

# Regulating E-Commerce Transport Businesses: A Case Study of Uber in South Africa

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**Abstract:** This article contributes to the debate of government regulation versus market self-regulation in South Africa by focusing on the app-based transport business Uber. The article examines the challenges which the government has encountered in developing a regulatory framework for transport app e-hailing business and similar businesses. The author considered some international perspectives in order to unpack how other governments have tackled this challenge. The role of the government is to control the business environment by providing regulations which promote business establishment, free markets, fair competition, and consumer protection. As a result of globalisation and consumer demands, Uber has taken a foothold in South Africa and with it, a new challenge has emerged for the State as a regulator. The challenge is now on government to navigate the complex slippery slope of over or under regulation of e-commerce. This article is underpinned by the Stakeholder theory as its theoretical lens. This article is based on primary and secondary desktop information including existing policy, parliamentary reports, peer reviewed articles, academic books, news reports, government policy documents. The author uses context analysis in order to consider the implications of government regulation on Uber in line with the National Land Transport Amendment Bill. The author examines the proposed Bill to regulate Uber and other application-based transport businesses in South Africa. The paper assesses the role the government should play in proactive regulation by considering the advantage and limitations of this role. Finally, the paper draws on lessons from the international perspective by examining their regulation of Uber and the outcomes of some of their regulatory approaches.

**Keywords:** E-Commerce, Government regulation, Market self-regulation, Transport business

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## 1. Introduction

In the past five years, there has been a growing concern by the government over the negative impact of self-regulated technology and innovation driven businesses in South Africa. Over the past ten (10) years, the trends emerging from the technology fourth industrial revolution and globalisation have seen businesses adopt mobile applications or apps to connect with consumers. These mobile application programmes have cemented their position in various business sectors including transport, hotel and hospitality, banking and finance, advertising, booking systems, tourism, online retail stores and social media. These large multinational technologically innovative businesses have changed and continue to change the nature of business, industries, economic growth and development (Puche, 2019). Moreover, they are perplexing most governments by proving complex to develop a regulatory framework for them due to their disruptive nature (Collier et al., 2018). This paper is based on Uber regulation in South Africa including the major concerns which the government has to consider

in developing a regulatory framework for Uber. The author argues that the government should be at the forefront when it comes to establishing a regulatory framework for Uber and related online, e-commerce businesses in South Africa. The innovative online app-based transport service *Uber* has changed and challenged the traditional approach to policy formulation and regulation and other occupational compliances such as occupational licensing (Cramer & Krueger, 2016). These new and innovation business models are designed in a way that start-up costs and running costs are relatively low, making it for them to grow and expand seamlessly (Jordan, 2017).

According to Wyman (2017), e-cab applications such as Uber have a less stringent and a simpler self-regulatory framework. The author is of the opinion that the self-regulation approach leaves room abuse on multiple levels. As seen with Uber, self-regulation has resulted in a poor organisational culture within Uber, passenger safety and violation of user privacy (Jordan, 2017). Thus, the author maintains that the government has to play a bigger and

more pro-active role in regulating Uber. The paper begins by briefing presenting and discussing the research methodology used in this study and theoretical framework guiding this study. It then follows by providing a background to Uber in South Africa, this is then followed by the problem statement. The author then provides some definitions and descriptions for Uber. This is following by a discussion on the sharing economy business model which underpins the establishment and operations of Uber. This discussion is useful in illustrating how the industry was established and why it has expanded in such a short period of time but also why it requires a different approach in regulation. The author will go on to describe Uber regulation approach in South Africa, before conducting a brief policy evaluation of the National Land Transport Amendment Bill including public participation and stakeholder engagement outcomes. This will be followed a critical discussion on the importance of pro-active government regulation of innovative and technology business industries in South Africa. The author will present some selected international perspectives on Uber regulation by looking at a few countries around the world to evaluate what the challenges of regulating Uber have been. After this the author will provide the advantages and disadvantages of regulating Uber and online Uber businesses before providing from government point of view. Thirdly, the paper will identify and present some advantages and disadvantages of regulating vs allowing for self-regulation of Uber and other online and app-based businesses in South Africa. This will be done in order to highlight the importance of government proactive role in market regulation. Fourthly the paper will draw some lessons on the regulation of Uber in a few countries by highlighting their regulatory approaches, challenges in establishing regulatory frameworks and the outcomes before making concluding remarks and recommendations.

