

Uber survives to fight another day in London, but for how long?

Blog post by Senior Associate Max von Thun, 30 September 2020

Defying expectations that it would be banned from the city entirely, yesterday Uber won an appeal at a London court enabling it to continue operating in the British capital. While acknowledging Uber's historical failings, the court argued that the ride-hailing platform was "fit and proper" to continue serving customers in London, subject to fulfilling certain conditions. It rejected arguments that Uber had sought to deliberately mislead its users and regulators, instead putting its troubles down to "misplaced optimism".

The high-profile case dates back to October 2017, when Transport for London (TfL), the city's transport regulator, found Uber not "fit and proper" and revoked its licence due to perceived failures in reporting serious criminal offences. Uber appealed the ruling and has since received a number of temporary reprieves from both the courts and TfL itself, before being stripped of its licence for a second time by TfL last November after the regulator identified new safety breaches. Uber once again appealed TfL's decision, with yesterday's ruling being the result.

Yet while Uber CEO Dara Khosrowshahi will undoubtedly be celebrating his company's victory in one of its most important global markets, there are a number of reasons for him to remain cautious. To start with, Uber's licence has only been renewed for 18 months, compared to a maximum possible period of five years. Uber will have to devote substantial time and resources towards closely monitoring its safety practices and complying with the ruling's 21 conditions to avoid further trouble in early 2022. With London's mayoral elections set to take place next May, incumbent Sadiq Khan - who has made being tough on Uber a political priority - is likely to keep up the pressure on Uber to prove it has truly changed its ways.

Uber's legal troubles are not over either. In the coming months, it is set to receive a ruling from the Supreme Court regarding a separate case on employment rights. The final appeal, which Uber is expected to lose, hinges on the question of whether its drivers should be considered as self-employed or as "workers" for the purposes of employment law. If the UK's highest court opts for the latter, agreeing with the decisions of every lower court that has examined the case so far, it could ultimately lead to Uber introducing driver benefits including the minimum wage and paid holiday and sick leave.

This would lead to a significant increase in costs that as a perpetually lossmaking business, Uber may struggle to absorb. It would come on top of a fall in revenues caused by the covid-19 crisis - its ridesharing business has shrunk by 75% - and an increasingly competitive London market following the entry of rivals Bolt, Kapten and Ola.

More generally, although the ruling only applies to Uber it is likely to have wider consequences for the ride-hailing sector in London. The issues with Uber's safety procedures identified by TfL will

shape how it regulates its other companies. Moving forward, it may well seek to redeploy the threat of licence revocation as a means of forcing firms to change their practices. This in turn may precipitate attempts by Uber's competitors to pre-empt regulatory action by highlighting their superior safety records and cracking down on or preventing the practices criticised by TfL in Uber's case. However, compromise may be facilitated by both sides' wariness of getting tangled in protracted legal disputes.

Both Sadiq Khan and TfL may use the court ruling as a useful foil for deflecting criticism from taxi associations and trade unions for not doing enough, by arguing that the decision has been taken out of their hands. And while Uber's survival will be interpreted in many quarters as a loss for the mayor, it would not be a surprise if he tries to portray his three-year battle with the American tech company as a victory for pragmatism that has allowed for the continued operation of a service Londoners value, while eliminating its most egregious practices. May's elections will reveal whether voters agree.