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Grand Chamber of the Court of Justice of the EU rules that Uber Spain is running a transportation business and not merely providing an information society service

Asociación Profesional Élite Taxi v. Uber Systems Spain SL
Case **C-434/15**

Article by David Bowden

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CJEU's Grand Chamber rules that Uber Spain is running a transportation business
Asociación Profesional Élite Taxi v. Uber Systems Spain SL - Case C-434/15

Executive speed read summary

Uber Systems Spain SL operates in Barcelona. Neither Uber Systems Spain nor its drivers held any taxi authorisation from the licensing department of the Barcelona government. Uber Systems Spain SL had a licence to use the Uber application developed by the Dutch company, Uber BV, which was installed on smart phones. Uber Systems Spain took the bookings from Catalan passengers, Uber drivers had to drive the route that Uber set and drivers received the fare from Uber Systems Spain SL once it had creamed off its cut as commission. The Professional Elite Taxi Association on behalf of its licensed taxi driver members brought a claim in the Barcelona Commercial Court. They sought a declaration that the activities of Uber Systems Spain amounted to '*misleading practices*' and acts of '*unfair competition*' under the 1991 Spanish Unfair Competition Law and sought an order that Uber Systems Spain should be ordered to cease its unfair conduct of providing on-demand taxi booking services by mobile phones and the internet. The Barcelona court referred 4 questions to the Court of Justice of the EU as to whether Uber Systems Spain was running an '*information society*' service or rather was running a transportation service. There are 2 EU Directives – one on E-Commerce and the other on Information Society Services – that Uber Systems Spain rely on. However Elite relies on the provisions of the 2006 Services Directive which (although it is a wide-ranging measure intended to allow a business incorporate in one EU country to start up or expand its business in another EU country) contains a number of exemptions. At an earlier hearing in May 2017 Advocate General Maciej Szpunar gave a ruling adverse to Uber Systems Spain. Following a further hearing the Grand Chamber of the Court of Justice has followed its Advocate-General's advice. The CJEU has ruled that Uber Systems Spain exercised '*decisive influence*' over the conditions under which the Uber service is provided by its drivers, as Uber determines the maximum fare by means of its '*eponymous application*' and exercised a '*certain control*' over the quality of the vehicles, the drivers and their conduct which can result in a driver's exclusion. Because of this the CJEU ruled that Uber's '*intermediation service*' had to be regarded as forming an integral part of an overall service whose '*main component is a transport service*' and accordingly it had to be classified not as '*an information society service*' but rather as '*a service in the field of transport*' under Article 2(2)(d) of the Services Directive. The case will be send back to the Barcelona Court to apply the CJEU ruling and deal with costs. Separately, the Court of Appeal will hear over 3 days in February 2017 Uber London's appeal over an English language requirement that TfL has imposed over its drivers. Uber London lost its appeal in November 2017 with the Employment Appeal Tribunal agreeing with the Employment Tribunal that Uber drivers are '*workers*'. Uber London is seeking to appeal this ruling and trying to get the Supreme Court to hear this in February 2018 with the *Pimlico Plumbers* appeal. Uber London has filed its 2016 accounts with Companies House with an important qualification about '*contingent liabilities*'.

Asociación Profesional Élite Taxi v. Uber Systems Spain SL
The Governments of the Kingdoms of Spain & the Netherlands and the Republics of Ireland, Greece, France, Poland, Finland intervening
The European Commission and the EFTA Surveillance Authority also intervening
Case C-434/15 *20 December 2017*
Grand Chamber of the Court of Justice of the European Union (Judges Lenaerts, Tizzano, Silva de Lapuerta, Ilešič, da Cruz Vilaça, Malenovský, Levits, Juhász, Borg Barthet, Šváby, Lycourgos, Vilaras and Regan)
Opinion of Advocate General Maciej Szpunar *11 May 2017*

What is the business model of Uber?