## 2. Research Methodology and Theoretical Framework

In order for the author to pack the role of the state in regulating Uber as well as the ongoing process of regulation, the author will use a qualitative research methodology. The case study approach and strategy will be used to describe, analyse and interpret the events and approaches around Uber regulation in South Africa. South Africa is the case study under consideration. The author will use both primary (PMG reports, stakeholder reports

and policy documents) and second data (literature, existing research) as sources of data. Data analysis follows a contextual analysis as it is most suitable for country specific policy analysis. The author has noted that there is limited published research on Uber regulation policy process in South Africa. This study is anchored by the stakeholder theory as its theoretical lens in approaching the regulation of Uber in South Africa. The government is the main stakeholder due to its role as the regulator particularly in the light of passenger and driver safety as well as consumer protection (Kashyap & Bhatia, 2018). The author believes that a fair Uber regulatory framework can be adopted in South Africa if stakeholders can cooperate, be transparent and find common ground.

## 3. Background to the Study

The purpose of this background is to provide the context of South Africa's public through historical and present dynamics. This is important in order for the author to illustrate to the reader why Uber has faced hostility from its local competitors and why the government has needed to intervene. The history of public transport in South Africa like much of South Africa's history must be examined from the Apartheid era and the current democratic context in South Africa. Public transport in South Africa is a widely contested issue (Walters, 2013). The government has used the railway line and bus systems in order to cost effective mobility to citizens (Walters, 2013). However, due to apartheid's spatial development for white only communities, this also meant that the routes of buses and railway were limited to affluent neighborhoods. According to Walters (2013), more accessible taxis (minibuses) closed this gap by providing more accessible forms of public particularly for urban township communities.

The arrival of Uber and other app-based transport businesses was met with anger, resistance, and violence by the existing traditional cab and taxi operators. They were media reports of Uber and Taxify cars being set on fire, drivers being violently attacked and passengers facing intimidation were rife (Adenayo, 2019; Henama & Sifolo, 2017). Apart from the minibuses or taxi, other forms of transport which exist in this industry include public trains, buses and metered taxis. The modes of transport are used by millions of South Africans to commute to work, places of business and school amongst others. Thus, in the issues of the public transport

in South Africa, the passenger is usually affected the most. The culture of criminality, hostility and aggression which is prevalent in the taxies industry of South Africa did not spare Uber and other app-based transport providers when they arrived in South Africa (Fokazi, 2021; Maromo, 2021; De Villiers, 2018).

#### 4. Problem Statement

Business models such as Uber in South Africa have contributed to making public transport efficient in South Africa. It has had a positive impact on passenger commuting as well as tourism (Park, Kim & Pan, 2021). Uber was able to provide extra choice as an alternative to the train, bus, carpooling and minibuses. Moreover, Uber has created a competition shift in both the transportation of people and the movement of goods. Public transport is considered necessary for the movement of people, goods and services for trade purposes in any country (Mosaberpanah & Khales, 2013). Efficient public transport is therefore a necessity for economic growth and economic development. According to Mosaberpanah and Khales, (2013), the transport sector and efficient transports systems are positive multipliers for the economy because they provide access to markets, employment and investments. Uber in South Africa can be said to be a positive multiplier. Despite this positive aspect of Uber, it has brought along negative consequences such as unfair competition, threatened the livelihoods of its competitors and concerns of public safety.

