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Nowag, Julian

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LUND UNIVERSITY

PO Box 117  
221 00 Lund  
+46 46-222 00 00

# UBER between Labour and Competition Law

by

Julian Nowag<sup>1\*</sup>

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## I. INTRODUCTION

UBER has gained massive attention around the world by breaking into the taxi market. UBER and UBER like platforms offer services by providing a platform and app which connect apparently independent service providers with customers. In the case of UBER, the customer orders a ride from A to B for a price which is fixed by the app using algorithms. This short paper on UBER and UBER-like business models examines issues that such a model faces with regard to labour and competition law<sup>2</sup>. In a particular, it focuses on the competition law implications if UBER's business model is not subject to labour law. The paper first describes the UBER model and the labour law questions. The paper then turns to its main subject of examining the possible competition law implications of UBER and UBER-like business models. After presenting a recent antitrust court decision in the US, the paper finally briefly explores potential ways how UBER and UBER-like can prevent antitrust liability.

## II. THE UBER BUSINESS MODEL

UBER provides a transport service via an app for mobile phones. UBER has a number of drivers which have signed contracts with UBER and which are providing driving services for customers which use the UBER app. *Via* the app the customer is offered a ride from A to B for a fixed price. The price is determined by UBER using algorithms. The customers pay for the ride *via* the UBER app and UBER subtracts a percentage before passing the payment on to the driver. The agreement between UBER and the drivers specifies that the drivers are not allowed to charge or receive any payment by other means than the UBER app.

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<sup>1</sup>Senior Lecturer in EU and Competition Law, Lund University. This paper is an extended version of two blog post which were published at <<https://lalibrecompetencia.wordpress.com>>

<sup>2</sup> In this paper the terms competition law and antitrust law are used interchangeably.

UBER is often described as a disruptive innovator,<sup>3</sup> while it is questionable whether UBER's model really fits under this concept developed by Christensen,<sup>4</sup> it can certainly be seen as an example of Schumpeterian creative destruction. UBER breaks into the, sometimes centuries old, monopoly market for taxi services in many countries around the world. As a disruptive innovator UBER's strategy can be described as entering a market first and only then dealing with legal compliance issues.<sup>5</sup> With this strategy UBER has faced obstacles in many countries, e.g. France, Germany, Spain<sup>6</sup> and the issue is now being taken to the EU level.<sup>7</sup> Similar things are also happening in parts of the US,<sup>8</sup> as well as in Canada<sup>9</sup> and India.<sup>10</sup>

Any competition lawyer will certainly have a great sympathy for UBER's challenge to the monopoly of taxis.<sup>11</sup> This sympathy seems to extend to the European Commission as Neelie Kroes, the former Commissioner for Competition, and now Vice-President and Digital Agenda Commissioner, as well as Elzbieta Bienkowska, Commissioner for Industry and the Internal Market and

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<sup>3</sup> See for example Scott Anthony, 'Disruptive innovation: What's Holding Uber Back' (2 June 2014) Harvard Business Review available at <<https://hbr.org/2014/06/whats-holding-uber-back>> (accessed 29 June 2016).

<sup>4</sup> Clayton M. Christensen, *The Innovator's Dilemma: When New Technologies Cause Great Firms to Fail* (Harvard Business School Press 1997). It is questionable whether UBER would fit within this category, in particular as UBER has not started as low quality, low cost company serving an untapped low end of the market.

<sup>5</sup> Marcus Wohlsen, 'Uber's Brilliant Strategy to Make Itself Too Big to Ban' (7 August 2014) <<http://www.wired.com/2014/07/ubers-brilliant-strategy-to-make-itself-too-big-to-ban>> (accessed 29 June 2016)

<sup>6</sup> EU Observer, 'Uber files complaint against ban in France, Germany, Spain' (2 April 2015) <<https://euobserver.com/tickers/128233>> (accessed 29 June 2016)

<sup>7</sup> EU Law Radar, 'Case C-526/15, Uber Belgium – facilitating a mobility service not a taxi service' (31 October 2015) <<http://eulawradar.com/case-c-52615-uber-belgium-facilitating-a-mobility-service-not-a-taxi-service>> (accessed 29 June 2016).

