

GLOBAL MARKET ACCESS TRENDS & PRINCIPLES FOR REGULATION

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GLOBAL MARKET ACCESS TRENDS

- The advent of Smartphone technology has transformed the way in which people communicate, do business and summon transportation service.
- One of the most prevalent issues challenging regulators is finding an optimal solution that will permit new entrants to flourish in the market place without jeopardizing the safety, security and privacy of passengers.
- For actors in the incumbent industry, the innovative methods have been onerous because they mandate compliance with existing regulations in order to maintain operating license while new market entrants enjoy a regulatory reprieve.



GLOBAL MARKET ACCESS TRENDS

- The role of technology is neither the root nor the cause of the regulatory and market access issues exhibited in many jurisdictions.
- The underlying problem originates from the mismatch between new market entrants' Commercial Transportation Intermediary (CTI) business model and the responsibility of regulatory agencies to enforce safety, security and privacy of the public.
- CTIs are defined as entities that provide e-hail capabilities to for-hire vehicles and act as intermediaries between passengers and taxi and FHV drivers.



Global Market Access Models of CTIs

1. Model 1: Licensed Level Playing Field
2. Model 2: Minimal & Self-Regulation
3. Model 3: Stricter Regulations for E-Hails

Market Access Model 1: *A “Licensed Level Playing Field”*

- CTIs are fully licensed.
- Vehicles, drivers, and companies operate under existing regulations that govern taxis and FHV.
- Equal playing field to all market actors.
- Jurisdictions - London & New York City.



Market Access Model 2: *Minimal & Self-Regulation*

- CTIs operate under new TNC laws.
- Minimal & self-regulation pertaining to vehicles, drivers, and companies.
- Revision of TNC laws underway to address safety issues.
- Jurisdictions – Most U.S. cities & Canada.



Market Access Model 3: Stricter Regulations for E-Hails

- New regulations permit CTIs to operate legally.
- Regulation focuses on the e-hail aspect of the operation.
- Stricter regulations imposed on drivers, vehicles and companies of CTIs.
- Jurisdictions - China, Malaysia & Singapore.



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Occasional vs. Professional Service Providers

- One of the key issues that must be addressed in order to establish a sound regulatory framework is to determine how to distinguish between occasional and professional service providers, or whether the regulations should draw such distinctions between drivers.
- Regulators in many jurisdictions are seeking to determine when a person offering services on an occasional basis becomes a service provider acting in a professional capacity, and if so, what criteria would establish the safest and fairest market conditions.
- It may remain beneficial to preserve regulatory distinctions currently reserved for “professionals”.



Occasional vs. Professional Service Providers

- Moreover, while it may be appropriate to establish some distinctions between occasional and professional service providers, such as in granting union voting rights, all service providers - whether seldom providing for-hire transportation or pursuing it as a profession - must be held to the same safety and consumer protections (i.e. market and price controls, anti-discrimination laws, passenger bill of rights, etc.) standards when taking passengers from point A to point B.
- Regulators and industry stakeholders should aim to establish rules and regulations that promote occupational and consumer health and safety, drive innovation, prevent market fragmentation, and eliminate unnecessary or arbitrary regulatory burdens, while “levelling the playing field.”



Determining Employment Relationships

1. European Commission's Criteria for the Existence of an Employment Relationship
2. Major Worker Classification Litigation in the United States
3. Control as a Factor in Employment Status

1. European Commission's Criteria for the Existence of an Employment Relationship

- Member States are responsible for defining their national concepts of employees and the self-employed, and the related applicable laws.
- There is currently no single approach on how to qualify employment status across Member States in the collaborative economy.
- The European Commission (EC) recognizes that national legal frameworks ultimately determine whether someone is a worker or self-employed (i.e. independent contractor), but in order to provide guidance and encourage harmonization of the national frameworks, the EC sets out cumulative criteria that would indicate the existence of an employment relationship.
- The EC recommends that the determination of whether an employment relationship exists be considered on a case-by-case basis, by analyzing the facts that define the relationship between the technology platform and the service provider, and the performance of related tasks.



