

## **Challenging the Uber Business Model in London**

Such has been the rapid and pervasive growth of the ride-hailing app Uber, that the word 'Uberisation' has entered the language as a shorthand expression for a distinctive mix of operational and working practices. Although the Uber smart phone app forms the technological basis for Uber's business, it is its ambitious and relentless worldwide growth, driven by its co-founder and former chief executive Travis Kalanick, which is the trademark feature of this Silicon Valley disruptive innovator. The Uber business model and culture has won customer popularity, but also fierce criticism and opposition from regulators and competitors in many cities, with the latest crisis for the company coming in September 2017 in its former stronghold of London, with the regulator Transport for London (TfL), revoking Uber's licence on the grounds that it is not a fit and proper operator. Uber is continuing to operate pending an appeal, but TfL's decision throws doubts on the future for both Uber's 40,000 London drivers, and 3.5 million customers. The public popularity and political strength of Uber is illustrated in a petition launched by the company, protesting against TfL's decision, which was signed by over 800,000 people.

Uber suffered a further major setback in London in November 2017, when it lost a London employment tribunal appeal (the original case was in 2016) that its drivers should be treated as employees rather than their current status as independent contractors. The Uber business model includes the principle of the 'sharing economy' in which the drivers use their own cars, and download the Uber app to be put in touch with customers using their own smart phone app. The drivers therefore generally become part of the so called 'gig economy,' whereby they can hold a portfolio of work, with Uber claiming that their business model allows the drivers flexibility in terms of working hours, and being able to take advantage of other work opportunities. However, the tribunal appeal judge ruled that the Uber drivers who brought the claim, James Farrar and Yaseen Aslam, were not independent contractors but Uber workers, because the company controlled the majority of their work. Uber is appealing against this decision, which has significant cost implications for them in terms of paying the minimum wage, and sickness and holiday pay, together with national insurance contributions.

James Farrar, as one of the co-claimants, is highly critical of Uber's employment practices. At the same time, he defends the company in its fight to retain its London licence, and blames TfL for what he believes is its generally weak regulation of Uber. The implications of the issues raised by the tribunal therefore go well beyond employment practices, and include major planning and regulatory issues both for London and the other cities in which Uber operates.

### **Uber and the Gig Economy**

James Farrar acknowledges that, in deciding to become a Uber driver, he saw the advantages of working in the 'gig economy': "I was working on a number of things, and was looking for a portfolio of work. Taking on the Uber job fitted in well with this." Circumstances changed when one night he was assaulted on the job: "I wanted details of the passenger and contacted Uber, but they refused on the grounds of data protection and privacy. They also refused to give the details to the police, and I realised that something was wrong. I was on my own, and carried all the risk, and

Uber had no incentive to become involved.” He continues: “I was eventually put in touch with Yaseen Aslam, who was organising private hire app drivers in London, and we took the employment tribunal case forward from there.” Farrar believes that, in fighting and winning the tribunal case, and then the appeal, they were exposing the vulnerabilities of the Uber business model: “Not long ago, every business review had references to the ‘Uberisation of this and that,’ and their model was widely admired. It still is in some respects, in terms of being exempt from paying benefits to so-called contingent labour. If we had lost, then many other employers could choose to go down that road.”

## **Licensing Problems**

One of the key issues highlighted by the growth of Uber and its technological and employment model is in distinguishing for licensing purposes between private hire vehicles, the category to which Uber belongs, and plying for hire taxis, epitomised in London by the long established and iconic black cabs that can be hailed by customers, and also stand in cab ranks. The rivalry between private hire and plying for hire operations is long established, but the arrival of technology-based businesses such as Uber has tended to blur the distinction. This was highlighted in 2015 when TfL brought a case against Uber, claiming that the company contravened section eleven of the 1998 Private Hire Vehicles (London) Act, which stipulates that no private hire vehicles should be equipped with a taximeter, and that the Uber app constituted a taximeter. In terms of the Act, only a plying for hire cab is legally entitled to carry a taximeter, which gives a running price for the ride based on time and distance. However, Uber and its technology won the day when the High Court ruled that the app was legal, and could not be classed as a taximeter.

