

## Uber: Europe's Backseat Driver for the Sharing Economy

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### I. INTRODUCTION

Since Uber's European debut in 2011, the online taxi-hailing app has encountered tremendous opposition from local taxi services which complain it unfairly competes by bypassing local licensing and safety laws.<sup>1</sup> With opposition growing across Europe, a Spanish case has been referred to the European Court of Justice ("ECJ"), the European Union's ("EU") highest court, to determine whether the United States startup is merely a "transport activity" or "an electronic intermediation or information society service".<sup>2</sup> This determination will be crucial for Uber, as it already faces several court injunctions throughout the EU.<sup>3</sup> If Uber is deemed an intermediary that acts as an information society service, it will become tougher for national regulators to limit its operations under the EU's 2006 Services Directive ("Services Directive") and the 2015 Digital Single Market Strategy for Europe ("Digital Strategy") initiated by the European Commission ("EC"), the executive body of the EU.<sup>4</sup> However, if the ECJ determines Uber is a transport service, it may be subject to local jurisdictional boundaries determined by the 28 member states of the EU, empowering them to determine the legality of Uber's practice.<sup>5</sup> This ECJ's determination is crucial because it will greatly affect the growth and future of Europe's sharing economy.

This Article will proceed in three sections. First, the Background will examine the history of Uber; its basic business structure; and Uber's recent lawsuits in France, Belgium, Germany, Italy, Netherlands, England, and Spain.<sup>6</sup> Next, this Article will advance to the Argument that the ECJ should deem Uber a digital

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<sup>1</sup> Julia Fioretti & Andrew Callus, *Spanish Judge Asks EU Top Court for Key Uber Ruling*, REUTERS (Jul. 20, 2015), <http://www.reuters.com/article/2015/07/20/us-uber-eu-ecj-idUSKCN0PU1LP20150720>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> William Louch, *EU Commission Launches Study on Uber*, PARLIAMENT MAG. (Sept. 1, 2015), <https://www.theparliamentmagazine.eu/articles/news/eu-commission-launches-study-uber>.

<sup>5</sup> *Id.*

<sup>6</sup> *See infra* notes 9-90 and accompanying text.

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service and will expand on the Services Directive and the Digital Strategy.<sup>7</sup> Finally, this Article will propose a regulatory solution should the ECJ deem Uber an online intermediary of information society services.<sup>8</sup>

## II. BACKGROUND

### A. UBER BASICS

Uber is an Android, iOS, and Windows Phone app that brings together riders with drivers while utilizing a smartphone's GPS capabilities.<sup>9</sup> The San Francisco-based tech company was founded in 2009 in response to common issues with local taxis.<sup>10</sup> Soon thereafter, the company rapidly expanded across the United States.<sup>11</sup> By the end of 2011, Uber had entered into Paris, marking its first debut into overseas markets.<sup>12</sup>

In order to use Uber, a passenger must provide the company with his or her credit card information.<sup>13</sup> From there, Uber takes a cut for itself and deposits the remaining amount into the driver's account.<sup>14</sup> The booking and billing process includes the customer utilizing the "Customer App" and the driver utilizing the "Driver App"; both licensed by Uber.<sup>15</sup> The trip's fare "is not calculated and displayed on a running basis", as with a taxi service.<sup>16</sup> Uber's fare is calculated through the use of Uber's fare calculation model, a software-based algorithm.<sup>17</sup>

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<sup>7</sup> See *infra* note 101.

<sup>8</sup> See *infra* note 113.

<sup>9</sup> John Patrick Pullen, *Everything You Need to Know About Uber*, TIME (Nov. 4, 2014), <http://time.com/3556741/uber/>.

<sup>10</sup> Travis Klanick, *Uber's Founding*, UBER (Dec. 22, 2010), <https://newsroom.uber.com/2010/12/ubers-founding/>.

<sup>11</sup> Michael Sinan, *On Heels of New Funding and Global Expansion, Car Service Uber Launches in D.C. Today*, VENTURE BEAT (Dec. 15, 2011), <http://venturebeat.com/2011/12/15/uber/>.

<sup>12</sup> *Id.*

<sup>13</sup> Pullen, *supra* note 9.

<sup>14</sup> *Id.*

<sup>15</sup> *Transport for London v. Uber London Limited*, [2015] EWHC (Admin) 2918 CO/1449/2015, [11], (Eng.).

<sup>16</sup> Pullen, *supra* note 9.

