UBER AND THE RULE OF LAW: SHOULD PONTANEOUS LIBERALIZATION BE APPLAUDED OR CRITICIZED?

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Uber and the Rule of Law: Should Spontaneous Liberalization be Applauded or Criticized?

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Abstract

While Uber is able to operate legally in a growing number of countries and cities, regulatory approval has proved to be elusive in other jurisdictions. Yet, in a number of regions or cities Uber decided to launch its services despite the absence of regulatory approval. The fact that Uber has decided to engage in "spontaneous liberalisation" has drawn criticism from various quarters. But should Uber be blamed for failing to comply with certain regulatory requirements or should they be applauded for pushing the boundaries of the law? Whether spontaneous liberalization should be applauded or criticized depends. While there is generally no justification for ignoring rules that are necessary to protect the services' users and nonusers from the risks that are inherent to the carrying of passengers on public roads, there is an element of public good in testing the boundaries of public restrictions of competition. Whatever happens to Uber's efforts to challenge rules impeding its ability to deliver certain categories of services in certain markets, the taxi industry has already changed for the better as many taxi companies have developed their own apps, either alone or with others, and efforts have been to improve their quality of service. Uber was a needed electroshock in an industry whose actors had often become complacent and failed to meet user expectations.

Keywords: Uber, online platforms, electronic marketplaces, two-sided markets, competition, taxi services, care-sharing services, transportation, regulation, regulatory barriers to entry.

JEL: H 41, K21, K23, K40, L51, L91

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I. Introduction

There is hardly a day without a front page story in the Financial Times or the Wall Street Journal about Uber and its struggles with transportation authorities on the four corners of the world. These struggles are often due to the fact that Uber does not fit into the legal regimes that regulate traditional taxi services. The taxi industry is heavily regulated and the rules in place create barriers to entry by, for instance, limiting the number of taxis that are allowed to operate in a given city.[1] Price regulation may also sit uneasily with a business model where prices may vary based on a variety of factors, including not only distance and time, but also the availability of vehicles at a given time of the day.[2]

Uber and other online platforms have also triggered massive protest from taxi companies and their drivers as they see Uber as a threat to their viability.[3] They claim that Uber engages in "unfair competition" by failing to comply with the regulatory requirements that burden traditional taxi companies, and in several jurisdictions taxi companies and associations have launched proceedings seeking to have Uber's activities declared illegal.[4] More generally, trade unions and left leaning politicians are hostile to what they see as the *Uberization* of the economy as (allegedly) good, well-paying jobs are destroyed and replaced by precarious occupations.[5] Of course, these views are a caricature of the reality, but there is no doubt that Uber has triggered a fair amount of hostility in some of the markets it has tried to enter into.

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[1] For instance, the number of licensed vehicles in the Brussels Region was set at 1,300 in 2003 and has not changed since then despite the growth of the city. See Arrêté du Gouvernement de la Région de Bruxelles-Capitale of 4 Septembre 2003 fixant le nombre de véhicules pour lesquels des autorisations d'exploiter un service de taxis peuvent être délivrées sur le territoire de la Région de Bruxelles-Capitale, available at http://www.gtl-taxi.be/3_28_549_3236_FR_Nombre_max_de_taxis_

[2] During periods when available cars are scarce (e.g., Friday and Saturday nights), Uber can incentivize drivers to take the road by increasing their fees (a process referred to as "dynamic" or "surge" pricing). Prices increase will at same time increase supply as drivers will be incentivized to take the road to earn higher fees, but also reduce demand as price-sensitive users are incentivized to consider alternatives, such as take their car or public means of transport. Cory Kendrick Hall and Chris Nosko, "The Effects of Uber's Surge Pricing: A Case Study", September 2015, available at www.faculty.chicagobooth.edu/chris.nosko/research/effects_of_uber's_surge_pricing.pdf

[3] Matthias Verbergt and Sam Schechner, "Taxi Drivers Block Paris Roads in Uber Protest", *Wall Street Journal*, 25 June 2015, available at www.wsj.com/articles/taxi-drivers-block-paris-roads-in-uber-protest-1435225659

