

Disruptive innovation and sunset clauses: The case of Uber and other on demand transportation networks

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Abstract

Uber and other on-demand transportation network companies, such as Lyft and Cabify, have brought significant change in the transportation industry within cities. Calling a taxi was never so simple and easy, while the payment transaction was never so fast and convenient. However, such ride sharing platforms brought significant disruption within the taxi business. Nowadays, ride-sharing platforms operate in the vast majorities of the big cities; in some cities like New York, cars affiliated with on-demand ridesharing platforms have not only outnumbered taxis but also and more importantly have taken away millions of rides from taxi drivers.

Due to the noticeable drop in passengers, the value of taxi licences has drastically reduced. According to anecdotal references, in 2013, a taxi licence in New York was worth as much as \$1.3 million, however, nowadays the price has dropped down to as low as \$200,000. As a result, such disruption in the taxi business has brought protests from taxi drivers around the world, and has created challenges to policy makers on how to resolve the conflicting interests and resolve the tension. Such challenges are expected to rise with the spread of the autonomous cars in the future.

This chapter aims to examine the utility of sunset clauses in order to resolve this issue. It will use the progressive abolition of roaming changes as a pilot case, which took place with a number of laws subject to sunset clauses, in order to show how such clauses may with temporary regulations to deregulate the taxi industry by creating a predictable business environment for all parties involved.

Introduction

This chapter concerns the changes and challenges faced by regulators due to the disruptive innovation caused by new technology and p2p online platforms. In particular, this chapter will focus on the disruption caused in the taxi industry by “on-demand transportation network companies”, also known as “ride-hailing apps” or as ridesharing platforms. Indeed, Uber and other regional ride-hailing apps,¹ have changed our perspective on transportation within cities.

Calling a taxi was never so simple and effortless, while the payment transaction was never so fast and convenient. Nowadays, such ride hailing apps operate in the vast majority of big cities, and in some cities like New York and London, cars affiliated with such on-demand ridesharing platforms, which are in reality ‘private hire cars’, outnumber taxis.² Most importantly, this took away millions of rides from taxi drivers. For instance, in New York, as of August 2018, ride sharing companies conducted around 558,000 rides per day (Uber conducted around 436,000 and Lyft around 122,000 rides), while taxis conducted around 275,000 rides.³

Due to the noticeable drop in passengers, and the de facto circumvention of the licencing system, the value of taxi licences has drastically reduced.⁴ As a result, such disruption in the taxi business has caused protests from taxi drivers around the world, and has created challenges to policy-makers on how to resolve the conflicting interests and put an end to the tension. Such challenges are expected to rise with the spread of autonomous cars (also known as self driving cars) in the future.⁵

¹ For instance Lyft which operates mainly in the US, Cabify which operates mainly in Spain, Ola which operates in India, Careem which operates in the Middle East, Didi which operates in China and Grab which operates mainly in Southeast Asian markets.

² In particular, in New York City, in August 2018, around 99,000 cars were recorded as affiliates of ride sharing companies or private hire cars (in particular 63,000 vehicles of Uber, and 34,000 vehicles of Lyft) while there were only 16,000 yellow cabs, see TW Schneider, ‘Taxi, Uber, and Lyft Usage in New York City: Open TLC data reveals the taxi industry’s contraction, Uber’s growth, and the scramble for market share’ (New York, 5 April 2016) www.toddwschneider.com/posts/taxi-uber-lyft-usage-new-york-city. On the other hand, in London, during the year 2016/2017, private hire cars were around 118,000, while the number of taxis was 21,000 vehicles, see J Titcomb, ‘Who really are Uber's 40,000 drivers and 3.5m users in London?’ *The Telegraph* (London, 26 September 2017) www.telegraph.co.uk/technology/2017/09/26/really-ubers-40000-drivers-35m-users-london.

³ M Iqbal, ‘Uber Revenue and Usage Statistics (2018) www.businessofapps.com.

⁴ For more details see below Part A.

⁵ In 2017 – 2018, more than 25 companies tested autonomous vehicles in California.

For the most recent report on the companies that operate under a license testing autonomous vehicles in California see

<https://thelastdriverlicenseholder.com/2019/02/13/update-disengagement-reports-2018-final-results/>.

In theory, a number of articles have examined the legal framework, the challenges of sharing the economy, and disruptive innovation.⁶ In practice there are two public policy options: first, to allow the ride hailing apps to operate, and thus de facto to liberalize the on demand transportation industry such as the case of most of the cities in the US, and second to ban the ride hailing apps directly such as the case of Greece or indirectly by imposing onerous regulations, such as the case of Barcelona.

