

Settlement agreement

The Parties

1. **The State of the Netherlands** (the Public Prosecution Service, represented in this matter by the National Office for Serious Fraud, Environmental Crime and Asset Confiscation in Amsterdam), having its official seat in The Hague and duly represented in this matter by Public Prosecutors *mr. E.B. Smit* and *mr. S.T.C. Bouhuijzen*, electing to have its address for service at IJdok 163 (1013 MM) in Amsterdam, referred to hereinafter as: the Public Prosecution Service,

and

2. **Uber B.V.**, a private limited liability company having its registered office in Amsterdam, at the address Mr. Treublaan 7, 1097 DP, registered in the Commercial Register of the Chamber of Commerce under number 56317441, duly represented in this matter by Mr P.D.N. Gore-Coty,

3. **Uber International B.V.**, a private limited liability company having its registered office in Amsterdam, at the address Mr. Treublaan 7, 1097 DP, registered in the Commercial Register of the Chamber of Commerce under number 5580646, duly represented in this matter by Mr P.D.N. Gore-Coty,

4. **Uber Netherlands B.V.**, a private limited liability company having its registered office in Amsterdam, at the address Mr. Treublaan 7, 1097 DP, registered in the Commercial Register of the Chamber of Commerce under number 56193386, duly represented in this matter by Mr P.D.N. Gore-Coty,

5. **Rasier Operations B.V.**, a private limited liability company having its registered office in Amsterdam, at the address Mr. Treublaan 7, 1097 DP, registered in the Commercial Register of the Chamber of Commerce under number 59888261, duly represented in this matter by Mr P.D.N. Gore-Coty,

Uber B.V., Uber International B.V., Uber Netherlands B.V. and Rasier Operations B.V. also being referred to hereinafter in the singular form as: Uber, and being advised in this matter by *mr. R.M.I. Lamp* and *mr. A.A. Kleinhout*, lawyers practising in Amsterdam,

the Public Prosecution Service and Uber collectively being referred to hereinafter as: the Parties,

whereas

- (a) in 2014, the Public Prosecution Service launched a criminal investigation against Uber B.V., Uber International B.V., Uber Netherlands B.V. and Rasier Operations B.V., giving the investigation the name 'Kimberliet' and case numbers 13/845006-16, 13/845088-15, 13/845007-16 and 13/845008-16;

- (b) the basis for that criminal investigation is the suspicion that, during the period from 1 July 2014 to 19 November 2015, Uber collectively and in unison was repeatedly culpable of carrying out and/or offering transportation by taxi without possessing a licence permitting it to do so, which constitutes an offence under section 76(1) in conjunction with section 75 in conjunction with section 103 of the Dutch Passenger Transport Act 2000 (*Wet Personenvervoer 2000, PTA 2000*) and section 1, at 3°, in conjunction with section 2(3) in conjunction with section 6 of the Dutch Economic Crimes Act (*Wet Economische Delicten, ECA*);
- (c) the violations of the PTA 2000 as described are grave offences and in principle are prosecuted by the Public Prosecution Service, by reason that the offences have a subversive effect in this connection and interfere with free competition on the market;
- (d) the offences yielded illicit proceeds, whereas the position of the Public Prosecution Service is that crime should not pay;
- (e) as part of the criminal case against Uber, on 3 February 2016 the Public Prosecution Service levied a prejudgment attachment against Uber with the Dutch Tax and Customs Administration, which attachment affected a right to a VAT refund of the 'Uber International Holding B.V.; Uber B.V.; C.S.' fiscal unity to the sum of €3,080,624;
- (f) Uber has implemented measures that are intended (at least in part) to prevent serious crimes as described above, and has shared those measures with the Public Prosecution Service;
- (g) the Public Prosecution Service is prepared to offer Uber a settlement under section 74 of the Dutch Criminal Code (*Wetboek van Strafrecht, DCC*), on the terms and according to the arrangements agreed below, which offer Uber has accepted;

agree and establish the following:

Article 1 (settlement)

1.1 The Public Prosecution Service's offer under section 74 DCC is that, on the terms described below, Uber will not be prosecuted, nor will a claim be brought against Uber to confiscate the illicit proceeds in connection with the facts described in the criminal investigation named 'Kimberliet'.

1.2 In connection with the suspicion under section 76(1) in conjunction with section 75 in conjunction with section 103 PTA 2000 and section 1, at 3°, in conjunction with section 2(3) in conjunction with section 6 ECA, Uber will pay the State of the Netherlands a sum of €2,025,000 (in words: two million and twenty-five thousand euros) pursuant to section 74(2)(a) DCC, in the manner described below at 1.4.