<sup>17</sup> *Transport for London v. Uber London Limited*, [2015] EWHC (Admin) 2918 CO/1449/2015, [11], (Eng.).

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The Uber driver is required to obtain a valid driver's license and pass a background check.<sup>18</sup> Additionally, he or she must be at least 21 years old and own their vehicle with a model year of 2000 or newer.<sup>19</sup> For its most basic service, an Uber driver does not need a professional taxi license.<sup>20</sup>

B. UBER DEVELOPMENT

Uber's primary service in the United States is broken down into 5 distinct offerings: UberX, Uber BLACK, Uber SELECT, UberXL, and UberLux<sup>21</sup> UberX, is Uber's low-cost private service option where local drivers respond and connect with passengers at a low cost via the Uber app.<sup>22</sup> Next, the company launched Uber BLACK, the luxury version of UberX.<sup>23</sup> Drivers of Uber BLACK are required to own newer black vehicles which require the vehicle to have black leather interior.<sup>24</sup> Uber SELECT is offered in certain cities and is similar to Uber BLACK, except each vehicle is not required to black exterior and interior features.<sup>25</sup> This service costs more than UberX, but less than Uber BLACK.<sup>26</sup> UberXL is a step up from UberX that offers rides for passengers who need to transport up to six people.<sup>27</sup> Finally, UberLUX is Uber's most luxurious option, utilizing vehicles such as the BMW 7-Series, Mercedes Benz S-Class, and the Tesla Model S.<sup>28</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> *Driving Jobs vs. Driving with Uber*, UBER, <https://www.uber.com/driver-jobs> (last visited Apr. 12, 2016).

<sup>20</sup> *Id.*

<sup>21</sup> *What is UberX?*, UBER EXPANSION, <http://uberestimate.com/what-is-uberx/> (last visited Apr. 12, 2016).

<sup>22</sup> *Id.*

<sup>23</sup> *What is Uber Black?*, UBER EXPANSION, <http://uberestimate.com/what-is-uber-black/> (last visited Apr. 12, 2016).

<sup>24</sup> *Id.*

<sup>25</sup> *What is Uber Select?*, UBER EXPANSION, <http://uberestimate.com/what-is-uber-select/> (last visited Apr. 12, 2016).

<sup>26</sup> *Id.*

<sup>27</sup> *What is UberXL*, UBER EXPANSION, <http://uberestimate.com/what-is-uberxl/> (last visited Apr. 12, 2016).

<sup>28</sup> Natalie Jarvey, *Uber Launches Luxury Service in Los Angeles*, HOLLYWOOD REPORTER (Dec. 18, 2014), <http://www.hollywoodreporter.com/news/uber-launches-luxury-service-los-759338>.

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In 2013, the company expanded its offerings and introduced UberChopper, a one-way helicopter service.<sup>29</sup> In 2014, the company launched UberPool, a carpool sharing service where passengers are able to ride and divide the cost with another passenger who happens to be on a similar route.<sup>30</sup> In 2015, Uber launched Uber Eats, a service that connects customers with local food delivery.<sup>31</sup> These are only a few of the innovations the Silicon Valley startup has released.<sup>32</sup> All of which, are subject to limited availability in select cities.<sup>33</sup>

C. UBER'S EUROPEAN EXPANSION

1. *France*

In 2011, Uber expanded into Paris with its low-cost service, UberPop.<sup>34</sup> Unlike the rest of Uber's business in Europe, UberPop is Uber's low-cost service that connects riders with regular drivers—similar to UberX in the United States.<sup>35</sup> With UberPop, the driver is an unlicensed individual and is able to bypass typical requirements for taxi drivers in Europe such as professional training, social security contributions, taxes, and professional insurance.<sup>36</sup> In doing so, UberPop is able to

<sup>29</sup> Dan Amira, *Uber Will Ferry Hampton-Goers Via Helicopter This July 3<sup>rd</sup>*, N.Y. MAG. (July 1, 2013), <http://nymag.com/daily/intelligencer/2013/07/uber-helicopter-uberchopper-hamptons-july-3rd.html>.

<sup>30</sup> *Announcing UberPool*, UBER (Aug. 5, 2014), <http://newsroom.uber.com/announcing-uberpool/>.

<sup>31</sup> Fitz Tepper, *Uber's New Update Gives Food Delivery As Much Attention As Transportation*, TECHCRUNCH (Aug. 17, 2015), <http://techcrunch.com/2015/08/17/ubers-new-update-gives-food-delivery-as-much-attention-as-transportation/#.krwatq:abIH>.

