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The “Uberisation” of public service

Valentina Buratti

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L’avvento di Uber ha stravolto le categorie giuridiche tradizionali e impone un ripensamento dei paradigmi dell’intervento pubblico in economia. La volontà del presente contributo è quella di analizzare e di mettere a confronto gli interventi di regolazione del fenomeno Uber, attraverso una lettura comparata dell’ordinamento statunitense e di quello europeo, anche alla luce della più ampia prospettiva di regolamentazione dei servizi nati e sviluppatesi grazie alla rete e generalmente riconducibili alla categoria della sharing economy che si trova ad operare in settori fortemente regolamentati e dominati spesso da operatori ispirati a valori fortemente corporativistici. L’analisi condotta è funzionale a illustrare alcuni spunti per un’efficace regolazione del fenomeno che sappia coniugare l’esigenza di superamento di ottiche di regolazione eccessivamente rigide ispirate a una chiusura del settore che hanno inevitabilmente effetti deleteri sui consumatori che vogliano usufruire del servizio di trasporto sia di forme di liberalismo eccessive che svincolino i gestori delle piattaforme, spesso grandi multinazionali, dai vincoli a cui gli operatori tradizionali sono sottoposti.

The advent of Uber distorts traditional legal categories and requires a rethinking of the paradigms of public intervention in the economy. This contribution analyses and compares the regulatory interventions of the Uber phenomenon, through a comparative reading of US and European systems. This contribution considers the broader regulatory perspective of the 'sharing economy' category which operates in highly regulated sectors and is often dominated by operators inspired by strong corporate values.

1. Introduction

Uber’s rise is connected, by the doctrine, with the phenomenon of the so-called

sharing economy[1] which, recently, is establishing itself as a new and emerging economic model, alternative to the traditional ones, which is characterized not by the ownership and consumption of goods, but by the sharing and exchange of the same within a community, born thanks to the network.
Sharing economy is a heterogeneous and of difficult classification sector of economy, even if it shows some typical and recurring elements that allow interpreters to carry out a systematic reflection.
The characteristics[2] recognized by doctrine and jurisprudence are primarily the sharing of a good or service, a horizontal relationship peer-to-peer between the subjects involved, unprecedented compared to the classic "consumer producer" relationship, and the operation of a digital platform, functional to support online commercial transactions, on which this relationship and the sharing of goods or services are established.
Sharing economy is not only a new economic model, but it modifies the traditional legal categories: property right, which has always been an essential juridical institution in civil law, is being replaced by access to the good or service, shared among a plurality of users.
The aspect that most characterizes and influences this economic and social model are new technologies which represent its origin and that contribute to its characterization. The fast and unpredictable evolution and the elusive boundaries of the products born from the network exacerbate the regulatory difficulties of the legislator.
The first context in which the platform economy has started operating is that of public transport. Platforms create a virtual context that facilitate meeting between those who wish to use a transport service and those who wish to offer it, using own means of transport.
The advent of Uber, the most famous company in the sector, has changed not only urban mobility, but the traditional paradigms of public power which is faced with an epochal junction that requires a rethinking of methods of public economic intervention. So, the public law category that is most affected by the new services provided is that of the public service. In relation to transport sector, the public service «is not identified with the single mode of transport, but is represented by mobility, understood as a service that must be organized as a whole»[3] and as such assumed by public entity. The transport sector is also one

in which, more than others, «the profound transformation and perhaps the crisis of the very notion of public service is felt, which today embraces different dimensions from the single type of service. of collective needs and thus becomes an intangible asset (health, mobility) »[4].

Public service[5] traditionally represents a changing institution of legal system that changes its characteristics according to the historical period and the political and social context. The historicity and relativity of the notion is strongly linked to technological advancement, to changing social needs as well as to the geographical location.

The relativity of public service notion is influenced by networks and platforms which, making activities that were previously not profitable, make functions once considered in the public domain end up being managed by private initiatives.

This paper aims to analyze and compare the regulatory interventions of the Uber, through a comparative reading of the US and European systems, to draw a conclusion about regulatory perspectives of the economic models, developed thanks to the platforms.

2. Uber and non-line public transport in Italy

Uber company was founded in 2009 in San Francisco as a start-up aimed at providing, thanks to an intermediation platform, an urban transport service, using individuals and private means of transport. The company took its first steps in the context of the global economic crisis of 2009 and quickly conquered the market, first in the United States, then in Europe up to the Arab countries and China, which currently represents its largest investment market.

Over the years, Uber has also diversified the range of activities on offer, making available new types of services[6], all referable to the transport sector and always based on the brokerage service provided by the IT platform that connects those who want to offer a service and whoever requests it.

Uber offers an urban mobility service through two different applications, which needs to be downloaded on smartphones with contextual registration, UberPop and UberBlack.

The difference between the two lies in the fact that, through the first, the

customer is put in contact with a professional driver, that is, in Europe, a person with a license issued by the public authority, while, through the second, the customer interacts with a non-professional driver. In both cases, the platform, through a geolocation system, signals to user available drivers and allows him to establish direct contact with the closest or preferable one based on his needs, thanks to the feedback mechanisms to which both users and drivers are subjected. Payment management is also exclusive task of the platform: in fact, the user will proceed, via electronic transaction, to pay the service directly to Uber which, in turn, will pay the driver. The mechanism by which the price is calculated is linked to the level of demand for the service, the so-called surge pricing model, and is influenced by the customer's satisfaction with the driver.