Uber BV is a Dutch company which owns the rights in the computer platform which contains the traffic, location, driver, passenger and payment data. According to a release dated 14 April 2017 issued by Bloomberg, Uber BV is valued at $69 billion by investors and operates in 75 countries. In the final quarter of 2016, globally Uber increased its gross bookings by 28% from the previous quarter to $6.9 billion. Globally for the whole of 2016 Uber had gross income of $20 billion and after expenses this reduced to net revenue of $6.5 billion. However this has translated into an unexplained loss of $2.8 billion.

What are the facts of this case?

Drivers sign up to be drivers with Uber Systems Spain and agree to use the Uber software. Passengers install the Uber software on their smart phones. Passengers use the Uber software to say where they are and where they want to go. Uber calculates a price for the passenger. A driver with the Uber software on who is near or nearest to the passenger accepts the job. When the driver accepts the job they do not know the destination. Only when a passenger gets in the car is the driver told the destination. The driver

has to drive the route dictated by Uber by GPS on its software unless the passenger gives an alternative route. Uber collects the fare from the passenger, takes its commission and pays the driver the balance. There is a rating system for passengers to give feedback on drivers. If a driver turns down a job, Uber will turn them off the system.

On 7 August 2015 the Professional Elite Taxi Association in litigation against Uber Systems Spain SL had a number of questions referred to the Court of Justice of the European Union. The referred questions raised issues of interpretation under both the Services Directive **2006/123/EC** and the Information Society Directive **2000/31/EC** and particularly the scope of article 2(2)(d) of the former. The nub of the referral is whether Uber is operating a '*transport service'* or whether instead it is merely an '*electronic intermediary service or an information society service*' to be covered by these Directives' requirements. Uber also sought a ruling on whether it had breached the Unfair Commercial Practices Directive and had infringed the rules governing competitive activity.

What are the various EU rules that the CJEU had to unpick here?
The CJEU had to determine the hierarchy or EU laws which dealt with online business with those relating to the freedom to provide services. In 1998 the European Commission finalized its Information Society services directive, a measure which was very forward thinking. That directive allowed internet companies such as Google, YouTube, Facebook and others to avoid any liability for materials posted on their websites where they were only acting as a '*mere conduit'*. 2 years later in 2000 the European Commission finalized its e-commerce directive which was a minimum harmonization measure in quite general terms. However this directive was only a starting point and this directive provided a building block for later measures.

In the financial services field, the European Commission was then delivering upon its May 1999 financial services action plan which saw a whole suite of measures (including on distance sales of financial services, insurance mediation, consumer credit, markets in financial instruments, etc.) which were intended to intermesh as well as building upon the earlier non-sectoral e-Commerce legislation (which also included measures on e-signatures, e-money, e-privacy, etc).

The 1995 Data Protection Directive was a wide ranging measure which applied to all data processing and its rules were to apply across all industry sectors. Fritz Bolkestein was a Dutch politician who was the European Commissioner in charge of the Internal Market from 1999-2004. His vision was a Services Directive which would apply across the EU and would be of general application. Bolkestein wanted to prevent EU member states using local rules such as those relating to language, fees, licences, exams, approvals, etc. to prevent a business established in 1 EU member state setting up or expanding its business in another member state. At the EU level, the Bolkestein directive was controversial and in order to get what became the 2006 Services Directive through, a large number of exemptions were ultimately added to it by both the Council of Ministers and the European Parliament.

What happened in the Barcelona Commercial court?
On 29 October 2014, Asociación Profesional Élite Taxi ('Elite') brought an action before the Barcelona Commercial Court seeking the following:

- a declaration that the activities of Uber Systems Spain amounted to 'misleading practices' and acts of 'unfair competition' under the 1991 Spanish Unfair Competition Law,
- an order that Uber Systems Spain should be ordered to cease its unfair conduct of providing on-demand taxi booking services by mobile phones and the internet, and
- an order prohibiting Uber Systems Spain from engaging in such activity in the future.

