter, at the end of 2014, total revenue in the market exceeded U.S. \$100 million per quarter (see Figure 2).³⁸

Figure 2: Total revenue in point-to-point transport market in Los Angeles



[media/One-Stop-Shop/Taxi/Taxi-Bureau-Update-to-Council-Transportation-Committee-\(Feb-22,-2016\).pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term.](#)

37 Deloitte Access Economics, "Economic effects of ridesharing in Australia, Uber", 2016, available at: <https://www2.deloitte.com/pg/en/pages/economics/articles/economic-effects-ridesharing-australia-uber.html>, at 4.

38 Id. at 58.

There are several reasons explaining why Uber and other platforms grow the market.

First, because rides intermediated by Uber, in particular with regards to its UberPOP product, are generally cheaper than those provided by taxis,³⁹ people who would not normally use taxi services for financial reasons (students, low-income families, etc.) may order rides through Uber's platform. Similarly, because of the cheaper rates (except possibly during "surge pricing" episodes, see below), people using their car in city centers may also decide to switch to Uber or other competing platforms.⁴⁰

Second, because of the set number of licensed taxis, there may be periods of the day or circumstances where demand for rides exceeds the supply offered by taxis (e.g. Friday and Saturday evenings, large popular events (football games, concerts, etc.), rainy days, etc.). Uber has sought to address this problem not only by adding supply to the market, but also through its dynamic pricing model (often referred to as "surge pricing"), which adjusts prices as circumstances warrant.⁴¹ In times of high-demand for rides on Uber's platform, higher prices motivate drivers to postpone to join the platform, while simultaneously motivating riders to defer low-value trips.⁴²

Third, some cities have also been chronically undersupplied for many years due to the insufficient number of licenses with the result that such licenses are traded for very large sums of money.⁴³ For instance, in 1937, the city of Paris decided to cap the number of taxi licenses at 14,000. In 2017, despite the considerable growth of the city's population and wealth, the number of cabs had only increased by 29 percent, to 17,770.⁴⁴ Similarly, in New York City, the number of taxi licenses (so-called "medallions") was set at 16,900 in 1937.⁴⁵ The number dwindled to 11,787 following the Great Depression and stayed at the same level until the mid-1990s,⁴⁶ where it grew to 13,437 as of 2014.⁴⁷

39 Hamilton, "Road-testing the taxis: Uber was cheaper and quicker than a black cab," *The Independent*, June 10, 2014, available at: www.independent.co.uk/voices/road-testing-the-taxis-uber-was-cheaper-and-quicker-than-a-black-cab-9524060.html; Global Editorial, "In the Uber-vs-taxi battle, less regulation is the way to go," *The Globe and Mail*, November 29, 2015, available at: www.theglobeandmail.com/opinion/editorials/in-the-uber-vs-taxi-battle-less-regulation-is-the-way-to-go/article27516180/ (reporting that "[a]ccording to a new report by the City of Ottawa, Uber prices are 36 per cent cheaper than the average taxi fare, and the average wait time for passengers is under four minutes, compared to between five and 15 for a regular cab.").

40 Krug, "Ditching my car for Uber saves me over 6 days and \$11,000 a year," February 9, 2015, *Business Insider*, available at: uk.businessinsider.com/how-using-uber-and-lyft-saves-me-money-2015-2?r=US&IR=T.

41 UBER, "What is Surge Pricing?," available at: <https://help.uber.com/h/6c8065cf-5535-4a8b-9940-d292ffdc119>; see also Hall et al., "The Effects of Uber's Surge Pricing: A Case Study," September 2015, (unpublished manuscript), available at: http://faculty.chicagobooth.edu/chris.nosko/research/effects_of_uber's_surge_pricing.pdf.