According with these characteristics, the traditional sector with which Uber shows the greatest affinity is that of non-scheduled public transport[7].

In Italy, non-scheduled public transport is governed by the Law of 15 January 1992, no. 21[8] which identifies two main types of non-scheduled public transport: taxi service and noleggio con conducente, NCC[9].

It's an outdate discipline and inspired by logics of strong market contingency[10], not able to regulate technological innovations coming from the platform economy.

The reaction of traditional operators to the new entrant was immediately harsh and resulted in a series of appeals proposed to civil and administrative judge.

Also, independent administrative authorities, specifically Agcm and Art, recognized that the discipline was bygone and invited the government to reform the issue, considering technological innovation brought by Uber.

On the one hand, Art[11] suggested a series of criteria for developing the reform, among which the need to distinguish between transport activities of "courtesy" and commercial activities. The former, which can be attributed to carpooling activities such as *Blablacar*, promotes forms of sharing of non-commercial transport services, rendered in an unprofessional way by drivers. These share, in whole or in part, with one or more people, put in contact via the network, a route set by the driver, traveled with a vehicle owned by them. The latter offers technological brokerage services on request and for commercial purposes.

However, Transport Authority does not take a position on Uber's assimilability to the first or second category, leaving the main character of the story in

background.
Agcm[12], instead, addressed the issue in a "more courageous" way compared to the Transport Authority, highlighting the advantages associated with these new forms of mobility both for users and the urban community and for traditional operators[13].
Agcm suggest a form of "minimum regulation" that allows this «*tertium genus*» of operators to expand the supply for the benefit of the consumers.
Independent administrative authorities therefore look favorably on the new forms of mobility and are the bearers of a model of regulation which, intervening in the least invasive way possible, can favor the products resulting from innovation and stimulate a transport market characterized by conditions of inefficiency.

3. Juridical case qualification and admonishment to service regulation: case law

Uber phenomenon has violently entered our legal system, severely testing a system that had already shown signs of anachronism and excessive rigidity. In this context, jurisprudence plays a leading role, because it is called to confront, on the impulse of traditional subjects, concretely with the questions raised by the new operator.

3.1. Allegations of unfair competition and civil jurisprudence

The main question was relating to the accusations of unfair competition brought by taxi drivers to Uber and dealt with by the civil judge[14]. A central aspect in civil jurisprudence analysis was qualification of the service offered by Uber: if this configured a "courtesy" service, fully attributable to the paradigm of the sharing economy, or if it could be referable to taxis and NCCs activity.
Civil courts, to verify whether Uber's behavior, in the form of Uberpop, materialized a hypothesis of an anti-competitive offense, used the typical instruments of antitrust law, emphasizing that the latter «*essentially functions as the traditional service of radio taxi, even if created in more advanced ways*». Like

taxi service, anyone who has downloaded the Uber application can use the requested transport service, without limitations and against payment of a fee.
There is no hypothesis of carsharing or carpooling, because the activity of driver and customer does not consist of sharing a journey and a car that the owner/driver, but in the realization of two autonomous services, although in close dependence.
However, under the same service, Uber is not burdened with the series of obligations that Law no. 21 of 1992, on the other hand, requires traditional operators, both taxi drivers and NCC drivers who do not use the app, and therefore finds itself operating in an agile and flexible manner, with a behavior that configures a hypothesis of unfair competition[15] pursuant to Article 2958, no. 3, code civ.
The consequence of these rulings was the inhibition of the Uberpop service on national soil, while UberBlack continued to operate, based on its assimilation to the rental service with driver, with concurrent submission to regulatory regime required for non-scheduled transport sector.

3.2. Administrative judge's interpretation

The qualification of the legal institute to which Uber's activity can be traced and consequently the identification of applicable discipline has also been addressed by the administrative judge, although with less frequency than the civil judge.
The opinion given by Consiglio di Stato to the President of the Council of Ministers regarding the applicability of Law no. 21 of 1992 to the new forms of organization and telematics management of people transport through auto services is relevant.
Consiglio di Stato, firstly, carried out a survey of non-scheduled public transport rules, observing that Law no. 21 of 1992 is limited to reduce two different phenomena to unity, the taxi service and NCC, without elaborating a single notion of non-scheduled public transport. The direct consequence of this legislative choice is measured in the inadequacy of new "technological services for mobility" regulation.
The administrative judge notices that the activity carried out by the mobility platforms cannot be traced back to mere mediation between performance and

job offer, but that the provision of transport is a direct obligation of the company, which simultaneously offers complementary financial and telematic services, but that take a marginal position in the contractual dynamic.
However, the Court acknowledges that the service offered by Uber is not totally and fully attributable to an urban transport service, but that the technological component characterizes it in a peculiar way. According to administrative jurisprudence, the institute is characterized as an «*negozio atipico a fattispecie doppiamente bilaterale*». Upstream of the same, the manager of the IT platform must be placed, which maintains two independent legal relationships: on the one hand, one with the platform's user from which he directly receives the payment for the transport and mediation activity; and on the other, the one with the transport service provider to whom it allows to operate on the platform and who pays for the service provided.
These new forms of mobility do not constitute a hypothesis of public transport, such as the taxi service, due to the incompatibility with the constitutive features of the same, but this acknowledgment does not exclude the public relevance of the same for the legal system and the need to introduce adequate discipline. For this reason, the recognition of Uber as a private transport service does not exempt the public power from intervening to efficiently regulate the phenomenon[16].

