‘UBER’ Facing Legal Obstacles in Europe

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The ongoing legal quarrels between the software company Uber, which provides a ‘ride-sharing’ app, and local authorities and taxi companies in Germany is symbolic for a clash of legal cultures and expectations with the US-American company demanding more economic liberty in the strongly regulated market for single person transport services in Germany.

Uber was founded as UberCab in San Francisco in 2009. As the original name reveals, the founders had in mind to compete with taxicabs as the traditional means of single person transport in urban areas. The loan word ‘uber’ – an anglicized version of the German word ‘über’, which means ‘above’ or ‘over’ – is used in informal English as a prefix to imply superiority. Uber’s CEO Travis Kalanick commented at the so-called ‘Code Conference’ on 28th May, 2014 that he sees his company in a ‘political campaign’ and that the opponent is an ‘asshole named taxi’. Uber – set up by Kalanick and co-founder Garrett Camp as a start-up enterprise – as soon as 2010 began to be the target of investors such as Google Ventures and Goldman Sachs. The company is now valued at the considerable amount of 18.2 billion $, or 14 billion €.

Uber provides mainly two services – labelled UberBlack and UberPop. Only the latter is subject of controversy. Both services distinguish between users acting as ‘drivers’ and ‘riders’. Drivers need to be approved. Riders can request inner-city ‘rides’ via Uber’s smartphone app, which the drivers can subsequently accept. Uber sets the prices and charges a 20 percent fee on all rides to their drivers. UberBlack as a premium product – providing mainly sedan services – requires applicants to be professional drivers with the necessary administrative authorization. The equivalent minimum standard for UberPop drivers is trivial.

Considering the obvious similarities to traditional taxi services, Uber’s business activities in the US led to considerable legal controversies, culminating in a cease and desist order by Californian authorities including the threat of a 20,000 $ fine per contravention. The company could conclude an agreement with the authorities but its entry to the European and especially the German market proved to be even more arduous. Uber started its business in five German cities in 2013 – Berlin, Munich, Hamburg, Frankfurt and Duesseldorf. Soon it discovered that both regulatory authorities and unions of local taxi enterprises saw the company in breach of national and regional legislation.

Notwithstanding the interventions of administrative units in Hamburg and Berlin, unions of competing taxi companies successfully invoked unfair competition claims. Courts in Berlin and Frankfurt consequently granted injunctions against Uber. The courts repudiated Uber’s allegation to merely provide intermediation for transport services and instead considered the company in actual competition with taxi services. Since Uber drivers are usually neither licensed nor adequately insured, Uber enjoyed an unfair advantage compared to traditional taxi services, commented the court.

Both decisions temporarily disallow Uber to provide its services. Each infringement may be fined up to 250,000 €, or 327,000 $. Uber decided to carry on its business, despite of any possible sanctions. The applicant in Berlin then abstained from enforcing the injunction and claiming fines for infringements, being afraid of potential compensation claims. Meanwhile in Frankfurt, the court has set aside the injunction denying the special urgency of the case. But the court explicitly held that it still considers Uber’s business to be illegal. A possible appeal and of course the main proceedings are still to come and show that Uber is not over.

Uber’s fight against regulatory requirements is symbolic for the clash of the so-called shareeconomy with traditional service providers. Prior to Uber’s confrontation with taxi companies, hotel businesses complained about Airbnb, a website that allows non-commercial providers to offer their apartment or room for short-term accommodation. While the US-American company emphasizes the social value and the complementary nature of its services, hotel managers remark that Airbnb competes with hotels not observing the relevant regulations and thereby eroding social and regulatory standards.

The public discussion about Uber exceeds its nature as a merely legal confrontation and has become political. EU Commissioner for Digital Agenda Neelie Kroes heavily criticized the ban of Uber by local authorities in Brussels. While she can easily be agreed with that technological innovations have changed and are changing our lives, this cannot grant absolution for infringements with regulation that seeks to maintain social standards, consumer or employee protection. Uber’s blunt refusal to obey judicial decisions cannot be the right way to deal with such areas of tension.