

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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Taxi, ride-sourcing and ride-sharing services - Note by Peru

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More documents related to this discussion can be found at www.oecd.org/daf/competition/taxis-and-ride-sharing-services.htm.

Please contact Mr Chris PIKE if you have any questions about this document
[Email: Chris.Pike@oecd.org]

JT03432180

Peru¹

1. Introduction

1. Conventional taxi services in Peru are regulated by local authorities (Provincial and District Municipalities). Rules include the compulsory physical elements that a taxi unit should comply with. For instance, car units should have a yellow stripe on each side, a taxi fixed sign over the roof and the carriage plate printed on both lateral sides of the vehicle. As in other jurisdictions, authorities grant licenses to individual taxi drivers for an administrative fee. Digital platforms related to taxi rides, car sharing services or similar services have no specific regulation and, as in other jurisdictions, are not subject to supervision of a sectoral authority.

2. Conventional taxi fares are not subject to regulation and are set freely by a one-on-one bargain between the driver and the customer. In some cities however, taxi services departing from airports and interurban bus stations may have a regulated fare. Safety is a major issue about conventional taxi services. Taxi firms that use digital applications or taxi drivers that individually join a digital platform are perceived by the general public as more trustable. This attribute together with the fact that conventional taxis do not offer a door to door service, explain, in our view, why conventional taxi services' fares are much lower.

3. According to our geopolitical and institutional framework, there are 196 provincial municipalities and 1,655 district municipalities national wide. This granularity of municipalities implies significant heterogeneity of regulatory requirements. From the point of view of INDECOPI, this notorious heterogeneity has opened many opportunities to investigate regulations that are not justified and could lead to a strong regulatory burden for the traditional taxi services in the markets. Certainly, all these interventions restrict the access of new taxi drivers, which may distort the supply side conditions and may reduce the welfare of actual and potential consumers.

4. In these cases, INDECOPI exercises a regulatory role, applying an ex-post control on administrative regulations² of public institutions such as municipalities and ministries. In particular, INDECOPI is empowered by law to identify, evaluate and remove illegal and unreasonable administrative bureaucratic barriers³ included in municipal ordinances, agreements and resolutions. It is relevant to point out that if a norm is declared as a bureaucratic barrier, once the resolution is approved or confirmed in the second instance,

¹ The document was prepared by Javier Coronado, CEO and Jorge Trelles, Chief Economist at INDECOPI.

² Relating to the reviewing and approving of proposed laws, it is important to highlight that the Commission does not have faculties to review any Law (primary legislation); but its faculty responds to the reviewing of administrative regulation (secondary legislation).

³ This control is done by a set of specialized bodies: The Commission for Elimination of Bureaucratic Barriers (hereinafter, "Commission"), the Regional Technical Secretariat of Elimination of Bureaucratic Barriers (SRB), INDECOPI's Regional Commissions and the Court of INDECOPI (its second instance). Also, INDECOPI has the possibility of applying fines up to US\$ 25,000.

the public entity who emitted the norm will not be able to impose it to any economic agent.

5. INDECOPI has begun also to play a role in terms of ordering the market by taking decisions on cases related to digital platforms getting together taxi drivers and customers. We do not envision instances in which these decisions can distort competition as we will discuss later on.

2. Cases

6. Regarding conventional taxi services market, there are two cases related to entry regulations that have been challenged by INDECOPI. These two cases were analyzed by the Commission for Bureaucratic Barriers. The commission is empowered by law to investigate illegal regulations or regulations that are not sufficiently justified. The commission may declare a regulation to be illegal or irrational, and rule that the corresponding public entity stop applying it to the specific case.

7. About a year ago, the legal framework changed, increasing the scope and impact of the commission's decisions. In particular, the commission may rule that a specific bureaucratic barrier regarded as illegal or irrational is not be applied to any citizen or firm.

2.1. Case against the Provincial Municipality of Huaral

8. The third article of the Municipality Decree N° 016-2009-MPH established a series of restricted areas for taxi services within the jurisdiction of the city of Huaral. In particular, independent taxis were forbidden to circulate around the main square area. The commission challenged the reasonability of this regulation.

9. Commission considered this article was an irrational bureaucratic barrier even though the municipality gave objective evidence (e.g. a third-party technical report) about the high levels of road traffic or air/noise pollution at that time. The reason was Municipality did not assess the impact (cost analysis) of its restriction on local independent taxi drivers (An ex-ante appraisal computed 200 independent taxi drivers as directly affected).