3.3. Constitutional Court intervention: defense of State competences and admonishment to the legislator

The legal questions linked to Uber phenomenon have also been analyzed by Constitutional Court[17] which had the opportunity to examine the compatibility of this service with the constitutional system.
Constitutional legitimacy judgment matter is Regione Piemonte Law[18] which had identified, as a legitimate subject to provide the non-scheduled urban transport service, only those in possession of license for taxi service or rental with driver, unduly invading the sphere of State competence.
Non-scheduled public transport abstractly sees crossing of different matters, attributed to the legislative competence of different subjects. «Local transport» is included in Region residual competence, «competition» pursuant to article 117, paragraph 2, lett. e) of the Constitution, in State exclusive competence. The

Region therefore has the task of outlining the general framework of local and therefore non-scheduled transport, regulating the administered regime to which it must be subjected and developing a unitary framework within which the Municipalities, concretely called to manage the issue of licenses, the number and type of vehicles to be used for these services, the methods of performance and the criteria for determining the rates, can operate. The Piedmont Region regulations however, defining which subjects are enabled to offer certain types of services, imposes «*a limit on the freedom of individual economic initiative and affects competition between economic operators in the relevant market, insofar as it contributes to the configuration of a given sector of economic activity*». In the Court's opinion, this legislative choice is fully part of «competition»[19] matter and therefore, not falling within the competence of the Region, is to be declared unconstitutional by contrast with Article 117, paragraph 2, lett. e) of the Constitution.

Constitutional Court interpretation reveals a political choice: in fact, Regione Piemonte Law does not seem to differ much from the national discipline which, in outlining non-scheduled public transport, has taxi and NCC clearly in mind. However, the Court is struck by the ban on providing the non-scheduled transport service to operators different from the ones authorized by law, made by a Region. The constitutional judge seems to show caution, instead of civil judges, towards forms of total exclusion from the market of new operators, while hiding behind respect for the division of competences, instead leaving a glimpse open towards forms of regulation, respectful of the value of competition.

Beyond the concrete interpretative solution adopted by the Court, is interesting the admonishment addressed to legislator. Noted that «*technological evolution, and the consequent economic and social changes, raise issues variously discussed not only in the courts, but also in the authorities independent and political institutions, for the plurality of interests involved and the novelty profiles of their intertwining*», the Court invites the legislator to promptly handle regulatory needs posed by new operators.

Almost four years have passed since this ruling, but legislator did not accept Court invitation, leaving an age-old discipline and a regulatory vacuum that does not allow proper regulation of the phenomenon.

4. Hesitant action of European Union and corporatism of Member States

To better understand the phenomenon and to propose the conditions for its future regulation, a study of the European context, both at Union level and in the legal systems of the individual Member States, may be interesting.
First, the directive 2006/123/EC, better known as Bookstein directive, shall not apply to non-scheduled public transport services, such as the taxi service and N.C.C. Transport legislation is left to the competence of individual Member States and is excluded from the harmonization activity promoted by the European Union, but has a certain degree of affinity in different national contexts. In almost all European countries, non-scheduled public transport sector is heavily regulated, subject to a quota market regime and administered tariffs, and takes the form of two figures: taxi service and rental with driver. Just as similar are the reactions of the Member States[20] to the Uber phenomenon which, either through legislation or through case law, has been declared illegitimate[21].

4.1. States facing Uber: French and English case

In France, a Country with a strong tradition in the public service field and the first European state in which Uber started operating, the illegality of the activity provided by the Californian company was declared by law. Before the entry into force of this legislative text, French judges had already sanctioned Uber, based on the contestation of competitive offenses[22].
Loi Thévenoud[23] has modified French transport code, in the section dedicated to non-scheduled public transport, sanctioning the ban on electronic *maraude*, electronic priming and the organization of a system for connecting customers and drivers by illegally proposing such service, as well as the crime of organizing and connecting customers with people who carry out a transport service for people for profit with vehicles of less than ten seats.
French law has not appeased the jurisprudential contrasts, opening indeed to a new season of pronouncements, among which it notes, primarily, the judgment of the *Conseil constitutionnel*[24] which however recognized the *Loi Thévenoud* full

