

# Less is more: Competition Authority publishes report on taxi regulation

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### Introduction

Following the introduction of Uber, in Portugal there has been a lively debate on the regulation of occasional passenger transport services (with driver) and the requirements to which this type of service should be subject. Under the existing regulatory framework, it is unclear whether companies such as Uber are entitled to provide their services in Portugal. This issue is being discussed in court, further to an interlocutory injunction brought by Antral, the professional taxi association. The government has also established a working group to propose new legislative measures for the sector.

It is in this context that the Competition Authority has published a report on the regulation of passenger transport services in which it:

- sets out regulatory rules;
- analyses the constraints of such rules on competition in the market; and
- issues recommendations.

According to the Competition Authority, occasional passenger transportation services (with driver) include the following activities:

- taxi services;
- vehicles for hire with a driver; and
- other services (including tourist services).

The provision of taxi services in particular is subject to strong regulation, which has been challenged by the arrival of alternative online platforms such as Uber, which provide competing services.

Four key areas of concern are:

- market access;
- pricing;
- quality and security; and
- online platforms.

### Market access

The provision of taxi services is subject to licensing by the Transportation Regulatory Body and the number of players in each market is fixed by each municipality. The parking space available for taxis is also determined by municipalities. These rules create a quantitative restriction on access to the

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market and a geographic barrier for the different market players. Since market entry costs are low, the quantitative restriction aims to prevent a potential oversupply of taxis in the market, which would reduce the occupancy rate per taxi.

However, the Competition Authority considers that this argument does not justify a restriction on market access as, in the absence of substantial sunk costs (which occur in this sector), market players are not prevented from exiting the market in situations of overcapacity. Further, the Competition Authority believes that an increase in supply would benefit consumers, as more choice would:

- reduce waiting times;
- increase demand; and
- balance the market.

The Competition Authority also addressed other arguments in favour of stricter regulation, such as:

- the need to avoid congestion in specific areas (eg, airports and train stations);
- air pollution;
- service quality;
- security; and
- the transportation of persons with reduced mobility.

It concluded that legislative and regulatory bodies should assess the need and proportionality of the existing access rules and examine alternative and more efficient regulations to achieve such objectives. Thus, concerns relating to quality and security might be better addressed by establishing a certification process (for vehicles and drivers) than by quantitative restrictions on market access.

## **Pricing**

The price of taxi services in Portugal is fixed by the government through consultation with representative associations. The pricing regime was established to ensure that consumers know about transportation conditions in advance, so that they can check the service provided.

Despite increased transparency in the market, the Competition Authority considers that the pricing regime limits the ability of each market player to compete on price and quality. This restriction is significant considering the development of new business models, as taxi service providers are prevented from reacting to the entry of new players into the market (eg, through new pricing or quality strategies). In the Competition Authority's view, pricing restrictions prevent the creation of a level playing field among service providers.

It is recognised that price regulation may benefit consumers in certain circumstances. This is the case where transaction costs are associated with the provision of a specific service, such as when a consumer hails a taxi in the street and cannot immediately compare the price of alternative services (including waiting for another vehicle). As the rule of first come, first served applies at taxi stands, a consumer may be unable to compare the price and quality of taxis available.

Therefore, the Competition Authority acknowledges that while regulation may be necessary in certain sections of the market, a more flexible and less restrictive approach should nonetheless be followed. Among the different options being considered are the setting of maximum prices (to protect consumers from price surges) and an effective market monitoring mechanism, so that any risk of price coordination is detected.

Regardless of the options on price regulation that may be adopted, ongoing monitoring of the market is essential to ensure that the rules are adjusted when necessary.

The Competition Authority recommended to the government a more flexible price regulation for the provision of taxi services that promotes price liberalisation where possible, in particular for non-significant market failure situations.

## **Quality and security**

The quality and security of the provision of taxi services are also highly regulated. This regulation was introduced to reduce information asymmetries for consumers, as they are unaware of the quality of the service when they call a taxi. As the quality of a service may be evaluated only after it has been provided, taxi providers may not have incentives to engage in quality improvements, as consumers will not recognise the improvements in advance.

However, in a scenario where market players can differentiate their offers in terms of quality (eg, by creating a brand or reputational rating system through an online platform), competition may increase. This scenario is more efficient than one in which minimal quality requirements are set, but not monitored.

The Competition Authority acknowledged that regulations may be required to correct specific market failures concerning security issues by defining the requirements with which all players must comply. These regulatory provisions should be limited to the minimum legislation required to ensure the correction of market failures and achieve public policy objectives in order to allow for quality differentiation as result of competition between market players.

### **Online platforms**

The Competition Authority recognised the challenge that new online platforms represent to the existing regulatory framework. Traditional players in the market have expressed their concerns about the different regulatory provisions applicable to the different segments of the market and have questioned the need for a new regulation for online platforms.

A discrepancy between market context and the regulatory framework may create disparities for market players. According to the Competition Authority, the regulatory framework needs to be adapted in order to open the market to the new opportunities provided by online platforms, such as:

- reduced transaction costs;
- information asymmetries; and
- more efficient allocation of resources.

In light of the above, the Competition Authority's recommendations to the government include:

- the need to assess the necessity and proportionality of the existing quantitative restrictions on market access;
- the relaxation of certification and licensing requirements;
- the restriction of regulatory intervention to the extent necessary to regulate market failures;
- the introduction of price flexibility to give operators the freedom to set their prices; and
- the removal of unnecessary service quality requirements in order to avoid an artificial offer standardisation that limits non-price competition.

The Competition Authority stressed that these recommendations are not aimed at favouring a specific market operator, but rather at promoting a level playing field for the different market players.

### **Comment**

The entry of new players into the taxi market has been highly contentious in Portugal and the modernisation of the regulatory regime is a challenge for the government. On the one hand, taxi companies are constrained by the existing rules, which prevent them from reacting in terms of price and quality of service. On the other hand, the new regulation should take into account the entry of new online platforms, which may increase competition and ultimately enhance consumer welfare in the market.

These different aspects should be assessed by taking into account the views of all stakeholders in the market. The report is therefore welcome, as it provides a competition law analysis of the existing regulation and issues recommendations that may constitute an alternative (and less restrictive) solution to achieve the public policy objectives pursued by the existing regulation.

The report is under public consultation until September 9 2016.

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