The difficulties in classifying the Uber operations are also highlighted by James Farrar, who explains that their business model can place drivers on the borders of the distinctions between services: “The difficulty in distinguishing between private hire and plying for hire is one of the symptoms of Uber having so many vehicles on the road. In the old days, a private hire driver would do a pre-booked job, then go back to base. But with the number of Uber vehicles on the road, all competing for business, this isn’t practical. What are they supposed to do between jobs – evaporate?” He continues: “You can’t leave the road, but if you stay then technically you could be found to be plying for hire. You are punishing drivers for the saturation coverage by Uber, and the road infrastructure is not available to accommodate so many private hire drivers. Rather than TfL tackling the Uber business model, it can make the drivers the scapegoats.”

Farrar explains that the Uber model necessitates a large number of drivers: “Uber enjoys the network effects of many drivers sitting around. In that way, they can guarantee an instant response. This means that, for every driver winning a job, three or four are also waiting to get that job. The drivers aren’t paid for waiting, so have to be on hand to try and win the next job.” In 2015, the then London mayor Boris Johnson attempted to sharpen the private hire distinction by proposing that these vehicles should have to wait five minutes after a booking before picking up a customer, but this proposal was withdrawn after considerable pressure from Uber, that included a petition with over 200,000 signatures. This indicated how Uber could employ its popularity with the public to powerful political effect. Nevertheless, in his

2017 transport strategy, current London mayor Sadiq Khan has called on government to introduce legislation to provide statutory definitions of plying for hire and pre-booked services.

### **Congestion Crisis**

In addition to licensing difficulties, the growth of Uber and private hire vehicles generally in London has provoked accusations that they are contributing to congestion problems, particularly within the central congestion charging zone. Uber itself argues that, during the daytime when the congestion charge applies, the majority of its vehicles are outside the zone. It also points out that, in encouraging use of its services, it could contribute to a long-term decrease in car ownership. However, as private hire vehicles are exempt from the congestion charge, political pressure has been increasing to have this concession removed. In this case, James Farrar argues that ending the exemption will do little to deter Uber: “The underlying Uber business model requires over supply. It costs them very little to add another vehicle to the road, only administrative costs, and so the marginal cost is almost zero. This is disastrous for drivers having to work long hours to earn a living wage, and also for urban planners, because too many vehicles on the road causes localised congestion problems. This is because the drivers are chasing business, and will go where the most people are.”

A type of indirect quantity licensing is being introduced in London in the form of written English tests for all private hire drivers. Uber fought this proposal in the High Court, but on this occasion lost its case. TfL believes that the tests will aid customer relations, but James Farrar claims that there is little public support for the measure: “TfL could not find any customers who complained that language skills were a problem, but in this case, have responded to pressure from the black cab drivers.” It is central government that has the powers to limit the numbers of private hire vehicles, and TfL has lobbied persistently that ministers should either exert their power, or devolve authority to the local level. For his part, James Farrar argues that the mayor and TfL could discover ways to exert control on numbers: “It’s hard to believe that the mayor doesn’t have leverage here. For example, I would have thought numbers could be capped on grounds of medical need, caused by pollution problems. He could also take action on safety grounds, given that some drivers may be working one hundred hours per week to earn a basic living.”

### **The Battle for Uber’s Licence**

Since June 2017, James Farrar has moved on to become the first chair of the Independent Workers’ Union of Great Britain’s United Private Hire Drivers’ Branch. He sees this recruitment of private hire drivers as a means for them to punch their weight in terms of their importance to public transport systems generally: “In London in particular, 117,000 private hire drivers are basically not represented at TfL. The importance of the private hire drivers needs to be more widely recognised. For example, they contribute around 73 per cent to the taxi licence revenue TfL collects annually, around £20 million, but have nothing to show for it.”

The decision by TfL to revoke Uber’s licence has created further uncertainty for the drivers. TfL made its decision chiefly on safety and security grounds, including failure to report serious criminal offences appropriately, and questioning how the

company conducted background checks on drivers. The regulator also expressed doubts about Uber's 'Greyball' software. Earlier in 2017, Greyball had been revealed as a means whereby Uber could 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 denied that it had ever employed Greyball in London, but the company's culture of single-minded expansion made it vulnerable to the charges made by the regulator. Uber's new chief executive, Dara Khosrowshahi, was anxious to adopt a more conciliatory tone, and visited London in October to meet TfL commissioner Mike Brown.