European Commission

2. Major Worker Classification Litigation in the United States

- The issue of worker misclassification has been raised in multiple lawsuits across the United States, but most notably in two class action suits brought by 385,000 Uber drivers in California and Massachusetts in 2013.
- Plaintiffs argued that Uber drivers are required to follow a litany of detailed requirements imposed on them by Uber, and therefore should be classified as employees rather than independent contractors.
- If successful, drivers would receive the wage protections that employees receive and Uber may be required to reimburse drivers for the mileage accrued in their vehicles going back to 2009.
- After an aggressive battle spanning nearly three years, in April of 2016 the parties negotiated an unexpected \$100 million proposed settlement.
- Settlement is not yet approved by the presiding judge.



3. Control as a Factor in Employment Status

- Both American employment law and the EU legislation have suggested three cumulative criteria (the existence of subordination link, the nature of work, and the compensation) for the existence of an employment relationship. For both, the element of control is a key determining factor.
- Uber exerts significant control over driver behavior through its driver rating system and surveillance system.
- Thus, legislators and regulators across all jurisdictions should engage more pro-actively with industry stakeholders to analyze how key features of the platforms, such as driver rating, surge pricing, scheduling, electronic surveillance, as well as real-time and predictive analysis, impact the existence of an employment relationship under the locally applicable laws.



SUBMIT

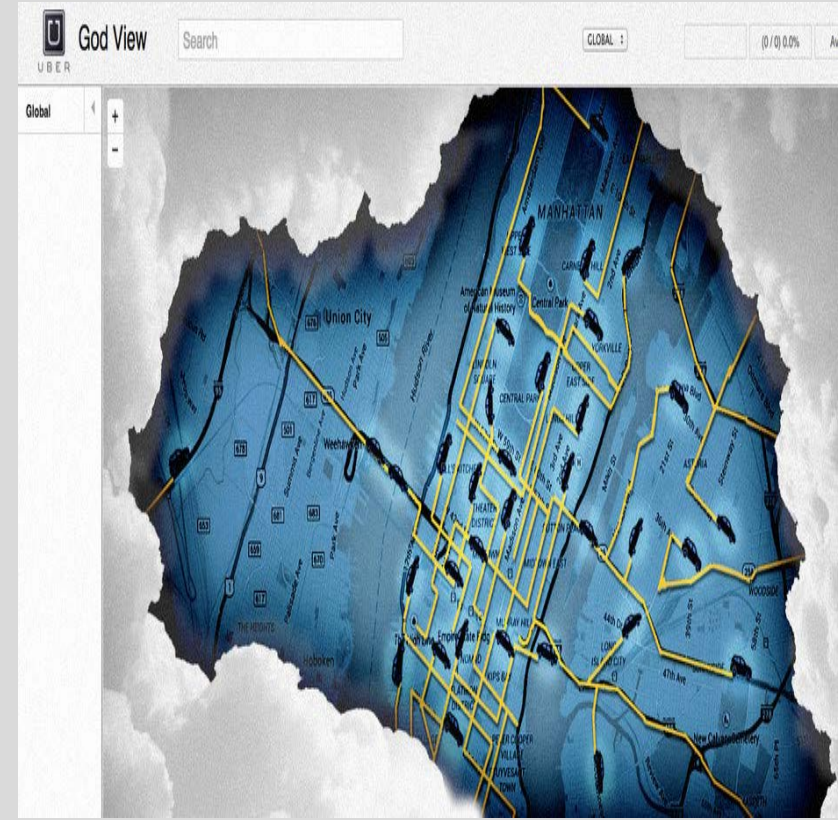
Passenger Safety and Liability

- A cause for significant concern with regard to CTIs is the question of liability.
- When traffic accidents occur or when incidents of drivers violently or sexually attack passengers, who is held liable or responsible for those actions?
- Liability issues resulting from the CTIs business model is yet to be resolved.
- CTIs should not be allowed to falsely advertise themselves as a safer option while all the while attempting to skirt policies that provide the necessary safety nets for consumers, such as adequate insurance and biometric background checks.
- CTIs should not be allowed to waive off all liability by having customers check a box on the fine print and they should not be able to avoid admissions of liability by paying off claimants.