What questions were referred to the CJEU?
The Barcelona court referred these 4 questions for an opinion from the CJEU:

- In so far as as Article 2(2)(d) of the Services Directive **2006/123/EC** excludes transport activities from its scope, must the activity carried out for profit by a defendant, consisting of acting as an intermediary between the owner of a vehicle and a person who needs to make a journey within a city, by managing the IT resources — in the words of the defendant, '*intelligent telephone and technological platform*' interface and software application — which enable them to connect with one another, be considered to be merely a '*transport service'* or must it be considered to be an '*electronic intermediary service or an information society service'* as defined by Article 1(2) of the Information Society services Directive **98/34/EC**?
- Within the identification of the legal nature of that activity can it be considered to be in part an information society service? If so, ought the electronic intermediary service to benefit from the

principle of freedom to provide services as guaranteed in Article 56 of the TFEU and the Services Directive **2006/123/EC** and the E-Commerce Directive **2000/31/EC**

- If the service provided by Uber Systems Spain SL is not to be considered to be a 'transport service' and is therefore considered to fall within the cases covered by the Services Directive **2006/123,** the question arising is whether Article 15 of the Law on Unfair competition (concerning the infringement of rules governing competitive activity) is contrary to the Services Directive specifically Article 9 on freedom of establishment and authorisation schemes, when the reference to national laws or legal provisions is made without taking into account the fact that the scheme for obtaining licences, authorisations and permits may not be in any way restrictive or disproportionate. May it not unreasonably impede the principle of freedom of establishment?
- Are restrictions in one member state (regarding the freedom to provide an electronic intermediary service from another member state in the form of making the service subject to an authorisation or a licence based on the application of national legislation on unfair competition) valid measures? Are these measures valid derogations under paragraph 2 of article 3(4) of the E-Commerce Directive **2000/31/EC**?

What opinion did the Advocate General provide to the CJEU?

On 11 May 2017, Advocate General Szpunar delivered his advisory opinion to the CJEU. His conclusions were that:

- Article 2(a) of the E-Commerce Directive **2000/31/EC** read in conjunction with Article 1(2) of Information Society Services Directive **98/34/EC** had to be interpreted as meaning that a service that connects (by means of mobile telephone software) potential passengers with drivers offering individual urban transport on demand (where the provider of the service exerts control over the key conditions governing the supply of transport made - in particular the price) does not constitute an information society service, and
- Article 58(1) of the Treaty on the Functioning of the EU and Article 2(2)(d) of the Services Directive **2006/123/EC** have to be interpreted as meaning that Uber's service constitutes a '*transport service'* for the purposes of those provisions.

What does the Information Society Services Directive say? What is its scope?

Article 1(2) of the Information Society Services Directive **98/34/EU** provides as follows:

'For the purposes of this Directive, the following meanings shall apply:

...

(2) "service", any Information Society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

For the purposes of this definition:

– "at a distance" means that the service is provided without the parties being simultaneously present,

– "by electronic means" means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means,

– "at the individual request of a recipient of services" means that the service is provided through the transmission of data on individual request.

An indicative list of services not covered by this definition is set out in Annex V....'

What does the E-Commerce Directive say?

Article 3(2) and (4) of the E-Commerce Directive **2000/31/EU** provides as follows:

'2. Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide information society services from another Member State.

...

4. Member States may take measures to derogate from paragraph 2 in respect of a given information society service if the following conditions are fulfilled:

(a) the measures shall be:

(i) necessary for one of the following reasons:

– public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons,

– the protection of public health,

– public security, including the safeguarding of national security and defence,

– the protection of consumers, including investors;

(ii) taken against a given information society service which prejudices the objectives referred to in point (i) or which presents a serious and grave risk of prejudice to those objectives;

(iii) proportionate to those objectives;

(b) before taking the measures in question and without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation, the Member State has:

– asked the Member State referred to in paragraph 1 to take measures and the latter did not take such measures, or they were inadequate,

– notified the Commission and the Member State referred to in paragraph 1 of its intention to take such measures.'