[4] See, e.g., Eric Auchard and Christoph Steitz, "German court bans Uber's unlicensed taxi services", *Reuters*, 18 March 2015, available at www.reuters.com/article/2015/03/18/us-uber-germany-ban-idUSKBN0ME1L820150318; "Italian court bans unlicensed taxi services like Uber", *Reuters*, 26 May 2015, available at www.reuters.com/article/2015/05/26/us-italy-uber-idUSKBN0OB1FQ20150526

[5] John Aaron, "'Uberized' economy, more businesses shift toward freelancers", 14 June 2015, *Washington Top News*, available at wtop.com/business/2015/07/freelancers-rise-to-top-in-uberized-economy/

On the other hand, consumers love Uber and it is not hard to see why. Uber rides are materially cheaper than taxi rides[6] and quality of service tends to be higher.[7] Consumers also love the ability of booking a vehicle through their smartphone and see the car progressing towards their location without worrying as to whether it will eventually show up. Users also have the possibility to rate their drivers, hence giving them incentives to be polite and drive safely.[8] Finally, there is no need to carry cash as payments are done electronically, and the driver will not expect you to give him a tip (which materially increases the cost in some countries). As Ben Edelman and I observed elsewhere, online platforms, such as Uber, are a source of considerable efficiencies, including reduction of transaction costs, improved allocation of resources, as well as information and pricing efficiencies.[9]

Although Uber has drawn a lot of attention, it is not the first time that fossilized markets are disrupted by new entrants. The last three decades have witnessed waves of liberalization in Europe in markets ranging from telecommunications to air transport services.[10] Yet, liberalization in these industries was structured with markets being opened in stages following the adoption of EU legislation.[11] What is new with Uber, but also with online platforms like Airbnb, is that these companies did not necessarily wait for regulatory approval before launching their services. While Uber was able to obtain a license in many cities in the United States and abroad, such licenses proved very hard to obtain in some jurisdictions for a variety of reasons. Yet, Uber often decided to go ahead with the success we know. From a legal standpoint, this raises interesting questions. Should we applaud Uber for having the guts to start its operations in the absence of regulatory approval? Or should we instead be appalled by what could perceived as a form of contempt for the law? There are no simpler answers to these questions, which this paper is seeking to address.

This paper is divided in six sections. Section II explains that the taxi industry has been regulated for a long time, but that passengers are not necessarily impressed by the quality of service they

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6 Sara Silverstein, "These Animated Charts Tell You Everything About Uber Prices In 21 Cities", *Business Insider*, 16 October 2014, available at www.businessinsider.com/uber-vs-taxi-pricing-by-city-2014-10?IR=T

7 Scott Wallsten, "Has Uber Forced Taxi Drivers to Step Up Their Game?", *The Atlantic*, 9 July 2015, available at www.theatlantic.com/business/archive/2015/07/uber-taxi-drivers-complaints-chicago-newyork/397931/

8 James Cook, "Uber's internal charts show how its driver-rating system actually works", *UK Business Insider*, 11 February 2015, available at uk.businessinsider.com/leaked-charts-show-how-ubers-driver-rating-system-works-2015-2

9 Benjamin G. Edelman and Damien Geradin, "Efficiencies and Regulatory Shortcuts: How Should We Regulate Companies like Airbnb and Uber?", *Harvard Business School NOM Unit Working Paper No. 16-026*, September 2015, available at papers.ssrn.com/sol3/papers.cfm?abstract_id=2658603

10 See, e.g., Damien Geradin, *The Liberalization of State Monopolies in the European Union and Beyond*, Kluwer Law International, 1999.

11 In the energy, postal services and telecommunications sectors, it took an average of ten years and several EU liberalization directives to move from monopoly to fully liberalized markets. This was necessary to make the liberalization process politically feasible, as well as to give incumbents time to adapt to competitive constraints.

obtain. Section III explains why Uber has been willing and able to launch its services in various cities and regions without necessarily obtaining prior regulatory approval. Section IV addresses the issue of whether Uber should be applauded or criticized for engaging in spontaneous liberalization. Section V explains the role that regulatory authorities and competition authorities can play in the liberalization of the taxi industry. Finally, Section V concludes.