42 Einav et al., "Peer-to-Peer Markets," (Nat'l Bureau of Econ. Research, Working Paper No. 21496, 2015), <http://www.nber.org/papers/w21496>; Weinner "Is Uber's surge pricing fair?," *The Washington Post*, December 22, 2014, https://www.washingtonpost.com/blogs/she-the-people/wp/2014/12/22/is-ubers-surge-pricing-fair/?utm_term=.fbb7ac6e0931 ("When Uber engages in surge pricing, it's simply a response to an imbalance between supply and demand. As Uber explains, when demand suddenly increases, Uber raises the prices for a ride as a way to get more drivers, i.e. supply, on the road. No need for anyone to figure out what price will work because if prices are too high, demand will fall, whereas if prices are too low then supply will fall. At some point, the invisible hand of the market gets the prices just right so that there are enough Uber drivers to take riders where they want to go.").

43 See Horwitz & Cumming, "Taken for a Ride," *Slate*, June 6, 2012, available at: www.slate.com/articles/business/moneybox/2012/06/taxi_medallions_how_new_york_s_terrible_taxi_system_makes_fares_higher_and_drivers_poorer_.html.

44 See the data provided by the police, which is available at: <https://www.prefecturedepolice.interieur.gouv.fr/Demarches/Professionnel/Transports/Taxis-parisiens>.

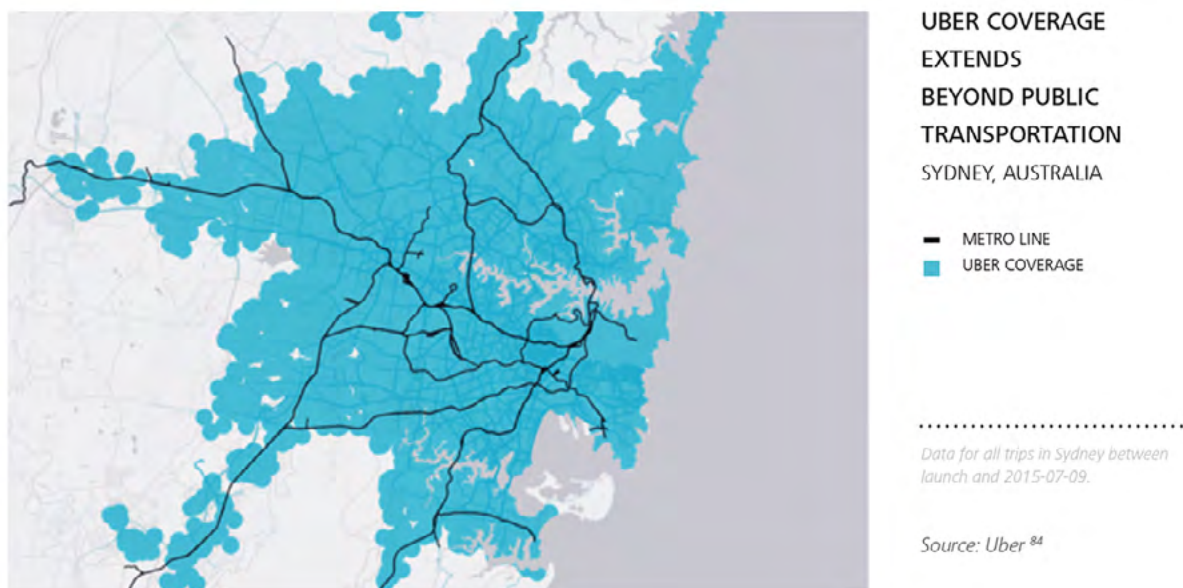
45 See Van Gelder, "Medallion Limits Stem From the 30's," *New York Times*, May 11, 1996, <http://www.nytimes.com/1996/05/11/nyregion/medallion-limits-stem-from-the-30-s.html>.

46 Id.

47 See "2014 TaxiCab Fact Book," New York Taxi & Limousine Commission (2014), http://www.nyc.gov/html/tlc/downloads/pdf/2014_taxicab_fact_book.pdf.