Data Sharing, Security and Privacy Protections

- In the course of providing services, CTIs collect user's name, contact information, payment information, device location, profile photo, device manufacturer and model, mobile operating system, pick-up location, destination, trip history, and information about how customers interact with the CTI's interfaces.
- There have been several media reports and lawsuits alleging that some CTIs may be unlawfully storing and tracking passenger data. There are instances where CTIs have had their data hacked, and their own executives accessing customer's private data are disconcerting.
- CTIs' ability to collect vast data needs to be closely monitored to ensure compliance with data security and consumer privacy laws. Conversely, governments should take advantage of the data being collected by CTIs to inform better transportation and infrastructure policies.
- However, CTIs have been quite resistant to sharing such data with regulators, as evidenced by their behavior in California and New York.



Tax Avoidance

- The so-called “sharing-economy” businesses are estimated to have generated \$15B in revenue in 2014 and are expected to reach \$335B in 2025.
- However, not only do CTIs’ tax structure deprive nations of their fair share of tax revenue, but it allows them to charge lower rates than the native private for-hire service providers that operate in and from their local jurisdictions
- Without the advantage of a tax structure such as one employed by CTIs, local taxpaying competitors are forced out of business, further decreasing the tax revenue to the government and denying important and critical services to the populace that rely on them. The OECD, G20 and EU have all acknowledged the harmful effects of the tax minimization schemes used by multinational enterprises such as CTIs and are starting to take action to rectify the situation.



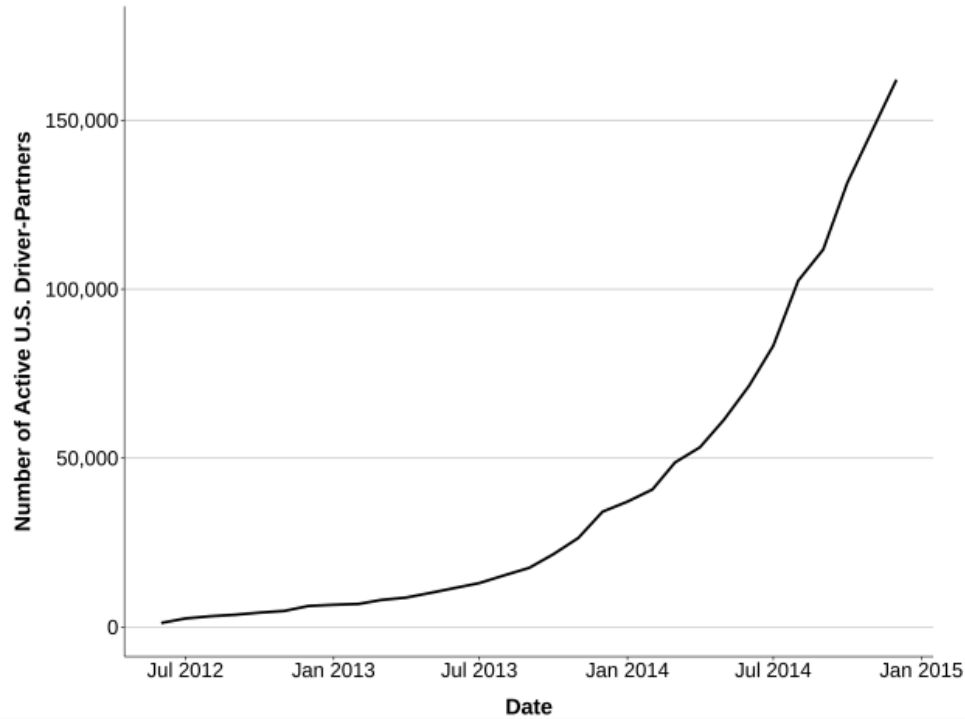
Environmental Impact of Increasing Number For-Hire Vehicles