<sup>8</sup> Josh Lowensohn, 'Uber halting its operations in Portland for 3 months while a deal is worked out on' (18 December 2014) <<http://www.theverge.com/2014/12/18/7418195/uber-halting-its-operations-in-portland-for-3-months-after-being-sued>> (accessed 29 June 2016); Kim Lyons, 'PUC seeks to subpoena Uber CEO Kalanick, raises proposed fine to \$19 million' (14 January 2015, Pittsburgh Post-Gazette) <<http://www.post-gazette.com/business/pittsburgh-company-news/2015/01/14/Pennsylvania-PUC-subpoena-Uber-CEO-Travis-Kalanick-raises-proposed-fine-19-million/stories/201501140151>> (accessed 29 June 2016).

<sup>9</sup> Reid Southwick, 'Uber launches in Calgary to strong demand, as city cautions drivers could face fines' 14 October 2015 (The Edmonton Journal) <<http://www.edmontonjournal.com/ride+sharing+service+uber+rolls+into+calgary/11440120/story.html>> (accessed 29 June 2016); Elise Stolte, 'Edmonton readies for a crackdown but keeps Uber afloat for the holiday season' (17 November 2015, The Edmonton Journal) <<http://edmontonjournal.com/news/local-news/edmonton-readies-for-a-crack-down-but-keeps-uber-afloat-for-the-holiday-season>> (accessed 29 June 2016).

<sup>10</sup> Aman Sharma, 'Delhi Government bans Uber, says it is misleading customers' (8 December 2014, The Economic Times) <[http://articles.economictimes.indiatimes.com/2014-12-08/news/56839680\\_1\\_taxi-services-radio-taxi-scheme-customers](http://articles.economictimes.indiatimes.com/2014-12-08/news/56839680_1_taxi-services-radio-taxi-scheme-customers)> (accessed 29 June 2016).

<sup>11</sup> Damien Geradin, 'Should Uber be Allowed to Compete in Europe? And if so How?' (18 June, 2015) Competition Policy International.

Jyrki Katainen, Vice-President for Jobs, Growth, Investment and Competitiveness, have all expressed support for UBER.<sup>12</sup>

### III. UBER AND COMPETITION LAW

In the past, one major issue in the US has been whether UBER employs its drivers or whether they are independent contractors. UBER has lost a high profile case in California where UBER was found to be an employer due to the control exerted over the driver. UBER's argument was however that it was "*nothing more than a neutral technological platform, designed simply to enable drivers and passengers to transact the business of transportation.*"<sup>13</sup>

While UBER lost a similar case in Florida and appealed both the California and Florida cases, it was successful in claiming that drivers are independent contractors in Georgia, Pennsylvania and Texas.<sup>14</sup>

The application of competition law is in part<sup>15</sup> depended on whether the person engaging in this activity is defined as a worker or independent contractor. Where drivers of UBER are considered to be workers, the competition law provisions do not apply. In the EU that is by reason of the Court of Justice's ("CJ") *Poucet et Pistre* decision.<sup>16</sup> In this decision the Court held that workers cannot be considered undertakings and hence the arrangements between the workers and UBER are not subjected to the competition regime. In the US the situation is similar, there competition provisions do not apply due to Section 6 of the Clayton Act which specifies that 'antitrust laws [are] not applicable to labor organization[s].'

But if the drivers are not workers and one follows UBER's argument that they are independent contractors and that UBER is merely a platform, what competition problems could arise from this?

This line of argument would mean that UBER itself is not directly providing taxi rides but that UBER is only an intermediary that connects the independent

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<sup>12</sup> See EU Observer (12 June 2014) 'EU commissioner lashes out at Europe-wide taxi protest' <<https://euobserver.com/economic/124570>> (accessed 29 June 2016); Financial Times (4 November 2015) 'Banning Uber like trying to stop the printing press, says Brussels' <<http://on.ft.com/1MleQX2>> (accessed 29 June 2016).

<sup>13</sup> *Uber vs Berwick* CGC-15-546378 <<https://www.scribd.com/doc/268911290/Uber-vs-Berwick>> (accessed 29 June 2016), page 9.

<sup>14</sup> Mike Isaac and Natasha Singer, 'California Says Uber Driver Is Employee, Not a Contractor' (17 June 2015 New York Times) <[http://www.nytimes.com/2015/06/18/business/uber-contests-california-labor-ruling-that-says-drivers-should-be-employees.html?\\_r=1](http://www.nytimes.com/2015/06/18/business/uber-contests-california-labor-ruling-that-says-drivers-should-be-employees.html?_r=1)> (accessed 29 June 2016).