2.2. Case against the Metropolitan Municipality of Lima (MML)

10. The application of constructive denial ("negative administrative silence") to the administrative proceeding that grants authorization for traditional taxi services offered by legal entities (taxi remise), contained in MML's Unified Text of Administrative Procedures (TUPA), approved by Ordinance No. 1334-MML, was declared an illegal administrative bureaucratic barrier.

11. According to Commission, the aforementioned procedure was within the assumptions in which it is appropriate to apply constructive approval ("positive administrative silence"), in accordance with the provisions of article 1 of Law N° 29060, Law of Administrative Silence.

12. On the other hand, this case initiated by the firm "Taxi Crucero S.A.C." against the MML was declared concluded concerning the following bureaucratic barriers:

1. The presumed ignorance of the automatic approval rule materialized in Letter N° 5650-2013-MML/GTU-SRT issued under the Ordinance N° 1684-MML.
2. The condition to present certain requirements⁴ at the time of submitting the application materialized in Letter N° 5650-2013-MML/GTU-SRT issued under the Ordinance N° 1684-MML.
13. In particular, through Resolution N° 432-2013-MML/GTU (issued in the course of the procedure) the Municipality declared the nullity of Letter N° 5650-2013-MML/GTU-SRT and recognized that the plaintiff (“Taxi Crucero S.A.C.”) had obtained the authorization to provide the taxi service from February 24, 2012, on the grounds that its application was automatically approved. Also, the MML accepted that Ordinance N° 1684-MML that required the presentation of certain requirements was not applicable.
14. However, INDECOPI fined with US\$ 7,400 to MML for implementing constructive denial.
15. Given our particular experience and considering the relative flexibility of taxi services digital platforms, our main strategies are to constantly screen administrative regulations national wide, in a consistent manner, and to discard the sanctioning procedure, whenever it is possible, to obtain the voluntary elimination of the bureaucratic barriers imposed by any public body. Only in 2017, INDECOPI has reported the voluntary elimination of 32 bureaucratic barriers related to traditional taxi services market⁵.

2.3. Uber was responsible for unclear payment methods

16. INDECOPI’s Commission for Consumer Protection N° 3, fined Uber for not informing consumers about the effective currency in which the firm will charge for the rides. The commission confirmed that the application informed prices in local currency but charged consumers in USD
17. The decision is important because it establishes a criterion by which the firm is liable for the information that is given to consumers, even though the firm alleged that it only manages the app but has no control over certain information. Transparency of information to consumers is important to improve competition. In particular, this decision regards that price uncertainty because of flawed information may distort the ability of consumer to make better decisions.

⁴ The additional requirements were:

1. New application form for authorization to provide taxi service.
2. Affidavit indicating the communication system of the taxi central station and indicating the means through which the communication will be made (telephone number, website address, among others).
3. Evidencing a minimum vehicle fleet of ten (10) units owned by the company.
4. Payment of proceedings fees, after the inspection with favorable result of the taxi central station.

⁵ The distribution of these barriers is: five (05) from Ministry of Transport and Communications, twenty (20) from MML, five (05) from the Provincial Municipality of Callao, one (01) from the Provincial Municipality of Tarma and one (01) from the Provincial Municipality of Huancayo.

3. Taxi and car sharing apps are not unfair competition for conventional taxi services

18. In a series of decisions regarding administrative demands against taxi platform services for unfair competition, the Commission for Unfair Competition at INDECOPI, ruled that the platforms cannot be regarded as unfair competition for conventional services because they do not actually provide taxi services.

19. Conventional taxi drivers demanded that INDECOPI should fine and restrict platforms services because they serve the market without the corresponding licenses. The law of unfair competition considers against the law to provide a service without getting all the corresponding licenses. The commission considered in all but one case that platforms do not actually provide taxi services. In a specific case, a firm accepted that it truly offered taxi services, more in the way of a conventional call center service, and did it without conveying with all the corresponding regulations.

20. These decisions are consistent with a view by which competition in the market should be enhanced by digital platforms. According to a recent newspaper article, there are about seven apps competing in the market, producing a global revenue of about S/. 240 million.⁶

21. According also to a recent independent survey in Lima, about 68% of taxi users still prefer conventional services, and in particular, services taken on the street. However the percentage of customers using call centers are only of about 6% and is expected to reduce in favor of rides demanded through platform services. These figures mean that digital platforms are having a positive impact over general competition in the market and there seem to be even somehow robust platform competition.⁷

⁶ <https://larepublica.pe/marketing/861018-las-aplicaciones-de-servicio-de-taxi-y-su-posicionamiento-dentro-del-mercado>

⁷ <https://elcomercio.pe/lima/transporte/limenos-prefieren-utilizar-taxis-calle-423102>