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**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM**

**Session I: Disruptive innovation in Latin America and the Caribbean:  
Competition enforcement challenges and advocacy opportunities**

-- Contribution from Brazil --

12-13 April 2016, Mexico City, Mexico

*The attached document from Brazil is circulated to the Latin American and Caribbean Competition Forum FOR DISCUSSION under Session I at its forthcoming meeting to be held on 12-13 April 2016 in Mexico.*

Contact: Ms. Lynn Robertson, Global Relations Co-ordinator, Competition Division [Tel: +33 1 45 24 18 77 -- E-mail address: Lynn.ROBERTSON@oecd.org]

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English - Or. English

# LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM



**14th Latin American and Caribbean Competition Forum  
12-13 APRIL 2016, Mexico City, Mexico**

## **Session I: Disruptive innovation in Latin America and the Caribbean: Competition enforcement challenges and advocacy opportunities**

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### **DISRUPTIVE INNOVATION IN BRAZIL: COMPETITION ENFORCEMENT CHALLENGES AND ADVOCACY OPPORTUNITIES<sup>1</sup>**

#### **-- CONTRIBUTION FROM BRAZIL --**

Brazilian economic scenario has changed significantly in the last fifteen years. Social politics and economic growth have allowed a large part of the population that was excluded of main economic markets to increase their income and become consumers. Between 2003 and 2008, the consumer market increased almost 20%<sup>2</sup>. This social and economic change in the Brazilian context was then an avenue for new economic models. Informal economy, solidarity economy, sharing economy, disruptive innovations, e-commerce, mavericks firms, and others, are some concepts that have been much debated in this context. From the competition policy perspective and having this context as a background, this paper discusses, at first, the challenges related to disruptive innovations in Brazil; then, it analyzes some advocacy opportunities; and, finally, it presents a specific case study related to disruptive innovation in the country.

#### **1. Challenges related to disruptive innovations in Brazil**

1. A rapidly changing social and economic context tends to affect the relation between supply and demand in an economy. The entrance of a large number of consumers in the economic market makes room for new business, new economic models and new economic relations. This context is especially favorable

<sup>1</sup> This document was prepared by Luiza Kharmandayan and Ana Julieta Teodoro Cleaver. Luiza Kharmandayan serves as the Head of International Unit at CADE and Ana Julieta Teodoro Cleaver is a Senior Executive of the Brazilian Federal Government serving at CADE's International Unit. For further contact: [luiza.kharmandayan@cade.gov.br](mailto:luiza.kharmandayan@cade.gov.br) and [ana.cleaver@cade.gov.br](mailto:ana.cleaver@cade.gov.br).

<sup>2</sup> See the press article: <http://br.reuters.com/article/domesticNews/idBRSPE58K0F920090921>.

for new businesses with a sense of opportunity to seize the moment. There is, consequently, a potential market for disruptive services, products and firms.

2. In fact, a large number of disruptive innovations have entered the Brazilian market in the recent years. They are present in the educational market (MOOC model), finances/banking sector (MoneyClip), public transportation (Uber), hotel business (AirBnB), telecommunications (Whatsapp), entertainment (Netflix), to name few areas. These innovations generally attract a great public, while causing an immediate opposition of incumbents<sup>3</sup>. In other words, at the same time that incumbents try to ban innovators, the public debate on the legality and the market effects of disruptors appear to be appealing to a large non-expert audience. The judicial decision that suspended Whatsapp services for 48h hours in December 2015 upon a telecommunication operators' demand was a matter of public uproar<sup>4</sup>.

3. It is complex, nevertheless, to approach this context from the competition enforcement perspective. On one hand, a rapidly evolving context could require rapidly evolving antitrust laws. In this sense, the competition system should be flexible enough to follow the economic challenges and to give sound answers to a changing market. On the other hand, certainty and predictability are fundamental to the good functioning of competition agencies. In view of that, while dealing with disruptive innovations, the Brazilian Administrative Council for Economic Defense – CADE has been prioritizing the refinement of analysis methods instead of focusing in specific policy trends. The complex effects of each disruptive innovation need to be better understood before any categorical decision.

4. In addition, disruptive markets usually blur market structured definitions and boundaries. This entangled economy poses a significant challenge to the accurate analysis of the effect of a disruptive innovation in a specific market. Market studies are complex in this context, demanding new tools and perspectives. Refining the assessment tools used for market analysis also helps the authority in anticipating competition issues related to disruptions. Defining specific trends and implementing policy novelties should result from a deep and comprehensive understanding of the effects of disruptive innovations on the competition scenario.

