

Kluwer Competition Law Blog

The Catalan Competition Authority Fines a Taxi Association for Boycott Conduct

Isaque Leite (Backer McKenzie) · Thursday, November 16th, 2023

On 26 July 2023, the Autoritat Catalana de la Competència (a regional competition authority in Spain; hereinafter, the **ACCO**) issued an infringement decision against the **Asociación Profesional Elite Taxi** (Professional Association Elite Taxi; hereinafter, **Elite Taxi**) for a boycott conduct which had as its object the digital platform business pioneer, UBER.

This latest decision follows a series of recent confrontations between the taxi sector and the private hire vehicle sector in Barcelona that made their way as far up to the European Court of Justice (for more [see here](#)). Nevertheless, the ACCO decision (the **Decision**) fining Elite Taxi stands out on its own merits for a series of features which are discussed below.

Background

Whereas the essence of this case remains the same from its predecessors (i.e., the taxi industry crusade to maintain its place in the market of urban transport services), the facts differ substantially from the facts that drove Elite Taxi to bring an action against UBER before the Spanish courts almost a decade ago.

In 2014, Elite Taxi brought an action before the Juzgado de lo Mercantil No 3 de Barcelona (Commercial Court No 3, Barcelona, Spain) seeking a declaration from that court that the activities of UBER in Spain amounted to misleading practices and acts of unfair competition, based on the Unfair Competition Act (**Ley de Competencia Desleal**, Articles 4, 5 and 15). At that time, UBER's activity consisted of providing, by means of a smartphone application, a paid service connecting non-professional drivers using their own vehicles with persons who wished to make urban journeys. Elite Taxi's main claim was that UBER was providing urban transport services without having been granted the mandated authorisation, which amounted to unfair competition.

In order to determine whether UBER's practices could be classified as unfair practices that infringed the applicable rules on competition, the Commercial Court concluded that it was first necessary to ascertain whether or not UBER required prior administrative authorisation. The Commercial Court then stayed the proceedings and referred the matter to the European Court of Justice (**ECJ**) for a preliminary ruling. In its [judgment of 20 December 2017](#), the ECJ concluded that UBER's intermediation service should be regarded as forming an integral part of an overall

service whose main component was a transport service and it must be classified not as “*an information society service*” but as “*a service in the field of transport*”. Finally, the Commercial Court dismissed Elite Taxi’s unfair competition claim against UBER arguing that any potential [unfair] benefit or unfair conduct in connection with the provision of urban transport services could not be attributed to UBER (and the judgment went on to suggest that any potential unfair benefit belonged with the drivers themselves, but did not conclude on the matter).

The infringement: a textbook case of boycott?

The case at hand is a result of UBER’s decision in March 2021 to start providing intermediation services in its *app* both for taxi drivers and individuals who wished to make urban journeys in the Barcelona Metropolitan Area (i.e., the contested service did not represent direct competition to that of the taxi service as such). This decision was met with an unrelenting backlash from Elite Taxi.

The Decision provides a series of examples of actions from Elite Taxi addressing the taxi driver’s community (i.e., not only Elite Taxi affiliates) and which clearly aimed at convincing taxi drivers to boycott UBER’s taxi intermediation service in the Barcelona Metropolitan Area.

In its intent to prevent UBER from entering the taxi intermediation service market, Elite Taxi’s leadership:

- Made public and direct threats to UBER (e.g. a *tweet* from Elite Taxi’s spokesperson stating that UBER would “*have to ‘sweat blood’ to get into Barcelona*”);
- Carried out a disparagement campaign against UBER (e.g., the association referred to UBER in multiple *tweets*, videos posted on *YouTube* and even at a formal hearing attended in the Catalan Parliament with very explicit language and imagery that pursued to portray UBER as a rogue company);
- Elaborated guidelines addressed to taxi drivers supportive of Elite Taxi’s view that included specific measures aimed at preventing UBER from entering the market;
- Tried to dissuade taxi drivers/taxi fleets owners that were thought to be considering partnering with UBER; and
- Harassed those taxi drivers/taxi fleets owners that were already working with UBER (this included, among others, the production and distribution of a ‘*black list*’ with personal data of taxi drivers that were partnering with UBER).