<sup>32</sup> See Sarah Buhr, *UberRUSH Now Delivers The Same Day From Nordstrom, Rent the Runway, Other Big Retail Stores*, TECHCRUNCH (Jan. 28, 2016), <http://techcrunch.com/2016/01/28/uberrush-now-delivers-from-nordstrom-rent-the-runway-other-big-retail-stores/>; See also Sarah Buhr, *Uber Delivered Puppies On Demand to TechCrunch Ahead of Super Bowl Weekend*, TECHCRUNCH (Feb. 3, 2016), <http://techcrunch.com/2016/02/03/uber-delivered-puppies-on-demand-to-techcrunch-ahead-of-super-bowl-weekend/>.

<sup>33</sup> *Id.*

<sup>34</sup> Renee Kaplan, *Why the French are Uber-Pissed at UberPop*, FRENCH MORNING (Dec. 17, 2014), <http://frenchmorning.com/en/french-uber-pissed-uberpop/>.

<sup>35</sup> See Uber et UberPop: c'est quoi la difference?, LE FIGARO (Mar. 7, 2015), <http://www.lefigaro.fr/secteur/high-tech/2015/07/03/32001-20150703ARTFIG00177-uber-et-uberpop-c-est-quoi-la-difference.php>.

<sup>36</sup> *Id.*

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charge its user a much lower rate than its local competitors.<sup>37</sup> Additionally, Uber offers alternate services provided by professional drivers, such as those found in traditional taxi services.<sup>38</sup>

In September 2014, France's National Assembly passed the Thévenoud Law, which imposed numerous regulations and restrictions on Uber, taxis, and French chauffeured cars ("VTCs").<sup>39</sup> The law provided a penalty of two years imprisonment and a fine of €300,000 for any person or organization who engages in providing consumers unlicensed transportation.<sup>40</sup> In November 2014, VTC associations and taxi unions sought an injunction from the Paris Commercial Court to ban UberPop.<sup>41</sup> On January 1, 2015, the Thévenoud Law went into effect, prohibiting the use of UberPop.<sup>42</sup> Uber quickly appealed this decision and claimed that the Thévenoud Law violated the French Constitution.<sup>43</sup> Uber circumvented the ban by initiating legal proceedings and continued to operate while the court reached a decision.<sup>44</sup>

In July 2015, after months of complaints, riots, and the indictment of two of Uber's French executives, Uber suspended its UberPop service in France.<sup>45</sup> On

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<sup>37</sup> *Id.*

<sup>38</sup> See *Uber Moves*, UBER, <https://www.uber.com/cities/paris> (last visited Apr. 12, 2016).

<sup>39</sup> *France's new anti-Uber law gives Taxis an unfair advantage*, RUDE BAGUETTE (Sep. 19, 2014), <http://www.rudebaguette.com/2014/09/19/frances-new-anti-uber-law-gives-taxis-unfair-advantage/>.

<sup>40</sup> Conseil constitutionnel [CC] [Constitutional Court] decision No. 2015-484 QPC, Sep. 25, 2015, (Fr.).

<sup>41</sup> Kathie Claret, *EU & Competition Law*, BRYAN CAVE (Jan. 19, 2015), <http://eu-competitionlaw.com/the-paris-commercial-court-declines-to-ban-uberpop/>.

<sup>42</sup> *Id.*

<sup>43</sup> Chine Labbé, *Paris Court Delays Decision on Uber's Unlicensed Taxi Service*, REUTERS (Mar. 31, 2015), <http://www.reuters.com/article/2015/03/31/us-france-uber-idUSKBN0MR0SQ20150331#QHQQuzKMDzIZcfyv.97>.

<sup>44</sup> Lucie Aubourg, *Top French Court Upholds Ban on UberPop Ride-Sharing Service*, VICE NEWS (Sept. 2, 2015), <https://news.vice.com/article/top-french-court-upholds-ban-on-uberpop-ride-sharing-service>.

<sup>45</sup> James Cook, *Uber is Suspending One of its Services in France After Taxi Drivers Rioted in the Streets*, BUS. INSIDER (July 3, 2015), <http://www.businessinsider.com/uber-suspends-uber-pop-in-france-2015-7?r=UK&IR=T>.

