

# Kluwer Competition Law Blog

## Polish competition authority declares that Uber does not pose a threat to competition and protection of consumer interests.

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Polish competition authority, the Office of Competition and Consumer Protection (UOKiK), took its stance on the Uber's innovative business model.

As it is its last important statement under President Adam Jasser, I would like to mention him at the end of this entry, especially as the way UOKiK tackled the "Uber problem" is an another interesting example of positive changes that occurred in the authority's information policy under his supervision.

### What you see depends on where you stand...

It was not until several days ago that we were able to read an interesting article on this blog, written by Mark Katz, regarding the stance of the Canadian competition watchdog on Uber. The opinion of the President of the Polish competition authority, which was published on the 5th of May, offers a commentary on the matter from the Polish perspective. Here, the situation supports the well-known truth, being that what you see depends on where you stand. While the leitmotiv of Canadian competition authorities' arguments seems to be the pro-competitive effect companies such as Uber have on stimulating the strongly regulated taxi market (which, due to limited number of licences that can be issued, is facing the challenge of competition restrictions), in Poland (along with its extremely competitive market of taxi services) the authority's explains in fact the lack of sufficient grounds for intervention (it is also probably trying to find excuses to give to the large group of furious taxi drivers, whose lives are going to become even more miserable with the emergence of such a threatening competitor (and their lives are already quite frustrating considering for example the fact that there were 10,500 taxi licences issued in Warsaw, with its 1,739,586 inhabitants as of January 2015, whereas in New York there were about 13,000 cab licences issued, the holders of which provide services for with 8,336,697 people according to Wikipedia).

In the context of the highly competitive market, it is not surprising that the aspects of competition law are practically absent in the Polish authority's stance. The stand taken by the President of UOKiK can be reduced to the following claim: *"Uber's main competitive advantage to be the use of modern information technology, which on the one hand allows consumers access to functionalities that traditional taxi services do not provide, and on the other lowers the costs of the core service due to more efficient use of a fleet of vehicles. In this way Uber puts competitive pressure on the traditional taxi service market. (...) At the same time, it must be stressed that the innovative nature of Uber cannot be categorized as an activity intended to eliminate competition. The basic technology used by Uber is not patent protected and therefore rival firms can use this*

*business model and modify it further, thereby benefiting the development of competition and thereby consumers. This is confirmed by the availability of rival applications similar to Uber in Poland and other countries. Also, the type of service that Uber offers might not be the optimal solution for every consumer as it does not guarantee certain features such as anonymity of the passenger or the option of paying by cash, which might be important for some passengers.”*

### **Consumers are well protected**

Crushing any threats to free competition this way, President of UOKiK focuses on issues related to consumer rights protection (as the very name of his office – Office of Competition and Consumer Protection – suggests, his statutory prerogative and obligation is also the protection of the weakest market participants against business operators’ abuse).

In this respect, the authority’s stance focuses on the three key issues:

- **Passenger safety.** Here UOKiK briefly discusses safety standards related to Uber drivers and concludes: *“The question of whether these safeguards are adequate needs to be analysed also by other state agencies responsible for safety in passenger transportation. From UOKiK’s point of view the principal issue in this regard is whether the consumer is made sufficiently aware that use of services via the Uber platform is not the same as a taxi service. Data available on the company’s website does not appear to be misleading for consumers as to the nature of Uber’s activity. In the Terms of Use on that website, a clear distinction is made as to the policies concerning liability of Uber and of drivers, and Uber stipulates that it does not provide transportation services and neither is it a carrier. It also stipulates that it is not party to an agreement for provision of transportation services (this agreement is concluded between the consumer and the driver).*
- **Transparency of service price information.** This aspect of Uber’s business model is not disputed by the Polish authority either. *“It needs to be pointed out that the obligations such as use of a meter, displaying information about fares on the vehicle, and compliance with maximum price limits, are intended to protect passengers from dishonest drivers. In UOKiK’s view, Uber does not provide a lower level of protection against abuses of this nature as the fare is calculated according to a transparent system of rates and objective parameters. Uber’s price tariff is given in a comprehensible way. The company’s website gives information about the price tariff for selected town or city (...)*
- **Complaint procedure.** This matter was reviewed as well and pursuant to this analysis, UOKiK stated as follows: *“Uber’s activities should not lead to a decline in the standards in force. According to information provided directly by the company, it has the appropriate back office support needed for efficient review of consumer cases regarding the transportation services provided. UOKiK has ascertained that Uber has a comprehensible complaint procedure in which complaints can be submitted via the application, over the telephone, and by e-mail.”* The fact that *“from the moment Uber commenced operations in Poland until now UOKiK has not received any consumer-related complaints about Uber, nor has it received any information suggesting that there is any improper handling of consumer claims by this company”* surely helps.

UOKiK concludes its discussion as follows: *“In UOKiK’s view Uber’s entry on local passenger transportation service markets in Poland contributes to the development of competition on these markets and has a positive impact on consumers. For consumers, emergence of a new carrier means wider choice, while for other market players it presents a challenge for them to raise quality and innovativeness of their services. This does not exclude that the development of this and other platforms might require adjustments in the regulatory environment with regard to safety, personal data protection, and equal treatment with regard to taxes. Nevertheless, any regulatory changes in these areas would have to be carefully considered and be proportional to the of the problems*

*identified. In general they should be conducive to growth of innovative services that consumers expect and avoid solutions that would grant unjustified protection to long established competitors”.*

Summing up, it would also be reasonable to mention an important statement made by UOKiK in the conclusion of its standing on the matter: *“Since the type of services provided by Uber and other undertakings operating on the market of online platforms are of a dynamic nature, UOKiK will continue to actively monitor their market activity to ensure compliance with the consumer protection and competition law”.* This is certainly an important political declaration, which confirms that both the e-commerce sector and, particularly, various types of online platforms acting as intermediaries selling goods and services (UOKiK’s recent action in the cases of Booking.com and Expedia can be mentioned here) will continue to be the focus of the authority’s attention.

### **Good reflection of a certain style of governance**

The statement of the President of UOKiK concerning the market of taxi services is probably the last essential document published by the Polish competition watchdog under President Adam Jasser. It is a very good reflection of his style of governance – open, transparent and willing to choose solutions that had not been expected of the Authority before (because publishing such a “political” declaration which clarifies the motives of making certain decisions is still not a common practice regarding the functioning of the Polish public administration bodies).

Let us keep our fingers crossed for Mr. Marek Niechcia?, the new President (who, by the way, had already held the office during the years 2007-2008 and is therefore an “old-new” President, familiar with the authority, which is his great advantage), so that UOKiK continues to change in an equally positive manner during his term of office as well.

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