



Case Study: Uber in Spain

28 April 2016

Expanding in Spain

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Agenda

- Executive summary
- What were Uber's legal run-ins in Spain?
- What's changed?
- What is the outlook for Uber in Spain and for disruption in the sector?
- Lessons learned
- Appendix:
 - Unfair competition law in Spain
 - Other players in the sector in Spain

Uber's aggressive disruption to the Spanish market has had its drawbacks but is now precipitating change across Europe

- Why was Uber banned in Spain?
 - In Dec-14 UberPOP was banned in Spain for not using drivers with an official "VTC" licence, which are issued in a limited ratio to the number of taxi licences in Spain.
- What's changed since the ban?
 - Following the ban of UberPOP in Spain, Uber trialled the use of licenced (VTC) drivers through UberEATS.
 - Jul-15: a judge in Barcelona referred Uber's legal proceedings in Spain to the European Court of Justice, effectively suspending legal proceedings against Uber in Spain.
 - On 31st March 2016 launched UberX in Madrid, utilising officially licenced drivers.
- What is the outlook for Uber in Spain and for disruption in the sector?
 - The referral of Uber's legal proceedings in Spain to the European Court of Justice effectively suspended the proceedings in Spain and opened the door to whether, in restricting UberPOP, Spain had acted in contravention to certain European laws
- Lessons learned
 - Uber underestimated the impact of their disruptive model in Spain. With hindsight, Uber considered its approach to Spain to be "too much, too fast"
 - However, the disruption is now precipitating change.

In Dec-14 UberPOP was banned in Spain for not using licenced drivers. In Jul-15 the proceedings were referred to the European Court of Justice

- Apr-14 UberPOP was launched in Spain which provided everyday vehicles, amateur drivers and bill-splitting options for passengers. Taxi drivers and in Madrid and Barcelona made a number of protests.
- A legal complaint was made by the *Asociación Madrileña Del Taxi* on the basis that Uber was not complying with taxi and passenger transport regulations in Spain, and was competing unfairly.
- Dec-14: a Spanish judge ruled that the use of amateur drivers did not comply with national laws and represented unfair competition to licensed taxi drivers. Uber was banned from operating its online service in Spain
- Jul-15: a judge in Barcelona referred legal proceedings to the European Court of Justice (CJEU), effectively suspending legal proceedings against Uber in Spain. The specific questions the CJEU was asked to rule on were:
 - whether Uber provides a “mere transport activity” or “an electronic intermediation or information society service” in Europe
 - if partially an “information society” service , whether the American company should benefit from the principle of freedom to provide services guaranteed by [Article 56 TFEU](#) and [Directive 2006/123/EC](#) and [Directive 2000/31/EC](#)
 - whether Spanish unfair competition law as applied to “information society” services is contrary to European law, specifically Article 9 of the Services Directive, which states that an authorisation, licensing or permits regime cannot be restrictive or disproportionate, and cannot unreasonably hinder the principle of freedom of establishment
 - whether the restrictions Spain is currently imposing on Uber (which is incorporated in the Netherlands), including court-ordered bans, are allowed if the service is able to benefit from the principle of freedom to provide services guaranteed by the aforementioned Article 56 TFEU and Directive 2006/123/EC and Directive 2000/31/EC

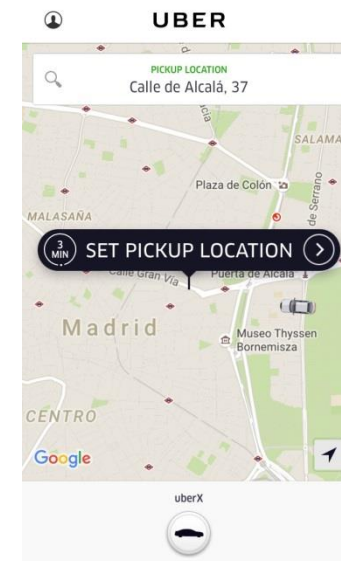
Source: [Uber blog](#), [Uber Webcast](#)

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Following the ban of UberPOP in Spain, Uber trialled the use of licenced (VTC) drivers through UberEATS, and in Apr-16 launched UberX in Madrid

- UberEats Barcelona (Feb-15 to Nov-15):
 - Following the ban of UberPOP in Spain, Uber launched its food delivery service in Barcelona, only working with “VTC” licenced drivers
 - VTC licences are limited by law and there can only be 1 per 30 traditional taxi licences.
 - In Nov-15, Uber suspended UberEats in Barcelona, citing the need to focus its the passenger offering
- UberX Madrid (Mar-16 onwards):
 - Puts users in touch with drivers who hold VTC licences (chauffeurs using private cars), rather than the amateur drivers used by UberPOP.
 - Where is it: UberX was launched in Madrid in April 2016
 - Pricing: undercuts the standard taxi airport fare of €30, charging €20.
 - Competition from other new entrants: The new service will rival that of Cabify, which has operated in Spain using drivers with VTC licences



Source: [Novobrief](#); [Uber communications](#)

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Uber underestimated the impact of their disruptive model in Spain. However the disruption is now precipitating change.