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September 22, 2015, France's Constitutional Council upheld the Thévenoud Law and dismissed Uber's appeal.<sup>46</sup>

2. *Belgium*

In February 2014, UberPop made its first appearance in Brussels.<sup>47</sup> Two months later, the service was banned by the Commercial Court in Brussels because UberPop drivers lacked taxi licenses.<sup>48</sup> Incumbent taxi services led the opposition in Brussels, deeming that the company held an unfair market advantage.<sup>49</sup> Uber continued its UberPop services in the Belgian city.<sup>50</sup> Despite the ban, the local government allowed Uber to continue its UberPop service and worked on legislation allowing the company to continue operating.<sup>51</sup> After months of violent protests and demonstrations by local taxi providers, a Brussels court ruled that Uber was to terminate its UberPop service on September 24, 2015.<sup>52</sup> Following the order, Uber suspended UberPop in Brussels on October 13, 2015.<sup>53</sup>

3. *Germany*

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<sup>46</sup>Mark Scott, *French Law That Banned UberPop Service Survives Legal Challenge*, N.Y. TIMES (Sept. 22, 2015), [http://www.nytimes.com/2015/09/23/technology/french-law-that-banned-uberpop-service-survives-legal-challenge.html?\\_r=0](http://www.nytimes.com/2015/09/23/technology/french-law-that-banned-uberpop-service-survives-legal-challenge.html?_r=0).

<sup>47</sup>Sylvain Andrieu, *Uber Arrives in Brussels with uberPOP!*, UBER (Feb. 24, 2014), <http://newsroom.uber.com/belgium/en/2014/02/uber-arrives-in-brussels-with-uberpop/>.

<sup>48</sup>Robin Wauters, *Brussels Court Bans Uber, Imposes 10,000 Euro Fine for Every Violation of its Ridiculous Order*, TECH.EU (Apr. 15, 2014), <http://tech.eu/news/brussels-court-bans-uber/>.

<sup>49</sup>*Id.*

<sup>50</sup>AFP, *Uber Driver Found Guilty in Belgium Crackdown*, YAHOO NEWS (May 4, 2015), <http://news.yahoo.com/uber-driver-found-guilty-belgium-crackdown-180057329.html>.

<sup>51</sup>*Id.*

<sup>52</sup>Natalia Drozdiak, *Uber's Low-Cost Service UberPop Banned in Brussels*, WALL STREET JOURNAL (Sept. 24, 2015), <http://www.wsj.com/articles/ubers-low-cost-service-uberpop-banned-in-brussels-1443106617>.

<sup>53</sup>Robert-Jan Barunek, *Uber to Suspend Unlicensed UberPop Service in Brussels*, REUTERS (Oct. 13, 2015), <http://www.reuters.com/article/2015/10/13/us-uber-tech-belgium-idUSKCN0S71VQ20151013#eUXd2eIQm5ggrpsy.97>.

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In January 2013, Uber initiated services in Berlin.<sup>54</sup> The company expanded into Munich, Hamburg, Frankfurt, and Dusseldorf before a Frankfurt court placed its first nationwide ban on UberPop on September 2, 2014.<sup>55</sup> Uber appealed, and two weeks later a district court in Frankfurt lifted the ban.<sup>56</sup>

On March 18, 2015, a German court placed a second nationwide ban on UberPop.<sup>57</sup> The court claimed the service violated Germany's public transportation act and ruled that drivers must hold the same permits as taxi drivers in order to operate in Germany.<sup>58</sup> Uber continued to operate its UberX and UberBlack services for several months before terminating all services in Hamburg, Frankfurt, and Dusseldorf on October 30, 2015.<sup>59</sup> Uber still operates in Munich and Berlin, however, it is struggling as it grapples with Germany's pervasive regulatory environment.<sup>60</sup>

#### 4. *Italy*

In March 2013, Uber expanded into its first Italian city, Milan.<sup>61</sup> In April 2015, Italian taxi associations filed a complaint against UberPop, alleging that the service created "unfair competition" for traditional taxi drivers.<sup>62</sup> On May 26, 2015

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<sup>54</sup> Catherine Shu, *Uber Gets More Super as it Expands into Germany*, TECHCRUNCH (Jan. 16, 2013), <http://techcrunch.com/2013/01/16/uber-gets-more-super-as-it-expands-into-germany/>.

<sup>55</sup> Kevin Rawlinson, *Uber Service 'Banned' in Germany by Frankfurt Court*, BBC NEWS (Sept. 2, 2014), <http://www.bbc.com/news/technology-29027803>.