However, both public policy options have some immediate drawbacks. The former inhibits the legal and financial expectations of the taxi license owners, while the second protects the taxi license owners at the expense of the innovation and the consumer benefits. That said, this chapter aims to show that a third way is possible that creates a middle ground and aims to demonstrate how time limited laws, which are subject to sunset clauses,⁷ might be useful in order to mitigate different interests in society.

Specifically, this chapter seeks to examine the utility of sunset clauses in resolving this issue. It will use the progressive prohibition of roaming charges in the European Union as a pilot case. The prohibition of roaming charges took place progressively with a number of laws subject to sunset clauses, as such clauses allowed the imposition of ex ante obligations by capping of retail and wholesale voice roaming charges in combination with periodic market review evaluation;⁸ this paradigm shows how such clauses may deregulate progressively the taxi industry through temporary laws which create a predictable business environment for every stakeholder in the transportation industry.

Laws subject to sunset clauses may regulate the cohabitation of licensed taxis with private hire cars connected to ride hailing apps by progressively allowing more private hire cars to operate. The ultimate aim is to deregulate the market of transportation industry by abolishing the

⁶ See, eg: S Ranchordas, 'Does sharing mean caring: Regulating innovation in the sharing economy' (2015) 16 *Minnesota Journal of Law Science and Technology* 413; D Rauch and D Schleicher 'Like Uber, but for local government law: the future of local regulation of the sharing economy' (2015) 76 *Ohio State Law Journal* 901; B Edelman and D Geradin, 'Efficiencies and Regulatory Shortcuts: How Should We Regulate Companies Like Airbnb and Uber' (2015) 19 *Stanford Technology Law Review* 293; N M Davidson and J J Infranca, 'The Sharing Economy as an Urban Phenomenon' (2015-2016) 34 *Yale Law and Policy Review* 215; M Finck and S Ranchordas, 'Sharing and the City' (2016) 49 *Vanderbilt Journal of Transnational Law* 1299; O Lobel, 'The Law of the Platform' (2016-2017) 101 *Minnesota Law Review* 88. V. Hatzopoulos, *The Collaborative Economy and EU Law* (Hart 2018).

⁷ Sunset clause is a provision that requires a legal norm to automatically terminate at the end of a fixed period.

⁸ Such state intervention in reality aimed to make the market more competitive on the roaming charges. For more details about the different forms of state interventions and their impact see S Ranchordas, 'Innovation Experimentalism in the Age of the Sharing Economy' (2015) 19 *Lewis & Clark Law Review* 871, 902 ff.

‘*numerus clausus*’ (closed number) of the licensing system.⁹ Thus, this chapter aims to show how lawmakers may use time-limited provisions in order to adapt the existing legal framework to the technological change and accommodate innovation. The chapter is structured as follows. First, Part A will examine the emergence of ride-hailing apps and will focus on their disruptive impact on the taxi industry. Then, Part B will demonstrate how sunset clauses and progressive regulation and deregulation may lead to a predictable and stable business environment for every stakeholder – taxi drivers, drivers of private cars affiliated with the ride-hailing apps and consumers.

A. Disruption and Regulation

a) Disruptive innovation and ride-hailing apps

Taxis, regardless of their colour – yellow or black, blue or red –, are present in every big city around the world. From the appearance of the first on-demand horse-drawn coaches in 1605,¹⁰ the so-called Hackney carriage, the regulation of such business did not take too long. While in 1625 there were 20 Hackney carriages,¹¹ in 1635, Charles I adopted a proclamation to limit the use of Hackney coaches in London and Westminster ‘unless the passenger is making a journey of at least three miles’.¹² According to the text of the law, such carriages ‘were not only a great disturbance to his majesty, his dearest consort the queen, the nobility, and others of place and degree, in their passage through the streets; but the streets themselves were so pestered, and the pavements so broken up, that the common passage is thereby hindered and made dangerous’.¹³

Possibly the first major ‘disruption’¹⁴ of on-demand transportation within cities took place with the appearance of automotive cars that made

⁹ The use of sunset clauses to regulate the sharing economy, and in particular the ride hailing industry for experimental purposes is proposed by Ranchordas. See S Ranchordas, ‘Innovation Experimentalism in the Age of the Sharing Economy’ (2015) 19 *Lewis & Clark Law Review* 871, 920. However, this chapter highlights another reason behind the use of the sunset clauses that is their utility to facilitate transitions with the aim to deregulate the market.

¹⁰ W Gilbey, *Early Carriages and Roads* (London Vinton, 1903) 26.

