

# Court issues milestone ruling for sharing economy and digital platforms

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March 14 2017 | Contributed by Pérez-Llorca

Litigation, Spain

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On February 3 2017 Madrid Commercial Court 2 ruled in favour of French company Comuto and its Spanish subsidiary with regard to the unfair competition claim brought by Confederación Española de Transporte en Autobús (Confebús).

## Facts

Confebús, the biggest association of bus transport service companies in Spain, filed a lawsuit against Comuto requesting that it stop its activity in Spain and shut down its website 'www.blablacar.es'. Confebús alleged that Comuto was acting unfairly in the Spanish market – particularly in the transport sector – as it did not have the required licence to provide passenger transport services.

## Decision

Confebús's request was unsuccessful. The ruling put an end to the two-year proceeding, although Confebús is expected to file an appeal with the Madrid Regional Court.

## Comment

This is a pioneering ruling for many reasons. First, as BlaBlaCar's managers repeatedly pointed out, Spain is the only jurisdiction in which ride-sharing is unfairly pursued by private operators and public authorities. Further, this is the first time that a commercial judge has ruled on the issue of digital platforms and the sharing economy. More importantly, the judge ruled that BlaBlaCar's operation of a digital platform through which people arrange to share a road journey (and the associated costs) is legal and does not constitute a transport activity. Finally, this ruling is the first step towards establishing the long-awaited legal framework for this type of activity.

### ***Operation of digital platform does not constitute transport activity***

The court correctly found that BlaBlaCar's activity does not constitute a transport activity. It examined BlaBlaCar's activity with regard to its development of the platform, as well as that of its users. According to the ruling, BlaBlaCar has perfected the practice of sharing travel costs. Whereas this practice has long since existed, new technologies have allowed it to develop in such a way that was previously impossible, and BlaBlaCar has harnessed this new technology.

As stated in the ruling, BlaBlaCar gathers certain information from its users and requires certain conditions to be fulfilled. This information is not gathered in order for BlaBlaCar to participate in the platform's underlying activity (ie, travelling together by road and sharing the cost), but rather to:

- improve users' experience; and
- ensure that they are not using the platform for commercial purposes, as it allows BlaBlaCar to detect and remove users who are using the platform for any reason other than its stated purpose.

The fact that BlaBlaCar charges a commission for the management of this information, which allows users to get in touch in order to travel together, does not change the nature of the service or render it a transport activity.

### ***New framework for digital platforms and sharing economy***

Further, this ruling marks a change in the way public authorities approach digital platforms and the sharing economy, as the court made an effort to understand that society has changed. In light of this approach, a situation that could not have been foreseen at the time the law was enacted cannot automatically be considered to be prohibited. Specifically, the court ruled that BlaBlaCar's activity:

- falls under the scope of the EU E-commerce Directive (2000/31/EC); and
- has led to the development of new, more competitive markets, which is in the public interest.

With regard to this type of business, the court held that:

*"Not only is the public interest not being violated but in fact it benefits from the development of these new technologies that allow for the proliferation of new, more competitive markets. These new and more productive markets imply a price reduction and guarantee a greater choice and quality of services. This is in the interests of consumers and users and therefore the economy in general."*

It remains to be seen whether the ruling will spur the public authorities to develop specific legislation for the sharing economy as, according to the ruling, companies such as BlaBlaCar "are not sufficiently regulated in Spain".

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