When it comes to Uber, a report by the Cape Town Uber driver's guild revealed that Uber drivers were unhappy and dissatisfied with the relationship or partnership they had with Uber (PMG, 2016). Some of their complaints centered around the amount of responsibilities they must shoulder in the agreement, such as the costs of purchasing or renting a vehicle, the rising costs of fuel, traffic fines, data bills, the lack of transparency from Uber and more vehicles than agreed upon with the government (Cape Town Uber City Drivers Guild parliament report, 2016). The report cited the lack of safety for drivers and the lack of black economic empowerment in their approach.

As a disruptive technology, Uber managed to disrupt and outdate the legal framework for Land transport in South Africa and many other parts of the world as well as shake up the 'business as

usual' status enjoyed by metered taxi industry. Unfortunately, the government was not proactive in their reaction to this disruption and as a result, metered taxi owners took matters into their own hands with some deadly consequences. De Villiers (2018) reported cases of arson, stabbings and acid attacks suffered by Uber drivers at the hands of metered taxi owners and cases of arson by Uber drivers targeted at metered taxi drivers as retaliation (Burke, 2017). The metered taxis felt that the arrival of Uber was a threat to their livelihoods and thus were aggressive in addressing the perceived threat.

#### 5. What is Uber?

The question to ask is not why Uber should be regulated but rather how and how fast can adequate regulation be achieved? To answer this question, it is firstly important to define and describe Uber and Uber's business model. It is imperative that what Uber is and how it works is understood, not only for passengers and drivers but in this case for regulators. Uber has been able to capitalize on technology and demographic trends such as smartphones, social media, referrals and reviews, low barriers to entrepreneurship and zero retail inventory (Jordan, 2017). Uber plays the role of the intermediary by linking drivers and riders (Tonin, 2015; Jordan, 2017). Uber profits by takes a cut of every transaction facilitated on its app (Jordan, 2017). This is why it an app-based business. Both riders and drivers need the app in order to be able to connect and transact with each other.

According to Mohamed et al. (2019), app and internet-based business models such as Uber are constantly changing and adapting through the data which the app collects. This make them unpredictable for regulators to keep abreast with their developments, hence it is not easy for governments to regulate them. Furthermore, regulation takes time. It requires agenda setting, consultation, public participation, and engagement. By the time the government understands the nature of the industry fully, the industry might have changed or a new one might have emerged. Uber is a company which transcends borders and exists and operates across the globe. According to Marcau (2017), data in 2017 indicated that Uber was operating in more than 750 cities world-wide. The company is based in San Francisco in the United States of America (USA) and does not own any vehicles of its own. The business falls within

the scope of disruptive technology because it has changed the on-demand transport service model. Thus, the regulator approach according to Collier et al. (2018) should work against regulator capture and disruptor framework like that of Uber. According to Adebayo (2019), tap and go service offers various elements of convenience for the passengers and drivers such as payment methods, advanced booking and waiting time. In addition to those, Uber also uses real-time map services for drivers so that they know where they are going (Adebayo, 2019). In a country like South Africa where there are various crime hotspots, the driver can deny a ride request for safety reasons.

Mohamed et al. (2019) citing (Chan & Shaheen, 2012) have called it a ridesharing service which uses Geographic Information Systems (GIS) and global positioning systems (GPS) technologies on Internet-enabled smartphones to organise ridesharing in real-time, just minutes before the trip takes place. According to Wyman (2017), e-cab applications such as Uber have a less stringent and a simpler regulatory framework. This means that there is less gatekeeping thus individuals can quickly take advantage of this business model as which is marketing as an economic opportunity. Moreover, this also means that this creates a gap which the government has to use regulator to close.

## 6. Sharing Economy Business Model

Uber is part of the new crop of firms which operate using the shared economy business model. Uber is a sharing economy enterprise which is based on internet usage and access to mobile devices (Elliot, 2015). It uses a technology platform to create a market space to trade between some individuals. These individuals are those: (1) with private excess capacity and, (2) who wish to buy it from them (Stemler, 2016:32). Various researchers have coined different terms, phrases and definitions to capture and maybe define the Uber business model. In the sharing model, "sharing can be seen as a remedy to overconsumption and at the same time it has environmental benefits because it uses resources in a more efficient way" (Tonin, 2015:14). Sharing as a business model is a new social culture phenomenon which pushes back against overconsumption and over-ownership (Tonin, 2015). Traditional business models have faced disruption and outright threats of decline as a result of the success of firms emerging from the shared economy business models.

