Uber and the Disruption of the Disruptive Innovator

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A favourite saying of Uber chief executive and co-founder Travis Kalanick was that 'it is easier to ask for forgiveness than permission,' but recent events suggest that this strategy can have its limits.

After years of successfully disrupting established taxi businesses all over the world, in 2017 the expansionary ride-hailing app Uber is itself experiencing the traumas of disruption. The latest blow for Uber occurred in December, when the European Court of Justice ruled that Uber is a taxi operator, and not, as the company claimed, a technology platform that acts as an intermediary between driver and customer. This means that, throughout the EU, Uber will be subject to regulatory control as a transport operator, and not be entitled to exemptions allowed for e-commerce companies. With its roots in Silicon Valley, this is also a blow to Uber's image as an innovative technology company that apprently placed it in a different category to established taxi operations.

Another notable setback occurred in a former stronghold of London, where in September the regulator Transport for London revoked Uber's licence to operate, claiming that the company was not a fit and proper service provider, as it had failed to report serious criminal offences appropriately, and to conduct adequate background checks on its drivers.

London Mayor Sadiq Khan commented that providing an innovative service must not be at the expense of customer safety.

Uber has been able to continue its operations pending an appeal, and launched a petition enlisting public support that has been signed by 800,000 people, but has notably adopted a more conciliatory tone, with new chief executive Dara Khosrowshahi stating after a meeting with TfL commissioner Mike Brown that he is "determined to make things right in this great city."

Founded in San Francisco in 2009, Uber epitomises the Silicon Valley image of a rapid technological success story. It now operates in more than seventy countries, with around $16bn invested in global operations.

Its market value is about $70bn, making it the world's most valuable privately held technology company. The successful expansion of Uber has been based on a deceptively simple use of modern technology combined with the principles of the 'sharing economy,' whereby the drivers use their own vehicles, and are put in touch with customers who are using their own smart phone Uber app.

Prior to the ECJ ruling, Uber had sought to differentiate itself from established taxi companies by describing itself as a technology platform, rather than a taxi business, while it classifies drivers not as employees, but as 'registered partners.'

However, this classification has become highly sensitive politically, with many drivers in the UK seeking social benefits such as sickness and holiday pay, and claiming that Uber is exploiting their self-employed status.

In 2016, two Uber drivers won a notable test case at the Central London Employment Tribunal that they should be treated as employees and given associated benefits, and were also successful with a subsequent appeal. The case has wide implications for workers in the so called 'gig economy.' At the same time, some Uber drivers have defended being self-employed because of the flexibility and tax benefits it allows.

Prior to its London experience, Uber's expansion has been met with fierce resistance in a wide range of countries. In Europe the company has fought battles with governments, regulators, and established taxi operators in the UK, France, Germany, Belgium and Italy, while Uber has been excluded altogether from Hungary and Denmark.

Uber has also encountered criticism for its failure to actually make a profit, caused partly by heavy investment in its services in order to fuel expansion, and also through a highly ambitious autonomous vehicle development programme. For Uber, however, the overriding objective has been expansion and an ever-increasing number of users.

Ironically, despite losing its licence, this expansion is illustrated particularly well by the example of London, where Uber commenced operations in 2012. Unlike the situation in many other European cities, its standard Uber X service was officially registered by the regulator, Transport for London (TfL), from the outset. As Uber expanded, it provoked fierce opposition from the drivers of the established and iconic black cabs, including major protests in 2014 and 2015.

Significantly, the black cab drivers principally blamed TfL for failing to regulate Uber more strictly. As TfL became more sensitive to the case being put forward by the black cab drivers, it sought to impose more restrictive conditions on Uber, but with only limited success.

Firstly, in 2015 TfL brought a high court case against Uber and similar operators claiming that the app constituted an illegal taximeter. Uber vehicles are classed as private hire, and the law governing them in London stipulates that only plying for hire vehicles, such as the black cabs, are legally entitled to carry a taximeter, which gives a running price for the ride based on time and distance. The high court ruled that the app was legal, and could not be classed as a taximeter. In this case, the London taxi regulations rested on nineteenth century foundations, and TfL discovered that it was difficult to fit Uber technology to these rules.

After this failure, TfL made a further attempt to impose greater restrictions on Uber, but in response the company launched a public campaign that included a petition signed by 200,000 people, and TfL was once again compelled to back down. In 2017, TfL did achieve some success when the high court this time supported its case to introduce written English language tests for all drivers. But prior to revoking its licence, nothing TfL could do was able to restrict the expansion of Uber, and by 2017 it had around 40,000 drivers in London, compared with around 22,500 black cabs.

Despite its success as a disruptive innovator, and in addition to its London experience, Uber was ill prepared for the disruption it has suffered in 2017 resulting from a series of scandals.

Firstly, the company was subject to sexual harassment claims by a former employee, and this was swiftly followed by a recorded heated altercation between Travis Kalanick and an Uber driver with regard to employment conditions. Uber's image was further damaged by revelations concerning its secret Greyball programme, whereby the company would identify users who might be rivals or enforcement officials, and show them a fake version of its app whenever they tried to order a car, thereby frustrating any official action. Uber was also subject to legal action in the case of its autonomous vehicles programme, when it was accused of trade secret theft by its competitor Alphabet, the parent of Google.

A number of high profile resignations culminated in the departure of Kalanick himself, amidst bouts of in-fighting on the part of the company's board, and a period of several months elapsed before the appointment of a new chief executive. Nevertheless, Kalanick remains a member of the board, with much debate concerning his future role with the company. Khosrowshahi will need to steady the ship, but in doing so can Uber become a more publicly acceptable company without losing its innovative edge?

In this context, how events develop in London is likely to be of particular significance for Uber. The company appears anxious to achieve a compromise with TfL, even before the appeal case comes to court. Uber cannot afford to see its position undermined in a city that is particularly important for its expansionary strategy, while it is also diversifying into other fields such as a food delivery arm UberEats. The situation is also likely to be watched carefully in other cities, with regulators possibly taking a lead from TfL in seeking new concessions from Uber.