¹¹ J Noorthouck, ‘Book 1, Ch. 11: Charles I’, in *A New History of London Including Westminster and Southwark* (London, R Baldwin, 1773), pp. 154-174.

¹² Gilbey, *Early Carriages and Roads* (1903).

¹³ Noorthouck, ‘Book 1, Ch. 11: Charles I’, in *A New History of London Including Westminster and Southwark*. The first parliamentary act to regulate hackney coaches took place in 1654. See CH Firth and RS Rait eds, ‘June 1654: An Ordinance for the Regulation of Hackney-Coachmen in London and the places adjacent’, Acts and Ordinances of the Interregnum, 1642–1660, London: British History Online, pp. 922–924.

¹⁴ The term ‘disruptive innovation’ was coined by Christensen in 1997. See C Christensen, ‘The Innovator’s Dilemma’ (1997) *Harvard Business School Press*, 1997.

horsepower obsolete.¹⁵ In fact, in 1907, an MP of the House of Commons, Mr Gladstone, confessed during the debates on the Bill on ‘Cabs and Stage Carriages (London)’ that ‘Now the privileged men, by virtue of the privilege, were no doubt in one of the best and most lucrative parts of the business of cab driving in London, and, as the House knew, horse cab-drivers generally were now suffering severely from the competition with motor cabs’.¹⁶ Furthermore, in 1912, Viscount Allendale in the House of Lords provided evidence about the dramatic decrease of the horse-cab licences, stating that ‘in 1902, for instance, there were 11,382 cab licences; they were practically all horse cabs. [...] In 1911 there were 10,973 licences—3,347 horse cabs and 7,626 motor vehicles’.¹⁷

Nowadays, many dimensions of on-demand transportation is regulated. States or cities regulate the entry into the market with a licencing system, which is in most of the cases ‘*numerus clausus*’ (closed number),¹⁸ fix prices per km, and also, set the requirements and the standards for drivers and vehicles.¹⁹

However, the emergence of ride-hailing apps, which are based on p2p online platforms, has disrupted the business of on-demand transportation once again. In particular, such companies, which act as an intermediary between drivers and passengers, outmanoeuvred the State and city regulations on the licencing system and the standards for drivers and vehicles.²⁰ Anyone could use their personal car and join the online platform, while clients could request a taxi, locate it on the map, calculate how quickly it will arrive, pay for online with their credit cards without spending time to look for cash, and finally have the option to rate the driver’s service.²¹ Most importantly, that service was cheaper than the ordinary taxi ride.

Suddenly, the roads of cities around the world were filled with ride hailing apps’ cars or private hiring cars.²² For instance, Uber expanded in

¹⁵ Leontief discussed the impact of machines in agriculture and its impact on horses. See W Leontief, ‘*National Perspective: The Definition of Problems and Opportunities, The Long-Term Impact of Technology on Employment and Unemployment, a National Academy of Engineering Symposium* (Washington D.C, June 30 1983) 6 *National Academy Press*.

¹⁶ HC Deb 07 August 1907, vol 180, c 206.

¹⁷ HL Deb 22 July 1912, vol 12 c, 607.

¹⁸ According to an OECD report, the entry restrictions the market are placed in general in many jurisdictions because in times of high unemployment, more unskilled workers would be willing to enter in this industry. See OECD/ITF, Regulation for Hire Passenger Transport (2016) *Portugal in International Comparison*, p 14-15.

¹⁹ About the evolution of the regulatory framework in UK and USA see LC Shaw, G Gilbert, C Bishop, and E Pruitt, ‘Taxicab Regulation in U.S. Cities’ (Washington, D.C.: U.S. Department of Transportation, 1983).

²⁰ About the disruption in London see G Dudley, D Banister and T Schwanen, ‘The Rise of Uber and Regulating the Disruptive Innovator’ (2017) 88 *The Political Quarterly*, 492.

²¹ For more details for instance about how Uber works see generally www.uber.com.

²² It is estimated that in 2018 Uber for instance operated in 65 countries and over 600 cities worldwide while daily 15 million Uber trips were completed. See generally: Uber Revenue and Usage Statistics (2018) www.businessofapps.com.

one country after the other, and more ride hailing apps' copied the business model. For instance, Lyft appeared in the US and , in Spain, Cabify.

Consequently, taxi drivers' share in the market was under threat, and their income started to shrink. As a result, demonstrations and protests occurred, for instance, in a number of European cities.²³ Taxi drivers were seeking a complete ban or at least regulation of such companies.