1.3 Uber will pay the State of the Netherlands a sum of €309,409 (in words: three hundred and nine thousand four hundred and nine euros) for confiscation of the illicit proceeds pursuant to section 74(2)(d) DCC, in the manner described below at 1.4.

1.4 The amounts described above at 1.2 and 1.3 will be paid within a period of one month after the signing of the agreement is complete, by payment into account number NL17INGB0705004929 of the National Office for Serious Fraud, Environmental Crime and Asset Confiscation of the Public Prosecution Service, stating 'settlement for Kimberliet 13/845006-16, 13/845088-15, 13/845007-16 and 13/845008-16'. No interest is payable on the amounts.

1.5 Only by satisfying the terms of the settlement described above at 1.2, 1.3 and 1.4 will Uber declare that it agrees to the present settlement agreement and will the settlement be effected. Only then will the Public Prosecution Service's right to prosecute Uber lapse, and the Public Prosecution Service will therefore not prosecute Uber further in connection with the various acts investigated by the Dutch fiscal intelligence and investigation service FIOD in the 'Kimberliet' case as recorded in the file with the case numbers listed above, except if the Court of Appeal orders the Public Prosecution Service to as yet prosecute Uber in connection with proceedings under section 12 of the Dutch Code of Criminal Procedure (*Wetboek van Strafvordering*, *DCCP*). If Uber has not satisfied the terms of the settlement described above at 1.2, 1.3 and 1.4, or has not satisfied them correctly, this settlement will lose its validity and it will be deemed not to have been agreed.

1.6 Once Uber has satisfied the terms of the settlement described above at 1.2, 1.3 and 1.4, the Public Prosecution Service will proceed to lift the attachment described in the recitals at (e).

Article 2 (press release)

The Public Prosecution Service will draft a factual narrative in connection with the terms of this settlement, and will publish it together with a press release about the present handling. The text of that factual narrative will read as presented in the **schedule** attached to the present settlement agreement. The Parties will refrain from making any comments in the media about the case or the settlement agreement that deviate from the facts and circumstances as described in the factual narrative.

Article 3 (final discharge from liability)

The Public Prosecution Service on the one hand and Uber on the other hereby declare that they have no further claims on each other, excepts as stated in or pursuant to the present settlement agreement, in connection with the criminal investigation 'Kimberliet', the facts and circumstances ensuing from that investigation, and all past and future consequences ensuing from that investigation, of any nature whatsoever. The Parties grant each other full and final discharge from liability in that connection. This implies that Uber will refrain from bringing proceedings against the State based on or connected to the criminal investigation 'Kimberliet'. This should also – and not exclusively – be understood to include requests for information and requests under sections 591, 591a and/or 578 DCCP.

Article 4 (miscellaneous)

4.1 If the Public Prosecution Service proceeds to prosecute Uber by reason of an order handed down by the Court of Appeal following an objection under section 12 DCCP, the present settlement agreement will be considered to have been rescinded, without any further act being required. Section 74b DCC will then apply.

4.2 The Parties waive their right to rescind or terminate the present settlement agreement, either in whole or in part, on any ground whatsoever, even if circumstances to emerge that were unknown or could not have been known when this settlement agreement was formed.

4.3 The Parties declare that they have read the present agreement, fully understand its substance, have had the opportunity to obtain independent legal advice on it and sign this agreement entirely of their own free will.

Article 5 (choice of forum and competent court)

The present settlement agreement is governed by Dutch law. The District Court of The Hague is designated exclusively as the competent court to hear any disputes relating to this settlement agreement.

Article 6

This settlement agreement and the statement of facts were drawn up in Dutch. An English translation of the settlement agreement and the statement of facts will also be made available or be published by the Netherlands Public Prosecution Service. Where the Dutch text and the English translation differ, the Dutch text will prevail.

Agreed and drawn up and signed in five copies,

Amsterdam, 22 February 2019

For the State of the Netherlands
(Public Prosecution Service),

.....
mr. E.B. Smit

Amsterdam, 22 February 2019

For the State of the Netherlands
(Public Prosecution Service),

.....
mr. S.T.C. Bouhuijzen

Amsterdam, 22 February 2019

For Uber B.V.,

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P.D.N. Gore-Coty

Amsterdam, 22 February 2019

For Uber International B.V.,

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P.D.N. Gore-Coty

Amsterdam, 22 February 2019

For Uber Netherlands B.V.,

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P.D.N. Gore-Coty

Amsterdam, 22 February 2019

For Rasier Operations B.V.,

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P.D.N. Gore-Coty

On behalf of *mr. Lamp* and *mr. Kleinhout*, for having read this agreement:

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mr. S. Kool, colleague

Signed in: Amsterdam on: 22 February 2019