According to Kashyap and Bhatia (2018), there is a clear division of opinion amongst researchers when it comes to the sharing economy model. Some regard it with optimism whereas others approach it with caution. Nonetheless most agree that it is contributing to the employment market, the future of work, production, productivity and collaboration (Kashyap & Bhatia, 2018:170).

In highlighting some benefits of the shared economy business model, Henam (2020) citing Tatum (2017) argue that we must acknowledge the benefits it provides for the economy through the saving or earning of money by an individual, the promotion of sustainable consumption-less vehicles on roads that makes it environmentally friendly, social relations through the meeting and making of new friends as well as access rather than ownership which creates more choice for the consumer. Perhaps the last two points are more utopian ideals rather than practical advantages in some contexts. Moreover, the City of Cape Town found that Uber had more vehicles on the roads than the licenses the City had issued. Therefore, the argument of less vehicles on the road is an opinion which requires proof.

According to Henama (2020), the disruptive nature of sharing economy which comes about as a result of breaking down barriers of entry to compete with established solutions using technology solutions. They are able to disrupt the status quo, ways of doing things, competition barriers, access, corporate governance, financial models and traditional business models.

## 7. Uber Regulation in South Africa

The government approach to regulating Uber is line with government's role as a policy marker and implementor. Transport industry regulation is an activity which the government has carried over the years. According to Walters (2008, 2013, 2014), over the years, the government has amended or developed policies and frameworks to deal with various forms of public transport in South Africa such as contracts, licenses, funding and partnerships. Some of these included land and rail transport Acts, White Papers, Frameworks and strategies (Walters, 2013). It should therefore come as no surprise that the government saw the need to Uber. This would involve the amendment of existing policies. The need to regulate Uber goes beyond regulating its business model but also it entails ensuring that Uber and its

drivers adhere to other critical road transport processes such as licensing and occupational licensing (Cramer & Krueger, 2016).

## 8. The National Land Transport Amendment Bill

The introduction of the National Land Transport Amendment Bill [B7B-2016] came about three (3) years after e-hailing transport took off in South Africa, that is, Uber arrived in 2013 and the Bill was introduced in 2016. The government saw this as an opportunity to recognise and respond to changes in the South Africa public transport system. In a speech made by the transport minister Fikile Mbalula, he stated that the Bill was to be seen as a critical piece of legislation in the government's ongoing efforts to make public transport responsive to the needs of the people (SANEWS, 2020). According to Law for All (2021, Online), the public was invited to submit comments to the Bill in 2013. The recognition for the need of stakeholder engagement is an important aspect of the policy process in South Africa. Stakeholder engagement, as well as public participation are elements which make the policy process transport. For example, when the government was coming up with an appropriate definition for this new public transport model. This proposed definition was later hailed as problematic by Uber and Bolt representatives felt that the definition used was insufficient. During the stakeholder's engagement *"Uber requested that e-hailing be introduced into the definitions section of the National Road Transport Act (the Act) instead of being defined as it was in the Bill at present, as a sub-category of metered taxi association definitions. It asked that in any cases where there was to be a moratorium on the issuing of operating licenses, this should be done strictly in accordance with the Promotion of Administrative Justice Act"* (PMG, 2016). On the government end of the same session, they stated that Uber was more of a labour broker than a partner with the drivers as Uber claimed (PMG, 2016). The government's sentiments were welcomed by Uber Drivers Guild who agreed that *"Uber drivers were not in fact partners, because they were not permitted to have any say in the Uber policies, were dictated to, found themselves in contracts that they could not contribute to as equal partners and ended up with loan agreements that they could not meet. Uber was felt to be threatening the livelihood of its members"*.