Fourth, data shows that drivers using Uber's platforms tend to better cover areas that are traditionally underserved by taxis and other modes of transportation, which tend to concentrate on urban centers.⁴⁸ For instance, based on Uber data,⁴⁹ the above mentioned Deloitte Access Economics study found that, in the Sydney area, "64 per cent of Uber rides start in 'transport deserts' located 800 metres or more from medium frequency public transport."⁵⁰ (See Figure 3) In addition, a recent independent study showed that, as measured by wait times, neighborhoods with lower average income experienced better service from UberX.⁵¹

Figure 3: Transport deserts in Sydney



Fifth, Uber-mediated services offer several advantages compared to taxi services, such as the fact that they do not require cash payments, safety is enhanced by the fact that the identity of the driver is known and that the rides are traceable electronically. Leaving aside price differences, these features have encouraged people who would not normally use taxi services to request rides via Uber.

Finally, thanks to its platform, Uber provides services that simply were not provided by taxis, such as UberPOOL, a service whereby an Uber rider can share part or all her ride with one or more other riders headed in the same direction and thus benefit from reduced cost for of her own trip.⁵² This further enlarges the market by making the service more affordable.⁵³

48 McArdle, "Uber Serves the Poor by Going Where Taxis Don't," *Bloomberg*, July 20, 2015, available at: <https://www.bloomberg.com/view/articles/2015-07-20/uber-serves-the-poor-by-going-where-taxis-don-t> ("Uber provides the biggest benefit to people who live in lower-income neighborhoods, not in rich ones. That's where dispatch is often unreliable, where street hails are rare, and where many residents don't have a car. A new study suggests that in low-income areas, this benefit of Uber is potentially very large.")

49 Uber, "Connecting Sydney's Villages," May 28, 2015, available at: <http://newsroom.uber.com/sydney/2015/05/connecting-sydneys-villages/>.

50 Deloitte Access Economics, *supra* note 37, at 48.

51 Langston, "Uber service faster in low income Seattle neighborhoods, initial study finds," *Phys.Org*, October 25, 2016, available at: <https://phys.org/news/2016-10-uber-faster-income-seattle-neighborhoods.html>.

52 See *supra* note 32.

53 In the UK, UberPOOL has been met with success. See Rodioinova, "UberPOOL gets more than 1 million customers," *The Independent*, May 2016, available at: <http://www.independent.co.uk/news/business/news/uberpool-gets-more-than-1-million-customers-a7068841.html> ("More than 1 million Londoners have opted to share their Uber journey with the company's uberPOOL service since it launched last December. The service, which operates in central London as well as Heathrow Airport, enables passengers to save money by turning the usual Uber into a minibus service by matching people heading in the same direction. It also ensures drivers earn more than if they were to carry just one passenger through longer journeys and by increasing the number of people travelling in the car. Uber claims the growth of these shared trips has helped to reduce air pollution in London. Globally, 20 per cent of Uber journeys are now done via UberPOOL, the company said in May. This means that if the company is sacrificing margin on individual journeys – uberPOOL fares 25 per cent cheaper than the typical Uber journey – it is potentially growing the overall number of rides, giving it a larger economy of scale.")

As these factors show, while drivers using the Uber app and taxi companies may compete for the same riders, this is by no means a zero-sum game as the number of riders is not static. In fact, the more promising area of growth for Uber and other companies offering intermediation services is not to take away riders from taxis, but to convince people to no longer use their cars and opt instead for ride-sharing options.⁵⁴

It is also important to note that while they grow the market to the benefit of users, Uber and other intermediation platforms also contribute to a variety of policy objectives, such as increasing road safety, reduce pollution and traffic congestion. For instance, a recent study has shown that the entry of Uber in an area reduces congestion. The factors contributing to that outcome include the facts that: Uber can decrease the number of cars on the road by having more than one person in the car; it can reduce car ownership; ride-hailing services can lead people to drive less in general and use alternatives such as buses, bicycles and walking; Uber's surge-pricing strategy, which increases prices during periods of high demand, has the potential to delay or divert peak-hour demands because riders may wait to travel or use public transit instead; and Uber drivers are less likely than taxi drivers to spend time wandering streets to find passengers.⁵⁵ Another independent study has shown that Uber reduces the rate of alcohol related motor vehicle homicides.⁵⁶ Thus, Uber and other online intermediation platforms contribute to achieving a variety of public interest objectives.