II. <u>Basic service, heavy regulation, unhappy customers</u>

Taxi services are quite basic in nature. Taxis move people from point A to point B against the payment of a fee. Taxis are typically driven by low-skilled workers (although some of them have an extraordinary knowledge of the city in which they operate) and in most cities, there is nothing fancy about the service. Yet, the taxi industry is regulated to a surprising extent. As we have seen, in many cities, the number of licensed taxis is strictly limited and fares are regulated. Taxi regulations are rather lengthy and detailed, and include some requirements that do make sense and others that do not.

Taxi regulations have a long history. For instance, the regulation of the taxi industry in the US largely came in reaction to the "ruinous competition" that took place during the great depression were too many cars were chasing too few passengers.[12] Thus, caps were placed on the number of licenses and these caps were not necessarily relaxed over time despite demographic and economic growth. For instance, in New York, there were 13,437 licensed taxis in 2014, a number of licenses that is smaller than when caps where introduced by the Haas Ordinance in 1937.[13] Other rules aim to address market failures, such as externalities (accidents caused by drivers), information asymmetries (which can result in price gouging), cognitive biases (leading to insufficient attention to risks), and public goods (undersupply of wheelchair accessible vehicles).[14]

Of course, businesses that are subject to regulation like to complain about the burden it imposes on their activities. But they may also like regulation when it creates barriers to entry and immunize them from competition. The problem is that industries that are protected by barriers to entry tends to fossilize and the taxi industry is no exception. A striking feature of the taxi industry is the lack of innovation. Some may say that it is hard to innovate when your service consists in moving passengers from point A to point B, but it is not entirely true. Technology can be used to make the service more efficient, hence the spectacular development of Uber and other online platforms. New

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[12] For an historical perspective, see Paul Stephen Dempsey, "Taxi Industry Regulation, Deregulation & Reregulation: The Paradox of Market Failure", (1996) 24 *Transportation Law Journal* 73.

[13] See Lawrence Van Gelder, "Medallion Limits Stem From the 30's", *New York Times*, 11 May 1996, available at www.nytimes.com/1996/05/11/nyregion/medallion-limits-stem-from-the-30-s.html; 2014 Taxicab Fact Book, available at www.nyc.gov/html/tlc/downloads/pdf/2014_taxicab_fact_book.pdf

[14] See Edelman and Geradin, supra note 9.

services like car-pooling can also be introduced and various initiatives can be taken to improve the user experience.

It is therefore unsurprising that Uber quickly conquered a large customer base. Yet, Uber also faces major regulatory challenges. First, it is not easy to launch a service, however novel and attractive, when the number of authorized vehicles is strictly capped with a secondary market for licenses trading at inflated prices.[15] Second, as will be further discussed below, the regulatory framework applying to the taxi industry is extraordinarily fragmented with almost every region or city having its own rules and authorities of control. Thus, unlike in many areas, penetrating the market is a region by region or city by city struggle, which may last for months or even years. Third, taxi rules were adopted with a certain business model in mind at a time where the Internet, let alone online platforms did not exist. Taxi rules also developed as a result of political compromises to allow some degree of competition between different types of services, such as for instance regular taxi services and limousine services. Yet, Uber's service does not easily fit into any of the existing categories. Finally, the taxi industry is well organized and is able to exert significant pressure on regulatory authorities. Even with a lot of good will, obtaining an authorization to launch services is by no means an easy task even where there is significant unmet demand.

III. Entering the market with or without regulatory approval

While Uber is able to operate legally in a growing number of countries and cities,[16] regulatory approval proved to be elusive in other jurisdictions. However, in a certain number of regions or cities Uber decided to launch its services despite the absence of regulatory approval. The reasons why Uber has adopted this strategy are most likely multi-fold.