What was the aim of the EU's Services Directive? What provisions are relevant here?
The final text of the Services Directive **2006/123/EU** contains these 4 critical provisions.

- **Recital 21** states that '*transport services, including urban transport, taxis and ambulances as well as port services, should be excluded from the scope of this Directive'*.
- **Article 2(2)(d**) provides that it 'does not apply to services in the field of transport, including port services….'.
- **Article 9(1**) provides that '*Member States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied:*
  (a) the authorisation scheme does not discriminate against the provider in question;
  (b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest;
  (c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective.'
- **Article 16** lays down the procedures enabling service providers to provide services in an EU member state other than the one in which they are already established.

Are there any special provisions of Spanish law?
Article 4 of the 2003 Barcelona Taxi law provides as follows:

'1. The provision of urban taxi services is subject to the prior grant of a licence entitling the licence holder for each vehicle intended to carry out that activity.
2. Licences for the provision of urban taxi services are issued by the town halls or the competent local authorities in the territory where the activity shall be carried out.
3. The provision of interurban taxi services is subject to the prior grant of the corresponding authorisation issued by the ministry of transport of the regional government.'

What authorisations does Uber Systems Spain SL hold?
None. The Barcelona Commercial court made a specific finding that neither Uber Systems Spain nor its drivers held either the licences or authorisations required under the Barcelona Taxi law. This must be compared to the position in the UK, where Uber London Limited did hold (until Transport for London revoked it) a private hire operator's licence.

What case law of the CJEU is of relevance?
These 6 prior CJEU judgments (including 2 from the Grand Chamber) are referred to in the Grand Chamber judgement in this case and are listed chronologically.

Yellow Cab Verkehrsbetrieb **C-338/09** (CJEU, 3rd chamber. Judges Lenaerts, váby, Silva de Lapuerta, Juhász and von Danwitz. Advocate General Cruz Villalón. 22 December 2010)
Free movement of services in the transport sector was not governed by article 56 of the TFEU but rather by article 58 and accordingly by provisions adopted under the article 71 of the Nice Treaty to liberalise transport services. The legislation fell to be assessed in light of the TFEU provisions on freedom of establishment. The requirement for an undertaking established in another member state to hold a seat or other establishment in the host member state before authorisation was granted had a dissuasive effect on the exercise of the right of establishment which was not justified by the aims claimed. Such a requirement was not contrary to EU law where it was applied after authorisation had been granted and before commencement of the service. National legislation requiring prior authorisation to operate a tourist bus service was a restriction on freedom of establishment within article 49 of the TFEU in that it sought to restrict the number of service providers albeit without discriminating on the ground of nationality. The operation of such services could serve an objective in the general interest such as promotion of tourism, road safety or protection of the environment. However the objective of ensuring the profitability of a competing bus service for purely economic reasons could not constitute an overriding reason in the public interest capable of justifying such a restriction. A means of assessing an application for authorisation which relied solely on information provided by a direct potential competitor in relation to its profitability would be contrary to EU law since it was liable to affect the objectivity and impartiality of the assessment.

Trijber and Harmsen **C-340/14** and **C-341/14** (CJEU, 3rd chamber. Judges Ilešič, Ó Caoimh, Toader, Jarašiūnas and Fernlund. Advocate General Szpunar. 1 October 2015)

The services for which authorisations were requested were likely to be mostly utilised by nationals of other member states. The authorisation scheme could impede access to the market for all service providers including those from other member states who wished to establish themselves in the Netherlands. An activity which consisted in providing for payment a service of carrying passengers on a boat for a waterway tour of a city for event-related purposes did not constitute a service in the field of transport under the Services Directive **2006/123** art.2(2)(d). Article 11(1)(b) of the Services Directive meant that where the number of available authorisations was limited by an overriding reason relating to the public interest, those authorisations must be for a limited period. Any grant of authorisation must ensure that a legitimate objective of general interest is pursued and does not go beyond what was necessary to achieve that objective.

