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ANTRAL
Associação Nacional dos Transportadores
Rodoviários em Automóveis Ligeiros

[REDACTED]
Av. Eng. Arantes e Oliveira, nº15
1900-221 LISBOA

By e-mail: a.marques.sg.antral@gmail.com

Subject: Case AT.40336 ANTRAL
Commission Decision rejecting the complaint
(Please quote this reference in all correspondence)

Dear [REDACTED]

- (1) I am writing to inform you that the European Commission (the "Commission") has decided to reject your complaint against Uber Technologies Inc ("Uber"), pursuant to Article 7(2) of the Commission Regulation (EC) 773/2004.¹

1. THE COMPLAINT

- (2) By e-mail dated 19 December 2014, ANTRAL brought to the Commission's attention a letter that it had sent to the Portuguese Ministry of Economy. In its e-mail, ANTRAL complained to the Commission about a lack of enforcement actions on the side of the Portuguese authorities concerning alleged illegality of services provided by Uber in Portugal. On 5 March 2015, a meeting was organized upon ANTRAL's request to discuss the possible competition concerns, if any, related to the provision of services by Uber in Portugal.
- (3) By e-mail of 26 March 2015, ANTRAL questioned whether the provision of services by Uber in Portugal could be in breach of Articles 101(1)(d) and 102(a) and (c) TFEU. ANTRAL notably questioned:

¹ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, Official Journal L 123, 27.04.2004, pages 18-24.

- (a) Whether there is an agreement between the companies forming Uber (and that provide services for road passenger transport by car under unequal conditions in comparison to licensed taxi operators), which would be against Article 101(1)(d) TFEU; and
 - (b) Whether requiring taxi companies to carry out services for road passenger transport by car under the defined regulatory framework would not mean that unequal conditions are applied in similar circumstances in violation of Article 102(a) and (c) TFEU.
- (4) On 3 May 2015, ANTRAL also informed the Commission of the interim judgement of the Comarca de Lisboa - 1ª Secção Cível ("Judgement") by which the national court prohibited the provision of Uber's services in Portugal and imposed a number of enforcement measures until the judgement² in this matter would be reached.
 - (5) The Commission, following a request for access to the documents of 15 January 2015 by Uber, with ANTRAL's consent of 26 March 2015, sent to Uber ANTRAL's e-mail of 19 December 2014 and ANTRAL's letter of 19 December 2015 sent to the Portuguese Ministry of Economy. Uber has to date not submitted any comments on the documents provided.
 - (6) By letter of 27 October 2015, the Commission informed ANTRAL of its intention to reject its complaint. In response, by e-mail of 13 November 2015, ANTRAL raised several questions, concerning the Commission's reasons for intending to reject ANTRAL's complaint. A meeting between the Commission and ANTRAL took place on 7 December 2015 in which the Commission explained the grounds for the preliminary conclusions presented in its letter of 27 October 2015.
 - (7) ANTRAL made additional observations in its letter of 21 December 2015 stating that:
 - (a) Uber is dominant in Europe because Google is one of its shareholders and Uber therefore constitutes part of the Google platform, which is currently being investigated for possible abuse of market dominance,
 - (b) Uber is gaining advantages through positive discrimination as it is not subject to same requirements as taxi operators, and
 - (c) Uber is in breach of EU rules on working time of self-employed people, thereby obtaining illegal advantages through substantial discrimination.

Finally, according to ANTRAL, Uber uses a virtual tool to carry out a commercial activity for commercial gain without complying with EU rules, particularly as regards equality and non discrimination, on abuse of a dominant position.

² The Commission notes that the judgement in this matter was adopted on 24 June 2015, which confirms the measures adopted in the interim judgement of 23 April 2015.

2. THE NEED FOR THE COMMISSION TO SET PRIORITIES

- (8) The Commission is unable to pursue every alleged infringement of EU competition law which is brought to its attention. The Commission has limited resources and must therefore set priorities, in accordance with the principles set out at points 41 to 45 of the Notice on the handling of complaints.³
- (9) When deciding which cases to pursue, the Commission takes various factors into account. There is no fixed set of criteria, but the Commission may take into consideration whether, on the basis of the information available, it seems likely that further investigation will ultimately result in the finding of an infringement.

3. ASSESSMENT OF YOUR COMPLAINT

3.1. General

- (10) After a preliminary assessment of your complaint, the Commission decided not to conduct an in-depth investigation into your claims for the reasons set out below.