C. Myth No 3: Uber Destroys Good Jobs and Replaces Them by Precarious Ones

One of the claims that is regularly made by Uber critics is that Uber would destroy good (employee) jobs for precarious (self-employed) ones.⁵⁷ Such claims are unfounded for at least two reasons. First, data does not suggest that Uber eliminates taxi jobs. For instance, an independent study examining the impact of Uber's expansion on workers in point-to-point transportation services across U.S. cities over the period 2009 to 2015 found that "the labour supply of traditional taxi drivers increased in cities where Uber was introduced relative to cities where it was not."⁵⁸ Second, while it is true that Uber relies on partner-drivers operating independently, this is hardly a distinguishing feature compared to the taxi industry. Except for a few countries, the clear majority of taxi drivers in EU Member States are independent workers. For instance, it has been reported that 84 percent of taxi drivers in Belgium are self-employed,⁵⁹ while the number of self-employed taxi drivers in France reaches 97 percent.⁶⁰ Thus, besides the fact that Uber does not necessarily take away business from taxi companies (as it grows the market), it does not turn employees into self-employed workers. In this respect, given the flexibility of Uber's platform, nothing in the Uber business model prevents self-employed drivers to work at the same time as taxi drivers and Uber drivers.

As to those who believe that drivers using the Uber platform are false independent contractors,⁶¹ they misunderstand the relationship between Uber and these drivers. First, while Uber seeks to match requests from riders with drivers in an efficient manner, drivers are free to accept these requests or not. Moreover, drivers using the Uber platform drive whenever

54 See Krugel, "Uber doesn't consider taxi industry its main competition," *Calgary Herald*, April 4, 2016, available at: calgaryherald.com/business/local-business/uber-legal-director-says-taxi-industry-not-ride-sharing-apps-main-competition (quoting Uber Canada's Legal Director for whom "taxis aren't Uber's main competition — private car ownership is.").

55 Li et al., "Do Ride-Sharing Services Affect Traffic Congestion? An Empirical Study of Uber Entry," September 14, 2016, available at https://papers.ssrn.com/sol3/papers2.cfm?abstract_id=2838043.

56 Greenwood & Wattal, "Show Me the Way to Go Home: An Empirical Investigation of Ride Sharing and Alcohol Related Motor Vehicle Homicide," *Fox School of Business Research Paper No. 15-054*, January 31, 2015, available at: https://papers.ssrn.com/sol3/papers2.cfm?abstract_id=2557612.

57 See "Uber: risk without autonomy or control," *The iLabour Project Investigating the Construction of Labour Markets, Institutions and Movements on the Internet*, November 1, 2016, available at: labour.oii.ox.ac.uk/2077-2/.

58 Berger et al., "Drivers of Disruption? Estimating the Uber Effect," January 23, 2017, available at: www.oxfordmartin.ox.ac.uk/downloads/academic/Uber_Drivers_of_Disruption.pdf.

59 See blog post by Bart Tommelein Vice-Minister-President of the Flemish Government, Flemish Minister for the Budget, Finance and Energy referring to a study of the Belgian Social Security, available at: <http://www.tommelein.com/uber-chauffeurs-zijn-zelfstandigen/>.

60 Rabreau, « Les vrais salaires des chauffeurs de taxis, » *Le Figaro*, June 15, 2016, available at: www.lefigaro.fr/economie/le-scan-eco/dessous-chiffres/2016/02/02/29006-20160202ARTFIG00010-les-vrais-salaires-des-chauffeurs-de-taxis.php.