In the Bill, Uber and related modes of transport were defined as "electronic hailing service" or 'e-hailing

service' public transport service operated by means of a motor vehicle, which: (a) is available for hire by hailing while roaming; (b) may stand for hire at a rank, and (c) is equipped with an electronic e-hailing technology enabled application, as contemplated in section 66A" (2016). The definition should be examined and understood within the context of the South Africa public transport system where the phrase "may stand for hire at a rank" refers to areas which the government designates for public transport to park their vehicles whilst waiting for customers. In this case Uber stops anywhere and generally does not make use of taxi ranks.

The inclusion of public commentary in the policy process of South Africa is a key point to ponder. The public is made up of consumers who are users of the service, potential workers/contractors of Uber and those who will use this as a business or investment opportunity. This reflects the principles of the Stakeholder theory, which urge organisations to be cognisant of their stakeholders in order to achieve superior performance (Laplume, Sonpar & Litz, 2008). In this case, by recognising Uber, Uber drivers and the general problem stakeholders to public transport.

## 9. The Importance of Pro-Active Government Regulation of Innovative and Technology Business Industries in South Africa

Heman and Sifolo (2017) refer to innovative and technology businesses as disruptive in nature. This is a fitting reference as innovative business models not only disrupt traditional business models, concepts and operations but they also change the ways in which consumers use or access a product or service. Regulation is not a singular process or approach. Businesses being regulated should play an active role in the process to ensure engagement and transparency. Cannon and Summers (2014) believe that firms operating in the sharing economy locus have a role to play in the regulation process. If they are not careful, they will constantly pay fines, face legal action or even lose their license or right to operate in a city of country. The role of firms in regulation processes is to be offensive rather than defensive when dealing with regulators (Cannon & Summers, 2014).

Regulation of new players in an industry remains salient due to a number of factors such as hostility,

legal compliance, and healthy competition. Uber drivers in South Africa experienced the brunt of taxi violence and its effects. Cases of conflict and violence between Uber and metered taxi drivers were reported (Adebayo, 2019). According to Adebayo (2019), the government also waged war on Uber by impounding 300 Uber vehicles in Cape Town.

The competition commission (2020) noted that "the competition between the metered taxis and e-hailing services was largely driven by technological developments which Uber took advantage of. Uber was considered to be unfair in its approaches due to a number of reasons. Firstly, the complaints were against Uber's set standards for joining their network or partnership, which were considered too high by metered taxi owners and or drivers. For example, according to Uber's joining policy, the vehicle of the partner driver should meet certain specifications and requirements such as: "5-door hatchbacks (minimum year 2013), 4-door sedans (min year 2011) and from 1 Jan 2022, only sedans that are 5 years or newer (or 2017 & newer) will be eligible for UberX requests ABS, passenger and driver airbags safety features fitted to all vehicles" (Uber Inc, 2021). Most metered taxi owners have vehicles which are older than 15 years and thus felt that they could not meet these requirements. Moreover, the drivers of Uber according to the Cape Town Uber driver guild report (2016), Uber had allowed for more cars in Cape Town, this made the competition to be steep among Uber drivers. Early this year, Uber amended their car requirements to include cheaper hatchback under UberGo vehicles in major cities in South Africa (MyBroadband, 2021).

Secondly, Uber charged less for its services to passengers, and they made it too competitive for metered taxis who have enjoyed years of monopolistic high taxi fares. Thirdly, some owners of metered taxis did not like the idea of giving a percentage of the passenger fare to Uber or similar partner apps. Fourthly, Uber discriminates against individuals with criminal records, whereas the metered taxi drivers may have had criminal records and thus felt that they could operate in those industries without anyone's knowledge of their criminal records. All the above factors made owners of metered taxis feel that Uber was encroaching on their territories and threatening their livelihoods. Early this year (2021) some Uber drivers felt that Uber was exploiting them as drivers, thus they approached some law firms which could assist them with a class action

lawsuit. The purpose of this Class action lawsuit is for drivers to be recognised as employees, thereby getting benefits such as paid holidays or vacation leave and compensation for overtime under existing South African legislation (Magubane, 2021).