<sup>15</sup> While not within the scope of this paper, it is interesting to explore which definition of worker would apply. This could either be an independent definition within the EU/US Federal competition law framework or a definition depending on the State (in the US) or Member State (in EU).

<sup>16</sup> Joined Cases C-159/91 and C-160/91 *Poucet et Pistre* [1993] ECR I 637; EU:C:1993:63.

drivers with their customers through the app. In this case UBER itself is not directly providing taxi rides. UBER would only offer a platform for drivers to offer their services to customers. In this sense the model would not be much different to Ebay or Amazon where consumers buy goods or services from independent providers.

How could such an arrangement be contrary to competition law? The important element in this context is that UBER's business model relies currently on the prices that are not set freely by the drivers. Instead UBER sets or co-ordinates the prices by means of an algorithm.

Such a configuration can be seen as a so called hub-and-spoke cartel. In a hub-and-spoke cartel the cartel members do not directly communicate to align their business behaviour. Instead the communication or more precisely the organisation of the cartel is left to a third party, an intermediary. In such an arrangement the intermediary is not active on the cartelised market. However, this does not shield the intermediary from antitrust liability.<sup>17</sup> A recent example of such a hub-n-spoke cartel in the EU is *AC-Treuhand*.<sup>18</sup> In this case the CJ found that a Swiss consultancy company, AC-Treuhand, by overseeing the cartel, collecting and sharing market data, and providing a place for the cartelists to meet had infringed Article 101(1) TFEU. In the US the last major hub-and-spoke cartel was the Apple e-book price-fixing case.<sup>19</sup> In this case Apple was found to have engaged in a hub-and-spoke cartel by fixing the e-book prices with the publishers to a certain level. Apple would receive a certain percentage of the fixed price. This was found to be a *per se* violation of Section 1 of the Sherman Act, the US prohibition of cartels.

Similarly, in the case of UBER's business model, UBER profits from the fixing of the driver's prices because its fees are depended on the rate charged by the drivers. What distinguishes the UBER arrangement from the Apple agreement is that UBER does not directly fix the prices or a price range for the driver. Instead it uses a computer algorithm to determine the price which the drivers will charge the customers.

Price fixing between competitors using a computer algorithm may be a new phenomenon. Yet, as such it should not be an obstacle to antitrust liability. Such an arrangement is not much different from a normal hub-and-spoke cartel

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<sup>17</sup> On hub-and-spoke agreements under EU and US law see e.g., Okeoghene Odudu, 'Indirect Information Exchange: The Constituent Elements of hub-and-spoke Collusion' (2011) 7:1 European Competition Journal 205–242; Barak Orbach, 'Hub-and-Spoke Conspiracies' (April 2016) *The Antitrust Source* 1–15.

<sup>18</sup> Case C-194/14P *AC-Treuhand AG v European Commission* EU:C:2015:717.

<sup>19</sup> *United States of America v. Apple Inc., et al.*, 12 Civ. 2862 (DLC).

arrangement.<sup>20</sup> Moreover, it is worth noting that there is evidence that UBER's algorithm has led to higher prices for consumers.<sup>21</sup> Such evidence of higher prices may not even be necessary because the co-ordination of prices between (potentially) competing drives can be seen as an object restriction of competition (EU)<sup>22</sup> and *per se* violation of Section 1 of the Sherman Act (US).

In the US the classification as *per se* violation would mean that a balancing of pro- and anti-competitive effects under the rule of reason would not take place. In contrast, in the EU it would be possible to argue that consumers would benefit under Article 101(3) TFEU. However, it would need to be shown that the UBER consumers would benefit from such an arrangement which seems unlikely given the higher prices. Moreover, it seems that the arrangement would fall short of the final requirement of Article 101 (3) TFEU, that is to say the non-elimination of competition criterion. The UBER business model does eliminate (price) competition between the drivers entirely.<sup>23</sup> Whether it would be possible to advance the pro-competitive effect on the 'taxi-market' as a whole, i.e. the increased competition with the state organised monopolies is more questionable.<sup>24</sup> But even if such an argument could be made it is unclear how the non-elimination requirement would be fulfilled and whether the price restriction would be indispensable to break increased competition on the 'taxi-market'.