- Cities all over the world have created a variety of initiatives to decrease the use of private motor vehicles (PMVs), including automobiles, while increasing reliance on collective passenger transport modes such as buses, coaches and taxis.
- More recently with the exponential growth rates of CTIs, the increased number of automobiles on the streets has raised concerns that these efforts will be reversed with a deleterious effect on congestion and the environment.
- Unfortunately, the lack of sufficient data to adequately measure the impact of the expansion rate of CTIs in many cities has exacerbated the problem, but new studies and further transparency by CTIs may show that the new technologies and innovative business models may play a significant role in future efforts to address the sharing of resources and environmental sustainability of the for-hire transportation industry.



Unregulated Uber-Growth - The Lack of a Vehicle Cap and Adverse Environmental Impacts

Figure 1: Number of Active Driver-Partners in United States Each Month



Case Study - New York City

- In NYC, FHVs have increased by approximately 53% between 2011 and 2015, causing an impact on air quality, traffic congestion and parking.
- As a result, the City commissioned a four-month study to ascertain the effect of TNCs on traffic in the City. The study determined that TNCs did not increase congestion in the City. The reasoning was that the number of trips by all vehicles in the Central Business District remained flat between 2014 and 2015.
- Moreover, trips by TNCs were alleged to largely substitute for yellow taxi trips in the CBD, so it was concluded that TNCs did not increase the total vehicle miles travelled in the CBD.



Case Study - New York City

- However, some have questioned the research model used and have noted that the \$2 million report did not include links to spreadsheets or include additional data for the public.
- Uber has more than 35,000 affiliated vehicles in NYC as of February 2016. Although Uber claims that only 1,900 vehicles are active at any given time, experts have projected that these additional 1,900 vehicles result in a 7.7% decrease in NYC travel speeds. To put this into perspective, each additional mile driven by an Uber vehicle in the CBD adds an extra 10 minutes to all other vehicles on the road at the time. This unregulated vehicle growth may have a detrimental impact on the environment, and may potentially increase vehicle related carbon emissions. Emissions may increase as vehicles spend more time in traffic, idling or crawling, and undergoing numerous acceleration and deceleration events.