## 10. International Perspectives on Uber Regulation

The proposed regulation of Uber is not unique to South Africa alone. Uber has faced opposition in many countries in which it operates. Some countries have gone as far as to criminalise Uber and made it illegal for it to operate in those countries (Oppengaard et al., 2020; Tonin, 2015). Some countries like the UK and India have accused Uber of using the entrepreneurship discourse to gain legitimacy (Shalin & Raju, 2019; Mohamed et al., 2019). Uber has successfully outmaneuvered regulators and competitors around the world and thus Dudley et al. (2017) refer to it as a regulator disruptor. The focus of regulation has been different in the countries where Uber has been successfully regulated. Some aspects or target of regulation have been targeted at occupational licensing (Cramer & Krueger, 2016), the employment status of Uber drivers (Lomas, 2021; Enwkwe, 2021; Cape Town Uber Drivers' Guild report, 2020), the rules around price surging (Singh, 2020), the percentage the drivers get to keep from the Uber fare, passenger safety (Singh, 2020; Topham, 2019).

## 11. The United States of America

Uber is an American established and based business. The USA government has not been able to develop legislation to provide the cab drivers protection against the competition brought by Uber. The initial approach to regulator Uber in the USA was done via sending cease and desist letters to Uber by city authorities for flouting price and industry entry controls (Collier et al., 2017). Subsequently, cab drivers fell on the wayside of this new industry and most lost their livelihoods. According to Wayman (2017), the United States government has failed to regulate and keep abreast with changes in the transport system. Moreover, she argues that the United States regulators have also failed to revisit the heavy regulations which have for decades governed the traditional metered taxis industry. The outcome of this failure has left traditional taxis at a competitive disadvantage (Wayman, 2017:5-6). The case of Uber in the USA is unique as a result of different

states having the power to create their own laws and regulations. Thus, there has been no uniform approach to regulating Uber there. Moreover, in the US, regulation has been met differently depending on the political sphere of government (Flores & Rayle, 2017). In addition to this, some cities such as San Francisco have been welcoming and less hostile to new technology companies like Uber (Flores & Rayle, 2017)

## 12. The United Kingdom

Countries such as the UK have successfully regulated Uber and its subsidiaries. Although this process was not an easy fit for the regulators to achieve. According to Dudley et al. (2017), Uber used its technology to undercut and undermine a transport system of the black cab which had been set as early as the 1960s. According to Mohamed, Rye and Fonzone (2019), the British government encountered challenges when it came to developing a concise definition Uber when it was developing a regulatory framework. Despite this the government did not let this be a hinderance to its objectives. The key requirements for Uber to operate in the UK includes the status of its drivers who were to be employees of Uber and not partners. Uber lost its license to operate in the UK in 2019. According to CNBC Online (2019), the decision to revoke Uber's operating license was a response to compromised passenger safety. This was after it was discovered that some Uber drivers used fake identities (Topham, 2019). It is the issue of safety that the South African government highlights as the main motivation for developing better regulations for Uber.

Research conducted by Mohamed et al. (2019) on Uber regulation in London highlighted the need to develop specific transport policy measures and regulations for ride-sourcing services, which must take into consideration input from all relevant stakeholders. The input aspect has been achieved by the South African government in their approach of inviting the public and stakeholders for input in the proposed bill. However, South Africa's transport authorities unlike their UK counterparts, are as ill-equipped in the knowledge and lack the skills capacity needed to manage and regulate such disruptive technology and innovative services.