First, it is questionable whether Uber's services should be assimilated to traditional taxi, or more generally transportation, services considering that Uber is essentially a marketplace connecting occasional private drivers offering rides and passengers seeking a ride through a software application. In other words, given the nature of its services it is not clear that Uber should be subject to the regulatory frameworks, including license requirements, which are applied to taxi or

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[15] Where licenses may have initially have been owned by drivers, they are regularly traded by individuals or companies, which see them as a profitable investments. The price of licenses has increased over the years to, for instance, exceed $1 million in New York. See Michael M. Grynbaum, "2 Taxi Medallions Sell for $1 Million Each", *City Room*, 20 October 2011, available at cityroom.blogs.nytimes.com/2011/10/20/2-taxi-medallions-sell-for-1-million-each/?_r=0 Uber's entry has, however, depressed the price of licenses with taxi medallion owners deciding to sue New York City and its Taxi and Limousine Commission for allowing Uber into the market. See Joe Mullin, "Cab medallion owners sue NYC, blame Uber for ruining business", *Ars Technica*, 18 November 2015, available at arstechnica.com/tech-policy/2015/11/cab-medallion-owners-sue-nyc-blame-uber-for-ruining-business/

[16] See David Plouffe, "Racing to Rideshare", 2 November 2015, available https://medium.com/@UberPubPolicy/racing-to-rideshare-f588359cabae#.xwdsqbw0o

other categories of transportation services. This issue of the nature of Uber's services is not of academic interest only as it will soon be analysed by the European Court of Justice (ECJ) following requests for preliminary rulings respectively made by Spanish and Belgian courts.[17]

Second, if one assumes for the time being that Uber is a transportation service, this means Uber needs to obtain the go ahead from many regulators since, as we have seen above, the regulatory framework is extremely fragmented. Unlike most regulated firms (telecommunications service providers, pharmaceutical companies, etc.), which are generally controlled by one regulatory authority per country, Uber needs to obtain regulatory approval from dozens of regulators located at the regional or even city level. This renders the regulatory approval process hopelessly complex and time-consuming, hence creating incentives for launching the service in as many cities as possible even if this means facing some prohibitions.

Third, it is easy to overestimate the difficulty of successfully launching a two-sided platform.[18] The challenge is to draw users from both sides (in this case drivers and prospective passengers) at the same time and in the right proportions. There is no point drawing hundreds of drivers to the platform if they are too few prospective passengers and vice-versa. Moreover, to be sustainable, the platform needs to gain scale as quickly as possible.[19] There is thus some urgency in launching an online platform and growing it rapidly. With this aim in mind, it is unsurprising that Uber is willing to launch its services in some cities without regulatory approval (or with approval pending) even if this creates a risk of having to discontinue the services following a court order.

Fourth, unlike in many industries, Uber's business model is not characterized by large sunk costs besides the development of the platform. Thus, the cost for Uber of terminating its operations in a given location is not prohibitive since it does not have to lay-off drivers or roll back any type of infrastructure. The financial risk of launching a service before obtaining regulatory approval is thus limited. By contrast, it would not be wise for a power producer to build a power station or for a telecommunications operator to lay wires into the ground before obtaining regulatory approval as a subsequent failure to obtain such an approval would have very severe financial consequences. That is one of the reasons why spontaneous liberalization has not been observed in these industries with some limited exceptions.

Finally, Uber is betting on the fact that its users will put pressure on the regulators to grant the regulatory approval it needs. While taxi companies and their drivers have a fair amount of political

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[17] See Case C-434/15, *Asociación Profesional Élite Taxi* and Case C-526/15, *Uber Belgium*.

[18] On two-sided platforms, see David. S. Evans and Richard Schmalensee, "The Industrial Organization of Markets with Two-Sided Platforms", 3(1) (2007*) Competition Policy International* 151.