61 Fox, "Uber and the Not-Quite-Independent Contractor," *Bloomberg*, June 23, 2015, available at: <https://www.bloomberg.com/view/articles/2015-06-23/uber-drivers-are-neither-employees-nor-contractors>.

they want for as long (or little) as they want, and may even decide not to drive at all for a time (e.g. if they find better opportunities).⁶² Finally, nothing prevents drivers from “multi-homing,” and thus drive using both the Uber app and any of its competitors’ apps.⁶³

One possible difference between taxi drivers and drivers using the Uber platform is that drivers using this platform can drive on a part-time basis only (this is particularly true for unlicensed drivers in countries where UberPOP is allowed).⁶⁴ But part-time work is frequent in many industries (e.g. catering industry, entertainment industry, etc.) and given the important fluctuation of demand for rides during the day, part-time work seems particularly well suited to market needs. In addition, in most if not all EU Member States, part-time work is regularly used by students and low-income workers to complement their revenues. In this respect, generating revenue opportunities for these categories should be a virtue rather than a vice of Uber’s intermediation services.

D. Myth No 4: Uber Needs to be Regulated like Taxi Companies to prevent “Unfair Competition”

One of the claims that is often made by taxi companies and associations is that taxi regulations should be extended to Uber to prevent “unfair competition.”⁶⁵ Claims of unfairness or discrimination are often made when competing businesses are subject to different regulatory requirements or when one category of businesses completely escapes regulation. While it seems fair that businesses offering similar services should be subject to similar rules, the relevant questions here are (i) whether Uber and taxi companies offer similar services and, if not, (ii) whether the regulatory requirements applying to taxis should be extended to Uber.

As to the first question, we have seen in Section A that Uber does not offer services that are similar or even comparable to taxi companies. While Uber is a software company offering intermediation services, taxi companies are in the business of *physically* transporting people from point A to point B. Thus, on top of matching a rider with a driver, they deliver a transportation service, which is not the case of Uber.

As to the second question, the regulations that apply to taxis were developed at a time when the technology used for online intermediation services did not exist (and was not even dreamed about) and when such services could thus not even have been contemplated.⁶⁶ In addition, the application of taxi regulations to Uber would eliminate most of the key efficiencies brought about by its intermediation platform.⁶⁷ For instance, the strict limitation on the number of licenses that applies in many European cities is fundamentally at odds with Uber’s objective of balancing supply with demand. As we have seen, this licensing system has the effect of creating an imbalance between supply and demand at certain times of the day or in certain circumstances. Uber’s platform solves that problem by adding supply when demand is high, and by more efficiently

62 Johnson, “How to Make Money Driving for Uber,” *The Simple Dollar*, January 18, 2017, available at: www.thesimpledollar.com/how-to-make-money-driving-for-uber/ (“Obviously you won’t make any money when you’re not working, but the fact that you can opt in and out as your schedule permits makes driving for Uber a unique gig. And if you want to earn more, you have that choice. With Uber, you decide when you are available and ready for business.”).

63 See Choudary, “Uber vs. Lyft: How Platforms Compete on Interaction failure,” November 5, 2015, available at: <https://medium.com/platform-thinking/uber-vs-lyft-how-platforms-compete-on-interaction-failure-30f59fdca137#rttsmz8t2> (“[M]ulti-homing costs for drivers to co-exist on Uber and Lyft are relatively low. Many drivers participate on both platforms. Given the ease of booking rides, multi-homing costs are very low for travelers/riders on these platforms as well.”).

64 Lawler, “Uber Study Shows Its Drivers Make More Per Hour And Work Fewer Hours Than Taxi Drivers,” *Tech Crunch*, January 22, 2015, available at: <https://techcrunch.com/2015/01/22/uber-study/> (“Unlike cab drivers, most Uber partners don’t see the platform as a full-time job. Across its 20 largest markets, 80 percent of its partners drove fewer than 35 hours a week, and more than half were working between one and 15 hours each week. That compares to more than 80 percent of cab drivers who logged 35 hours or more based on U.S. Census Data.”).

65 See *supra* note 4.

66 For a discussion of the history of taxi regulation, see Geradin, “Should Uber be Allowed to Compete in Europe? And if so How?,” *Competition Policy International*, June 2015.