#### IV. UBER'S US ANTITRUST CASE

On the 31th of March 2016, Judge Jed S Rakoff of the United States District Court for the Southern District of New York granted to motion and set the trial date for November 2016 to hear an antitrust price fixing case against UBER.<sup>25</sup> The Court

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<sup>20</sup> See Ariel Ezrachi and Maurice Stucke, 'Artificial Intelligence & Collusion: When Computers Inhibit Competition' (April 8, 2015). Oxford Legal Studies Research Paper No. 18/2015; University of Tennessee Legal Studies Research Paper No. 267. available at <<http://ssrn.com/abstract=2591874>> (accessed 29 June 2016) this paper highlights different options of assigning antitrust liability to companies when artificial intelligence is involved.

<sup>21</sup> See in particular, Gideon Lichfield, 'How Surge Pricing Works' (31 October 2015, The Atlantic) <[http://www.theatlantic.com/business/archive/2015/10/how-uber-surge-pricing-works/413335/?utm\\_source=SFFB](http://www.theatlantic.com/business/archive/2015/10/how-uber-surge-pricing-works/413335/?utm_source=SFFB)> (accessed 29 June 2016); Lauren Kirchner and Surya Mattu, 'Uber's Surge Pricing May Not Lead to a Surge in Drivers' (29 October 2015 ProPublica) <<https://www.propublica.org/article/uber-surge-pricing-may-not-lead-to-a-surge-in-drivers>> (accessed 29 June 2016).

<sup>22</sup> On the challenges of blurring the line between object and effect restrictions see Maria Ioannidou and Julian Nowag 'Can two wrongs make a right? Reconsidering minimum resale price maintenance in the light of Allianz Hungária' (2015) 11:2-3 European Competition Journal 340-366.

<sup>23</sup> Compare in this regard to the Airbnb pricing model where the people offering their services on that platform offer competing prices.

<sup>24</sup> In the case on Apple price fixing for e-books such an argument, concerning the dominant position of Amazon, was unsuccessfully advanced.

<sup>25</sup> *Spencer Meyer v Travis Kalanick*, 15 Civ 9796; 2016 US. Dist. Lexis 43944.

decided that it would hear an antitrust class action lawsuit against *Travis Kalanick*, the CEO and founder of UBER. The action was brought on behalf of every US customer who ever used UBER and who had paid the fair set by UBER's algorithm.

#### **A. Arguments before the Court**

The claim that the Court had to decide on alleged that UBER had orchestrated and facilitated a price-fixing cartel. In particular, it alleged that UBER, while claiming to be a transportation company, had conspired with its drivers to restrict pricing competition amongst the drivers by means of UBER's computer based algorithm. This conspiracy was also supported by the fact that UBER had organised meetings between the drivers. As part of these meetings information about upcoming events was discussed with a view to the potential increase in demand. Moreover, after complaints by the drivers about low prices UBER had raised prices.

UBER's argument to dismiss the motion was based on the claim that individual drivers act independently when entering into the agreement with UBER. Thus, there was no horizontal agreement between drivers. According to UBER there were only vertical agreements in place, those between UBER and the drivers. The drivers would have decided, independently from each other, that it would be in their best interest to contract with UBER. Although the drivers all agreed to use the UBER pricing algorithm, this would not diminish the drivers' independence.

#### **B. Decision of the Court**

The Court allowed the motion. It held that the claim of a horizontal as well as a vertical conspiracy within the meaning of the Sherman Act had been sufficiently been pleaded.

The Court found that a horizontal conspiracy via the UBER terms and app was plausible. In this context, the Court held that the drivers would forgo competition because UBER's system guaranteed that other UBER drivers would not undercut their prices. This guarantee would stabilise the cartel. UBER's pricing model would also allow for the realisation of the common motive: obtaining supra-competitive prices. The Court found this line of argument even more convincing given that UBER had organised events for the drivers and increased the fares after drivers had demanded an increase.

The arguments advanced by UBER in terms of the horizontal conspiracy did not convince the Court. In this regard, the court compared UBER to *Interstate Circuit*

vs *US*<sup>26</sup> which concerned price restrictions in agreements between movie distributors and theatre operators as well as to the hub-and-spoke conspiracies in *US v Apple*<sup>27</sup> and *Laumann v National Hockey League*.<sup>28</sup>

Additionally, the judgment emphasises that the concept of conspiracy in antitrust is based on the common law of conspiracy. Thus, it is not judged by ‘the technical niceties but by practical realities’.<sup>29</sup> The Court drew on *Silk Road*<sup>30</sup> stressing that UBER’s app provided UBER with the opportunity to organise a conspiracy amongst the drivers. Thus, UBER’s argument which suggested that it would be ‘wildly implausible’ and ‘physically impossible’ to organise an agreement amongst hundreds of thousands of drivers was rejected.

