**Sharing economy platforms and competition: empirical analysis of ridesharing apps regulation in Brazil**

*Plataformas de economia compartilhada e concorrência: análise das regulamentações brasileiras aos aplicativos de transporte individual privado de passageiros*

**Abstract**: In few years, ridesharing apps completely changed Brazilian private transportation dynamics, causing great impact and drawing regulatory authorities’ attention. The innovation brought notable benefits to society, but also a backlash from regulators driven mostly by taxi drivers, who claimed for the lack of fair competition conditions. Considering this scenario, the present article aims to identify, through an empirical analysis, to what extent the existing Brazilian regulations address the criteria considered effectively relevant by the competition authority’s Department of Economic Studies, as well as measuring challenges faced by Brazilian regulators while dealing with innovative services, and the difficulties to structure an effective advocacy strategy.

**Keywords**: ridesharing apps, Administrative Council for Economic Defense, regulation; competition law, antitrust law.

**JEL Classification Codes**: A12, A13, H23, H73, K2, K21, K23, K24, K25, L84, L86, L9, L92, R4.

**Resumo**: Em poucos anos, os aplicativos de transporte individual de passageiros alteraram a dinâmica de transporte privado no Brasil, chamando a atenção de autoridades reguladoras. A inovação trouxe benefícios notáveis à sociedade, mas carregou consigo uma forte reação regulatória influenciada majoritariamente por taxistas, que alegavam concorrência leal entre os serviços. Considerando esse cenário, o presente artigo pretende identificar, por meio de uma análise empírica, em que medida as regulamentações brasileiras existentes respeitam e implementam os critérios considerados efetivamente relevantes pelo Departamento de Estudos Econômicos da autoridade de defesa da concorrência sobre o tema, assim como traçar os desafios enfrentados pelos reguladores brasileiros ao lidar com inovações tecnológicas e as dificuldades para a estruturação de uma advocacia da concorrência eficaz.

**Palavras-chave**: aplicativos de transporte individual de passageiros; Conselho Administrativo de Defesa Econômica, regulação, Direito Concorrencial, Direito Antitruste.

1. Introduction; 2. Taxi and ridesharing apps regulation in Brazil; 2.1. Regulatory jurisdiction; 2.2. Taxi regulation; 3. Competition concerns: DEE-CADE’s Studies; 4. Analysis of capitals’ regulation; 4.1. Methodology; 4.2. Comparative analysis; 5. Conclusion; 6. References.

# **Introduction**

Ridesharing apps first arrived in Brazil with Uber, during 2014 FIFA World Cup in Rio de Janeiro/RJ. Shortly after, Uber was already operating in the country’s major capitals: São Paulo/SP, Belo Horizonte/MG and Brasília/DF. In less than four years, Uber services were available in over 100 cities[[1]](#footnote-1) and São Paulo/SP was already the location with the highest number of rides globally[[2]](#footnote-2). Ridesharing apps’ innovation brought notable benefits to society, but also a backlash from regulators driven mostly by taxi drivers. Traffic conditions, data sharing and labor issues became the focus of bills all over the country. Among all these questions, competition concerns related to taxis drew particular attention of the Brazilian antitrust agency, the Administrative Council for Economic Defense (“CADE”)[[3]](#footnote-3).

The Brazilian Constitution and the federal legislation give both municipalities and the Federal Union the authority to regulate on transportation policies, being municipalities bounded to federal guidelines, if any[[4]](#footnote-4). In this scenario, taxi drivers’ unions and associations reunited to execute great pressure in their cities claiming for the lack of fair competition conditions against the new apps. Consequently, municipalities rushed to issue normative acts to regulate apps’ activities, resulting in very different provisions from one city to another.

Considering that the main alleged argument for the existence of municipal regulation was the promotion and protection of competition conditions, the present article aims to verify if the regulations followed the recommendations made by the Brazilian Competition Authority’s Department of Economic Studies (“DEE-CADE”).

 At the same time that municipalities were editing their regulations, the DEE-CADE published Studies indicating that apps improved and would increase even more the competition and the quality of the service in the private transportation market. On the federal scenario, however, regulation was issued only by the end of March 2018, when 18 of the 27 state capitals had already regulated the apps in their own different ways.

Considering that the Brazilian federal law on the subject (Federal Law No. 13.640/2018) has been issued when city regulations had already been issued and considering DEE-CADE’s opinion on pro-competitive effects of new apps, the two fundamental questions for the debate proposed by the article are: (*i*) do existing regulations – both federal and municipal – address the competition concerns indicated on DEE-CADE’s Studies?; and (*ii*) was there any contradiction between federal and municipal regulations by the time federal regulation was issued?