Grupo Itevelesa **C-168/14** (CJEU, 2nd chamber. Judges Silva de Lapuerta, da Cruz Vilaça, Arabadjiev, Lycourgos and Bonichot. Advocate General Wahl. 15 October 2015)
Article 2(2)(d) of the Services Directive 2006/123 has to be interpreted as meaning that VRT activities are excluded from its scope. Article 51 of the TFEU has to be interpreted as meaning that the activities of VRT centres are not connected with the exercise of official authority notwithstanding the fact that the operators of those centres had the power to take vehicles off the road in cases where vehicles displayed safety defects creating an imminent danger. Article 49 of the TFEU had to be interpreted as not allowing national legislation which an authorisation to open a VRT centre subject to the conditions that there was a minimum distance between that centre and other centres belonging to that company which were already authorised and that that where such an authorisation was granted, not hold a market share in excess of 50%, unless it was established that that condition was genuinely appropriate in order to achieve the objectives of consumer protection and road safety.

Pillbox 38 **C-477/14** (CJEU, 2nd chamber. Judges Silva de Lapuerta, da Cruz Vilaça, Arabadjiev), Lycourgos and Bonichot. Advocate General Kokott. 4 May 2016)
Electronic cigarettes displayed different objective characteristics from those of tobacco ones. By submitting those cigarettes to a separate legal regime which was less strict than the one applicable to tobacco products, the EU legislature had not infringed the principle of equal treatment. The national provisions governing the conditions which electronic cigarettes must satisfy were in themselves liable to constitute obstacles to the free movement of goods. The identified and potential risks linked to the use of electronic cigarettes had led the EU legislature to act in a manner consistent with the requirements stemming from the precautionary principle/ Submitting electronic cigarettes to a notification scheme was neither manifestly inappropriate nor manifestly beyond what was necessary to attain the objective pursued by the EU legislature. A prohibition imposed on economic operators of promoting their products did not affect the essence of the freedom to conduct a business and the property right recognised by the Charter of Fundamental Rights of the European Union.

de Lobkowicz **C-690/15** (CJEU, Grand Chamber. Judges Lenaerts, Tizzano, Silva de Lapuerta, Ilešič, Bay Larsen, Berger, Prechal, Toader, Safjan, Šváby, Jarašiūnas, Fernlund and Biltgen. Advocate General Mengozzi. 10 May 2017)
Article 14 of Protocol (No 7) on the privileges and immunities of the European Union and the provisions of the Staff Regulations of Officials of the European Union on the joint social security scheme of the EU institutions has to be interpreted as precluding national legislation which provides that income from real estate received in a member state by an EU official who has his or her domicile for tax purposes in that member state is subject to contributions and social levies that are allocated for the funding of the social security scheme of that same member state.

Congregación de Escuelas Pías Provincia Betania **C-74/16** (CJEU, Grand Chamber. Judges Lenaerts, Tizzano, Ilešič, Bay Larsen, von Danwitz, Juhász, Berger, Prechal, Vilaras, Regan, Rosas, Arabadjiev, Safjan, Šváby and Jarašiūnas. Advocate General Kokott. 27 June 2017)
A tax exemption which a congregation belonging to the Catholic Church is entitled in respect of works on a building intended to be used for activities that do not have a strictly religious purpose may fall under the prohibition in Article 107(1) of the TFEU if (and to the extent to which) those activities are economic.

