

PUBLIC CONSULTATION ON NEW MODELS FOR SERVICE DELIVERY AND THE SHARING ECONOMY

MODEL 3: NEW MODELS AND REGULATIONS

New models for service delivery are emerging as business models which are apparently viable and competitive in terms of price and delivery compared to those of traditional agents operating to date in the same sectors of activity.

Part of the competitiveness of these business models may be due to efficient management through the use of information technologies which reduce transaction costs, encourage innovation and lead to a high volume of transactions at a lower cost.

In the case of new models based on the "sharing economy", this competitive advantage is based on the use of products and services that are at least partially unused, with negligible marginal cost. For example, if someone is about to travel somewhere and has room in his/her car, the cost of taking an extra passenger is almost zero, and therefore he/she may agree to transport that person at a reduced cost free of depreciation of the vehicle or other fixed costs.

However, another aspect of the competitive advantage of new models could also be the existence of a regulatory vacuum, or on the **asymmetry of compliance with sector-specific or horizontal regulation** applicable to other agents operating in the same markets. This circumstance may lead to cost reduction thus giving a competitive advantage to the new operators compared to the traditional ones. In these cases, therefore, it could be precisely the specific regulation applied to the latter operators what creates the competitive advantage for the former. In fact, many of the new models arise in intensively-regulated sectors, what suggests that at least part of that sectorial regulation might be excessive.

This asymmetry in the application of regulation in the sector may be stating the following:

- The features of the new models, such as efficient use of information technologies, could have rendered regulation of the traditional sectors (or part of it) unnecessary or disproportionately restrictive of competition, by permitting the provision of a service while solving some of the market failures which,

prior to the technological changes, occurred with traditional operators. This is assuming that these market failures really existed at the time and that regulation of the sector responding to the failures was necessary and proportional in the sense of introducing the minimum possible restriction of competition.

- In these sectors there was unnecessary or disproportionate regulation due to historic, regulator capture or other reasons. Therefore the general interest would be better-off if that regulation was either repealed in total or in part, or not applied to any of the operators in the market, be they based on traditional models, new business models, mixed models, or whatever model that might arise through innovation.
- Market failures to which regulation of traditional sectors allegedly responds could continue to occur with the new models, so that the existing sector regulation, or a part of it, would still be needed, assuming that such regulation, as it is, is needed and proportional to market failures.

Some possible relations between the existing regulation and the new models for service delivery are cited below in the specific cases of passenger road transport and tourist accommodation.

Passenger road transport sector (taxi, VTC and regular bus lines)

Taxi and VTC

One of the new models providing services similar to those provided by taxis and VTC, as described in the previous document of the public consultation, seem not to be complying with sector regulation applicable to passenger transport in terms of access requirements (basically the need for a transport licence), requirements to carry out the activity (driver and vehicle requirements as well as insurance and consumer protection requirements) or regulated tariffs.

Irrespective of the legal implications deriving from current regulation of various service models, the analysis whether, given the new offer and the new demand for this transport service, compliance with the sector regulation is justified, has to be done from the perspective of the need and the proportionality of the restrictions established by said regulation.

- Requirement of a licence: the market failure to which the need for an administrative licence may respond is the negative externality deriving from the activity's environmental impact and urban congestion. Otherwise there would be an unlimited number of vehicles travelling through the city in search of passengers. Because the new model for passenger road transport in cities, is based on an on-demand service platform using mobile devices, and thus vehicles are not in traffic unless there has been a request for a service, restricting supply would be inefficient. Indeed, although at times there would be an excess offer, this would be offset by the market itself, with supply adjusting to demand. In any case, this argument would be equally valid for vehicles which are currently operating with a licence, when they use mobile applications to match supply and demand along with GPS.
- Driver and vehicle requirements: if the market failure to which these sector requirements allegedly provide a response consists of problems of asymmetric information (vehicle features, cleaning, driver's attitude, etc.), reputation systems for drivers, passengers and vehicles included in the new transport service model could, to a considerable extent, solve the problem in better way than traditional instruments . It may be necessary to retain some of the requirements, though (relating to vehicle safety, driver's driving licence, liability insurance, etc.), provided that these are proportional to the information asymmetry which it is intended to remedy.
- Knowledge of the city or the routes: if the market failure which market access requirements intend to redress were due to imperfect information and the lack of drivers' knowledge about the city, roads and routes, navigation applications could resolve these problems to a sufficient degree.
- Tariffs: if the market failure to which the existence of tariffs responds concerns transaction costs arising from the need to compare prices case-by-case, and temporary or local market power of the driver (temporary, given the relative bigger need of the passenger to move to another point within a fixed schedule; local, due to restriction on licences), new service models could ease the problem by advertising prices through mobile applications, in real time, and permitting anticipated contracting, which would even out the bargaining positions of supply and demand. Where there was more than one platform available, there could be effective competition between different operators

with the result of restricted or even prevented market power of a single platform.

Regular bus lines

The new model for delivery of transport services described in the previous document of the public consultation, which offers alternative interurban transport services to those provided by regular bus lines (and to other regular transport services such as railway or air travel) seems not being complying with any sector regulation concerning access requirements (licence), requirements to carry out the activity (driver and vehicle requirements) or tariffs.

As in the previous case, possible arguments could be put forward regarding the need for compliance with the sector regulation depending on the principles of need and proportionality of said regulation:

- Requirement for concession of an administrative licence: if this requirement was based on ensuring a regular service, it would not need to apply to the new model because the transport service were vehicles with empty seats are shared, is discretionary.
- Driver and vehicle requirements: as in the previous case, reputation systems included in the new transport service model may partially resolve information asymmetries, although some requirements (relating to safety, liability, etc.) might still be necessary provided they are proportional.
- Tariffs: the new service model advertises transport service prices in real time through mobile applications, therefore facilitating comparisons and reducing transaction costs.

Tourist accommodation sector

The new tourist accommodation model described in document 2 of this public consultation, based on temporary rental of private apartments or rooms ("touristic apartments") could be subject to specific regulation by the corresponding Autonomous Community. In any case there would be asymmetry regarding the

application of regulation to the new accommodation formula compared to traditional ones, which are requested to comply with certain prerequisites in terms of access as well as some requirements to carry out the activity (sometimes including statements of liability or notifications prior to the start of the activity).

Some of the possible arguments regarding the existence of this regulatory asymmetry are the following:

- Requirements on the “tourist apartment”: reputation systems in the new models may ease the problem of information asymmetry with respect to most of the premises’ features, although some requirements (relating to safety, liability, consumer protection, etc.) might still be considered necessary, provided they are proportional.
- Other specific requirements could concern the fact that new tourist accommodation is in private homes (so that there is a need to ensure coexistence with the neighbours). These requirements should, in any case, be necessary and proportional, and should not be designed to introduce barriers to entry into the new economic activity.

Based on the foregoing, the following questions are proposed:

- 1. Do you consider that the existing regulation is applicable to the new service delivery models? In the two selected sectors, which regulation do you think could be applied to new models and which not?*
- 2. In these two same sectors, do you believe that the new models should adapt to the current regulation (sectorial or horizontal), or do you consider it necessary to change the regulation in order to take into account all business models? What do you think this change could consist of?*