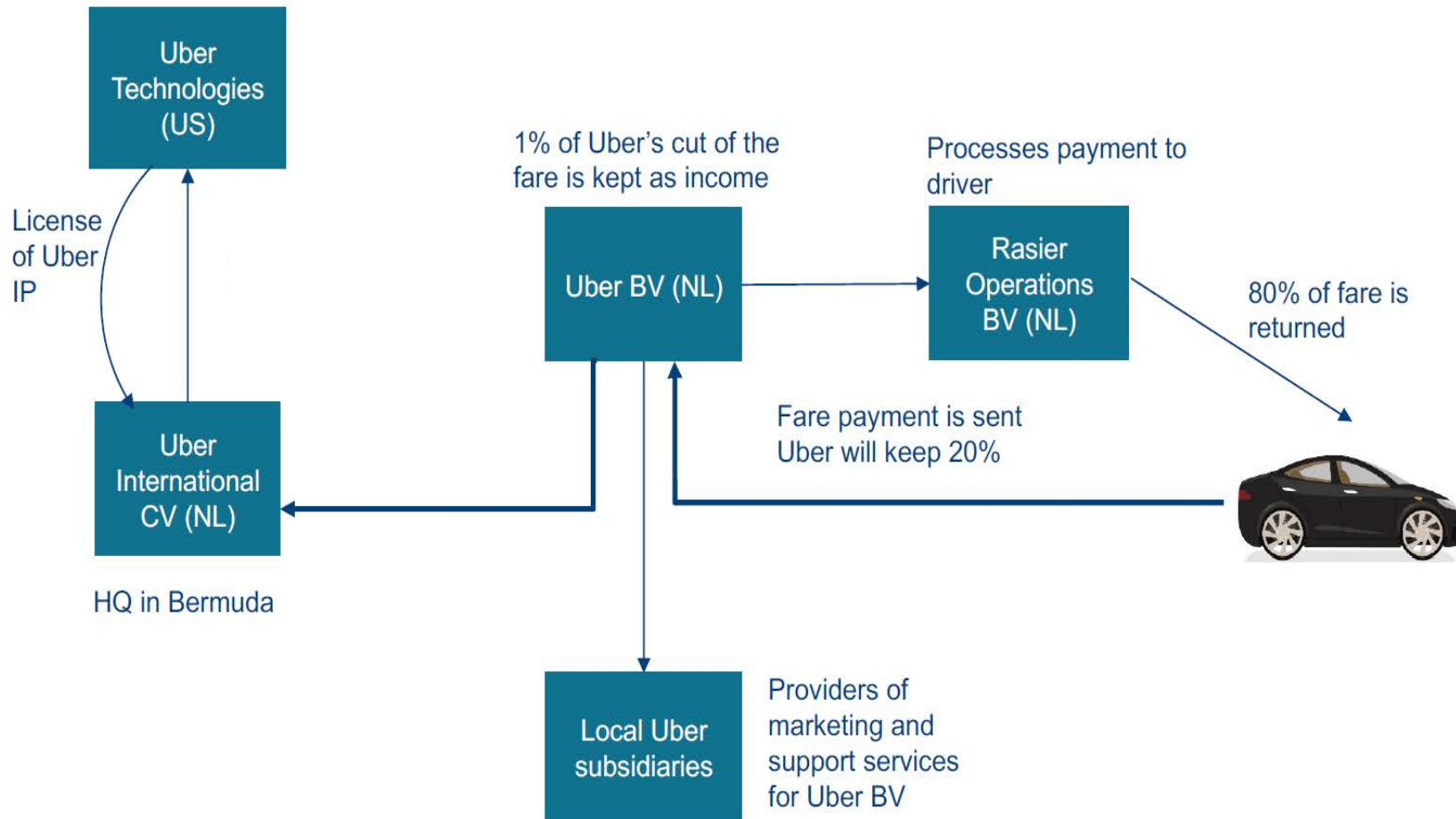


After the decision by the EU Court of Justice – What's next?



Uber in Europe



Courtesy of Prof. L. De Broe, "Direct Taxation of Digital Platform Companies", The Platform Economy – Legal Status of Online Intermediaries, 2018

Uber in Europe

“With the aid of a smartphone equipped with the Uber application, the platform allows users to order urban transport services in the cities covered by it. The application recognises the location of the user and finds available drivers who are nearby. When a driver accepts a trip, the application notifies the user of such acceptance and displays the driver’s profile together with an estimated fare to the destination indicated by the user. Once the trip has been completed, the fare is automatically charged to the bank card which the user is required to enter when signing up to the application. The application also contains a ratings function, enabling drivers to be rated by passengers and passengers to be rated by drivers. Average scores falling below a given threshold may result in exclusion from the platform.” (Adv. Gen. SZPUNAR C-434/15)

Mobility and the ECJ

Uber Spain: ECJ C-434/15 of 20 december 2017

- UberPop (non-professional, non-licensed drivers) vs. local and national taxi-regulations
- Qualification of the intermediation service:
 - information society service (Directive 2000/31/EC on electronic commerce)
 - service in the field of transport (excluded from Services Directive 2006/123/EC)
 - mix of the two (main component?)
- Relevance:
 - EU principle on **freedom to provide services** principally prohibits restrictions on information society services (limited exceptions), e.g. imposing license
- Art. 58 and 90 TFEU regarding the freedom to provide services on transport?
 - No common transport policy adopted by the EU institutions (yet)

Mobility and the ECJ



Mobility and the ECJ

Uber France: ECJ C-320/16 of 10 April 2018

- UberPop (non-professional, non-licensed drivers) vs. loi n° 2014-1104 (art. L.3124-13): criminal sanctions on transport-platforms using non-licensed drivers
- Rule on information society services that should have been notified to the European Commission to be enforced against individuals (in conformity with the Information Society Services Directives) ?
- ECJ: information society service vs. service in the field of transport (Information Society Services Directives not applicable)

What's next?

Short term effects

- Uber has discontinued the services for non-professional/licensed drivers in most EU countries (UberPop still active in Poland, Check Republic, Slovakia and Romania)
- Effect on other providers offering similar services?
- Effect on other Uber services (UberX, UberBlack, etc.) or other providers offering licensed services?

What's next?

Medium-long term effects

Freedom of establishment (art. 49 TFEU)

- Commercial court of Brussels 16 February 2017
- EFTA Surveillance Authority report of 22 Februari 2017 concerning certain provisions of Norwegian law governing access of transport operators to the market for taxi services and their compliance with Article 31(1) of the EEA
 - *“National legislation which makes the establishment of an undertaking from another Member State conditional upon the issue of prior authorisation [e.g. obtaining taxi license where a numerical limitation exists] constitutes a restriction, since it is capable of hindering the exercise by that undertaking of its freedom of establishment, by deterring or even preventing it from freely pursuing its activities through a fixed place of business”*

Common EU transport policy on intermediaries services regarding the freedom to provide services?

What's next?

Long term effects

- Relevance of current ECJ case law?



vs.



Questions?

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