

## After the Uber case and the Airbnb case – the Star Taxi App case: focus on the question of the qualification as “Information Society Service”



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## Introduction

Societal and digital developments are reflected in the case law of the Court of Justice of the European Union (CJEU). For several years now, European judges resolve disputes relating to digital applications and the services they provide. On 3 December 2020, they handed down a judgment in a case concerning *Star Taxi App* ([C-62/19](#), not yet available in English). This blog analyses the *Star Taxi App* case law in the light of the *Uber* case law (CJEU, 20 December 2017, [C-434/15](#), *Asociación Profesional Elite Taxi v Uber Systems Spain SL*) and the *Airbnb* case law (CJUE, 19 December 2019, [C-390/18](#), *Airbnb Ireland*). The three judgments have in common the question of the qualification of services as Information Society Services (ISS).

## The facts of the *Star Taxi App*

*Star Taxi App* is a smartphone application linking customers and professional taxi drivers. When customers connect to the app, they receive information about taxis drivers available, their prices

as well as comments about drivers left by other users. In order to be referenced by *Star Taxi App*, taxi drivers concluded contracts with the business, without the latter making any particular selection, and pay a monthly fee to the business.

According to the CJEU, this service has to be legally translated as follows: “intermediation service consisting, by means of a smartphone application, of putting persons wishing to make an urban journey in touch with authorised taxi drivers, against payment, for which the provider of the said service has concluded contracts for the provision of services with these drivers in return for the payment of a monthly subscription, but does not pass on orders to them, does not set the fare or collect it from them, who pay it directly to the taxi driver, nor does it exercise any control over the quality of the vehicles and their drivers and the behaviour of the latter”.

## An Information Society Service (ISS)?

According to Article 2(a) of Directive 2000/31 on electronic commerce, which refers to Article 1(b) of Directive 2015/1535, an ISS is “any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services”.

Four conditions must therefore be met:

1. A service: the intermediation activity is a service;
2. A service provided for remuneration: the remuneration taken into account by the CJEU is that between the taxi drivers and the business (and not the remuneration paid by the final users to the drivers for the transport service);
3. At a distance and by electronic means: the service is based on a smartphone application;
4. A service provided at the individual request of the recipients: the request comes from the users, implying that the drivers must be connected beforehand.

The CJEU concludes that the described service in the *Star Taxi App* case is an ISS. However, an ISS could have another main qualification if the intermediation activity is an integral part of an overall service whose main element allows another legal qualification. After verification, the Court confirms its qualification as an ISS.

This last verification made by the CJEU is common in the *Uber*, *Airbnb* and *Star Taxi App* case law. In the *Airbnb* case, the CJEU concluded that the service is also an ISS (the service is not an integral part of an overall accommodation service). However, in the *Uber* case, the Court concluded that the service was an ISS, but subsequently considered that this ISS was an integral part of an overall transport service organised by *Uber*.

## What are the (main) differences between the *Star Taxi App* case and the two other cases?

1. The Service offered by *Star Taxi App* connects customers and professional drivers who are already registered. For them, the app is just one more way of attracting customers.

The CJEU came to the same conclusion in the *Airbnb* judgment: hosts and guests had many other channels for contracting rentals.

In the *Uber* judgment, however, the situation was different, since the application allowed non-professional drivers previously absent from the market to provide a service via a single channel.

2. When concluding contracts between drivers and *Star Taxi App*, no selection is made by the business. The drivers are free to set their own prices, which they collect directly (without going through the platform). *Star Taxi App* does not carry out any special control.

In the *Airbnb* judgment, the Court already held that the fact that the rental companies set their own prices was an element in dissociating the ISS from the rental service. It acknowledged that *Airbnb* provided several services (estimation service, canvas for advertisements, optional photography service, etc.), but these did not call into question the qualification of *Airbnb* as an ISS. One difference can be pointed out with the *Star Taxi App* case: the collection of the prices was done by *Airbnb*. The CJEU considered, however, that this practice was commonplace in electronic platforms activities and that it was not likely to change the qualification of the service.

In the *Uber* judgment, the CJEU recognised the existence of a real economic and functional dependence between the drivers and *Uber*, since *Uber* has created an innovative collective urban transport service involving a selection of drivers. This recognition reinforced the fact that the service has to be understood as a part of a global transport service.

## Conclusion

Imagining and creating a service through a smartphone application is a difficult first step. Qualifying this service correctly from a legal perspective is another. This second step is essential since it determines which regulation applies and therefore which obligations, rights and procedures must be respected. European regulations, whether it be in the field of ISS, transport or accommodation, are, as we can see, segmented and complex. It is therefore essential for any innovative company to consult specialised advisors on the subject from the conception of the app and the development of the service.