James Farrar argues that, since Uber arrived in London in 2012, TfL had adopted an excessively passive approach to regulating the company, but that the decision to revoke the licence represents an over reaction: "Uber may have made mistakes, but when it appeals a judge will have to decide if passengers will be more safe if the company disappears. Uber has shown great transparency in terms of the identification of the driver being made known to a passenger. There's no guarantee that other operators would do things any better." Farrar is also concerned by the uncertainty the licensing situation causes to the drivers: "The livelihoods of 40,000 Uber drivers are at stake. If a steelworks went bust, then government ministers would be parachuted in to help. But so far little attention has been given to the insecurity faced by the drivers. TfL has a role to play to ensure the workers are protected. They didn't regulate Uber actively enough for five years, but then suddenly decided to revoke the licence. That's not reasonable regulatory behaviour." Given the economic stakes, there will be great pressure on TfL and Uber to achieve a compromise.

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## **The Relentless Expansion of Uber**

The co-founder and former chief executive of Uber, Travis Kalanick, who until his resignation in June 2017 shaped the company's business model and culture, persistently expresses the ambition that Uber should provide 'transportation as reliable as running water, available everywhere to everyone.' This sums up the relentless worldwide expansion of the company since its founding in San Francisco in 2009. The speed of this growth has been so rapid that by 2017 it operates in over 550 cities and 70 countries, with around \$16 billion invested in the company since its inception. It has been given a value of nearly \$70 billion, making it the world's most valuable privately held technology company. At the same time, Uber has consistently made fierce enemies of regulators and rival operators in many countries, an outcome that is summed up in another favourite saying of Kalanick that 'it is easier to ask for forgiveness than permission.' In Europe, Uber has fought fierce regulatory battles in France, Germany, Belgium, and Italy, while it has been banned in both Hungary and Denmark. There is therefore wide concern about how Uber balances ambition against workers' rights and the quality of service.

The expansion of Uber has been based on a deceptively simple use of modern technology, in which the initial bookings, the route to be taken, the calculation of

fares and, finally, payment, are all made by means of a smart phone app. This technology is combined in operational terms with the concept of the 'sharing economy,' which aims to bring suppliers and consumers together by making use of spare capacity. The owner of a private vehicle can therefore download the Uber app and be put in touch with customers who are using their own smart phone app. In addition, Uber employs variable pricing that can be applied to deal with periods of peak demand, while both driver and customer provide score ratings for each other. Uber employs its Silicon Valley roots by describing itself as a technology platform rather than a taxi company.

The technology employed by Uber is far from unique, and it has faced significant competition from companies such as Lyft in the United States, Grab in South East Asia, and Ola in India. In China, Uber poured billions of dollars into its venture, but in 2016 was forced to withdraw in the face of fierce competition from China's own Didi Chuxing. Worldwide, Uber continues to operate at a loss, with heavy subsidising of fares underpinning its expansion.

In 2017, Uber suffered a series of crises that undermined severely its distinctive company culture. These included claims of sexual harassment by former employees, an embarrassing recorded altercation between Kalanick and an Uber driver over employment conditions, and a number of high profile resignations. Kalanick was replaced as chief executive by Dara Khosrowshahi, the former head of Expedia, who pledged to learn from the mistakes made by the company, and adopt a less confrontational approach. However, Uber was hit with a further scandal in November 2017 when it was revealed that in 2016 the company had failed to disclose a data breach affecting 50 million passengers and 7 million drivers, and had paid \$100,000 to the hackers to destroy the stolen information. Such a failure accentuates Uber's vulnerabilities in making a case to win back its London licence. Yet Uber continues to expand and innovate, most notably with an ambitious programme to develop autonomous vehicles. There is also something of a paradox in that, despite its confrontations with regulators, in the United States Uber has formed partnerships with local authorities that includes the provision of subsidised services.

## **Uber in London**

Uber arrived in London in 2012, when its standard UberX service was officially registered by TfL. From the outset, Uber encountered fierce opposition from the plying for hire black cab drivers, who since 2014 have staged a series of mass demonstrations against both Uber and TfL, who they accuse of being too close in their relationship. The opposition from the black cabs has had little effect on the expansion of Uber, which by 2017 had 40,000 drivers and 3.5 million passengers who use the ride-hailing app at least once every 30 days. Uber is by far the largest private hire operator in London, with second place held by the longer established Addison Lee, with around 4500 vehicles. Uber now operates in 40 UK cities, with total drivers (including London) of around 50,000. Unlike the situation in many cities, Uber makes a profit in London, with £3 million returned in 2016-17 (LTT 723). In contrast, the number of black cabs has remained at around 23,000, a similar number to when Uber arrived in the city in 2012.

The rise of Uber has contributed to a remarkable increase in private hire services, with the number of licensed drivers in London up from 65,000 in 2013-14, to more than 117,000 in 2016-17, while the number of vehicles increased from 50,000 to 87,000 in the same period.