<sup>56</sup> Mark Scott, *Uber Wins a Reprieve in Berlin*, N.Y. TIMES (Sept. 2, 2014), [http://bits.blogs.nytimes.com/2014/08/18/uber-wins-a-reprieve-in-berlin/?\\_php=true&\\_type=blogs&\\_r=0](http://bits.blogs.nytimes.com/2014/08/18/uber-wins-a-reprieve-in-berlin/?_php=true&_type=blogs&_r=0).

<sup>57</sup> *German Court Places Nationwide Ban on UberPOP*, FORTUNE (Mar. 18, 2015, 9:30 AM), <http://fortune.com/2015/03/18/german-court-ban-uber/>.

<sup>58</sup> Melissa Eddy, *An Uber Service is Banned in Germany Again*, N.Y. TIMES (Mar. 18, 2015), <http://www.nytimes.com/2015/03/19/technology/germany-frankfurt-uber-ruling-taxi.html>.

<sup>59</sup> Ludwig Burger, *Uber Germany Retreats to Berlin, Munich*, REUTERS (Oct. 30, 2015), <http://www.reuters.com/article/2015/10/30/uber-germany-cities-idUSL8N12U59Z20151030>.

<sup>60</sup> *Id.*

<sup>61</sup> *How UBER Charmed its 1<sup>st</sup> Italian City...*, UBER (Mar. 8, 2013), <http://newsroom.uber.com/milan/2013/03/how-uber-charmed-its-1st-italian-city/>.

<sup>62</sup> *'Unfair Competition': Italian Court Places Nationwide Ban on Lowcost Uber Service*, RT (May 26, 2015), <https://www.rt.com/news/262217-italy-bans-uber-competition/>.

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an Italian court held that the service violated administrative rules that regulate the Italian taxi industry, and thus, it created unfair competition against traditional taxi services.<sup>63</sup> Uber still operates its UberBlack service in Milan and Rome; however, it already faces stringent regulation which requires all UberBlack vehicles to be parked in specifically marked places.<sup>64</sup>

5. *Netherlands*

Uber expanded its business into Amsterdam in late 2012.<sup>65</sup> In December 2014 Dutch officials banned UberPop, claiming it fell afoul of licensing requirements for commercial drivers.<sup>66</sup> A few months later Dutch prosecutors raided Uber's offices in Amsterdam after police caught dozens of drivers providing illegal taxi services.<sup>67</sup> Following the raid, prosecutors launched a criminal investigation against the company.<sup>68</sup> As of January 30, 2016, the company has continued to provide an array of services, including UberPop, throughout the Netherlands.<sup>69</sup>

6. *England*

Uber first appeared in London, England in June 2012.<sup>70</sup> Since its debut, organizations such as the Rail and Maritime Transport Union, London Cab Drivers Club, and Licensed Taxi Drivers Association have protested Uber claiming it should follow the same regulations as local taxis.<sup>71</sup> A formal lawsuit was filed by industry leaders and on July 3, 2014; and the Transport for London ("TfL"), the

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<sup>63</sup> *Id.*

<sup>64</sup> Eric Sylvers, *Uber Ordered to Discontinue Uberpop Service in Italy*, WALL ST. J. (May 26, 2015), <http://www.wsj.com/articles/uber-ordered-to-discontinue-uberpop-service-in-italy-1432654165>.

<sup>65</sup> *Uber Houdt van Amsterdam*, UBER (Dec. 28, 2012), <http://newsroom.uber.com/amsterdam/nl/2012/12/uber-houdt-van-amsterdam/>.

<sup>66</sup> Anthony Deutsch, *Dutch Launch Criminal Investigation into Uber*, REUTERS (Apr. 17, 2015), <http://www.reuters.com/article/2015/04/17/us-uber-netherlands-investigation-idUSKBN0N81G620150417>.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *See Uber Webpage for Amsterdam*, UBER, <https://www.uber.com/cities/amsterdam> (last visited Apr. 20, 2016).

<sup>70</sup> *See Secret Ubers Spotted in London!*, UBER (June 15, 2012), <http://newsroom.uber.com/2012/06/secret-ubers-spotted-in-london/>.

<sup>71</sup> *London's Anti-Uber Taxi Protest Brings Traffic to Standstill*, BBC NEWS (June 11, 2014), <http://www.bbc.com/news/uk-england-london-27799938>.