67 International Transport Forum, “App-Based Ride and Taxi Services, Principles for Regulation,” *Corporate Partnership Board Report*, 2016, available at: <http://www.itf-oecd.org/sites/default/files/docs/app-ride-taxi-regulation.pdf>, at 7. (“Currently, regulatory oversight of taxis and CTAs is in many cases tilted towards incumbent service providers, often because of the specificity of taxi operations, notably street hailing, but in some instances also as a result of market capture by existing service providers. Rules governing market entry, geographic restrictions and fare setting for taxis are neither in line with the reality of mobility demand in many cities, nor are they adapted to the types of services provided by CTAs.”).

matching drivers with riders than a telephone dispatch system would be able to do. Moreover, the regulation of taxi rates is fundamentally at odds with the dynamic pricing system used by Uber. Because regulated taxi rates are set in a rigid manner, there are frequent imbalances between supply and demand. As we have seen, Uber has solved this problem by increasing the price of rides (surge pricing) when demand exceeds supply, hence increasing the number of drivers while decreasing the number of riders. The efficiency created by dynamic pricing would be eliminated if rate regulations were applied to Uber or to drivers using the Uber app.

In this respect, it is even questionable whether current taxi regulations should still be applied to taxis. Even in the absence of Uber and other intermediation platforms, it is far from obvious that these rules serve consumers well. One of the reasons why Uber met commercial success when arriving in Europe is that many taxi users were dissatisfied with the cost of taxi services, the quality of these services and some of the practices frequently observed in the industry (e.g. inability to pay by debit or credit cards as vehicles do not have the necessary equipment or this equipment is not functioning properly, etc.).⁶⁸ Instead of using the arrival of Uber as an opportunity for asking regulators to revisit taxi rules, it seems that most taxi companies and associations have used them as a shield against competition.⁶⁹

This is not to suggest that Uber services should be left totally unregulated, but that the regulatory framework that applies to these services should be tailored to simultaneously: (i) allow Uber to compete and deliver the efficiencies generated by its platforms, and (ii) assure that public interest is guaranteed.⁷⁰ I address this issue in Section IV below.

IV. REGULATING UBER AND OTHER INTERMEDIATION PLATFORMS WISELY: SOME PRELIMINARY THOUGHTS

How to develop a regulatory framework that would allow Uber to compete while ensuring public interest is a complex question that I intend to address in a subsequent paper. In this paper, I nevertheless share my preliminary views on two questions that are particularly important: (i) whether Uber should be labelled as a “transport service” to be properly regulated and (ii) what should be the core principles of regulation that should be applied to Uber and other intermediation platforms.

A. Should Uber be Labelled as a “Transport Service” to be Adequately Regulated?

This first question is at the core of the *Asociación Profesional Élite Taxi v. Uber Systems Spain, S.L.* case currently pending before the CJEU, where, as noted above, the CJEU is essentially asked to clarify whether UberPOP is a “transport service” or an “information society service” within the meaning of EU law. Whether UberPOP is a transport or an information society service is a legal question, which I have addressed at length in an earlier paper.⁷¹ In my view, Uber and other online intermediation platforms should be regulated as information society services for the reasons evoked in Section II above.

68 Wallsten, “The Competitive Effects of the Sharing Economy: How is Uber Changing Taxis?,” Technology Policy Institute, Studying the Global Information Economy, June 2015, available at: https://www.ftc.gov/system/files/documents/public_comments/2015/06/01912-96334.pdf, at 19 (“In particular, in Chicago the data suggest that complaints about things a driver might do to affect quality—use of air conditioning, ‘broken’ credit card machines, rudeness, and talking on cell phones—all seem to have decreased along with Uber’s rise. Sometimes credit card machines are “broken” (i.e., the driver refuses to use it) and sometimes they are really broken.”) Interestingly, competition from Uber made taxi associations support mandatory card payments, notably in the US. See “All London black cabs to take card payments from October,” *The Guardian*, February 3, 2016, available at: <https://www.theguardian.com/uk-news/2016/feb/03/all-london-black-cabs-to-take-card-payments-from-october> (“Groups representing taxi drivers said the decision by TfL, which regulates public transport in the capital, would benefit both drivers and customers. The move by TfL’s board followed a consultation in which 86% of respondents backed the move.”).

