

OPENBAAR MINISTERIE

Office for Serious Fraud, Environmental Crime and Asset Confiscation Amsterdam
(Functioneel Parket Amsterdam)

Account of the Facts Uber

Introduction

Uber is an internationally operating group that offers an app for taxi and other services. Starting in July 2014, Uber offered the UberPop service in the Netherlands, within the Uber app. Via this service from Uber, any private individual was able to provide transport services with his or her own car. No taxi licence was required. By means of the Uber app, passenger and driver were brought together. The app provided the link-up, the route and payment for both driver and passenger. As a result of the actions of the Human Environment and Transport Inspectorate (ILT) and the Public Prosecution Service, Uber halted its service provision via UberPop in November 2015.

The criminal investigation was focused on criminal activity in relation to the UberPop component of the Uber app. The heart of the accusation is that by means of UberPop, Uber was offering an app for transport services whereby *no* taxi licence was required from the drivers, although this was a legal obligation.

The licence requirement is among others in the interests of the safety of the client. Drivers are issued a licence once they have undergone approved training and have handed over a medical certificate. A licence also imposes requirements on the vehicles such as an on-board computer in the car to make it possible to check the drivers' driving and rest times. The provision of taxi services without a licence furthermore creates unfair competition. Taxi firms that do have a licence have had to invest in a medical examination, approved training and for example the installation of an on-board computer.

Criminal investigation

UberPop has attracted much international attention. Taxi unions in Madrid and Barcelona brought legal action to have UberPop banned in those cities. In December 2017, the European Court judged that UberPop is 'a transport service'. Mediation provided by Uber between customer and taxi driver is therefore not covered by European legislation governing the free provision of services or electronic trade, but is subject to transport policy, authority for which now lies with the EU Member States. This means that Uber is subject to Dutch taxi legislation and that the company can be prosecuted for violating the Passenger Transport Act 2000 (hereinafter: Wpv 2000).

Uber structured its business by making use of various different legal entities. In the criminal investigation, four Dutch legal entities from the Uber group were identified as suspects, because they played a role in the framework of provision of the UberPop service:

- Uber International B.V. was initially the BV (private limited liability company according to Dutch law) which emerged as a party in the Uber app in the general terms and conditions. This later became Uber B.V. Uber International B.V. was directly or indirectly involved in the following three Uber companies, as director/(sole) shareholder.
- Uber Netherlands B.V. is one of the group service support companies. Uber is an international company and as a rule has its 'own' Uber in each country where Uber operates, for local business.

- Uber B.V. Uber B.V. awards the licence for the use of the 'riders app' (using this app, the customer/passenger can order rides via the Uber app). Uber B.V. also award the licence for the use of the Uber app to Rasier Operations B.V. UberPop drivers were paid via accounts in the name of Uber B.V.
- Rasier Operations B.V. was exclusively established for 'peer to peer' activities (UberPop). Rasier Operations B.V was issued the licence by Uber B.V. to make use of the Uber app. Rasier Operations B.V. in turn issued the licence for UberPop for the use of the 'drivers app' (that established contact between the driver and the customer).

Investigations revealed that payment of the journey price took place by means of an automatic direct debit from the customer's linked credit card. 100% of the journey price was transferred to the Dutch bank account of Uber B.V. The UberPop driver then received (on average) 80% of the journey price (subject to deduction of 21% VAT on 20% commission) each week, from the bank account in the name of Uber B.V. 20% of the journey price was therefore retained by Uber, as commission.

Out-of-court settlement

On the basis of the criminal investigation, the Public Prosecution Service reached the conclusion that there was sufficient legal and convincing evidence that the companies referred to above were guilty during the period from 1 July 2014 up to and including 19 November 2015 of complicity in violation of article 76 of the Wpv 2000. The commission received by Uber, following deduction of costs, can be classified as the proceeds from crime, amounting in total to € 309,409.

Each of the four suspected legal entities played a role in the preparation, implementation and settlement of the provision of the UberPop service, whereby there was deliberate and close collaboration between the various suspects. It should be noted in this respect that the role of Uber B.V. can be classified as the most important. After all, it was Uber B.V. that issued the licences ('riders app' and 'drivers app') and the cash flow travelled via this company. The role of the other three companies remains more limited but the contribution of each of the four companies to the committing of the crime was of sufficient weight to be considered complicit in violation of article 76 of the Wpv 2000.

Violation of article 76 of the Wpv 2000 has now been terminated by Uber. Since November 2015, Uber has stopped offering the UberPop service and now and in the future will comply with Dutch legislation. No further violations on this point have been observed. Uber has announced its intention to wipe the slate clean. The suspected natural person responsible for the rollout of UberPop in the Netherlands also agreed to 90 hours community service. This service has now been completed.

Given the facts and circumstances, the Public Prosecution Service considers the maximum fine of € 810,000 appropriate and applicable for Uber B.V. Given the lesser role of the other three legal entities, the Public Prosecution Service recognises grounds for limiting the fine to 50% of the maximum fine, in this case an amount of €405,000 per company.

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In addition, the proceeds from crime, namely an amount in total of € 309,409 will be confiscated. The Public Prosecution Service would have made similar demands, in court.