In an interesting part of the judgment the Court also addressed *Leegin*<sup>31</sup> and recent jurisprudence on vertical agreements. This line of cases would not “undermine [the] plaintiff’s claim of a horizontal conspiracy.”<sup>32</sup> *Leegin* could be distinguished from the current case. First, UBER would not produce or sell something that would then be resold by the drivers. Second, there was no potential for free-riding by UBER drivers that needed to be prevented by the arrangement. Similarly, there would be no risk that drivers would undermine efforts of other UBER drivers to promote the app.

Finally, UBER’s claim that its pricing algorithm would be procompetitive by facilitating market entry would not prevent the finding of a horizontal conspiracy. More importantly however, the Court also held that a vertical conspiracy was sufficiently supported by the facts.

## V. OUTLOOK

While this judgment allowed the claim to advance to trial stage, it is only a preliminary assessment by the Court which set the trial date for November 2016. Thus, it will be a while before we will have a final judgment.<sup>33</sup>

So far, the defence offered by UBER can certainly improve. It is difficult to imagine that the argument that drivers voluntarily use the pricing algorithm and

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<sup>26</sup> *Interstate Circuit, Inc. v. United States*, 306 U.S. 208 (1939).

<sup>27</sup> *United States of America v. Apple Inc., et al.*, 12 Civ. 2862 (DLC) (2nd Cir 2015).

<sup>28</sup> *Laumann et al v. National Hockey League et al*, U.S. District Court, Southern District of New York, No. 12-01817

<sup>29</sup> *Spencer Meyer v Travis Kalanick*, 15 Civ 9796; 2016 US. Dist. Lexis 43944.

<sup>30</sup> *United States of America v. Ross William Ulbricht (Silk road)*, 14 Cr. 68 (KBF) (2015).

<sup>31</sup> *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877 (2007).

<sup>32</sup> *Spencer Meyer v Travis Kalanick*, 15 Civ 9796; 2016 US. Dist. Lexis 43944.

<sup>33</sup> If the case is not settled.



that there is still a theoretical possibility that the drivers can charge less than the fee set by UBER will be sufficient to avoid antitrust liability.

Yet, equally it would be too simplistic to assume that as soon as it is established that the drivers are not workers UBER is liable for an infringement of Section 1 of the Sherman Act.<sup>34</sup>

For the Court it seems that in particular *Interstate Circuit vs US* will be of importance. In this case a violation of Section 1 of the Sherman Act in form of a horizontal conspiracy was established. This case mainly concerns the issue of whether direct evidence for a conspiracy is needed or whether a conspiracy can be inferred from the facts. This issue might also be of interest in the UBER case, in particular with regard to whether the commonly used pricing algorithm is sufficient to prove the existence of an agreement.

Yet, the main question in the case of UBER seems to be whether this arrangement is some kind of distribution arrangement, i.e. a vertical arrangement or rather a horizontal one, as the Court seems currently to be leaning to. This issue of vertical versus horizontal has a substantial effect on whether a *per se* or a rule of reason approach will be taken. Would this case be treated as a horizontal hub-and-spoke cartel the *per se* approach would prevent UBER from arguing any pro-competitive effects that could come into play under the rule of reason approach.

While the UBER arrangement might be seen as comparable to the situation in *Apple (ebooks)*, UBER might try to compare itself to the line of case law concerning the joint selling of IP protected works by authors through associations like the American Society of Composers, Authors and Publishers.<sup>35</sup> The question is, to what extent these cases are comparable. Are these associations setting one general price for all authors selling through them? Similarly, one could ask what distinguishes UBER from businesses like Ebay or Amazon through which private actors are also able to sell their goods and services, in particular as Ebay and Amazon are platforms but allow for competition.

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<sup>34</sup> In this line see the first complaint filed to the Court, <<http://big.assets.huffingtonpost.com/UberAntitrustLawsuit.pdf>> (accessed 29 June 2016). It should, however, be noted that this complaint does not contain the full argument and only had the purpose of convincing the Court to grant the motion.