The Decision concluded that the conduct described above pursued to make the behaviour of the taxi drivers in the Barcelona Metropolitan Area homogeneous and uniform. The theory of harm applied by the ACCO is set in the Decision in very clear terms. The conduct aimed at, was liable to and effectively restrained, the freedom that should govern the taxi driver’s decision to work (or abstain from working) with UBER or any other intermediation service providers and, ultimately, limit the independence of action that said economic operators were entitled to in a context of free competition.

According to the Decision, the harmful nature of the conduct is in direct connection with the very rationale of the business model of *peer-to-peer* platforms such as UBER whose viability relies on the constant availability of both sellers and buyers. Therefore, the ‘victim’ of the conduct was not only the company object of the boycott conduct (i.e., UBER) but also the taxi drivers that -as a result of the boycott- found obstacles to using alternative sales channels as well as the users of

these taxi service that also saw how one channel for hiring taxi services was made less functional/attractive for them.

While the Decision finds that the conduct was a restriction of competition by object it also addresses (and concludes on) the existence of effects. In this respect, the Decision notes that the existence of effects was proved by some public statements of the spokesperson of Elite Taxi who claimed that *“as a result of the work done by Elite Taxi 46 drivers that were going to partner with UBER finally decided not to”*. Additionally, the Decision refers to the data provided by UBER which showed that the number of both taxi drivers and passengers using the intermediation app while the boycott took place was lower in comparison to Madrid. However, the Decision concluded that from this data alone it was not possible to conclude or to dismiss that the fluctuations in the number of users on the UBER app (both passengers and taxi drivers) were necessarily caused by Elite Taxi’s boycott.

In stark contrast with the number of arguments and evidence submitted by UBER, Elite Taxi’s defence was limited to claiming that the conduct was protected by freedom of speech and by the right of association and of collective defence of their professional interests. The Decision dismissed these arguments by referring to the consolidated Spanish Supreme Court’s case law that establishes that neither freedom of speech nor freedom of association may cover conduct that contravenes competition law. As stated in the Decision, Elite Taxi’s conduct was not confined to the *“market of ideas”*. Instead, it pursued to impact the market of taxi intermediation services.

To be continued...

The Decision stands (to this date) as the most recent case resulting from the taxi industry’s crusade to maintain its place in the market of urban transport services. The taxi industry has shown through multiple initiatives that it is more than willing to put up a fight (the Decision is currently under appeal). Competition authorities seem equally interested in maintaining markets competitive and penetrable while preventing companies from tipping markets (a phenomenon that seems to be very common in the digital economy with its well-known network effects).

Irrespective of the final outcome of the different cases that are still pending (and the ones that are expected to come – more on this in the last section of [this commentary](#)) one thing is certain: the taxi crusade will keep producing valuable insight into the legal challenges and the multiple legal angles that arise in connection with the entry of novel business models such as intermediation platforms into traditional sectors of the economy such as taxi services. To be continued...

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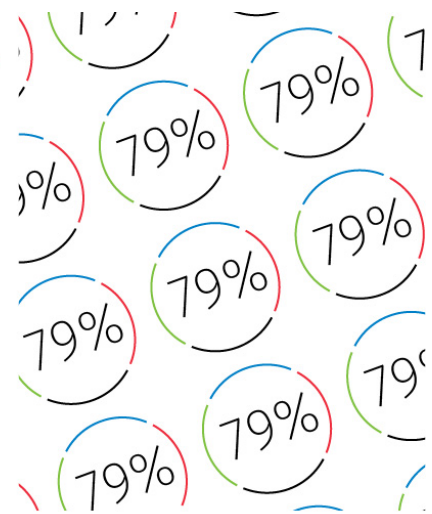
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