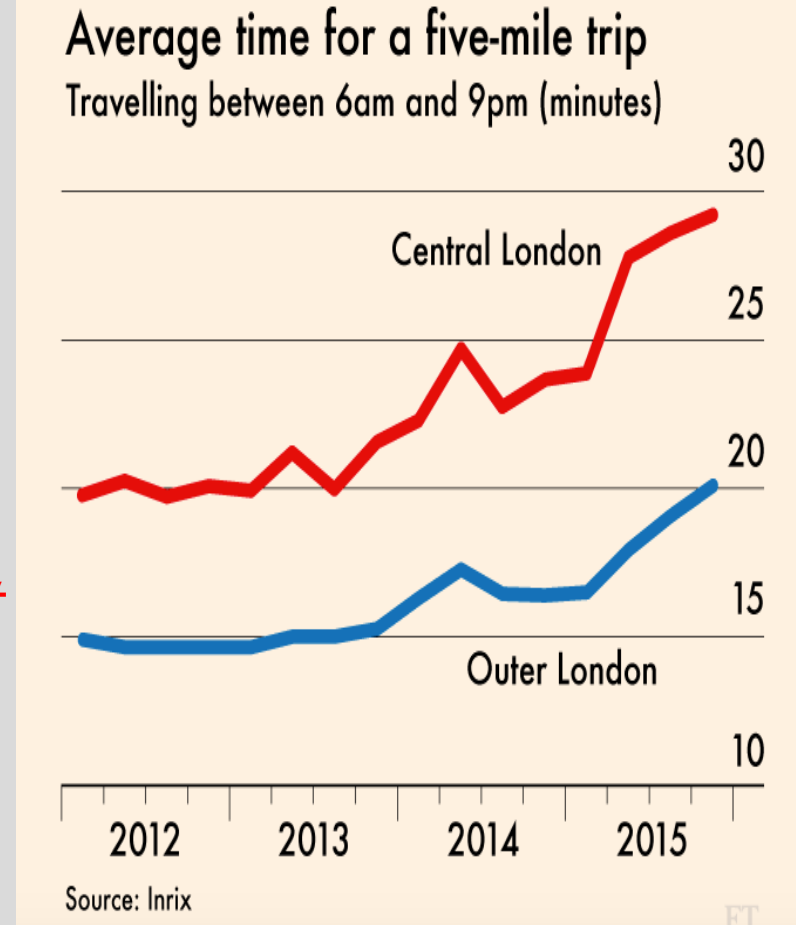
Case Study - Amsterdam

- In the first six months of 2016, Amsterdam has seen “explosive growth” in the number of taxis on its streets.
- From January through June 2015, 76 people entered the market as taxi drivers in Amsterdam, but in the same period this in 2016, there were 382 newcomers to the market.
- There are now more than 4,200 licensed taxis in Amsterdam and many established taxi firms have been calling for a limit on taxi numbers.
- *The Dutch taxi market was de-regulated in 2000 when the permit system was abandoned, allowing anyone to establish a taxi service.*
- Taxi firms claim that earnings have suffered and that many drivers are now making below minimum wage, and struggling to cover costs.
- Unfortunately, the Amsterdam City Council claims that it does not have the authority to limit taxi numbers, and only the national government can do so.



Case Study - London

- In 2016, the Licensed Taxi Drivers Association claimed that congestion reaching record levels on London's roads is partly because of the huge increase in private taxi drivers working for firms such as Uber.
- The number of minicabs in London reached a record 93,000 in December 2015, and 600 licenses were being issued each week.
- Motorists are spending an average of 250 hours, more than 24 days, a year stuck in traffic.
- They also said that the "unsustainable" congestion was costing London £5.4 billion a year and, if left unchecked, could damage the capital's economy.



Conclusions

- **Financial support and subsidies, not better and safer service are cause for the rise of app based companies:** The innovative and seamless Smartphone apps that are developed have proliferated due to a significant amount of financial support from individual and institutional investors.
- **Demand for faster and efficient service was underestimated:** The significant passenger switch from taxis to CTIs highlights the strong increase in demand of these services and anticipated growth of the sector.
- **Services involving smartphone apps have become more unsafe with new entrants:** CTI expansion has resulted in major safety concerns to the riding public as a result of these companies' refusal to be regulated using the argument that their services are distinguishable from the incumbent for-hire industry.

Conclusions

- **Models will adjust and consolidate over time:** As shown in this report, the regulatory innovation that has led to the formation of the different market access models is expected to alter and consolidate, mirroring the expected market attrition of new market entrants, the resolution of pending litigation, and additional legislative endeavors that are currently under consideration at various levels of government.
- **More technology challenges are on the way (shared mobility and autonomous vehicles):** It is evident that the for-hire vehicle sector will face more challenging times as a result of the new shared mobility principles that cities and national governments are embracing and attempting to encourage companies to introduce multi-passenger use of vehicles and different forms of transportation. Moreover, the rapid growth of autonomous and semi-autonomous vehicle technologies and reported success in real world trials of driverless vehicles will bring its own legislative challenges and additional burden to the incumbent industry.
- **Multi-faceted policy strategy is needed:** In order to mitigate a disproportional negative consequence on the incumbent industry a dynamic legislative strategy that focuses on safety, security and privacy of passengers should be a priority.