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government entity responsible for English transportation regulations, allowed Uber to continue operating while the lawsuit was pending.<sup>72</sup>

On October 16, 2015, the United Kingdom's High Court ruled that Uber did not have to adhere to local taxi regulations.<sup>73</sup> The Court ruled that Uber's app does not work as a taximeter and thus does not break local law.<sup>74</sup> Under Section 11 of the Private Hire Vehicle Act of 1998 ("Act"), only black cabs are allowed to use meters and private-hire vehicles ("PHVs") are granted a different license.<sup>75</sup> The Court concluded that, for the purposes of the Act, a meter "does not include a device that receives GPS signals in the course of a journey, and forwards GPS data to a server located outside of the vehicle. . . and sends the fare information back to the device."<sup>76</sup> Since Uber's app does not constitute as a meter used in black cabs, it does not have to follow local taxi regulations, but rather, only those imposed on PHV drivers.<sup>77</sup>

This decision marked Uber's first major victory in Europe, as London is the company's largest European market for business.<sup>78</sup> TfL, however, has proposed new regulations for the PVH industry that would severely restrict online car-sharing services such as Uber.<sup>79</sup> The agency has proposed rules such as an English-language requirement for drivers and a required five-minute wait time between initiating a

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<sup>72</sup> Mark Scott, *London Transport Regulators Says Uber Can Legally Operate*, N.Y. TIMES (July 3, 2014), [http://mobile.nytimes.com/blogs/bits/2014/07/03/london-transport-regulator-says-uber-can-legally-operate/?\\_php=true&\\_type=blogs&\\_r=0](http://mobile.nytimes.com/blogs/bits/2014/07/03/london-transport-regulator-says-uber-can-legally-operate/?_php=true&_type=blogs&_r=0).

<sup>73</sup> *Transport for London v. Uber London Limited*, [2015] EWHC (Admin) 2918 CO/1449/2015, [11], (Eng.); Geoffrey Smith, *Uber Just Won a Big Lawsuit in London*, FORTUNE (Oct. 16, 2015), <http://fortune.com/2015/10/16/uber-just-won-a-big-lawsuit-in-london/>.

<sup>74</sup> Amir Mizroch, *Uber App is Legal, U.K. Court Rules*, WALL ST. J. (Oct. 16, 2015, 7:30 AM), <http://www.wsj.com/articles/uber-scores-uk-legal-victory-1444990528>.

<sup>75</sup> *Id.*

<sup>76</sup> *Transport for London v. Uber London Limited*, [2015] EWHC (Admin) 2918 CO/1449/2015, [11], (Eng.).

<sup>77</sup> *Id.*

<sup>78</sup> *Uber Just Won a Big Lawsuit in London*, FORTUNE (Oct. 16, 2015), <http://fortune.com/2015/10/16/uber-just-won-a-big-lawsuit-in-london/>; Amir Mizroch, *Uber App Is Legal, U.K. Court Rules*, WALL ST. J. (Oct. 16, 2015), <http://www.wsj.com/articles/uber-scores-uk-legal-victory-1444990528>.

<sup>79</sup> Amir Mizroch, *Uber Faces New Threat in London*, WALL ST. J. (Sept. 30, 2015), <http://www.wsj.com/articles/uber-faces-new-threat-in-london-1443614283>.

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ride and pick up.<sup>80</sup> If adopted, these measures will become just another obstacle to company will have to overcome in its conquest for Europe.<sup>81</sup>

7. *Spain*

In April 2014, UberPop began operating in Barcelona, the company's first Spanish city.<sup>82</sup> Shortly after, the service expanded into Madrid, where it was subject to strong opposition.<sup>83</sup> On December 9, 2014, a Spanish court placed a nationwide ban on Uber after a complaint was filed by taxi drivers in Madrid.<sup>84</sup> The complaint alleged that UberPop did not conform to Spanish law and potentially resulted in unfair competition for taxi drivers.<sup>85</sup> A few weeks later, Uber suspended its business in Spain and appealed the decision.<sup>86</sup>

On appeal, Uber requested that the case be referred to the ECJ to determine whether Spanish taxi regulations and court decisions violate EU treaties and laws.<sup>87</sup> On July 20, 2015, a judge in Barcelona granted Uber's request and a decision should be reached in late 2016.<sup>88</sup> The Court has been asked to rule on whether Uber is a "mere transport activity" or "an electronic intermediation of information society service."<sup>89</sup> If deemed a transport service, the company will likely be subject to stricter regulations regarding licensing, insurance, and safety.<sup>90</sup> As an intermediary

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<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Maya Kosoff, *In an Effort to Boot Uber from Spain Madrid Will Fine Drivers up to \$22,000*, BUS. INSIDER (Oct. 6, 2014), <http://www.businessinsider.com/in-an-effort-to-kick-uber-out-of-spain-madrid-will-fine-drivers-up-to-22000-2014-10>.