[19] David S Evans and Richard Schmalensee, "Failure to Launch: Critical Mass in Platform Businesses", 9(4) (2010) *Review of Network Economics*, 1.

weight, Uber users, although less organised, may also have a word to say. Once users have learned to enjoy the efficiencies generated by Uber (in terms of booking convenience, quality of service and lower costs), they will certainly not want the service to be discontinued due to a lack of regulatory approval. For instance, when Uber had to discontinue its uberPop service in Brussels following an adverse court decision, thousands of regular users signed an online petition calling "on the Government to reform today's outdated legislation now!"[20]

IV. Spontaneous liberalization: Should Uber be applauded or criticized?

The fact that Uber has decided to engage in spontaneous liberalisation has drawn criticism from various quarters. But should Uber be blamed for failing to comply with certain regulatory requirements or should they be applauded for pushing the boundaries of the law?

There is not a single answer to that question as the taxi industry is subject to a variety of regulatory constraints. First, as already noted, certain requirements aim at controlling entry into the sector. Cities may, for instance, limit the number of taxis that are allowed to operate legally, hence often creating a scarcity of cars at certain times of the day. Second, regulatory requirements may be designed to address market failures. That is the case of rules of safety and insurance requirements, as well as the need, for instance, to provide for wheelchair accessible vehicles. Without State intervention, the market may provide an insufficient degree of consumer protection or the services offered would not be socially inclusive. Finally, taxi companies, like all other companies, are subject to "horizontal" legislation, such as for instance labour and tax requirements. While variations may apply across sectors, core labour or tax principles generally apply across the board.

While it seems difficult to justify, let alone encourage, breaches by Uber or other platforms of the second and third category of regulations, it is submitted that, in certain circumstances, there may be merits in ignoring rules that create barriers to entry and restrictions of competition (whatever their rationale may be), provided however that unsuccessful efforts were made to obtain regulatory approval in the first place. Throughout modern economic history, new entrants took the risk of penetrating markets subject to regulatory barriers to entry. In some cases the rules may have unclear and their exact scope needed to be judicially defined. But in other cases, companies launched services that breached statutory monopolies or other forms of public restrictions on competition at the risk of facing serious brushes with the law.[21]

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[20] This petition appears on Uber's smartphone screen when unsuccessfully trying to order a car.

[21] For instance, Tesla did not hesitate to bypass the American franchised car dealer system in breach of state law prohibiting car manufacturers from operating their own dealerships. See Daniel A. Crane, "Tesla and the Car Dealers' Lobby", *Regulation*, Summer 2014, at 10; Damien A. Crane, "Tesla, Dealer Franchise Laws, and the Politics of Crony Capitalism", forthcoming *Iowa Law Review* (2015).

In this respect, the EU case-law is replete with examples of companies penetrating markets subject to exclusive rights and other restrictions of competition.[22] In some cases, their actions eventually led to the opening of large chunks of the economy. Let us take the example of Mr. Corbeau, a small entrepreneur who was subject to criminal proceedings for delivering value-added "postal" services, whereby personal collection would be made from the sender's premises and delivery made before the next day in the same area. While these services were in breach of the Belgian postal monopoly, Mr. Corbeau's lawyers eventually convinced the ECJ that the postal incumbent's exclusive rights over the services it performed were in breach of EU law.[23] The judgment of the ECJ in turn played a major role in the liberalization of the postal sector.[24]

Thus, while nobody would want online platforms to operate services that are unsafe and put users and the general public at risk, breaching questionable restrictions of competition may sometimes be needed to upset the status quo. In this respect, whatever happens to Uber's efforts to challenge rules impeding its ability to deliver certain categories of services in certain markets,[25] the taxi industry has already changed for the better. For instance, many taxi companies have developed their own apps, either alone or with others, and efforts have been to improve their quality of service.[26] Uber was a needed electroshock in an industry whose actors had often become complacent and failed to meet user expectations.

V. The role of the public authorities

While public authorities are under pressure from both Uber and the taxi industry, their role should be to allow Uber to operate on the market so that consumers can benefit from their efficiencies, while maintaining the regulatory requirements needed to ensure the correction of market failures. This requires the following tasks.

