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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 Uruguay --

12-13 April 2016, Mexico City, Mexico

The attached document from Uruguay 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.

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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

-- CONTRIBUTION FROM URUGUAY --

1. Disruptive innovation in the transport sector: Introduction

1. Uruguay is no stranger to “disruptive innovation” and the associated challenges facing the competition authorities. Since 2014, Uruguay’s competition authority (*Comisión de Promoción y Defensa de la Competencia*) has been involved in a number of proceedings, ranging from complaints to competition advocacy cases related to technology-enabled innovations in the transport sector, particularly since the appearance of the Easy Taxi app, and the more recent Uber app.

2. Both innovations have been controversial, leading to a great deal of resistance from the taxi industry, particularly taxi owners and the taxi drivers’ union, as well as complaints and claims as to quality and price from users. The regulator and the Government have also voiced a number of reservations concerning Uber, since this innovation implies the provision of transport services by unlicensed operators. The emergence of Uber has led the Government to carry out a broader study of this issue, embracing not only the transport sector but also other sectors which use technology-enabled apps. The Executive is therefore examining how to regulate the activities of providers who make use of technological resources and IT apps to offer a variety of services.

3. These innovations can have pro-competitive market effects by increasing supply, allowing more efficient pricing, reducing transaction costs and improving service quality.

2. Easy Taxi

4. The competition authority acted on its own initiative with respect to Easy Taxi, and subsequently received a complaint from *Asociación de Taxis* against the Easy Taxi app.

2.1 *Own-initiative investigation*

5. The own-initiative investigation began in July 2014 when it came to light that the taxi drivers' union, *Centro de Propietarios de Automóviles con Taxímetro del Uruguay* (CPATU), had imposed a penalty on taxi drivers who had used an Internet app such as Easy Taxi or Safer Taxi to get customers. The union penalised drivers for not using its radio dispatcher to allocate journeys in the Montevideo Department.

6. Taxi services are regulated in this Department by Montevideo City Council in accordance with traffic and transport laws (*Digesto Departamental, volume V, Tránsito y Transporte*). The entry of new licensed taxi drivers is limited to the number of permits or licences granted by the City Council. A Council provision also stipulates that all vehicles allocated to services provided by vehicles with taximeters must have radio systems. While the possession of such equipment is mandatory, it does not mean that it is the only way that taxi drivers can get customers.

7. The relevant market was defined as taxi intermediation services in the Montevideo Department. The different methods available to taxi users for booking services were examined. Five methods were identified and their substitutability was analysed. Two of these methods do not involve intermediation: taxis hailed in the street and taxis hired from a taxi rank. The other three imply some kind of intermediation: booking a taxi by radio dispatch, text message or smartphone app. Methods involving intermediation are used to minimise waiting time or save on costs incurred by users in trying to find a vacant taxi at the time and place required. In its Policy Roundtable on Competition Issues in Road Transport, the OECD distinguishes three markets for taxi services: the street hail market, the taxi rank market and the pre-booked market (for taxis booked by telephone, the Internet or some other means).

8. The market in question is two-sided, in that radio dispatching, text message services and apps coincide in a virtual space with two groups of agents: those to whom bookings are offered on the one hand, and those who request them on the other. A characteristic of these markets is the existence of network economies, since interaction between both sides of the market depends on the size of the network: the greater the number of taxi drivers that belong to a network, the more incentive there is for users to interact with that network and vice versa.

9. Through Resolution No. 49/015 of 30 June 2015, the competition authority ordered the immediate cessation of the ban and sanctions imposed on all CPATU members for using methods other than those developed or promoted by CPATU to book taxis, thereby allowing drivers to make free use of said methods. It also levied a fine equivalent to UI 100,000 (100,000 indexed units of account) on the union.

10. In response to these apps, the taxi drivers' union created its own app in August 2014, with similar characteristics to the foreign apps.

2.2 *Complaint filed by Asociación de Taxis against Easy Taxi*

11. Subsequently, *Asociación de Taxis* filed a complaint against Easy Taxi for alleged predatory pricing. The relevant market was defined as in the case above.

12. The allegation of predatory pricing was studied via the two-tier approach proposed by authors such as Joskow and Klevorick (1979). Predatory pricing was ruled out in the first tier. No crowding-out by Easy Taxi of radio-dispatch booking platforms could be identified, given the difference in the nature of the relationship with the vehicles providing the service and their drivers. The relationship with radio dispatchers is mandatory, and a fixed payment is established (providing access to different platforms: text messages, radio dispatching and now also apps). By contrast, the link with Easy Taxi is a voluntary agreement between the persons who drive the taxis and the company. Easy Taxi's setting of high prices to recover the costs it may have incurred to remove its rivals was ruled out. Easy Taxi came into the country

offering these services free of charge. This approach on entering the market was regarded as a rational strategy, since both sides of the platform had to be encouraged to use the service.

3. Uber

13. The Uber on-demand car app was first launched in Montevideo in November 2015, generating a great deal of resistance from the taxi sector and departmental governments.

3.1 *Complaint by Asociación de Taxis against Uber*

14. *Asociación de Taxis* filed a complaint against Uber for abuse of a dominant position. This complaint is currently under investigation.

15. The relevant market was defined as the private transport of persons in return for payment in the Montevideo Department. The starting point was the smaller relevant candidate market, considering only the service offered by Uber, and an assessment was carried out as to whether the service offered by taxis was a substitute for Uber, which expanded the market. Consequently, all licensed taxi drivers and Uber drivers who operate in the city of Montevideo were included in the market.

16. The shares of the different operators in the market will be examined subsequently. An assessment will then be made as to whether the alleged conduct may constitute abuse of a dominant position.

3.2 *Competition authority action*

17. The Executive set up a government commission to analyse Uber's activity and its possible impact on various areas of public interest in order to assess whether or not to allow it to operate, and the competition authority was asked to give its opinion. The authority took the view that the regulations concerning services of the kind offered by Uber should be governed by the higher legal order, i.e. the constitutional and legal framework, which naturally includes the Law on the Protection of Competition. The authority stated that, in terms of scope of application, the regulations should not impose unjustified requirements and should not become barriers preventing new operators from entering the market, and they should also reflect innovation and technological development.

18. Whether or not Uber will be able to operate in Uruguay has yet to be decided. While the Government has stated that it does not intend to prohibit this type of app, it is in the meantime examining whether to regulate the activities of providers using technology-enabled apps by submitting the development of these services to the controls, authorisations, licences and permits which already exist for those activities.