5. Another challenge concerning competition enforcement regarding disruptive innovations relates to regulation. Brazilian economy is considerably regulated, nationally and locally, with agencies working on the telecommunication, energy power, land transportation, waterborne transportation, among other sectors. The entrance of disruptors in a regulated market requires competition authorities to considerate this aspect as well. In this sense, CADE's work also needs to keep a continuous dialogue with the Brazilian regulatory sector. Building a sound understanding of different disruptive innovations with the regulators is an essential part of the authority's agenda in respect to this matter.

## **2. Advocacy opportunities**

6. CADE's effort to promote advocacy is guided by the understanding that competition issues need to be considered by all stakeholders within the economic scenario. Since local governments are directly submitted to the pressure of incumbents and are often called to enact rules that aim at preventing the entrance of disruptors in certain markets, promoting competition benefits among governmental agents and institutions is an initiative of utmost importance. As presented in the following case study, CADE's assistance to local legislators and governments constitutes a relevant part of the agency's competition advocacy efforts, especially in respect to disruptive innovations.

<sup>3</sup> See the press article: <http://www1.folha.uol.com.br/mercado/2015/12/1715144-tv-por-assinatura-perde-mais-de-100-mil-clientes-em-outubro-diz-anatel.shtml>.

<sup>4</sup> See the press article: <http://www1.folha.uol.com.br/mercado/2015/12/1719934-justica-determina-bloqueio-do-whatsapp-em-todo-brasil-por-48-horas.shtml>.

7. Another important advocacy opportunity regarding the effects of disruptive innovations relates to the establishment of a better communication with the general public. While Brazilian consumers are very attracted by disruptive innovations, they are also those who are more vulnerable to antitrust practices. With the public debate that not seldom emerges from the controversy between incumbents and disruptors, consumers are increasingly interested in economic issues and competition matters. This context is, therefore, a window of opportunity for enforcers to promote competition and reach out to a large part of the population.

8. It is worth noting that, when it comes to disruptive innovations, the challenges and opportunities presented to enforcers are hardly exclusively local. Many great disruptors are firms based abroad that offer services all over the world. Start-ups have delocalized services and internet-based products and services are available everywhere through a web connection. Moreover, it happens that different jurisdictions face similar concerns about the topic. Considering the regional scope of the Latin American and Caribbean Competition Forum, it seems appropriate to underline the relevance of a regional effort to inform stakeholders – incumbents, disruptors, governmental officers and institutions, consumers, think tanks, bar associations, scholars, among others – about disruptive innovations and its probable impact on competition enforcement. A regional and international effort could be very effective and useful in the sense of bringing a sound background and understanding of this often controversial matter.

### **3. CADE’s Advocacy related to disruptive innovations – the case of car rides applications**

9. The entrance of car rides applications, specifically Uber, in Brazil affected the market of passenger car transportation. Being tightly regulated and locally legislated, this market is a complex field where to introduce disruptive innovations. The reactions of incumbents are the most conservative. Local governments and public entities, on the other hand, enact distinct norms and present different points of view on the topic. In view of this widely debated subject, which deeply affects the society, CADE’s Economic Studies Department published, in 2015, two working papers assessing the main implications of rideshare platforms on the market of individual transportation in Brazil<sup>5</sup>.

10. Much of the debate on rideshare platforms in Brazil centers on the argument of taxi drivers that the online platform causes unfair competition by opening the market to unlicensed drivers. Taxi drivers argue that, if they have to abide by the rules and regulations and pay taxes, then drivers rideshare platforms also would have to comply with the same regulations and pay the same taxes. Rideshare platforms (mainly Uber) retort that their drivers are not required to be licensed because of the different nature of the service provided.

11. Taxi drivers also claim that safety should be a concern for consumers. Rideshare platforms, on their turn, argue that they share this same concern, but are convinced that the systems of reputational feedback they provide guarantee that consumers have a reliable alternative service. They argue that, through this system, people can dismiss rides if they believe the driver is not well rated by other passengers and that, once the ride has started, platforms can monitor the car’s itinerary through their GPS services.

12. The issues involved are not only practical, but also political. In Brazil, taxis are considered “rental cars” and drivers must be licensed by the local government, which defines the amount of licenses available. Additionally, not only are licenses tradable, but licensed drivers can also buy cars with tax benefits. By virtue of that – the limited number of licenses granted by the government, the tax reduction available and the fact that those licenses are tradable –, taxi licenses are considered an asset. With new

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<sup>5</sup> To consult both studies, please access the links below:  
<http://cade.gov.br/upload/O%20Mercado%20de%20Transporte%20Individual%20de%20Passageiros.pdf>  
<http://cade.gov.br/upload/Rivalidade%20ap%20C3%B3s%20entrada%20-%20o%20impacto%20imediato%20do%20aplicativo%20Uber%20sobre%20as%20corridas%20de%20t%20C3%A1xi.pdf>.

technologies that allow drivers to enter the market without licenses, the value of the licenses naturally falls, usually distressing taxi drivers associations. The discussion therefore encompasses also professional class interests, which represent another challenge for regulators and policymakers.