69 Wilshire et al., “France, Uber in culture crash: Taxi drivers violently protest ride-share app,” *Los Angeles Times*, June 26, 2015, available at: www.latimes.com/world/europe/la-fg-uber-france-taxi.html-20150625-htmstory.html; See Global Editorial, supra note 39, (“If they thought it through, cabbies would abandon the current model and push for one that, as the Competition Bureau says, has the lightest possible regulatory touch, and whose regulations are the same for all drivers, old or new. Don’t limit entry into the market and don’t set fares; do require car inspections, police background checks and a reasonable level of insurance.”).

70 See Edelman & Geradin, “Efficiencies and Regulatory Shortcuts: How Should we Regulate Companies like Airbnb and Uber,” 19 (2016) *Stanford Technology Law Review* 293.

71 See Geradin, supra note 25.

One legitimate question is whether Member States would still be able to regulate Uber services should the CJEU decide that they are information society services or should such a finding mean that Uber services would have to be left entirely unregulated. There is no doubt that Member States would be able to regulate these services if they were recognized as information society services by the CJEU, but that the rules adopted by the Member States should not prevent Uber from enjoying its freedom to provide services across the internal market. That is the case for the following reasons.

First, if UberPOP were found to be an information society service, this would mean that its intermediation services would fall within the scope of the Services Directive (Directive 2006/123) and the E-Commerce Directive (Directive 2000/31), as well as under Article 49 and 56 TFEU. UberPOP could thus benefit from the freedom to provide services guarantees contained in these directives and in these TFEU provisions. For instance, Article 3(2) of the E-Commerce Directive contains the general principle that: “Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide information society services from another Member State.”

However, Article 3(4) of the same directive provides that Member States may nevertheless adopt measures derogating from the freedom to provide information society services if such measures are: (i) necessary for reasons of public policy, the protection of public health, public security, the protection of consumers; (ii) taken against a given information society service which prejudices the objectives referred to in point (i) or which presents a serious and grave risk of prejudice to those objectives; (iii) proportionate to those objectives.⁷² Thus, nothing prevents Member States to regulate UberPOP or other Uber services provided they meet the conditions specified in Article 3(4).

In this respect, while license requirements restrict the freedom to provide intermediation services across Member States, there may also be circumstances where regulation may be needed to achieve legitimate public interest objectives, such as public security and protection of consumers.⁷³ It could, for instance, be argued that by connecting prospective passengers with unsafe drivers (or drivers using unsafe cars), Uber could harm its users (riders and/or drivers) and non-users (third-party passengers or pedestrians). Thus, for instance, a measure requiring Uber to comply with safety measures going beyond those it voluntarily performs may not in itself be a breach of Article 3(4) of E-Commerce Directive provided, of course, that the measure adopted is proportionate to the objective sought. By contrast, imposing licensing requirements that have the object or effect of creating barriers to entry cannot be compatible with that provision.

In other words, UberPOP does not need to be considered as a “transport service” to be subject to regulation. Member States can regulate UberPOP and other intermediation services provided they do not unduly interfere with Uber’s freedom to provide these services in the internal market.

B. What Should be the Core Principles of Regulation Applied to Uber and Other Intermediation Platforms?

As noted in the introduction, one of the key objectives of this paper is to encourage a facts-based approach to the regulation of Uber and other companies’ intermediation services. A first step in that direction is to give a correct legal qualification to these services as “information society services” rather than “transport services,” which they are not when the facts are properly considered. Such a legal qualification would allow Member States to regulate these services to ensure public interest, while protecting Uber and other online intermediation platforms from regulatory requirements that would unduly interfere with their freedom to provide their services.

