



## **The service provided by Uber connecting individuals with non-professional drivers is covered by services in the field of transport**

*Member States can therefore regulate the conditions for providing that service*

The electronic platform Uber provides, by means of a smartphone application, a paid service consisting of connecting non-professional drivers using their own vehicle with persons who wish to make urban journeys.

In 2014, a professional taxi drivers' association in Barcelona (Spain) 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 Systems Spain, a company related to Uber Technologies (together 'Uber'), amount to misleading practices and acts of unfair competition. Indeed, neither Uber Systems Spain, nor the non-professional drivers of the vehicles concerned, have the licences and authorisations required under the Regulation on taxi services in the metropolitan area of Barcelona. In order to determine whether the practices of Uber can be classified as unfair practices that infringe the Spanish rules on competition, the Juzgado de lo Mercantil No 3 de Barcelona considers it necessary to ascertain whether or not Uber requires prior administrative authorisation. To that end, the court considers that it should be determined whether the services provided by Uber are to be regarded as transport services, information society services or a combination of both. Indeed, whether or not prior administrative authorisation may be required depends on the classification adopted. In particular, if the service at issue were covered by the directive on services in the internal market<sup>1</sup> or the directive on electronic commerce<sup>2</sup>, Uber's practices could not be regarded as unfair practices.

**In today's judgment, the Court declares that an intermediation service such as that at issue in the main proceedings, the purpose of which is to connect, by means of a smartphone application and for remuneration, non-professional drivers using their own vehicle with persons who wish to make urban journeys, must be regarded as being inherently linked to a transport service and, accordingly, must be classified as 'a service in the field of transport' within the meaning of EU law. Consequently, such a service must be excluded from the scope of the freedom to provide services in general as well as the directive on services in the internal market and the directive on electronic commerce.**

**It follows that, as EU law currently stands, it is for the Member States to regulate the conditions under which such services are to be provided in conformity with the general rules of the Treaty on the Functioning of the EU.**

<sup>1</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, p. 36).

<sup>2</sup> 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 ('Directive on electronic commerce') (OJ 2006 L 178, p. 1). For the purposes of the definition of 'information society service', Directive 2000/31/EC refers to Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ 1998 L 204, p.37), as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 (OJ 1998 L 217, p.18)

The Court takes the view, first of all, that **the service provided by Uber is more than an intermediation service** consisting of connecting, by means of a smartphone application, a non-professional driver using his or her own vehicle with a person who wishes to make an urban journey. Indeed, in this situation, the provider of that intermediation service simultaneously offers urban transport services, which it renders accessible, in particular, through software tools and whose general operation it organises for the benefit of persons who wish to accept that offer in order to make an urban journey. The Court notes in that regard that the application provided by Uber is indispensable for both the drivers and the persons who wish to make an urban journey. It also points out that Uber exercises decisive influence over the conditions under which the drivers provide their service.

Therefore, the Court finds that **that intermediation service must be regarded as forming an integral part of an overall service whose main component is a transport service and, accordingly, must be classified** not as ‘an information society service’ but as ‘a service in the field of transport’.

The Court states that, consequently, the directive on electronic commerce does not apply to that service, which is also excluded from the scope of the directive on services in the internal market. For the same reason, the service in question is covered not by the freedom to provide services in general but by the common transport policy. However, non-public urban transport services and services that are inherently linked to those services, such as the intermediation service provided by Uber, has not given rise to the adoption of measures based on that policy.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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