- Whether or not the regulations in Spain are appropriate for the digital age, Uber chose not to observe local regulations, unlike competitors such as mytaxi and Cabify. This higher-risk approach had both disadvantages and advantages:
- Aggressiveness:
 - “Too much too fast” *Carles Lloret, Uber*
 - “When people say the government should have made things easier for people in Spain and other taxi services, I don’t think Uber would have created as much noise as it did if it went the legal way. It knew it would be shut down sooner or later. That aggressiveness starts to catch up with you eventually.
- Local market understanding and adaptation:
 - Uber “very quickly tried to replicate in Europe what they did in the U.S. and that didn’t work out so well and now they’re trying to adapt their model to better fit Europe. They didn’t consider this carefully initially and now this is of course their big focus.”
- Publicity
 - Uber received a significant publicity boost from UberPOP’s launch, the protests and legal action. It has divided opinion in Spain.
- The potential for long-term market disruption
 - The aggressive approach has precipitated the review of UberPOP’s ban in Spain by the European Court of Justice, which may cause regulatory change in Uber’s favour over the long-term and across Europe.

The aggressive disruption to the Spanish market has had its drawbacks but is now precipitating change across Europe

Source: Skift.com.

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Unfair competition law in Spain protects the incumbent companies of a sector, but is vague in its definition.

- The theory of unfair competition in Spain
 - “Any conduct objectively contrary to good faith is deemed to be unfair. The amendments introduced by Law 29/2009 significantly extend the scope of consumer protection, whereby in relations between businesses or professionals and consumers, there are two requirements for behaviour to be deemed unfair: that the behaviour of the business or professional be contrary to professional diligence and capable of significantly distorting the economic behaviour of the average consumer. Intellectual property can often be protected via unfair competition legislation.”
 - Unfair competition torts include acts of confusion, misleading acts and omissions, aggressive acts, acts of denigration, comparison, imitation, exploitation of a third party's reputation, violation of trade secrets, incitement to breach of contract, infringement of laws relating to discrimination and selling at a loss. The 2009 reform also considers the breach of industry codes of conduct to which businesses have freely adhered, an act of unfair competition.
 - Unfair competition regulations also include the protection of know-how by deeming unfair the disclosure or exploitation, without the consent of their proprietor, of industrial or business secrets obtained lawfully, in the understanding that they would be kept confidential
- Relevant cases
 - Blablacar is a popular French ride-sharing platform and was taken to court in Spain in 2015 by the an association of Spanish bus operators (Confebús) over claims of unfair competition. Confebús alleged that Blablacar allowed drivers to make journeys solely to make money from transporting passengers from A to B as well as not carrying a the VTC licence required in Spain to transport passengers. In Feb-16 The court ruled against Confebús.

In Spain, Cabify and mytaxi have been utilising licenced taxi drivers since 2011. Competition to Uber is present from car-sharing and ride-sharing.

Spain	Uber	Hailo	Cabify	mytaxi	Car2Go	Blablacar
Services in Spain	Licenced freelance taxi drivers (UberX, 2016)	Taxi driver hailing, payment platform	Premium taxi ordering, service	Taxi ordering, payment, rating	Car-sharing (rental per minute)	Long-distance ride-sharing
HQ	USA	UK	Spain	Germany	Germany	France
Year launched in Spain	2014	2011	2011	2011	2015	2009
Locations in Spain (2016)	Madrid	Madrid, Barcelona	Madrid, Barcelona	Madrid, Barcelona	Madrid	Spain-wide
Other locations	Worldwide	UK, Japan, Ireland, Singapore	Mexico, Peru, Chile	Germany, Italy, Poland	Across Europe, USA	Europe, India, Brazil
Regulatory or licencing issues	UberPOP banned in Spain in 2015; pending European Court of Justice verdict	Temporarily banned in New York	Complies with local taxi driver licencing regulations, has fixed pricing	Complies with local taxi driver licencing regulations	None	Complaint from Spanish bus confederation citing unfair competition - rejected

Source: Wikipedia, 02b.com, Company websites

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