legitimacy.
For the Court, remunerated non-scheduled transport activity must be carried out only under the conditions set out in title II of book I of the third part of the Code and is therefore prohibited to people who are neither road transport companies which can also perform occasional services, neither taxi, two or three-wheel motorized vehicles or transport vehicles with driver. Again, according to the Court, Loi Thévenoud did not want to repress forms of car sharing and courtesy transport that can continue to operate on the market without applying the rules provided for operators of non-scheduled transport.
On 17 March 2016, *Tribunal de Grande Instance de Lille* raised a preliminary question before the Court of Justice concerning the non-submission of the reform to the Transport Code for the Commission's prior opinion. The Court of Justice, with a ruling of 10 April 2018, has ruled, referring to the reflections carried out in the 2017 ruling, that the Member States are free to prohibit and criminally repress the illegal exercise of transport activity within the service UberPop, without having to previously notify the Commission of draft law establishing the prohibition and penal sanctions for such exercise.
Faced with the great turmoil provoked by *Loi Thévenoud*, the French government has commissioned the socialist deputy Laurent Grandguillaume to work out jointly with the parties involved a bill to regulate the sector. The proposal was presented in July 2016 and approved in December and provided for the introduction of a simplified and more stringent regime for taxi drivers for VCTs, i.e. those who carry out non-private line transport activities, including therefore UberBlack.
France therefore remains "put in check" by taxi drivers and continues to regulate forms of alternative mobility in a highly repressive way. We must also report the recent attention dedicated to the phenomenon of the so-called «*Ubérisation*» and the services offered through the platform, signs of a growing awareness of the need for regulation and not exclusion from the system[25].
Another interesting legal system to be taken into consideration to better understand the Uber phenomenon is the English one which, unlike the French one which has remained rigid on its positions, has instead changed over time the approach to the Uber service.
In England, hackney carriages, that is the famous London taxis, and private hire

cars (PHV), better known as minicabs, which carry out an activity like Italian NCC, are considered non-scheduled public transport. The former can pick up customers and then start the ride from the public street or from special locations, while the minicabs must be booked in advance, electronically, by telephone or at a special office. This is a market based on the licensing system and managed by local authorities who are called to dictate a detailed discipline. In the city of London, the subject responsible for regulation and management is the Transport for London (TfL) and the applicable discipline is contained in the 1998 Vehicles (London) Act. Also in London, Uber's entry on the market provoked the violent reaction of taxi drivers who complained about the possibility granted to the first to carry out an abusive transport activity, that is, without any license and without the use of taximeters. In 2015, the High Administrative Court of London[26], unlike the other European States, excluded that the activity carried out by Uber would integrate a competitive offense, in as much as this was not comparable to that of the taxi. The new mobility services, such as Uber, instead had to be considered as PHV and therefore must obtain the authorization required for the exercise of this activity.

Uber worked in London market, thanks to its equivalent to a private non-scheduled service, getting a specific license. However, in November 2019, Transport for London made the decision to revoke the transport license from Uber, due to some behavior of company's drivers that would endanger the safety of passengers.

English model that decided to assimilate the service offered by Uber to the PHV one has therefore shown its inadequacy, insofar as it does not consider the peculiarities of the service.

4.2. Court of Justice: between transport services and information society services

The great legislative and jurisprudential turmoil developed in various Member States around Uber phenomenon made the European Union's standpoint increasingly urgent.

Like French case, Spanish courts[27] also asked the Court of Justice for a preliminary ruling on the qualification of the service offered by the Uber

platform: in particular, if this was to be considered a non-scheduled transport service or an information society service, or a combination of the previous two. From legal institute qualification it's possible to determine applicable discipline: the most stringent one referred to in Directive 2006/123 / EC, that referred to in Directive 2000/31/EC relating to information society services or that of the TFEU relating to implementation of the common transport policy.

The Advocate General observed that Uber's activity could qualify as a mixed service, since part of it is provided electronically, while the other part in different ways.

Abstractly, a mixed service may fall into the category of information society services if they meet two conditions: firstly, that the service not provided electronically is economically independent from that provided in this way[28] and, secondly, that the provider must offer the service in its entirety or that exercises a decisive influence on the conditions of non-electronic performance, which must however remain the main and characterizing element of the relationship. Uber does not meet any of the previous requirements, as the two services are economically dependent and are provided by two different entities. In the words of the Advocate General «*the activity in question exists only thanks to the platform, without which the former would make no sense*»: in the mixed service, the prevailing performance is that of transport.

Court of Justice[29], sharing the approach of Lawyer Szpunar, found that Uber intermediation service was based on the selection of non-professional drivers who use their vehicle and to whom an application is provided without which the performance is not it could come true. Uber exerts a decisive influence on the conditions of the performance, fixing, through the platform, ride's price that directly receives from the customer and then gives it to the driver, carrying out a control on vehicles quality and drivers as well as on their behavior, with contextual possibility of exclusion from the service.

Considering these characteristics, the service offered by Uber could only qualify as a transport activity: it is therefore up to the Member States to regulate it, not falling within the scope of application of Article 56 TFEU of Directive 2006/123 and Directive 2000/31.

5. United States of America and free regulation

Uber company was born and developed in the United States of America, stimulated by the legal and economic context in which services born thanks to the network are encouraged in a pro-competitive perspective and full market liberalization, also with the aim of relaunching the economy following the 2009 crisis. However, also in the United States there were doubts about the legitimacy of the service offered by the multinational Uber, with consequent intervention by the jurisprudence.

At the political level, it must be noted that Democrats and Republicans do not share the same line of intervention for service regulation[30]: Republicans want to guarantee a free market where new operators can operate without obstacles, Democrats tend to be more cautious in regulating the big platforms[31].

In United States, transport sector is the responsibility of the individual States and various municipalities that have dealt with the issue in a highly diversified manner. Some States switched to stringent regulation of the sector, to avoid not only forms of unfair competition against other operators, but also to guarantee users safety; others preferred to favor new operators, trying to limit the obstacles to their activity.