Furthermore, the licence to drive a taxi, which was considered an investment more profitable than an investment in the stock market, has been proven inferior and, in some cases, came with great loss. In particular, according to a number of reports the licence to drive a taxi lost its value in a number of cities although the number of licences remained stable. For instance, in New York, in 2013, the value of the licence was \$1.3 million, and, nowadays, it has dropped to \$200,000.²⁴ Likewise, in Paris, between 2009 and 2013, the taxi licence had reached the price of €250,000, but, in 2017, it went down to €140,000.²⁵

On the other hand, in Madrid, the value of the taxi licence in 2014 – the year that Uber was launched – was €133,100 and, in 2018, it has remained relatively stable at €135,000.²⁶ In addition, in Barcelona, in 2014, the value of a taxi licence was €119,300 and, nowadays, it is approximately valued at €130,000.²⁷ Interestingly, it seems that in cities where authorities have implemented a strict regulatory framework for on-demand companies, like Madrid and Barcelona, the licence of the taxi has not lost its value.²⁸ Likewise, in cities where ride hailing apps' do not operate, like San Sebastian and Segovia,²⁹ the taxi licence was not affected.

²³ A Topping and A Kassam, 'Angry cab drivers gridlock Europe in protest at 'unregulated' taxi app', *The Guardian* (Madrid, June 2014), www.theguardian.com/uk-news/2014/jun/11/cab-drivers-europe-protest-taxi-app-uber-london-madrid.

²⁴ G Fleishman, 'Uber, Lyft and Via Offered to Make a Fund for Taxi Drivers. The New York City Council Declined' (*Fortune*, 2 August 2018) www.fortune.com/2018/08/01/taxi-driver-fund-uber-lyft-via-new-york-city-council.

²⁵ N Louvet and A Verloes, 'Taxi licence prices are stabilizing in Paris: is the market mature?' (*6-t*, 31 October 2017) www.6-t.co/en/taxi-license-prices-stabilizing-paris-market-mature.

²⁶ See El Mundo, 'The irruption of Uber and Cabify has not devalued the price of taxi licences' (2018) available at www.elmundo.es/economia/macroeconomia/2018.

²⁷ *ibid.*

²⁸ See Directorate for Financial and Enterprise Affairs Competition Committee 'Taxi, ride-sourcing and ride-sharing services - Note by Spain' 4 June 2018 [17]. 'However, many Public Administrations in Spain, instead of having adopted a more flexible and cohesive regulatory approach, have rolled old regulatory regimes onto new technologies and sectors, thereby shielding the traditional taxi and PHV sectors'.

²⁹ As the National Commission of Markets and Competition (CNMC) drew in June 2016, the average value of a taxi licence in the secondary market is even more exorbitant in other cities: €220,271 in San Sebastián, €215,000 in Santander or €205,957 in Palma de Mallorca, €190,000 in Segovia. See National Commission of Markets and Competition, 'Economic Report on the Restriction on Competition included in the Royal Decree 1057/2015 and in the Order FOM/2799/2015 on private-hire driver licences' (Madrid, 8 June 2016) UM/085/15, www.cnmc.es/file/107176.

b) Regulatory framework and the ‘Right to possess a licence to drive’

While such ridesharing companies tried to differentiate themselves from the existing legal framework,³⁰ taxi drivers around the world sought protection from national courts in order to block the function of such companies. For instance, in the UK, the Licenced Taxi Drivers Association and the Licenced Private Hire Car Association contended that Uber cars are equipped with taximeters, which is an offence under the Private Hire Vehicles (London) Act of 1998.³¹ Likewise, in Italy, taxi drivers brought claims before the Courts arguing that the ride sharing platforms should be banned as they violate competition provisions.³²

At the same time, some authorities adopted laws to respond to the emergence of ride sharing platforms. While some authorities deregulated the taxi industry removing the barriers to entry, for instance the State of Georgia,³³ other authorities adopted strict regulations on the ride sharing companies. For instance, in France, the so-called law ‘Thévenoud’ was adopted, which prohibited, among others, the traveling in a chauffeured car, or obliging them to stay off-road, and it regulated the pricing system by prohibiting charges based on time and distance.³⁴ In Spain, a Royal Decree was adopted in 2015 introducing a numerus clausus, as the number of licences for the chauffeured car rental service is limited and dependent on a ratio of just one permit for every 30 taxi permits.³⁵

While property rights of taxi drivers due to the licence are not protected, it seems that rent seeking allows them to protect their interests.