3.2. The likelihood of establishing the existence of an infringement

- (11) The likelihood of establishing the existence of an infringement of Articles 101 and 102 TFEU in this case appears limited.
- (12) In order to identify a breach of Article 101 TFEU, one would need to show that there is an agreement between undertakings, decision by associations of undertakings or concerted practice which may affect trade between Member States and which has as its object or effect the prevention, restriction or distortion of competition within the internal market.
- (13) There is nothing in the complaint which indicates the existence of such an agreement. Even if one would assume that there may have been an agreement between drivers using Uber's platform and/or between drivers using Uber's platform and Uber, the complaint provides no information as to what such agreement may entail and why it would have as its object or effect the distortion of competition within the internal market. Besides, the alleged unequal conditions of exercising a specific activity on the market in the present case do not seem to arise from an alleged agreement between drivers using Uber's platform and/or between drivers using Uber's platform and Uber, but – if at all – rather, as ANTRAL itself refers to, from a possible lack of clarity concerning the applicable regulatory framework to individual drivers using Uber's platform.
- (14) In its latest submission of 21 December 2015, ANTRAL alleges that Uber is in breach of EU rules on the working time of self-employed people (i.e. drivers) thereby obtaining illegal advantages through discrimination. The Commission observes that the question of applicable rules concerning employment conditions and compliance with them is primarily a regulatory question and relates to the enforcement of specific rules by the competent enforcement authority. The Commission could not identify any element, which would indicate that the alleged lack of enforcement of applicable rules would be

³ OJ C 101, 27.04.2004, p. 65. See also the Commission's Report on Competition Policy 2005, p. 25-27.

the result of an anticompetitive agreement between drivers using Uber's platform and/or between drivers using Uber's platform and Uber.

- (15) Furthermore, as regards Article 102 TFEU, there is nothing in the complaint which would indicate an abuse of a dominant position.

Firstly, there is no information indicating that either the drivers using Uber's platform, or Uber itself, would hold a dominant position on any identified relevant market. ANTRAL, in its submission of 21 December 2015, seems to allege that Uber holds a dominant position on the market because: (i) one of its shareholders is Google, which is currently being investigated for possible abuse of market dominance, and (ii) it uses Google Maps, which is one of the services that Google provides on the market. However, the mere fact that Uber has a shareholder that may be dominant on other markets, does not mean that Uber would be dominant on any market relevant to the complaint. Furthermore, while it is not disputed that Google provides as one of its services Google Maps, the investigation that ANTRAL has referred to does not concern these services⁴. Moreover, the mere fact that Uber uses Google Maps provided by Google does not show that Uber would be market dominant.

Secondly, even if Uber were deemed dominant on any relevant market, it is questionable whether there would be any abuse. In particular, and similarly to the alleged breach of Article 101 TFEU above, the alleged unfair and unequal conditions of exercising a specific activity on the market in the present case and the alleged advantages resulting from a breach of the rules on the working time of self-employed people do not seem to arise from an abusive conduct by drivers using Uber platform and/or Uber itself, but – if at all – rather, as ANTRAL itself refers to, from a possible lack of clarity concerning the applicable regulatory framework to individual drivers using Uber's platform and from a possible lack of enforcement of applicable rules by the competent enforcement authority.

4. CONCLUSION

- (16) In view of the above considerations, the Commission, in its discretion to set priorities, has come to the conclusion that there are insufficient grounds for conducting a further investigation into the alleged infringement(s) and consequently rejects the complaint pursuant to Article 7(2) of Regulation No. 773/2004.
- (17) The Commission also notes that the national court has, when applying national transport legislation, prohibited the provision of Uber's services in Portugal and imposed a number of far reaching enforcement measures to that end. Further investigation by the Commission would therefore also seem to be inappropriate as the practices in question have ceased.

⁴ Business practices that are subject to investigation in case AT. 39740 *Google Search* are: (i) alleged favourable treatment of Google's own specialised search services, (ii) alleged lowering of the ranking of unpaid search results of competing services, which are specialised in providing users with specific online content such as price comparisons, (iii) alleged exclusivity obligations on advertising partners and (iv) suspected restrictions on the portability of online advertising campaign data to competing online advertising platforms (press release of the Commission of 30 November 2010 available at: http://europa.eu/rapid/press-release_IP-10-1624_en.htm?locale=en).

5. PROCEDURE

5.1. Possibility to challenge this Decision

- (18) An action may be brought against this Decision before the General Court of the European Union, in accordance with Article 263 TFEU.

5.2. Confidentiality

- (19) The Commission reserves the right to send a copy of this Decision to Uber. Moreover, the Commission may decide to make this Decision, or a summary thereof, public on its website.⁵ If you consider that certain parts of this Decision contain confidential information, I would be grateful if within two weeks from the date of receipt you would inform [REDACTED]. Please identify clearly the information in question and indicate why you consider it should be treated as confidential. Absent any response within the deadline, the Commission will assume that you do not consider that the Decision contains confidential information and that it can be published on the Commission's website or sent to Uber.
- (20) The published version of the Decision may conceal your identity upon your request and only if this is necessary for the protection of your legitimate interests.

For the Commission

*Margrethe VESTAGER
Member of the Commission*

⁵ See paragraph 150 of the Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU, OJ 2011/C 308/06.