Reaction's heterogeneity is reflection of highly differentiated disciplines in USA regarding non-scheduled transport which generally impose the obligation of licensing and of being subject to an administered regime, but without the inflexibility of legislation in Europe[32]. The common aspect is, in each state, the burden for subjects who wish to carry out a public transport activity to comply with a series of obligations imposed by law from which new entrants are instead exempted. Traditional operators accused Uber of unfair competition against them, insofar as the activity carried out by the Californian company is completely analogous to that offered by taxis, with the difference that the former is not required to submit to the rules on non-scheduled public transport, with consequent obtaining an undue competitive advantage[33].

Jurisprudence, given the different legislative contexts, reached different interpretative results: sometimes recognizing the peculiarity of Uber service compared to the taxi service and therefore the inconsistency and the risk of competitive distortions applying the obligations foreseen for the second[34], other

sometimes identifying a form of unfair competition[35] and still others by arranging that the rules for traditional transport services should be applied to Uber[36].

At the end, it may be interesting to examine the legislation adopted in California, Uber's state of birth and development. Initially, the Uber service had been hindered by the Californian authorities, based on the assumption that the company was providing a non-road public line transport service without the necessary authorization, with the imposition of a penalty of $ 20,000. In 2013, Californian authorities concluded an agreement with Uber then transfused into a law that introduced the category of the transportation network company which includes all operators that provide a transport service through the intermediation of an electronic platform, prescribing the obligation to have an insurance policy.

The US context is therefore variegated, «*an arabesque*»[37] of jurisprudence and political-legislative choices, even if the line of light regulation tends to favor the activity of digital operators.

6. The crisis of traditional models: which prospects for regulation?

Uber phenomenon and, more generally, that of the platform economy led to a change in the laws of European States and beyond, making clear the need to intervene with new forms of regulation.

The opinion of jurisprudence and of prevailing doctrine is now firm in excluding that Uber can be traced properly to sharing economy category, insofar as the purpose of the platform is not to encourage the sharing of its own resource with other subjects, but to provide a service for profit. This acknowledgment assumes that the service offered by Uber cannot be considered a courtesy service and therefore cannot be assisted by the elasticity of discipline that must assist the former. Similarly, the approach that tends to lead Uber to a transport service *tout court*, on the European model, would also seem incorrect, leaving out the peculiarities underlying the delivery via platform. Court of Justice, accepting this thesis, has adopted an evasive and opportunistic attitude: it has in fact avoided taking a clear position on the point, although it was desired by many, leaving the individual Member States free and disoriented who, with a predictable reaction,

applied canonical discipline to new operators.
Interesting is Advocate General opinion who enhanced the «*mixed service*» notion to be applied to the category of activities attributable to the platform economy, that is, an activity that has two components that deserve to be both valued.
Regulation prospects are clearly influenced by case qualification and are strongly influenced by it: thus, a legal system who recognizes Uber as a mere transport activity, will only be able to apply the legislation envisaged for the non-scheduled public transport sector. This approach, currently followed throughout the European Union, not only does not consider the differences between Uber and traditional services but ignores the requests for market renewal which are excluded, through declarations of illegality, from the legal system. This system is victim of «*corporate ostracism*»[38] logic promoted by traditional operators who defend consolidated positions of economic and negotiating privilege, ignoring market static and inefficiency.
On the other hand, there are models that enhance innovative aspect of the service and that completely trace back to sharing economy category, leaving it not only free from any regulation, but promoting its development. A similar approach is typical of the American-Republican economic model which perceives regulation as an obstacle to the market and its development. This vision risks fueling birth and affirmation of a new economic entity, the platforms often managed by large multinationals, which places itself in a monopoly position with respect to the other players.
Given the inadequacy of two models illustrated above, a possible perspective could be that of taking a third, median way, which is better able to enhance the two components of the service. It is a model that takes note of the inadequacy of non-scheduled public transport offer in Italy and that knows how to reform, in the first instance, the general discipline of the sector, to prevent traditional operators from being subjected to archaic and limiting obligations and, secondly, know how to introduce right tools to regulate new entrants' activity. An imperative for the regulator must be the protection of citizen-user who has the right to access an efficient transport service and the same to be protected by subjects who operate without any guarantee.
Public bodies, especially at the local level, are faced with the challenge of

providing services to a growing number of citizens, concentrated above all in the urban context, and of ensuring that these are rendered in a more efficient and economical way to promote social cohesion, indispensable for heavily inhabited areas[39]. Moreover, the choice of innovating some city's operating profiles, especially in relation to the mobility sector, digital administration, and bottom-up participation, has been the subject of attention of the legislator for many years[40].

The growing pressure on passenger transport systems has increased the demand for new and innovative solutions, with the integration of different transport services into an accessible on demand service, according to the concept of Mobility as a Service (MaaS). Many cities are at the same time witnessing a transition towards shared and collaborative mobility services (shared cars, bicycles, on-demand transport services and other forms of micro-mobility) facilitated by the emergence of intermediary platforms, thus allowing for the reduction of the number of vehicles in daily traffic.