³⁰ For instance Uber sought to differentiate itself from the taxi companies and it claimed that in the EU it should be classified as ‘an information society service’ falling under the regulation of Directive 98/34 of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and not as a ‘service in the field of transport’ falling under the Directive 2006/123 of the European Parliament and of the Council of 12 December 2006 on services in the internal market. See *Asociación Profesional Elite Taxi v. Uber Systems Spain SL*, Case C-434/15, Judgment of the Court (Grand Chamber) of 20 December, 2017 [40].

³¹ *Transport for London -v- Uber London Ltd, Licenced Taxi Drivers Association, Licenced Private Hire Car Association* [2015] EWHC 2918 (Admin).

³² Reuters, ‘Italian Court overturns Uber Ban’ (Rome, 2017) www.reuters.com/article/us-italy-uber.

³³ *Abramyan et al v State of Georgia et al*, May 15, 2017 301 Ga. 308.

³⁴ LOI n° 2014-1104 du 1er octobre 2014 relative aux taxis et aux voitures de transport avec chauffeur, JORF n°0228 du 2 octobre 2014. However, parts of this law and in particular the prohibition of the pricing system based on time and distance was held unconstitutional by the Conseil Constitutionnel. See French Constitutional Court, Decision 2015-468/469/472 QPC, 22 May 2015, Société UBER France SAS et autres.

³⁵ Royal Decree 1057/2015, of 20 November 2015. However according to Reuters, this ratio is not implemented, as in 2018 there were 9,000 chauffeured car rental licences and 70,000 taxi licences which is far from the ratio of 1:30. See Reuters, ‘Spain taxi drivers end Uber strike after licence limits agreed’ (Spain, 2018), www.reuters.com/article/us-uber-spain-strike. If the ratio were to be upheld it would mean at least 6,000 less chauffeured car rental licences.

In particular, the idea that property rights deriving from the taxi licence are not absolutely protected was emphatically held by Irish courts in *Hempenstall v The Minister for the Environment* in 1993.³⁶ Ireland deregulated the market of taxis, and the holders of such licences brought a complaint before the courts claiming that their property rights based on such licences were violated.³⁷ The Court on this issue held that ‘property rights arising through licences created by law (enacted or delegated) are subject to the conditions created by law and an implied condition that the law may change those conditions. Changes brought about by law may enhance the value of those property rights (as the Regulations of 1978 enhanced the value of taxi plates by limiting the numbers to be issued and permitting their transfer), or they may diminish them’.³⁸ Likewise, in the State of Georgia, the Supreme Court of Georgia has rejected a class action on behalf of the taxi drivers.³⁹

On the other hand, public policy concerns can limit the right of non-professional drivers to participate in sharing the economy of on-demand transportation companies. In fact in a number of countries such as Bulgaria and Denmark ride hailing apps are banned or due to the onerous regulation such apps were forced to withdraw.⁴⁰ Such public policy concerns may include the State interest to control pollution emissions caused to the environment, or to regulate the traffic and congestion in cities, as well as concerns about the quality of the transportation services, and the safety of the passengers.

Having said that, and withstanding that the holders of taxi licences have interests to safeguard their profession and the value of their licence, the presence of such companies offers to a more advanced and cheaper service to customers.

B: Deregulation via sunset clauses

- a) The rise of the autonomous car and the inevitable need for deregulation

In fact, the matter of the deregulation of the taxi industry is not new. Interestingly, it is a topic that has puzzled academics and policy-makers alike for years, and it seems that divergent views – in favour of and against deregulation – were expressed.⁴¹ The case of the city of Fresno

³⁶ *Hempenstall v The Minister for the Environment*, [1993] ILRM 318.

³⁷ For more details about the case law on the property rights of the holders of taxi licences in Ireland see S D Barrett, ‘Regulatory Capture, Property Rights and Taxi Deregulation: A Case Study’ (2003) *Economic Affairs* 23(4): 34-40.

³⁸ *Hempenstall v The Minister for the Environment*, (Costello J).

³⁹ *Abramyan et al. v State of Georgia*.