The next step is to determine what regulatory framework is needed to allow Uber to compete and deliver the efficiencies generated by its platforms, while ensuring public interest. Once the efficiencies brought by the Uber platform (and thus the benefits that this platform can bring to consumers and society) are properly understood, the best way to lead the path to sound

⁷² Similarly, Article 9(1) of the Services Directive provides that “Member States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied: (a) the authorisation scheme does not discriminate against the provider in question; (b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest; (c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective.”

⁷³ See Edelman & Geradin, *supra* note 70.

regulation is to determine the requirements that are needed to correct market failures.⁷⁴ Market failures arise in situations where the free operation of the market fails to achieve desirable outcomes. Safety may, for instance, be an issue for people requesting a ride through the Uber platform. Safety may have several dimensions, such as, whether the driver is safe (absence of criminal record), whether the car is safe (because it is well maintained, etc.). Riders may also be concerned about fraud (misuse of their credit card details), the protection of their privacy (as their ride will leave an electronic trace), etc. Finally, society may want to ensure that the services intermediated through platforms are accessible to disfavored groups, such as people with limited mobility. Thus, the question is whether regulatory intervention is needed to address these legitimate concerns or whether they will be sufficiently addressed by the platforms and/or its users without such an intervention. There is no easy response to that question, but for the fact that it should be answered in a facts-driven manner.

Another important issue is whether the regulatory requirements that may be needed to correct market failures should be imposed on the platform or on its users. While, for instance, background checks on drivers should arguably be conducted by the platforms, it is questionable whether the platforms are best placed to guarantee car safety considering that drivers relying on the Uber platforms use their own car to provide the service. Thus, it may be more effective to require drivers intending to use an intermediation platform to have their vehicles checked on a regular basis. The same can be said about regular health checks (e.g. to ensure that drivers have a good eyesight, do not have neurological diseases making driving dangerous, etc.).

An additional question is whether rules need to be specifically adopted for intermediation services when cross-sectoral regulation already exists. For instance, there may be no need to impose specific requirements on platforms designed to prevent credit-card fraud or protect the privacy of drivers and riders when general rules designed to ensure these objectives have already been adopted by the public authorities. For instance, Article 5 of the E-Commerce Directive provides that the Member States should adopt measures designed to ensure that service providers make accessible a series of information to the recipients of the service and the competent authorities. Overlapping regulatory requirements may bring no additional value, while making entry more difficult and costly.

Besides the fact that regulatory requirements must pursue legitimate public interest objectives and must be non-discriminatory and proportionate as requested by the Services and E-Commerce Directives, and that they should be based on facts, they should be technology neutral, and highly adaptable to changes in circumstances. While intermediation platforms are based on innovative technologies, there is no doubt that these technologies will continue to evolve. Radical shifts, such as the use of self-driving cars,⁷⁵ are just around the corner. Hence, the regulatory frameworks adopted must be sufficiently flexible to adapt to technological innovation.

V. CONCLUSION

The arrival of Uber and other intermediation platforms in Europe has been a subject of controversy. While even Uber's fiercest critics recognize that its online intermediation platform may be a source of efficiencies, many still cry foul because Uber would engage in "unfair competition" as it would fail to comply with taxi regulations. In this paper, I suggest that the question of whether Uber should be regulated and, if so how, should be addressed based on facts rather than rumors or perceptions. In addition, regulatory requirements should be limited to address legitimate public interest objectives, be non-discriminatory and proportionate, be imposed on the market actor that is best able to achieve these objectives, be technology-neutral and highly adaptable to ever changing circumstances.

⁷⁴ On the notion of market failure, see Ledyard, *Market Failure*, in 5 *The New Palgrave Dictionary of Economics* 300 (2d ed. 2008).

⁷⁵ See San Francisco, your Self-Driving Uber is arriving now, available at: <https://newsroom.uber.com/san-francisco-your-self-driving-uber-is-arriving-now/> (announcing that, starting on December 14, 2016 "riders who request an UberX in San Francisco will be matched with a Self-Driving Uber if one is available.").