13. Out of that complex situation, competition concerns arise. Antitrust authorities have to promote awareness about the changes in market caused by disruptive innovations and about the competitive benefits they may create. Thus, CADE's role in this case is that of advocacy not only before government branches, but before society as a whole, addressing the problems that undue regulation could present to competition.

14. In line with that, the public and widely disseminated working papers that CADE issued on the matter are the result of the authority's effort to promote information among government agents and other stakeholders on competition matters, including disruptive innovations. In other words, CADE's studies aim at effectively contributing to inform decision-makers and the public debate on competition concerns. Indeed, the studies analyze some aspects of urban planning, public safety and public transportation policies, but only to the extent that such considerations relate to competitive matters. Their objective is to better inform the discussion taking place between not only taxi drivers and governmental agents, but consumers as well. The stakeholders of the dispute naturally tend to focus on aspects that directly affects them. The authority expects that the studies help parties to objectively assess the pros and cons of allowing or prohibiting rideshare applications, having in mind how the market of public and private individual transportation may be affected by the introduction of a new and disruptive technology.

15. CADE's papers have given rise to consultation from stakeholders, mostly governmental institutions, interested in better understanding the subject. The best example of that is probably the constant dialogue between CADE and the government of the city of São Paulo, one of the world's largest cities. More specifically, the local legislative assembly of São Paulo passed a bill that, if approved by the local government, would ban rideshare platforms from the municipal market. Nevertheless, the executive government of the city, inspired by CADE's previous study, implemented a working group in order to evaluate Uber's impact on the sector. Additionally, the local government discussed with the agency's analysts competition issues related to the market and its regulation. The result of this cooperation has been the elaboration of a new bill, which is under public consultation since then.

16. The main analysis conveyed by the working papers relates to the necessity of carefully reflecting on how best to treat rideshare platforms. The papers explain that regulation stems from the necessity to fix market failures, such as monopolies, asymmetry of information and mismatch between supply and demand. Market failures have a direct impact on consumers' welfare by causing reduction of their surplus and dead weight loss. In sectors in which obstacles to self-regulation are significant, the government tends to intervene through regulation, in order to fix these failures. Notwithstanding, regulation can also cause competitive concerns. In this context, disruptive innovations may be an avenue to fix market failures and address regulatory concerns in several markets. When a disruptive innovator enters a market, it can break monopolies, provide more even information and match supply and demand more efficiently. Whenever disruptive innovations properly fix regulatory concerns, regulation of such markets is no longer necessary and its continuation may harm consumer welfare.

17. In light of that, the working papers developed by CADE show that rideshare platforms have the potential to provide a superior substitute for private cars for a group of consumers, and a superior substitute for taxis for another group of consumers, with a potential reduction of the prices charged by taxis. The new market would also provide an alternative for licensed drivers – including taxi drivers – who would like to change their business model. In short, the working papers inform society that rideshare applications can

result in several benefits for consumers, and that there have been no economic arguments to prohibit those technologies<sup>6</sup>.

18. As previously mentioned, CADE's input on the issues related to car ride applications has been crucial to the local governments pondering how to address rideshare platforms. The benefits of such studies are well illustrated by the aforementioned draft of the new regulation by municipality of São Paulo, which has great potential to inform other Brazilian local governments, thus multiplying the agency's advocacy effort in this sector.

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See press articles:

<http://www.pnm.adv.br/files/news/cade-violence-against-uber-in-brazil-may-have-broken-antitrust-law.pdf>

[http://www.correiobraziliense.com.br/app/noticia/brasil/2015/12/15/internas\\_polbraeco.510707/segundo-cade-criacao-do-uber-nao-diminuiu-uso-de-taxis-pela-populacao.shtml](http://www.correiobraziliense.com.br/app/noticia/brasil/2015/12/15/internas_polbraeco.510707/segundo-cade-criacao-do-uber-nao-diminuiu-uso-de-taxis-pela-populacao.shtml)

<http://www.valor.com.br/empresas/4356906/cade-conclui-que-uber-nao-concorre-com-aplicativos-de-taxi>

<http://g1.globo.com/economia/noticia/2015/09/cade-diz-que-nao-ha-razao-economica-para-proibir-servicos-como-uber.html>

<http://agenciabrasil.ebc.com.br/economia/noticia/2015-12/segundo-cade-criacao-do-uber-nao-diminuiu-uso-de-taxis>

<http://fernandorodrigues.blogosfera.uol.com.br/2015/12/14/procura-por-taxi-continua-a-mesma-apos-uber-avalia-cade/>

<http://noticias.terra.com.br/brasil/cidades/uber-nao-tira-corrada-de-taxistas-aponta-cade.3350cf56f64129f31379e7a8f2739ae7ampqox9g.html>

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