⁴⁰ Greg Dickinson, ‘How the world is going to war with Uber’ *The Telegraph* (26 June 2018) <https://www.telegraph.co.uk/travel/news/where-is-uber-banned/>

⁴¹ A number of economists have conducted research on the impact of deregulation. See A T Moore and T Balaker, ‘Do Economists Reach a Conclusion on Taxi Deregulation?’

exemplifies this. In 1980, the city authorities deregulated the taxi industry, allowing anyone with a driver's licence to operate a taxi service, but within two years, they regulated both entry into the market and fares again.⁴²

Ride hailing apps' de facto deregulated the market, as any holder of a driving licence owning a car could offer on-demand transportation. In addition, the presence of such companies led to a de jure deregulation of the market in some cities.⁴³

As a response to such de facto deregulation of the taxi industry, authorities around the world adopted laws to regulate ride hailing apps'.⁴⁴ In Spain, for instance, the number of private hire cars associated to ride hailing apps is subject to a licence like the taxi, while, recently, Barcelona has adopted a stricter law imposing restrictions on the use of ride hailing apps', 'requiring vehicles to be booked with at least 15 minutes' notice.'⁴⁵

While the regulatory response to the rise of sharing the economy de facto protects the taxi industry, the rise of autonomous cars which is expected within the following years will inevitably, and once again, distort the taxi industry. Already, a number of car industries invest in autonomous cars, including Uber,⁴⁶ while Waymo a subsidiary of Alphabet has already launched its self-driving taxi service (robotaxis) in four Phoenix suburbs in Arizona.⁴⁷

(2006) 3 *Econ Journal Watch* 109; S D Barrett, 'Regulatory Capture, Property Rights and Taxi Deregulation: A Case Study' (2003) *Economic Affairs* 23(4): 34-40; C Gaunt, 'The Impact of Taxi Deregulation on Small Urban Areas: Some New Zealand Evidence' (1996) *Transport Policy* 2(4): 257-262; T Garling, T Laitila, A Marell, and K Westin, 'A Note on the Short-term Effects of Deregulation of the Swedish Taxi-cab Industry' (1995) *Journal of Transport Economics and Policy* 29(2): 209-214.

⁴² L Shaw, G Gilbert, et. al.; Taxicab Regulation in U.S. Cities (October 1983) p 69.

⁴³ For instance authorities in Long Beach see LJ Nelson, 'Long Beach allows taxis to lower fares as they compete with Uber, Lyft', *LA Times* (California, 14 May 2015) www.latimes.com/local/california/la-me-long-beach-uber-20150514-story.html.

⁴⁴ Such reaction from authorities was a consequence of a number of demonstrations from taxi licence holders. For more details about how organised communities can advance their interests and rent seeking see A Krueger 'The political economy of the rent-seeking society' (1974) 64 *American Economic Review* 291. Competition authorities raise concerns about the strict regulation of ride sharing companies. For instance the 'CNMC is of the opinion that limiting or prohibiting the development of these new models and the entrance of new players in the market via restrictive regulation is not only problematic, but also counterproductive, as it has a negative impact on the market itself, by limiting its potential growth, innovation and its consumer welfare.' Directorate for Financial and Enterprise Affairs Competition Committee 'Taxi, ride-sourcing and ride-sharing services - Note by Spain' 4 June 2018 [8].

⁴⁵ S Jones, 'Uber and Cabify to suspend operations in Barcelona', *The Guardian* (Madrid, 31 January 2019) www.theguardian.com/world/2019/jan/31/uber-cabify-suspended-operations-barcelona.

⁴⁶ D Wakabayashi, 'Uber's Self-Driving Cars Were Struggling Before Arizona Crash' *The New York Times* (San Francisco, 23 March 2018) www.nytimes.com/2018/03/23/technology/uber-self-driving-cars-arizona.html.

⁴⁷ A Sage 'Waymo unveils self-driving taxi service in Arizona for paying customers' *Reuters* (5 December 2019) <https://www.reuters.com/article/us-waymo-selfdriving-focus/waymo-unveils-self-driving-taxi-service-in-arizona-for-paying-customers-idUSKBN1O41M2>

b) Sunset clauses and predictable business environment

Policy-makers are quite often called to adopt policies that dissatisfy parts of society. However, what is more challenging is to adopt policies when different societal groups have opposing interests. While this is occasionally inevitable, the major challenge is to adopt such policies at the minimum cost.

In our case, on the one hand, there is the professional interest of the taxi drivers for a secure business, with regulated minimum fares and a limited number of licences in order to control the supply of the service. On the other hand, there is the interest of the participants in sharing the economy and of the owners of private cars to use their recourses in order to maximize their income. Furthermore, there is the interest of the society for the most efficient and safe on-demand transport service in combination with the lowest possible fare.

Based on the assumption that the development of autonomous cars will eventually disrupt the taxi business, it would be prudent for policy-makers to intervene in the taxi industry market sooner than later, in order to enhance predictability in the transportation industry.

The intervention of EU policy-makers in the telecommunication industry by progressively eliminating roaming charges might be a paradigm for deregulation via temporary regulation.