What relevance did the CJEU attach to the EU's Free Trade Agreement with Singapore?
On 16 May 2017 the CJEU handed down its advisory opinion on a free trade agreement that the EU was proposing to enter into with Singapore (Opinion **2/15**, ECLI:EU:**C:2017:376**). This however was a decision given by the Full Court (with all the CJEU's 25 judges sitting namely Lenaerts, Tizzano, Silva de Lapuerta, Ilešič, Bay Larsen, von Danwitz, da Cruz Vilaça, Juhász, Berger, Prechal, Vilaras, Regan, Rosas, Borg Barthet, Malenovský, Bonichot, Arabadjiev, Toader, Šváby, Jarašiūnas, Fernlund, Vajda, Biltgen, Jürimäe and Lycourgos. Advocate General Eleanor Sharpston)

Paragraph 61 of this opinion says:
'In the light of the scope of Article 207(5) TFEU, it must next be determined which commitments contained in Chapter 8 of the envisaged agreement are, under that provision, excluded from the common commercial

> *policy. For this purpose, account is to be taken of the case-law according to which the concept of services 'in the field of transport' encompasses not only transport services in themselves, but also other services, provided, however, that the latter are inherently linked to a physical act of moving persons or goods from one place to another by a means of transport…..*'

What did the CJEU rule on whether Uber's service could be regarded as an information society service or not?
The CJEU began by observing that an on-line intermediation service was '*in principle, a separate service from a transport service consisting of the physical act of moving persons or goods from one place to another by means of a vehicle'* but that '*each of those services, taken separately, can be linked to different directives or provisions of the FEU Treaty on the freedom to provide services'*.

It seemed to start well for Uber Systems Spain when the CJEU said that '*a smartphone application'* did '*meet, in principle, the criteria for classification as an* 'information society service' *within the meaning'* of the Information Society Services Directive because that '*intermediation service'* was '*a service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services'*. The CJEU said conventional taxi services were '*non-public urban transport services'* which had to be '*classified as* 'services in the field of transport' *within the meaning'* of the Services Directive.

However the CJEU went on to note that Uber '*simultaneously offers urban transport services, which it renders accessible'* through '*software tools'* and whose '*general operation it organises for the benefit of persons who wish to accept that offer in order to make an urban journey'*. The CJEU then drew out these 4 matters which proved critical to its reasoning namely that Uber:

- exercises '*decisive influence'* over the conditions under which that service is provided by its drivers.
- determines the maximum fare by means of its '*eponymous application'*,
- receives that fare from the client before paying part of it to the driver, and
- exercises a '*certain control over the quality of the vehicles, the drivers and their conduct'* which can '*result in their exclusion'*.

With these 4 factors in mind the CJEU then went on to hold that Uber's '*intermediation service'* had to be '*regarded as forming an integral part of an overall service whose main component is a transport service'* and accordingly it had to be classified not as '*an information society service'* but rather as '*a service in the field of transport'* under Article 2(2)(d) of the Services Directive. The CJEU drew fortification for this conclusion from its prior decisions in *Grupo Itevelesa* and its *Free Trade Agreement with Singapore* opinion.

Concluding on this issue, the CJEU ruled that the E-Commerce Directive 2000/13 does not '*apply to an intermediation service'* because it is '*expressly excluded from the scope'* of the Services Directive. Going on the CJEU ruled that Uber's service was covered by Article 58 of the Treaty of the Functioning of the EU which provides that '*freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport'* and it drew fortification from this from its earlier ruling in *Yellow Cab Verkehrsbetrieb.*

However the CJEU cautioned that this was not necessarily the end of the matter for Uber because it noted that that '*non-public urban transport services and services that are inherently linked to those services'* had not been dealt with specifically as of yet by legislation from either the European Parliament or the EU Council. So the CJEU ruled that as things stood in the EU at the end of 2017, it was for Spain (or other EU member states) '*to regulate the conditions under which intermediation services'* are to '*be provided in conformity with the general rules of the FEU Treaty*'.

The answer to the 1st and 2nd questions was accordingly that an '*intermediation service'* the '*purpose of which is to connect, by means of a smartphone application and for remuneration, non-professional drivers using their own vehicle with persons who wish to make urban journeys'* had to be regarded as being '*inherently linked to a transport service'* and had to be classified as '*a service in the field of transport'* within the meaning of Article 58(1) TFEU.