In order to answer these questions, the article reviews the existing regulation in the 27 state capitals of Brazil, as well as Federal Law No. 13.640/2018. The objective is to compare the main topics and criteria addressed in DEE-CADE’s Studies with local and federal regulations, as well as to measure actual challenges faced by Brazilian regulators dealing with innovative services and the difficulties to structure an effective advocacy strategy.

The article is structured in four main parts, besides this introduction. First, a brief description will be given regarding the existing regulations for taxis in Brazil, as well as a brief explanation of the legislative jurisdiction on urban transportation laws (Part 2). Then, an analysis of DEE-CADE’s Studies will be carried out, in order to verify which should be relevant concerns according to the antitrust authority’s Department of Economic Studies (Part 3).

With the main topics addressed by DEE-CADE organized into an analysis guide, the existing regulation of the 27 state capitals, as well as the Federal Law No. 13.640/2018, will be compared with each other. Finally, the results obtained will be confronted with DEE-CADE’s positions on the highlighted points, to verify whether regulations contradict the Studies and the Federal Law (Part 4). This part will be followed by final remarks and suggestions for future researches (Part 5).

# **Taxi and ridesharing apps regulation in Brazil**

The challenges technological innovation represents for law systems are notoriously and worldwide recognized. Especially in civil law countries such as Brazil, regulations tend to be issued when innovations are already available, aiming to correct dysfunctions and to reduce asymmetries, usually in a reactive – rather than in a preventive – way.

When ridesharing apps reached Brazil, a regulatory pressure emerged from taxi drivers’ unions and associations, claiming for the lack of fair competition conditions. This specific sector already had a restrictive regulation system, from which the supposed differences could arise.

Brazilian Constitution and legislation give both municipalities and the federal government the authority to regulate on transportation policies, which includes taxi and ridesharing apps. Therefore, to understand the political context and the possibility of regulating those markets, it is necessary to understand first (*i*) how the jurisdiction to regulate on ridesharing apps is shared between the federative entities; and (*ii*) on which terms was the taxi market previously regulated.

## **Regulatory jurisdiction**

Before discussing regulatory challenges, a brief explanation regarding the competence to regulate private transportation markets must be made. The Federal Law No. 12.587/2012, which establishes guidelines to the National Policy on Urban Mobility, provides, in its Articles 1st and 2nd, that transportation policy should aim to integrate different types of transport. In addition, it establishes that regulation should improve the accessibility and mobility of people and cargo in the municipalities, in order to guarantee universal access to the cities.

When delimitating the attributions of each federative entity, the Federal Law No. 12.587/2012 determines, in its Article 16, items I and IV, that the federal government has the authority to "*provide technical and financial assistance to the States, Federal District and Municipalities, under the terms of this Law”*; and to *“foster technological and scientific development aimed by the principles and guidelines of this Law*"[[5]](#footnote-5). Regarding municipalities’ jurisdiction, the same Law establishes, in its Article 18, item I, among other responsibilities *"to plan, implement and evaluate the urban mobility policy, as well as to promote the regulation of urban transport services"*[[6]](#footnote-6)*.*

Therefore, the Federal Law No. 12.587/2012 prescribes the authority of the federal government to establish guidelines and make recommendations in a broader way when compared to municipalities, which are entitled to plan, execute and evaluate urban mobility policy in a particular way within their respective territories. In this sense, Brazilian Constitution provides, to the federal sphere, legislative competence to stablish the guidelines for the national transport policy, traffic and transportation (items IX and XI, Article 22)[[7]](#footnote-7), while the municipalities are able to legislate about these subject in order to supplement federal legislation when it is pertinent (item II, Article 30)[[8]](#footnote-8). Thus, both federative entities are competent to legislate, though with different forms and scopes[[9]](#footnote-9).

In federal scenario, the Federal Law No. 13.640/2018 has been published on the Official Gazette only on March 27, 2018, when several cities had already issued their own regulations. Considering that this Law restate the municipal authority to regulate specific points according to their local realities, it is important to understand how municipalities were already regulating the apps and to verify the eventual existence of contradictions between them. However, first, to understand the scenario in which all those regulations were issued, it is important to comprehend taxi’s regulation previous framework.

## **Taxi regulation**

The Federal Law No. 12.468/2011 regulates taxis in Brazil. All over the country, taxi drivers are the only authorized individuals to execute the so-called public individual transport of passengers. As determinates the Article 3 of the Law, to be a taxi driver in Brazil, it is necessary to (*i*) have a special drive license; (*ii*) take courses on human relations, defensive direction, first aid cares, basic mechanics and electrics, provided by an entity recognized by the respective municipal authority; (*iii*) have a vehicle with determinate basic characteristics; (*iv*) have a specific certification; (*v*) register at the National Institute of Social Security; and (*vi*) have a Work and Social Security Card.