22 See, e.g., Case C-41/90, *Höfner v. Macrotron*, [1991] ECR I-1979 (challenge of the exclusive rights of the Federal Office for Employment to put prospective employees and employers in contact with one another); Case C-260/89, *ERT v. EDP*, [1991] ECR I-2925 (challenge of ERT's exclusive rights to broadcasting and retransmitting television programmes in Greece); Case C-179/90, *Merci Convenzionali Porto di Genvo v. Siderurgica Gabrielli SpA*, [1991] ECR I-5889 (challenge of a company's exclusive right to organize the loading, unloading and other handling of goods within the Port of Genova); Case C-554/12 P, *Commission v. DEI*, [2014] ECR I-0000 (challenged of the Greek state-owned electricity company DEI's exclusive right to mine for lignite (brown coal)).

23 Case C-320/91, *Corbeau* [1993] ECR I-2533.

24 Damien Geradin and Christophe Humpe, "The Liberalisation of Postal Services in the European Union: An Analysis of Directive 97/67", in D. Geradin, Ed., *The Liberalisation of Postal Services in the European Union*, Kluwer Law International, 2002, at 91.

25 Duncan Robinson, "Germany faces European Commission probe over Uber ban", *Financial Times*, 14 July 2015, available at www.ft.com/intl/cms/s/0/d522e39e-2a47-11e5-8613-e7aedbb7bdb7.html#axzz3rx2P13sP

26 For instance, G7, which is the largest taxi company in France, has launched in own app, see http://www.taxisg7.com/order-taxi/taxi-from-smartphone

First, regulators should determine whether online platforms connecting private drivers with passengers should be subject to the same (type of) regulatory frameworks as taxi companies, which operate their own vehicles and employ some of their drivers. This is a complex issue, which will not be discussed in this short essay, but which has become particularly relevant in the context of the preliminary rulings referred to above. The solution may be to create specific frameworks for online platforms that take into account the characteristics of the services provided and ensure that these services are provided safely and in a socially-inclusive manner.

Second, regulators should revisit rules creating barriers to entry, such as caps on the number of vehicles that are allowed to operate on the market. The regulator should investigate whether the reasons that historically prevailed to establishing a cap on the number of licensed vehicles (e.g., vast oversupply) still hold and, if they do, whether the objectives sought can be achieved by less restrictive alternatives. Second, if it is determined that the number of licensed vehicles need to be capped, a doubtful proposition, it should be determined whether the number of licensed vehicles is set at an optimal level (not for taxi companies, but to satisfy consumer needs) and whether licenses should be available for regular taxis only or extended to online platform operators.

Third, regulators should review the regulatory framework to make sure that the rules that seek to address market failures effectively accomplish their goals. For instance, background checks on drivers and regular inspection of vehicles are certainly desirable, but with increased competition, it is questionable whether taxi fares should still be subject to regulation. Rate regulation may still be needed for taxi that are hailed on the street, but for vehicles that are e-hailed, price regulation no longer seems justified as users usually have the ability to request a fee estimate and thus to be informed of the expected cost of their planned journey.[27] It also seems that the ability to rate drivers may also go a long way towards protecting users against reckless driving or abusive behaviour, probably more so that rules allowing passengers to file complaints to the regulator when problems occur.[28] Given the new possibilities offered by technological advances, it is a certainly a good time to revisit regulatory frameworks, which may have been developed a long time ago.

Fourth, as decades-old regulatory frameworks cannot, and in many cases should not, be overhauled in a day, it is important to ensure a transition. In this respect, when regulatory approval cannot immediately be granted, there are advantages in granting temporary licenses to online platforms. First, this allows users not to have to wait for many months to benefit from the efficiencies that are generated by these platforms. Moreover, much can be learned from the data that is generated

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[27] Uber provides online fee estimates for journeys planned by its users, see http://uberestimate.com/

[28] Some have, however, expressed concerns about the possible consequences of rating systems. See, e.g., Alex Hern, Are Uber's passenger ratings big data for good – or discrimination 2.0?, The Guardian, 28 July 2015, available at www.theguardian.com/technology/2014/jul/28/are-ubers-passenger-ratings-big-data

by the operation of online platforms. In a sector where data is critical,[29] it will generally be wise for the regulators to take market data into account when revisiting their existing regulatory framework. Such data may, for instance, be used to see whether Uber better serves areas that are traditionally underserved or whether allowing Uber vehicles to operate creates additional congestion.