What ruling did the CJEU give on the '*unfair competition'* point?
No ruling was given because the CJEU said it was '*not necessary to provide an answer'* to this question which had been referred '*on the assumption'* that either the Services Directive or E-Commerce Directive applied.

What ruling did the CJEU give on freedom of establishment?
Again the CJEU gave no ruling on this point as it said it was no longer necessary to answer this question.

What will happen next with this case?
The case will be sent back to the Barcelona Commercial Court to apply the Grand Chamber ruling. It will also need to deal with costs.

What is happening in the UK in relation to Uber London's licence with TfL?
Uber London Limited is an English company which was incorporated in April 2012. It was licenced as a private hire operator ('PHO') by Transport for London ('TfL') in May 2012. On 26 May 2017 TfL granted a 4-month licence extension whilst it concluded its consideration of this initial 5 year licence. Uber's licence to run a minicab service in London with TfL expired on 30 September 2017. TfL has said it will not renew this licence. It its last filed accounts for the period up to 31 December 2016, Uber London recorded turnover of nearly £37million. However it also had '*administrative expenses'* of £34million which included substantial royalty payments to Uber BV to use the platform and computer programme. This meant a pre-tax profit of £3million.

Unlike its 2015 accounts, the Uber London 2016 accounts were not prepared on a '*going concern'* basis. However they do contain this important qualification about '*contingent liabilities'*:

> *'The Uber Group operates in a dynamic industry, and accordingly can be affected by a variety of factors. The Uber Group believes that changes in any of the following areas could have a negative effect on the Uber Group in terms of its future financial position, results of operations or cash flows. The Uber Group exposure to numerous legal and regulatory risks, including, amongst others, the application, interpretation and enforcement of existing regulations related to the Uber Group's business model, as well as risks related to the development of new regulations, and claims and litigations related to the Company's classification of drivers as independent contractors. However the company is remunerated on a costs plus basis, as such any claims would ultimately be born by Uber BV*.'

On 19 December 2017 Westminster Magistrates Court held a preliminary hearing in relation to Uber London's appeal against TfL's licence revocation. The Independent Workers Union of Great Britain are seeking to intervene in this case to make representations about the working hours that some Uber drivers work contending that some drivers are working for Uber for more than 60 hours a week.

On 3 March 2017 Mr Justice Mitting sitting in the Administrative Court of the High Court partially upheld a judicial review that Uber had brought in relation to licence conditions that TfL had imposed. Mitting J upheld a requirement in relation to competence in the use of the English language by Uber drivers. However Uber has been granted permission to appeal in relation to the English language requirement. This appeal will now be heard by the Court of Appeal over 3 days starting on 20 February 2018.

What is the present position on Uber London having lost in the Employment Appeal Tribunal?
In *Pimlico Plumbers,* in the Employment Tribunal, Judge Corrigan ruled that the plumbers were '*workers*' for the purposes of the Working Time Regulations 1998 and HHJ Serota QC in the Employment Appeal Tribunal agreed with this ruling. This ruling was upheld (but with some other observations) by the Court of Appeal on 10 February 2017 - **[2017] EWCA Civ 51**. On 9 August 2017, the Supreme Court of the United Kingdom granted the employer permission for a final appeal. This has been listed for a 2 day hearing to start on 20 February 2018.

On 10 November 2017 HHJ Eady QC handed down her reserved judgment in which she roundly rejected Uber's appeal on all points from the 28 October 2016 decision of a London Employment Tribunal **[2016] EW Misc B68 (ET)** who ruled that Uber drivers were '*workers*' -**[2017] UKEAT 0056_17_1011.** On 21 December 2017 Uber lodged an application with the Court of Appeal **A2/2017/3467** seeking permission to appeal this EAT ruling. It had been thought that Uber would seek a 'leap frog' appeal so that it could appeal directly to the Supreme Court but this no longer appears to be the case.

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