<sup>83</sup> *Id.*

<sup>84</sup> Al Goodman et al., *Spanish Judge Imposes Temporary Ban on Uber Taxi Service*, CNN (Dec. 9, 2014), <http://www.cnn.com/2014/12/09/world/europe/spain-uber-court-ban/index.html>.

<sup>85</sup> Mark Scott, *Uber Suspends Operations in Spain*, N.Y. TIMES (Dec. 31, 2014), <http://bits.blogs.nytimes.com/2014/12/31/uber-suspends-operations-in-spain/>.

<sup>86</sup> *Id.*

<sup>87</sup> Sam Schechner, *Uber to Fight EU Rules in Europe's Top Court*, WALL ST. J. (July 20, 2015), <http://www.wsj.com/articles/case-against-uber-referred-to-europes-top-court-1437402253>.

<sup>88</sup> See Julia Fioretti & Andrew Callus, *Spanish Judge Asks EU Top Court for Key Uber Ruling*, REUTERS (July 20, 2015), <http://www.reuters.com/article/2015/07/20/us-uber-eu-ecj-idUSKCN0PU1LP20150720>.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

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service, Uber would be able to enjoy certain safeguards under the Services Directive and Digital Strategy.<sup>91</sup>

D. THE SERVICES DIRECTIVE

The Services Directive was passed on December 12, 2006 and put into effect to eliminate barriers against the development of services between Member States, to strengthen European economy, and to promote sustainability.<sup>92</sup> It is commonly referred to as the “Bolkestein Directive,” as it was drafted under the direction of the former European Commissioner for the Internal Market, Frits Bolkestein. Under this decree, Member States are called to determine whether their legal systems make access to a particular “service activity or the exercise of it” compatible with EU standards.<sup>93</sup> The Service Directive applies to services supplied by providers within the European Union.<sup>94</sup> It does not, however, apply to services “in the field of transport.”<sup>95</sup> Thus, Uber’s distinction as “digital service provider”, instead of a “transportation service” by the ECJ will be crucial in determining whether Uber’s service provided falls within the scope of the Services Directive.<sup>96</sup>

E. THE DIGITAL SINGLE MARKET STRATEGY FOR EUROPE

In 2010, the EU launched Europe 2020—the ten-year growth strategy for Member States of the EU.<sup>97</sup> As part of its initiative to boost the growth of jobs, the EU has established seven flagship initiatives for smart, sustainable, and inclusive growth across Europe.<sup>98</sup> In efforts to foster “smart growth” across Europe, the EC initiated the Digital Single Market Strategy on May 6, 2015.<sup>99</sup> The plan has

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<sup>91</sup> *Id.*

<sup>92</sup> Directive 2006/123, of the European Parliament and of the Council of 12 December 2006 on the Services in the Internal Market, 2006 O.J. (L376) 36.

<sup>93</sup> *See id.*; *see also Q&A: Services Directive*, BBC NEWS (Nov. 15, 2006), <http://news.bbc.co.uk/2/hi/europe/4698524.stm>.

<sup>94</sup> Directive 2006/123 at 51.

<sup>95</sup> *Id.*

<sup>96</sup> Louch, *supra* note 4.

<sup>97</sup> *Europe 2020*, EUROPEAN COMMISSION (Mar. 8, 2016), [http://ec.europa.eu/europe2020/index\\_en.htm](http://ec.europa.eu/europe2020/index_en.htm) (hereinafter “*Europe 2020 Index*”).

<sup>98</sup> *Europe 2020*, EUROPEAN COMMISSION (May 16, 2012), [http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/flagship-initiatives/index\\_en.htm](http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/flagship-initiatives/index_en.htm) (hereinafter “*Europe 2020*”).