Fifth, regulators may need to compensate taxi drivers or operators for the losses they may have incurred as a result of allowing Uber and other platforms to operate. Difficult situations may arise when drivers have invested large sums of money in the acquisition of a license, which they intend to resell at some stage as part of their retirement plan.[30] While granting compensation may not always be justified (e.g., when licenses have been used as speculative instruments) or may be a source of additional difficulties,[31] it seems important to at least reflect on ways to ease the pain of the transition to a more competitive market.[32]

Finally, to the extent that regulators decide the revisit the existing regulatory frameworks, it is important to adopt rules that are technology neutral and flexible enough to accommodate further innovation. With driverless cars around the corner, the industry is likely to continue to evolve, possibly in a much more spectacular manner that what has been witnessed so far.

While regulators may be willing to modernize the regulatory framework, their work may be impeded by the activities of interested groups, which may threaten to carry out strikes and use their political connections to impede the work of reform-minded authorities. While these efforts are to be expected, there seems to be no valid reason to shelter the taxi industry from competition and to prevent users from enjoying new, innovative services.

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[29] Vehicle-data may, for instance, provide valuable information to regulators on issues, such as consumer demand at various times of the day, traffic flows and congestion, etc. For instance, the Taxi and Limousine Commission (TLC) of the City of New York collects data on taxi cabs rides. See www.nyc.gov/html/tlc/html/about/trip_record_data.shtml

[30] Sam Harnett, "For San Francisco Cab Drivers, Once-Treasured Medallions Now a Burden", *KQED News*, 24 September 2015, available at ww2.kqed.org/news/2015/09/24/for-san-francisco-cab-drivers-once-treasured-medallions-now-a-burden

[31] For a strong criticism of compensation regimes, see Edmund W. Kitch, "Can We Buy Our Way Out of Harmful Regulation?", in Martin & Schwartz, eds., *Deregulating American Industry: Legal and Economic Problems,* D.C. Heath and Co., 1977.

[32] For an excellent discussion of the ways in which transition to more competitive markets can be addressed, see Michael J. Trebilcock, *Dealing with Losers – The Political Economy of Policy Transitions*, Oxford University Press, 2014.

Competition authorities also have an important role to play through competition advocacy.[33] It is an important part of their mission to ensure that public authorities do not adopt or maintain regulatory frameworks that restrict competition. As to the European Commission, it has been at the forefront of the liberalization process in network industries using competition rules to put an end to regulatory measures impeding market access. There is, for instance, a highly developed case-law analysing and often striking down, on the basis of Article 106 TFEU combined with other Treaty provisions, a variety of public measures restricting competition.[34] While taxi services are local in nature, the use of online platforms gives a cross-border dimension to their activities.

VI. Conclusion

The taxi industry has witnessed a process of spontaneous liberalization with Uber and other platforms delivering services even in the absence of regulatory approval. Various factors explain why this strategy would not have been possible in sectors characterized by heavy sunk costs. Liberalization in these sectors thus pursued a structured process with the market progressively opening to competition while eventually reaching full liberalization.

Whether spontaneous liberalization should be applauded or criticized depends. While there is generally no justification for ignoring rules that are necessary to protect the services' users and nonusers from the risks that are inherent to the carrying of passengers on public roads, there is an element of public good in testing the boundaries of public restrictions of competition. Uber's market entry has generated various legal actions in EU Member States, which notably through preliminary ruling procedure, will clarify the legal framework in which Uber can operate, with hopefully more space for competition and consumer choice than under current the regulatory frameworks.

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33 See International Competition Network, Advocacy and Competition Policy, Report prepared by the Advocacy Working Group ICN's Conference Naples, Italy, 2002, available at www.internationalcompetitionnetwork.org/uploads/library/doc358.pdf

34 See the cases listed supra note 22. See also Jose Luis Buendia Sierra, *State Intervention and EU Competition Law, Exclusive Rights and State Monopolies under EC Law*, Oxford University Press, 2000.