<sup>35</sup> Similarly to UBER, in the ASCAP a violation of the cartel prohibition was alleged, see *United States vs. American Society of Composers, Authors and Publishers*, Dist. Ct., SD NY. No. E 78-388 (1934). However, the case was finally settled via a consent decree. See more recently also *Meredith Corp. vs. SESAC LLC* No. 09 Civ. 9177 (PAE) (2014).

In the EU, UBER could potentially also argue that UBER-driver arrangement is an agency agreement.<sup>36</sup> Under EU law these are typically not subject to EU competition law due to the single economic entity doctrine.<sup>37</sup> However, such a route would be problematic. In particular, UBER would need to establish that the drivers bear no or only an insignificant financial or commercial risk of the transactions with the customers.<sup>38</sup> To establish that the drivers would only bear an insignificant risk might be difficult because of the conditions that the Commission's set out in its vertical guidelines.<sup>39</sup> For example genuine agents do "not contribute to the costs relating to the supply ... of the ... services".<sup>40</sup>

In the US such a distinction between agency and vertical situation does not exist.<sup>41</sup> Such situations are examined under the rule of reason established for vertical arrangements in *Sylvania*.<sup>42</sup> Hence, the matter would yet again turn on whether the UBER arrangement is considered to be a vertical or horizontal situation.

What becomes clear is that the UBER case highlights a very interesting distinction, between vertical and horizontal arrangements. Under US law<sup>43</sup> the categorisation substantially effects whether the *per se* or rule of reason approach applies and therefore the outcome of the case. The gravity of this categorisation becomes even more pertinent if one considers that the class action has been brought on behalf of every US customer who ever used UBER and paid the fare set by the algorithm. Combined with the option of treble damages, potential damages could amount to a very substantial sum.

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<sup>36</sup> For such an argument see, Carlos Esguerra Cifuentes (12 February 2016) 'Between an UBER Rock and an UBER NOT TOO Hard Place' <<https://lalibrecompetencia.com/2016/02/12/between-an-uber-rock-and-an-uber-not-to-hard-place>> (accessed 29 June 2016).

<sup>37</sup> Case T-325/01 *Daimler Chrysler v. Commission*; [2005] ECR II-03319, :EU:T:2005:322; Case C-217/05 *Confederación Española de Empresarios de Estaciones de Servicio v CEPESA* [2006] ECR I-11987, EU:C:2006:784; Case C-279/06, *CEPSA Estaciones de Servicio SA v. LV Tobar e Hijos SL* [2008] ECR I-06681, EU:C:2008:485. See also EU Guidelines on Vertical Restraints [2010] OJ C 130/1 para 12ff. However, it should be noted that even within genuine agency agreements Article 101(1) TFEU may occasionally apply, particularly to relationships between the agent and the principal, see C-217/05 *CEES/CEPSA* [2006] ECR I-11987, EU:C:2006:784 para 62.

<sup>38</sup> Guidelines on Vertical Restraints [2010] OJ C 130/1 para 13-16.

<sup>39</sup> *Ibid* para 16 which contains a list of activities that would disqualify arrangements as agency.

<sup>40</sup> *Ibid* para 16.

<sup>41</sup> Roger van den Bergh and Peter Camesasca, *European Competition Law and Economics: A Comparative Perspective* (Intersentia Publishers 2001) 245-247.

<sup>42</sup> *Continental Television v. GTE Sylvania*, 433 U.S. 36 (1977)

<sup>43</sup> In the EU this corresponds roughly to the distinction between object and effect restriction. However, even if it would be considered to be an object restriction within the EU, there would still be the possibility to argue pro-competitive benefits under Article 101(3) TFEU. Such an option is not available under the US system.

## VI. CONCLUSION

At the interface between labour and competition law, this paper has briefly examined the competition law issues that UBER and UBER-like business models might face. It highlighted in particular the competition law implications and presented the recent US antitrust court decision concerning UBER. No competition enforcement action has taken place today in the EU. As a matter of policy such action is also not likely, given the support of UBER at EU level and accusations of protectionist targeting of US companies.<sup>44</sup> Yet, there are 28 national competition authorities and even if these agencies do not take up the case, there is still the potential that UBER could become the first major standalone private enforcement action in EU.

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<sup>44</sup> See James Vincent, 'Obama accuses EU of attacking American tech companies because it 'can't compete' (17 February 2015, The Verge) <<http://www.theverge.com/2015/2/17/8050691/obama-our-companies-created-the-internet>> (accessed 29 June 2016).