In particular, at the European level, until 2007, telecommunication companies and mobile phone operators were still charging roaming charges (higher charges) when their customers were using their mobile phone to make or receive calls or to use data from abroad, even from other EU countries.⁴⁸ While on the one hand, this was a significant resource for profit for such companies, it also burdened consumers significantly.⁴⁹

Hence, in 2007, the European Parliament and the Council adopted a Regulation on roaming charges and mobile networks in Europe to introduce price caps for mobile phone voice roaming charges across the

⁴⁸ In particular, the Commission considered the charges excessive. See European Union Committee, *Mobile Phone Charges in the EU: Follow-up Report* (HL 2008–9, 42) [2].

⁴⁹ European Parliament and Council Regulation (EC) 717/2007 of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC [2007] OJ L171/32, (14). ‘Regulatory obligations should be imposed at both retail and wholesale level to protect the interests of roaming customers, since experience has shown that reductions in wholesale prices for Community-wide roaming services may not be reflected in lower retail prices for roaming owing to the absence of incentives for this to happen. On the other hand, action to reduce the level of retail prices without addressing the level of the wholesale costs associated with the provision of these services could risk disrupting the orderly functioning of the Community-wide roaming market’.

Member States of the EU.⁵⁰ This Regulation included a sunset clause, stating that the Regulation would expire on 30 June 2010.⁵¹

The primary aim of the Regulation was to intervene in the market and eliminate the difference between roaming and national prices.⁵² However, as the market conditions were not met, in 2009, the European Commission decided to amend the regulation of 2007 and further decrease the roaming charges.⁵³ In addition, the sunset clause was extended for two more years until June 2012.⁵⁴

Moreover, in 2012, a new regulation was adopted to further reduce the roaming charges with a sunset clause until 2017.⁵⁵ Finally, in 2015, the European Parliament, the Council and the Commission reached an agreement in order to completely abolish roaming charges for intra-EU travels.⁵⁶

⁵⁰ European Parliament and Council Regulation (EC) 717/2007 of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC [2007] OJ L171/32, art 3(1) ‘The average wholesale charge that the operator of a visited network may levy from the operator of a roaming customer’s home network for the provision of a regulated roaming call originating on that visited network, inclusive inter alia of origination, transit and termination costs, shall not exceed EUR 0,30 per minute’.

⁵¹ Parliament and Council Regulation (EC) 717/2007 of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC 27 [2007] OJ L171/32, art 13.

⁵² European Commission, Digital Agenda for Europe: What would it do for me? (19 May 2010, MEMO/10/199).

⁵³ European Parliament and Council Regulation (EC) No 544/2009 of 18 June 2009 amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services [2009] OJ L 167/12, art 1(4). ‘The average wholesale charge referred to in paragraph 1 shall apply between any pair of operators and shall be calculated over a twelve-month period or any such shorter period as may remain before the end of the period of application of a maximum average whole sale charge as provided for in this paragraph or the expiry of this Regulation. The maximum average wholesale charges shall decrease to EUR 0,28 and EUR 0,26, on 30 August 2008 and on 1 July 2009 respectively and shall further decrease to EUR 0,22 and EUR 0,18, on 1 July 2010 and on 1 July 2011 respectively’.

⁵⁴ *ibid*, Art 1(14). See also European Union Committee, Mobile Phone Charges in the EU: Follow-up Report (HL 2008–9, 42) [14].

⁵⁵ European Parliament and Council Regulation (EU) No 531/2012 of 13 June 2012 on roaming on public mobile communications networks within the Union [2012] OJ L172/10, art 8(2). ‘With effect from 1 July 2012, the retail charge (excluding VAT) for a euro-voice tariff which a roaming provider may levy on its roaming customer for the provision of a regulated roaming call may vary for any roaming call but shall not exceed EUR 0,29 per minute for any call made or EUR 0,08 per minute for any call received. The maximum retail charge for calls made shall decrease to EUR 0,24 on 1 July 2013 and to EUR 0,19 on 1 July 2014 and the maximum retail charge for calls received shall decrease to EUR 0,07 on 1 July 2013 and to EUR 0,05 on 1 July 2014. Without prejudice to Article 19 those maximum retail charges for the euro-voice tariff shall remain valid until 30 June 2017’.

⁵⁶ European Parliament and Council Regulation (EU) 2015/2120 of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile

Thus, the ending of roaming charges in the EU was a roadmap that started in 2007, with policy-makers gradually phasing out roaming charges for intra-EU travel, and such charges being completely abolished in 2017.