Some of the lessons which can be learned from the UK on Uber regulation is that of labour relations

and corporate social responsibility. According to the Economic Policy Institute (2021), Uber's relationship with its drivers came under scrutiny in the UK Supreme court. The court's ruling indicated that Uber misrepresented or over-represented its model as an entrepreneurship, partnership and business opportunity. Furthermore, the conditions of employment by Uber were not compliant for all intents and with the UK's employment requirements (Fredman & du Toit, 2019). This presents a few takeaways for South Africa's contested employment relations and policies. Current labour legislation in SA needs to be amended to accommodate the new category of employees and new forms of innovative working conditions (Chayya, 2018). The loss of livelihood was experienced in developed countries including the USA and UK when Uber quasi taxis drove traditional metered taxis out of business. Although the UK was able to come up with ways in which to mitigate this problem such as restricting areas/cities where Uber would operate, thus leaving many other cities and towns for metered taxis

## 13. Kenya

The main complaints in Kenya have come from traditional metered taxis and other public transport participants who complained about the "unfair advantage" which Uber has (Adebayo, 2019). Perhaps the issue of loss of income and livelihoods should be at the heart of regulation in a country with high unemployment and inequality like South Africa. It is up to the government to find ways in which they can embrace new technologies and their opportunities but also ensured the survival of existing firms. In Kenya, the arrival of Uber did not attract the attention of regulators. According to Sperber (2020), only after Uber has acquired a large chunk of the transport market did the government respond. Moreover, disgruntled Uber drivers created an uproar when Uber allowed for cheaper vehicle models to enter the market. The existing Uber drivers felt that this was unfair as it made it difficult for them to make profits. As recent as 2020, the Kenyan government proposed new regulations which Uber drivers must adhere to. These include a taxi app hailing licenses, the drivers have been limited to work more 8 hours a day, drivers are prohibited from rejecting trips (The Kenyan National Transport and Safety authority Online, 2020). It is important to note that they are proposed regulations which still require public participation and comment.

## 14. Nigeria

In Nigeria, Uber regulations are in the process of been developed and enforced (Pau, 2020). The current regulations are focused on the tax obligation by Uber to the government as well as licensing. This includes paying 10% taxes by all operators to the government as a service fee. The 10% comes from all the fares which the drivers make. The author feels that this is an unfair approach by the government as drivers have other costs which fall on them including vehicle maintain, paying for fuel costs, data and other related costs. When it comes to issues of labour relations between Uber drivers and Uber, the existing framework has been said to be failing to close gap of exploitation. This has left Uber drivers to be exploited by Uber (Enwkwe, 2021).

## 15. Nordic Countries

In some Nordic countries such as Denmark, Finland, Norway and Sweden, Uber was unable to plant its roots and initiate sustainable operations. This was mainly due to two reasons. The first was that many individuals met the requirements of Uber Pop to be drivers but did not meet the countries' licensing requirements set in taxi regulations (Oppegaard et al., 2019). The second barrier was the numerous legislations set such as unchanging and unyielding taxi regulations, which most of these countries refused to amend (Oppegaard et al., 2020). Despite these restrictions, Uber launched its services in the aforementioned countries.

To date only Finland has amended its legislation and decriminalized Uber thus allowing Uber to operate (Oppegaard et al., 2020; Lomas, 2018), this comes after new taxi regulation were implemented in Finland in July 2018, providing Uber with the legal conditions for re-launching its operations in the country. The deregulation removed the numerical restrictions on taxi licenses, the maximum price regulation and the obligation to be organized by a dispatch center. The author believes that the approach taken by the Finish government ensures that Uber creates employment beyond that of drivers, passengers are protected and drivers are monitored to ensure the safety of all passengers. The other issues identified against Uber in Nordic countries include tax evasion by Uber drivers in Sweden, job and social security status of Uber drivers in Norway, inability of drivers to unionize

in Sweden, low hourly rate and long hours of work for little money Oppegard et al. (2019). It is also interesting to note that Uber has raised the issue of unfair competition in Nordic countries. Perhaps for the first time, this is not a case of metered taxis crying foul.