The will to reform the local public transport sector is linked both to the need to remedy the inefficiencies of the sector and to the broader project to reduce emissions and therefore protect the environment, according to the model of sustainable mobility. Encouraging new forms of mobility also has a positive effect on the organization of smart cities that address traffic and urban congestion problem, as well as on the protection of the environment, in relation to the control of emissions, in full compliance with the objectives set out in the new European Green Deal.

"Piano Triennale per l'informatica nella P.A. 2020-2022" identifies mobility as a key sector for improving the efficiency and quality of services, as it should be included among the areas of public interest with a high impact for the well-being of citizens. Similarly, "Piano nazionale per la ripresa economica e la resilienza", calls for the development of experiments to improve the efficiency of urban transport systems, in the context of the "mobility as a service" model[41]. Also, Mission n. 2, "Rivoluzione Verde e Transizione ecologica", links environmental protection to local public transport system efficiency.

Service model offered through platforms represents a concretization of the principle of horizontal subsidiarity, in so far as individuals, gathered in a digital community, directly provide for the production and sharing of urban mobility

service, with the consequent creation of a «*shared service*»[42].
The new paradigms of mobility and organization of the city are affected by the economic model of the sharing economy, promoted by platforms, to the extent that sharing, collaboration and co-production are the foundations of a new way of understanding the provision of services.
Public power seems to definitively lose its role as manager but sees its role as regulator even more strengthened: in fact, faced with a «self-produced» service by citizens, public power cannot abdicate its own authority, but is required to dictate a flexible discipline that knows how to combine safety needs, consumer protection, traditional operators and innovation needs.

1. Oxford Dictionary defines sharing economy as «*an economic system in which assets or services are shared between private individuals, either for free or for a fee, typically by means of the Internet*». G. Smorto, *Verso la disciplina economica della sharing economy*, in *Mercato concorrenza e regole*, 2015, 2, 246.
2. V. Turchini, *Il caso Uber tra libera prestazione dei servizi, vincoli interni e spinte corporative*, in *Munus*, 2016.
3. P. Chirulli, *Servizi pubblici "deregolamentati"? Il caso del trasporto pubblico locale*, in AA. VV., *Diritto amministrativo e società civile*, Bologna, 2018, III, 418.
4. *Ibidem.*
5. Literature about public service is huge. We remember U. Pototschnig, *I pubblici servizi*, Padova, 1964, F. Merusi, *Servizi pubblici instabili*, Bologna, 1990, M. Clarich, *Servizio pubblico e servizio universale: evoluzione normativa e profili ricostruttivi*, in *Dir. pubbl.,* 1998, 181-200, R. Villata, *Pubblici servizi: discussioni e problemi*, Milano, 1999, N. Rangone, *I servizi pubblici*, Bologna, 1999, L. Perfetti, *Contributo ad una teoria dei pubblici servizi*, Padova, 2001, F. Trimarchi banfi, *Considerazioni su i "nuovi" servizi pubblici*, *in Riv. it. dir. pubbl. comunit.*, 2002, 5, 945-969, G. Napolitano, *Regole e mercato nei servizi pubblici*, Bologna, 2005, S. Civitarese Matteucci, L. Torchia, *La tecnificazione. Studi a 150 anni dall'Unificazione Amministrativa Italiana*, 2016, Firenze, S. Torricelli, *I servizi pubblici*, in AA.VV, *Passato e presente del diritto amministrativo*, Napoli, 2017.
6. The reference is to Uber Eats, an application that allows home delivery of food and drinks, Uber Freight, an app to support goods delivery activities, Uber for business, aimed at promoting business travel. To these are added the apps aimed at booking scooters and / or bicycles to move around the city.
7. We can mention this literature on public transport: U. Pototschnig, *Disciplina pubblica dei trasporti e poteri della Regione*, in *L'impresa pubblica. Municipalizzazione*, 1967, 4, 8-15, C. Talice, *Istituzioni di diritto pubblico dei trasporti. Trasporti terrestri e navigazione interna*, Milano, 1968, M. S. Giannini, *Tramvie ed autolinee d'interesse regionale, in Studi preliminari sulle leggi cornice per le Regioni* (Quaderni ISAP), Milano, 1968, G.

Morbidelli, *Verso una legge quadro sui trasporti*, in *Le Regioni*, 1981, 1, 156-167, M. A. Carnevale Venchi, voce *Trasporti pubblici*, in *Enciclopedia del diritto*, 1992, XLIV, 1065-1101 , M. Tebaldi, *La politica dei trasporti in Italia*, Imola, 1999, A. Pioggia, *L'amministrazione pubblica in forma privata. Un confronto con la Francia e una domanda: che fine ha fatto il trasporto pubblico in Italia?,* in *Dir. amm*., 2013, 481-497, G. L. Albano, A. Heimler, M. Ponti, *Concorrenza, regolazioni e gare: il trasporto pubblico locale*, in *Mercato concorrenza regole*, 2014, 1, 117-138, M. Ponti, *I trasporti pubblici locali: cronaca di una morte annunciata*, Bologna, 2014, 1, 38-44, L. Ammanati, A. Canepa, *La politica dei trasporti in Europa: verso uno spazio unico?*, Torino, 2015, S. Torricelli, *Uber nel mercato italiano del trasporto pubblico non di linea: un ospite senza invito*, in *Revista de la Escuela Jacobea de Posgrado*, 2017, 13, pp. 147-165.L. Ammannati, *Diritto alla mobilita` e trasporto sostenibile. Intermodalità e digitalizzazione nel quadro di una politica comune dei trasporti*, in "Federalismi.it", 2018, 4, 1-28, G. Caia, *Il trasporto pubblico locale come paradigma del servizio pubblico*, in *Osservatorio costituzionale*, 2018, 3, 1-13.