<sup>99</sup> Communication from the Commission to the European Parliament, the Council, the European Strategy for Europe, at 1,4, COM (2015) 100 final (May 6, 2015),

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established that the “creation of a Digital Single Market” is a key priority of the EU in its conquest for growth.<sup>100</sup> The Digital Strategy defines a Digital Single Market as one where the free movement of goods, services, persons, and capital is guaranteed through fair competition for online activities and personal data protection.<sup>101</sup>

### III. ARGUMENT

The ECJ should deem Uber as an intermediation of information society service where it will be subject to the scope of the Services Directive and supported by the Digital Strategy.<sup>102</sup> Rapid innovations in internet commerce have normalized peer-to-peer (“P2P”) transactions, proving that the sharing economy is here to stay.<sup>103</sup> One key innovation has been the rise of transportation network companies (“TNCs”), such as Uber, that provide prearranged transportation services through online-enabled platforms to connect riders and drivers for profit through their personal vehicles.<sup>104</sup> These TNCs serve as intermediaries—acting as a third party who connects passengers with available drivers.<sup>105</sup>

An information society service is “any service normally provided for remuneration, at a distance, by electronic means, and at the individual request of a recipient of services.”<sup>106</sup> The words “at a distance” simply mean that the service is provided without the parties being simultaneously present.<sup>107</sup> As such, Uber should be protected by the safeguards of the Services Directive because it receives compensation for the service it provides as an intermediary between riders and

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<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0192&from=EN>.

<sup>100</sup> *Id.* at 3.

<sup>101</sup> *Id.*

<sup>102</sup> *See Id.*

<sup>103</sup> Vanessa Katz, *Regulating the Sharing Economy*, 30 BERKELEY TECH. L.J. 1067 (2015), available at <http://scholarship.law.berkeley.edu/btlj/vol30/iss4/18>.

<sup>104</sup> *See Transportation Network Companies*, Ca. Pub. Utilities Comm’n, <http://www.cpuc.ca.gov/General.aspx?id=787> (last visited April 21, 2016).

<sup>105</sup> Katz, *supra* note 103, at 1080.

<sup>106</sup> Directive 98/48, of the European Parliament and of the Council of 20 July 1998 Amending Directive 98/34/EC Laying Down a Procedure for the Provision of Information in the Field of Technical Standards and Regulations, 1998 O.J. (L217) 18, 21.

<sup>107</sup> Conference Report, Manuel David Maseeno, *EU Regulation of Information Society Services, With a Closer Regard to the Most Recent ECJ Cases*, (Aug. 26, 2010) (on file with author).

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drivers.<sup>108</sup> Under this definition, Uber’s service falls straight into the scope of what the Services Directive intends to cover.<sup>109</sup>

It is likely that those in opposition of Uber, specifically the UberPop service, will contend that the service provided is a transport service; a service that is an exception listed under the Services Directive.<sup>110</sup> However, this greatly overlooks the social aspect of TNCs.<sup>111</sup> TNCs allow users to communicate with their drivers before and after their trip.<sup>112</sup> A majority of the information shared through TNCs, allows a user to connect with their driver through social media—linking the user to information that is disclosed via these accounts.<sup>113</sup> This social aspect of TNCs creates risks and benefits that regulators could not include in the traditional notion of “transport” services, and as such, TNCs are unique from the transport services described in the Services Directive.<sup>114</sup>

#### IV. PROPOSED SOLUTION

Should the ECJ deem Uber as an online intermediary of information society services, the EU should establish a directive that specifically covers TNCs and other P2P services. While TNCs and other P2P service providers provide services that are closely analogous to traditional services, their P2P nature creates unique risks for the users, providers, and intermediaries involved.<sup>115</sup> These issues concern areas of liability, disclosure, information security, civil rights, and tax to name a few.<sup>116</sup> These risks do not pose an intolerable danger to users or third parties.<sup>117</sup> In fact, many of these risks exist in the market for traditional services.<sup>118</sup> However, because these P2P services are difficult to place into traditional schemes, they should not be afforded the same legislation as their traditional counterparts.

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<sup>108</sup> See *Transport for London v. Uber London Limited*, [2015] EWHC (Admin) 2918 CO/1449/2015, [11], (Eng.).

<sup>109</sup> See *Euro 2020 Index*, *supra* note 97.

<sup>110</sup> See *Euro 2020*, *supra* at 98.

<sup>111</sup> See Katz, *supra* note 103, at 1114.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 1069.

<sup>115</sup> Katz, *supra* note 103, at 1107.

<sup>116</sup> *Id.* at 1092-1107, 1114.

<sup>117</sup> *Id.* at 1125.

<sup>118</sup> *Id.*