Likewise, regulators may use temporary laws in order to create a transitional period for the progressive abolition of the closed number of licenses regarding the on-demand transportation. In particular, regulators may progressively deregulate the taxi industry by granting licences to private hire cars in order to affiliate with ride hailing apps'. In order to protect the existing taxi licences, more and more private hire car licences shall be granted gradually and with the aim to remove the *numerus clausus*⁵⁷ from the licencing system within a long-term period, for instance a ten-year period.

This would be particularly useful in cities where such ride hailing apps' do not operate. That way a transitional period will allow the taxi business to adapt to the new environment smoothly, without unexpectedly harming the investments of the taxi license owners.

The merit of sunset clauses to temporarily regulate an issue with the aim to deregulate was already stressed by the Chairman of the Delegated Powers and Regulatory Reform Select Committee, Lord Dahrendorf, who stated that:

'[I]n many, many cases, we should give much more serious consideration to the possibility, feasibility and usefulness of sunset clauses or, at any rate, of procedures which move in the direction of sunset clauses; that is, reviews in set periods and at particular times. That is by far the most effective way of deregulating and reducing the continuing burden of regulation'.⁵⁸

communications networks within the Union (Text with EEA relevance) [2015] OJ L 310, art 6(a): 'With effect from 15 June 2017, provided that the legislative act to be adopted following the proposal referred to in Article 19(2) is applicable on that date, roaming providers shall not levy any surcharge in addition to the domestic retail price on roaming customers in any Member State for any regulated roaming calls made or received, for any regulated roaming SMS messages sent and for any regulated data roaming services used, including MMS messages, nor any general charge to enable the terminal equipment or service to be used abroad, subject to Articles 6b and 6c'.

⁵⁷ The existing regulation of the taxi industry with the *numerus clausus* has created a path dependence which is always a challenge for regulators to surpass. Ginsburg, Masur and McAdams have argued that '[i]f the problem is path dependence, a temporary law will often be both necessary and sufficient to move behavior to the more efficient outcome [. . .] [because] temporary law offers a new "starting" point, resetting the system to allow the emergence of the equilibrium with the lowest smoking levels': see T Ginsburg, JS Masur and RH McAdams, 'Libertarian Paternalism, Path Dependence, and Temporary Law' (2014) 81 *Chicago Law Review* 291, 296.

⁵⁸ HL Deb 6 June 2005, vol 672 col 754. For more details see A Kouroutakis, 'The Constitutional Value of Sunset Clauses' (Routledge, 2017) 123ff. See also; Ginsburg, Masur and McAdams have stressed how sunset clauses may be useful to liberate the market from path dependence, see n 50 above.

That said, authorities around the world can adopt regulations to ease the transition from a regulated taxi licence system to a deregulated one. By gradually deregulating the taxi industry, they create a stable business environment, and they increase the legal certainty of the interested parties. Moreover, they can consider the changing business climate and adapt the regulations to the needs of the society.

Conclusions

This chapter has argued that the on-demand transportation industry has faced two disruptive moments – first, when the Hackney coaches were replaced by the motor engines, and secondly when ride hailing apps' based on p2p online platforms made their appearance.

In reality, such ride hailing apps' bypass the existing state regulation on the taxi business, which sets paramount challenges for regulators around the world. The drop-in passengers and the circumvention of the licensing system has reduced the value of taxi licences, which caused protests on behalf of the taxi licence owners. On the other hand, consumers have clearly shown a preference for the service provided by such ride hailing apps'.

This has created challenges for policy makers on how to resolve the conflicting interests and tension. Regulators in some regions, for instance in Catalonia, intervened in the market by adopting protective measures and rules that hinder the use of the ride hailing apps, such as the requirement that customers must book their ride 15 minutes in advance. Such policies, in reality strip the ride hailing apps from their innovative elements as their use will not be anymore that effortless. However, the challenges on the existing taxi licensing system are expected to rise with the spread of autonomous cars (robotaxis) in the future, which will cause the third disruption in the on-demand transportation industry. And the adoption of protective measures in order to preserve the existing taxi licensing system in reality brushes the necessity for rules to accommodate innovation in the on demand transportation under the carpet.

In line with the above, this chapter has demonstrated that time limited laws due to a sunset clause might be useful in order to mitigate different interests in the society. On the one hand, the owners of taxi licenses rely on the existing licensing system and they see that the value of their licences is threatened by the circumvention of the system by the private hire cars affiliated to ride hailing apps. On the other hand, ride hailing apps offer an innovative business model which benefits more the consumers. Hence, lawmakers might find useful in order to solve this conundrum to employ time-limited regulations. By progressively deregulating the taxi industry licensing system lawmakers' intervention

may create a more predictable business environment for every stakeholder in the transportation industry.