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## Uber x Taxi - The new old economy

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The word uber comes from Germany and is spelled über. In popular language uber means super, mega, ultra, better. The expression is used to indicate that something is the best of the best.

Apart from the more and more usual usage of the slang, the expression uber gained a peculiar meaning in the transportation market some years ago. It is about the name given to the interconnected cybernetic system of automotive vehicles which is nothing more than an application that provides the consumers with a transportation system of passengers in a private vehicle. It is estimated that Uber is operated in 295 cities in 55 countries.

According to the spokesman of the

company in Brazil, Uber is not a taxicab service but one additional transportation option in places where there is a huge demand, making up a set of alternatives that include taxicabs, private vehicles, bicycles, motorcycles, buses, trains and subways. Besides, he sustains that the company is defined as the technology that has broken through by creating a platform that connects private partner-drivers to users that search for safe and efficient rides. In addition, he states that technological innovations have brought people and cities countless opportunities and the citizens must be assured of their fundamental right to choose how to move about.

Still, he sustains that Uber does not represent an illegal service once it introduces a disruptive and innovative model into the Market and, thus, there is still no specific regulation. And that the company must be associated to the concept called “collaborative economy”. The basic difference between these two transportation systems is that to be a driver for Uber one must register and follow a list of safety requirements demanded by the company that

operates the international system, dispensing with the expensive licenses required of taxi drivers.

Besides, Uber drivers do not charge for the run personally; they receive salary from the company. That’s why the model is also known as remunerated ride.

The initial idea of the company that detains the application, founded in 2009 by Garret Camp and Travis Kalanick, was to be a service like the luxury taxicabs of San Francisco City, USA. The application

was launched in 2010 for Android and iPhone, which was one of the first ones to use the E-hailing concept, that is, the act of calling a private transportation by means of a mobile communication device –

cellular or smartphone.

The system offers the following advantages:

**Easy pay** – the application stores the user’s credit card data, dispensing with wireless readers in the cars;

**Quick attendance** – the application has information obtained by GPS or mobile phone, allowing the real-time localization of the caller, thus, reducing the waiting time;

**Costs** – considerable reduction of prices paid per ride due to the low operational cost of the system.

Since 2010 the referred company has been receiving significant investments and has

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recently achieved the market value of US\$51 billion. Analysts declare that the value achieved is the biggest that a start-up has ever achieved.

Its incredible growth has called the attention of regulatory departments and generated warlike acts on the part of taxi drivers around the world. The billionaire company is accused of unfair rivalry and practice of clandestine transportation.

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The reason for this atmosphere of hostility that is spread over the big cities where Uber operates is due to that fact that practically all over the world the traditional taxi-operated passenger transportation system is subject to the rigorous government regulation by means of a license granted. Therefore, it has been argued that Uber operates illegally when offering a transportation service without the due license required by the law.

Such a fact does not occur in an isolated manner in Brazil, since there have been accusations of such nature in San Francisco city itself, pioneer in this practice, in California, in New York, in the state of Virginia as well as in Australia, Canada and in several countries such as Germany, France, Italy, Portugal, among others, resulting in the imposition of heavy fines. It has been noted that the more Uber net grows, the more the issues with the law expand.

On the other hand, it is important to ponder that granting the license encumbers the system operation mainly because its number is always inferior to the demand, creating a parallel market of license rentals totally illegal and operating high amounts of values. Therefore, it has been observed that the traditional taxi-operated transportation system, though regulated by the law and subject to its own legislation, is not as regular as it seems or should be in practice.

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Though operating in Brazil for a short time, the referred application has given rise to a huge indignation among taxi drivers to the point of several lawsuits being filed already. Thus, the Union of Drivers and Workers of the Taxi Companies of the State of São

Paulo have filed a Provisional Remedy with the purpose of putting an immediate halt to the servicing of the company UBER do Brasil Tecnologia Ltda. (Uber of Brazil Technology Ltd.) and blocking their providers' access so that UBER application becomes inaccessible to the people in the Brazilian territory under the following arguments:

1. The requested (UBER DO BRASIL TECNOLOGIA LTDA) provides private service-rendering similar to those of professional taxi drivers without having their respective vehicles authorized to act as such, without following the rules of identification and inspection, as well as not having been subjected to the administrative control inclusive in relation to the prevailing prices;

2. In Brazil, one can freely perform any work, craft or profession, provided that the professional qualifications are attended to, according to the Law (article 5, XIII, CF);

3. Countrywide, everyone is assured the free exercise of any economic activity, independent of the authorization of any public department except in the cases provided by the law (article 170, single paragraph, CF);

Upon his decision, the magistrate asserts that:

1) Article 2 of Law 12.468/2011 stipulates that "it is the professional taxi drivers' private activity to use automotive vehicles, of his own or someone else's, for the remunerated individual public transportation of passengers, the capacity of which shall hold seven passengers at the most.