8. Literally, Law no. 21 of 1992 defines non-scheduled public transport by resorting to a finalistic criterion, identifying it in that service «*which provides for the collective or individual transport of people, with a complementary and integrative function with respect to public rail, car, maritime, lake line transport and planes, and which are carried out, at the request of those transported or transported, on a non-continuous or periodic basis, on itineraries and according to timetables established from time to time*».
9. The public nature of non-scheduled transport services is controversial and fueled doctrinal and jurisprudential debate.Currently, taxi service is recognized as a public service due to the nature of the activity carried out, for the authoritative elements such as the mandatory nature of the service, remuneration with administered tariffs, the recognition of the car, subsidy on excise duties for fuel, the possibility of accessing restricted traffic areas and the parking of vehicles on public land, the right to travel the preferential lanes of urban centers and the granting of licenses for carrying out the activity. TAR Liguria, sez. II, 14 aprile 1993, n. 17.

   Noleggio con conducente, on the other hand, tends to be qualified as a non-scheduled private transport service, as it is characterized by the non-mandatory nature of the service, the factual determination of the price, the prohibition on parking and, sometimes, circulation in the spaces reserved for public transport, the indistinguishability of vehicles and the mandatory nature of the systematic departure from the garage.

   G. Pizzanelli, *Innovazione tecnologica e regolazione incompiuta: il caso dei servizi di trasporto non di linea*, in *Munus*, 2016.
10. To carry out taxi service it is mandatory to have a license, the release of which is subject to compliance with the requirements and conditions provided by the municipality, to the fulfillment of numerical quota criteria, also identified based on analyzes carried out by the Transport Regulation Authority, through comparison with other European authorities.
11. Atto di segnalazione al Governo e al Parlamento sull'autotrasporto di persone non di linea: taxi, noleggio con conducente e servizi tecnologici per la mobilita`, 25 may 2017.

12. AGCM, AS 1222/2015, 29 september 2015.
13. Agcm states that «*the use of these tools, through a more efficient use of the capacity to offer mobility services present in each urban context, allows greater ease of use of the mobility service, better coverage of a demand often unsatisfied, a consequent reduction in user costs, and to the extent that it discourages the use of private transport, a decongestion of urban traffic with an improvement in the conditions of supply of the scheduled public transport service and traffic circulation private*».
14. Trib. Milano, sez. I civ., 6 luglio 2015, n. 8359, Trib. Torino, sez. spec. impr., 1 marzo 2017, n. 1553, Trib. Roma, IX sez. civ., 26 maggio 2017, n. 25857.
15. About unfair competition L. C. Ubertazzi, *Regole pubblicistiche e concorrenza sleale*, in *Riv. dir. ind*., 1, 2003, 301-312.
16. TAR del Lazio is deciding about suspension of the interpretative circular of the Ministry of the Interior of 28 February 2019 on the non-line public transport of people who reiterates the obligation for NCC drivers and therefore also for Uber, to return to remittance at the end of each new race and introduces the burden of completing, on board the vehicle, a service sheet on electronic support.In the meantime, TAR del Lazio and Consiglio di Stato, during second-instance judgement, rejected the request for precautionary suspension of the circular requested by Uber, hoping for a swift definition of the judgment.
    It will be interesting to see what interpretative solutions the administrative judge will reach: if it will continue to maintain a position of prudent caution or if he will explicitly take a position on the issue.
17. Corte cost., 15 december 2016, no. 265. Commented by d. tega, *Uber in piazza del Quirinale n. 41: la «gig economy» arriva alla Corte Costituzionale*, in *Le Regioni*, 2017, pp. 580-590, l. belviso, *Il trasporto locale non di linea fra tradizione e innovazione tecnologica. Anche la Corte Costituzionale si pronuncia*, in *Rivista della regolazione dei mercat*i, 2017, 1, pp. 170-197.
18. Regione Piemonte Law 6 july 2015, no. 14, about «Misure urgenti per il contrasto dell'abusivismo. Modifiche alla legge regionale 23 febbraio 1995, n. 24 (Legge generale sui servizi di trasporto pubblico non di linea su strada)».
19. For the Constitutional Court, competition matters «*include both regulatory interventions and, primarily, affect competition, such as legislative protection measures in the proper sense, which contrast the acts and behavior of companies that are prejudicial to the competitive structure of the markets; and promotion measures, which aim to open up a market or consolidate its opening, reducing the constraints on the methods of exercising economic activities, in particular barriers to entry, and on the free development of entrepreneurial capacity and competition between companies*».
20. There is no shortage of experiences from some Member States that have adopted a discipline aimed at promoting Uber's entry on the market such as Portugal, which was however soon repealed, and Estonia which is characterized by a particular market.
21. There're many studies about Uber n. rampazzo, *Rifkin e Uber. Dall'età dell'accesso*

all'economia dell'eccesso, in *Diritto dell'informazione e dell'informatica*, 2015, 6, pp. 957-984, e. c. raffiotta, *Trasporti pubblici non di linea e nuove tecnologie: il caso Uber nel diritto comparato*, in *Munus*, 2016, 1, pp. 75-95, l. belviso, *Il caso Uber negli Stati Uniti e in Europa fra mercato, tecnologia e diritto. Obsolescenza regolatoria e ruolo delle Corti*, in *MediaLaw*, 2018, 1, p. tullio, *Da Uber ai robotaxi: spunti comparatistici per una riforma degli autoservizi pubblici non di linea*, in *Diritto dei trasporti*, 2018, pp. 677-697.