## 16. India

In India, Uber regulation has been centered around consumer needs. For example, during the surge or peak time operating such as when the demand for Uber and other app-based business Ola, the surge price cannot be more than 1.5 times of the regular fare (Singh, 2020). Other guidelines protecting drivers maintain that "drivers will not be allowed to work for more than twelve (12) hours in a day, and that the companies need to provide them insurance cover" (Singh, 2020). This echoes the proposed amendment of working hours in Kenya, which will be limited to eight (8) working hours for all Uber drivers.

## 17. Government as a Regulatory Agent: Challenges and Opportunities

The challenge of regulating disruptive technology and online businesses is a global phenomenon which is being faced by many other governments around the world as illustrated above (Shwab, 2016). On one hand, there is the danger of over-regulating and stifling the sector, which may lead to future investors to perceive South Africa as a hostile environment for investors. On the other hand, cases in international perspective above highlight the implication of Uber where regulation is not stringent. Regulation presents opportunities such as protecting and promoting of fair competition, protecting the consumer against unfair and exorbitant fares, the protection and promotion of fair and sustainable law practices, driver and passenger safety, the cushioning of metered taxi drivers against the onslaught of Uber.

The opportunities presented above can prove challenging for regulators to manage. For example, as indicated during the stakeholder engagement between the government and Uber in parliamentary group report, Uber did not appear to take the proceedings seriously but sought to change the direction of the discussion in their favor. The second challenge is that of finding an appropriate but fair approach in regulating Uber ills. This is

because, it is important as a regulator to recognise that the nature of a profit business is profit making. Thus, all expectations should be researched and engaged fairly. The third challenge is that of the government (regulator) know of its opponent. This is where the importance of research comes to the fore. The final challenge in regulating Uber is that of protecting existing metered taxi drivers. The author has observed one successful of this approach. This has been at the airport (OR Tambo in Johannesburg) where Uber and metered taxis drivers have well-known separate spots for picking up passengers.

## 18. Conclusion and Recommendations

Government cannot defer its regulatory duties to businesses and to the private sector. By understanding that innovation and technology provide unique dimensions to regulations, the government can create commissions or special tasks teams with knowledge and expertise of an industry or a business model. New industries may come as opportunities; however, it is the duty of the government to interrogate these "opportunities" especially where labour relations and livelihoods are at stake. In some of the cases considered, many individuals were quick to purchase new vehicles and buy in the marketing partnership. The government should thus analyse these partners through the lens of fair labour practices or allow for these relationships to be piloted before signing on to them.

A key requirement of the policy process in South Africa is public and stakeholder participation which has thus far, in the proposal Transport Amendment Bill, been achieved. A review of that engagement showed that Uber was trying to outsmart the government and was not sticking to the real issues at hand. The author found it interesting that some Nordic countries made it difficult and even illegal for Uber to operate in their countries, this means that on the one hand they have protected their taxi industry and on the other hand but at the same time they have lost out on potential to create new jobs. Perhaps, they believe that the tradeoff getting jobs is not sufficient as other countries experienced as they have resulted in the loss of existing jobs held by metered taxis drivers. Regulation of Uber and related business models is not just a strategy for the state to protect existing livelihoods but also gives the state an opportunity to uphold, to form and enforce fair labour practices such as remuneration, job security, health and

safety while allowing the business to make profit. The best or rather noteworthy approach can be said to be that undertaken by India where the guidelines put in place protect and empower in the drivers and passengers. However, despite this noble approach, research has to be conducted to see if this approach has not perpetuated unfair competition and eliminated the cab/taxi industry. The government needs proactively consider the needs of Uber drivers in South Africa. The government should take a firm stance on Uber regulation by balancing the economic opportunity it provides against driver's labour rights as achieved by UK courts. This has been by recognising Uber drivers as employees and protecting them in line with the country's labour laws. It also has to put consumer protection at the center of its regulatory framework to enhance the service the consumer is receiving. This safety enhancement is not just physical harm but also against consumer exploitation. It is thus imperative for the state to act but act in a way which protects and promotes existing industry benefactors, drivers and passengers in this disruptive shift in the transport industry.

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