2) According to Art. 4, VIII, of Law

number 12.587/2012, it is considered as “individual public transportation: the remunerated passengers transportation service open to the public, by means of rental vehicles, in order to carry out individual rides”;

3) The Brazilian Traffic Code per se establishes in its Article 135 that “the rental vehicle, destined to individual or collective transportation of regular lines or employed in any

remunerated service, for the register, licensing and respective commercial-featured license plate, shall be duly authorized by the granting public Power”.

4) Within the municipal sphere, and specifically in São Paulo City, it is stated, in the terms of Art. 1 of Law #7.329/69, that the passengers’ individual transportation system constitutes a service of public interest that can only be provided by means of previous authorization by the City Hall;

5) Municipal Law of São Paulo #15.676/12 stipulates that “the passengers’ individual remunerated transportation is forbidden unless the vehicle has been authorized for this purpose”.

The magistrate still contends that the requested company is providing a clandestine service, since Art. 1 of Resolution #4287-14 of the National Agency of Land Transport – ANTT – understands as “clandestine service the remunerated transport of people carried out by individual or entity without authorization or permission of the competent government”.

He understands that, if the secondary factors resulting from the virtual nature of part of the service provided by the requested were abstracted, it would essentially persist as a service identical to that provided by taxicabs.

Still, he ponders that it would not be natural the fact of simply

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starting to perform a regulated activity in a clandestine manner. Thus, and while the current legislation remains unaltered, being or not a service very much in line with the society, the fact is that the activity of the requested remains prohibited.

Thereby, complying with the reasons above pointed, concluded the judge of the 12th Civil Court of the Central Court of the City of São Paulo, being present the smoke of good law as well as the danger of the delay, since thousands of taxi drivers would be impaired by the vertiginous expansion of the services by the requested, being present the requirements for granting the Provisional Remedy that has been pleaded.

The magistrate also pointed out that the referred decision would not be condemning the business model provided by the requested. He just observed that in the court injunction such model seems to lack regulation, which is the previous condition for its exercise.

He asserted that “the mere fact of, in our times, living in a world of thousands of innovations in all segments and all the time (many of which advertising “social revolutions” just by clicking a button or passing a credit card) does not seem, on the

other hand, to have turned lawful an official dismantlement of the democratic institutions such as we have known them. If it is right that it is imperative that nowadays we should debate in depth the paths of our political organization, not less correct is the fact that we live under the Aegis of a Democratic State of Law,

and that obeying the Constitution is cogent as well as the laws being tuned to this very Constitution”.

Thus, the injunction was granted so as to determine that the requested should stop the availability and the working of the application (countrywide), as well as suspend its activities in the City of São Paulo, SP (according to the specification of the initial request), under penalty of a daily fine of R\$100.000,00 (one hundred thousand reais) – limited, for the time being, to R\$ 5 milhões (five million reais), to run as from the third day of the execution of the subpoena of the requested.

Afterwards, the initial petition referring to the main action founded on article 295, items II, III, and IV of the Code of Civil Procedure was rejected, as the magistrate understood that there was illegitimacy of part, lack of procedural interest, and because the type of procedure, chosen by the author, did not correspond to the nature of the cause. Thus, the procedure was extinct for procedural irregularity; therefore, the merit was not examined. As a consequence, the injunction previously granted was immediately withdrawn.

Although the merit of the action above described had not been examined, several other actions with equal or similar object have been filed in Brazilian places where UBER operates. However, there has not been a definite decision of merit or even a jurisprudential positioning as referred to the issue.

The UBER case is not all about an isolated episode resulting from the digital revolution. Other similar situations or equally challenging and awaiting responses have risen in the bosom of information technology society, such as audio and video services through the internet versus TV operators, communication applications versus telephone companies, among others.

The question that rises is: will Brazil have a business environment that favors technological innovation?

It has been observed the existence of an explicit war between the old and the new economy. There is a series of services that so far have occupied a consolidated and dominant position in the market and that now are being superseded by more efficient, cheaper digital competitors and which operate in an enticingly flexible and unbureaucratic manner. Their only sin is to be hostage of a paralyzing and bureaucratic system, unable to follow the velocity of technology, thus, generating an endless regulatory battle!

The response to this issue will not be found on Manichean discussions that many people insist on putting forward. We have lived a moment of deep transition, resulting from an unparalleled

revolution in history, and we must have the courage to give up on models that no longer live up to the social expectations of modern times.

In function of the imbalance between the regulation velocity of a technology and its life cycle, and until the polemic between UBER and taxi drivers have been solved, it is likely that autonomous vehicles, which dispense drivers, will have been operating by then, thus, making the discussion or even the UBER regulation absolutely pointless.



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