22. Conseil d'Etat, ord. 5 febbraio 2014 Sociéte Allocab et autres e del Tribunal de commerce de Paris, ord. 1 agosto 2014, Association française des Taxis.
23. Loi no 2014-1104 du 1er octobre 2014 "relative aux taxis et aux voitures de transport avec chauffeur" is so known from the name of its proponent, Senator Thomas Thévenoud, in charge of carrying out study and conciliation activities on the topic and author of the report *"Un taxi pour l'avenir des emplois pour la France"*.
24. Conseil constitutionnel, decisione n. 2015-468/469/472 QPC del 22 maggio 2015, Sociéte UBER France SAS et autre (I), Conseil constitutionnel, decisione n. 2015-484 QPC del 22 settembre 2015, Sociéte UBER France SAS et autre (II), Conseil constitutionnel, decisione n. 2016-516 QPC del 15 gennaio 2016, M. Robert M. et autres.
25. The reference is to the study promoted by the Conseil d'Etat in 2017 entitled *"Puissance publique et plateformes numériques: accompagner l'«uberisation»"*.
26. High Court, Transport for London v Uber London Limited, Licensed Taxi Drivers Association & Licensed Private Hire Car Association – [2015] EWHC 2918.
27. Juzgado de lo Mercantil n. 3 de Barcelona with decision of 16 july 2015.
28. The Advocate General refers, for example, to brokerage platforms for the purchase of airline tickets or for hotel reservations.
29. EU Court of Justice, large section, 20 December 2017, C-434/15.
30. innovation sector records the clash between Republicans and Democrats on several fronts: for example, think about the hypothesis of regulating information on platforms and net neutrality. One of the first acts of the Trump Presidency was the replacement of the Open Internet Order, strongly desired by the Obama Presidency, with a new discipline, Restoring Internet Freedom, which introduced a more flexible regime for digital operators, instead limiting the guarantees imposed by the need for net neutrality.
31. Is interesting the anecdote reported by e. biale*, Uber: il costo di un'innovazione senza regole*, Il Mulino, 2015, 5, p. 813. During the last presidential elections, Hillary Clinton argued the need to regulate the work and on demand services deriving from the platforms, provoking the criticisms of the Republican candidates who accused her of wanting to put a brake on the market. Jeb Bush, a Republican candidate, used the Uber service for the entire election campaign to emphasize his position.
32. For example, in the city of San Diego in California, there is an obligation to obtain an authorization for the exercise of the activity which is not however quota.
33. L. Belviso*, Il caso Uber negli Stati Uniti e in Europa fra mercato, tecnologia e diritto. Obsolescenza regolatoria e ruolo delle Corti*, in *Rivista di diritto dei media*, 2018, 1.
34. Illinois Transportation Trade Association v. City of Chicago (2016 WL 5859703). A.

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35. Boston Cab Dispatch e altri contro Uber Technologies Inc., n. Civ. A. 13-10769, del 27 marzo 2014.
36. Uber Technologies, Inc. and Rasier LLC v. Second Judicial District Court of the State of Nevada, Supreme Court case No. 66875, del 20 novembre 2014.
37. E. Mostacci, *Un arabesco regolatorio tra Federazione e Stati federati: l'avvento di Uber negli Stati Uniti*, in E. Mostacci, A. Somma (a cura di), *Il caso Uber – La sharing economy nel confronto tra common law e civil law*, Milano, 2016.
38. E. Caruso, *Regolazione del trasporto pubblico non di linea e innovazione tecnologica. Il caso Uber*, in *Il Diritto dell'economia*, 2018, 223.
39. About relevance of mobility sector for the development of a new urban paradigm P. Stella Richter, V. Parisio, *La mobilité urbaine, compétences administratives et aménagement du territoire dans le système juridique italien*, in *Rivista giuridica dell'edilizia*, 2019, 6, 477-487.
40. Communication from the Commission to The European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, Sustainable and Smart Mobility Strategy – putting European transport on track for the future, 2020, COM (2020), 789 final.
41. With a total allocation of 31.46 billion euros, Mission n. 3, "Infrastrutture per una mbilità sostenibile" aims to make, by 2026, the most modern, digital and sustainable infrastructure system capable of responding to the challenge of decarbonisation (European Commission - Strategy for intelligent and sustainable mobility) and to reduce the gaps present on the national territory.
42. L. Ostengo, *I servizi pubblici condivisi: il trasporto pubblico non di linea come "case study" del fenomeno*, in "Ildirittoamministrativo.it", 2016.