The authorization itself consists in a specific license issued by municipal authorities and, therefore, taxi drivers execute a public service delegated to private agents. The number of licenses issued in each city is limited and, in most cases, they are not available to be purchased from the public administration anymore[[10]](#footnote-10). It is also important to notice that issuance of new taxi licenses does not usually follow the growth of cities[[11]](#footnote-11).

Even though taxi regulation varies between municipalities, all rules are notably pretty rigid. There are provisions regarding fees, additional values in non-commercial hours and minimum safety and quality standards, for both taxi drivers and vehicles[[12]](#footnote-12).

In São Paulo/SP, for example, all taxi rides start with a minimum price of R$ 4.50 (approx. USD 1.10[[13]](#footnote-13)), each kilometer costs R$ 2.75 (approx. USD 0.68), and the still time costs R$ 33.00 (approx. USD 8.12) per hour [[14]](#footnote-14). At night, on Sundays and holidays, prices might be up to 30% more expensive. In Rio de Janeiro/RJ, rides start with a minimum price of R$ 5.50 (approx. USD 1.35), each kilometer costs R$ 2.50 (approx. USD 0.62) from 6 a.m. to 9 p.m. during the week, or R$ 3.00 (approx. USD 0.74) at night, on Sundays and holidays. The still time costs R$ 31.50 (approx. USD 7.75) per hour [[15]](#footnote-15).

Its noticeable, therefore, that taxis must follow specific rules and conditions to operate in Brazilian cities and are not able to fix their own prices. Thus, taxi drivers argue that ridesharing apps would be competing on unfair terms, considering they are not submitted to the same legal requirements[[16]](#footnote-16).

Within all the pressure exerted by taxi drivers’ unions and associations in their cities protesting against the lack of fair competition conditions against the new apps, municipalities rushed to regulate apps’ activities, under the argument of promoting and protecting competition. At the same time, DEE-CADE published Studies indicating apps would improve markets’ competition and quality.

To verify whether existing regulation address the competition concerns pointed on DEE-CADE’s Studies, a comparison between the main topics brought by these Studies and the regulations of the 27 state capitals of Brazil, as well as the Federal Law No. 13.640/2018 will be carried out in the following parts of this article. To make the comparison easier to comprehend, first the Studies will be analyzed and summarized into an analysis guideline. Then, in part four, the regulations will be examined through the main topics already identified.

# **Competition concerns: DEE-CADE’s Studies**

In order to facilitate the treatment of municipal and federal data and compare it with DEE-CADE’s point of view on competition concerns, an analysis guide is structured based on the main topics addressed by antitrust authority’s Department of Economic Studies. Therefore, the Studies are analyzed before regulation, so that the regulatory scenario may be drawn through these criteria, making it easier to identify contradictory and convergent points.

By the time Federal Law No. 13.640/2018 was issued, DEE-CADE had published two economic Studies and a Technical Note regarding individual passenger transportation market. The first study to be written by DEE-CADE, entitled “*Individual Passenger Transport Market: Regulation, Externalities and Urban Balance*” (“First Study”), was released in September 2015. The study presents a synthesis on taxi regulation and ponders pros and cons of the regulating taxis and new apps.

A first point brought by this study that should be highlighted is the very existence of regulation. DEE-CADE points out that apps respond in a satisfactory way to several of the problems originated by taxi regulation, presenting a satisfactory mechanism of self-regulation.

According to DEE-CADE, taxi regulation has emerged based on the idea that the individual passenger transportation market has two major failures: (*i*) asymmetric information, considering that consumers do not have prior knowledge about service’s quality and have almost no ability to negotiate prices; and (*ii*) negative externalities, either by traffic conditions or by air and noise pollution.

Although regulation minimizes these market failures, it also generates high social costs. For instance, rules fixing fares make competition through prices impossible. In addition, the restrict number of licenses inhibits entry of new drivers into the market, which may lead to a shortage of supply. All that considered, DEE-CADE suggests that we could have less regulation in this market[[17]](#footnote-17) and a cross-regulatory standard to be applied indiscriminately across heterogeneous cities should be considered with due caution[[18]](#footnote-18). Thus, the question to begin the analysis guide is the very existence of regulation in each location.

Secondly, the First Study states that it would not make sense to restrict ridesharing apps. Besides having self-regulatory mechanisms, apps were serving a market that was not focused on, or was unsatisfactorily covered by taxis until that moment[[19]](#footnote-19). Thus, the second question of the guide should verify the prohibition of apps.

The third point raised by the First Study revolves around fixing prices or their calculating methods. Based on a study developed in 2003 by Bekken & Longva, DEE-CADE points out that as taxi service is deregulated, prices tend to follow the logic of the balance between supply and demand. Although it is generally assumed that the regulator establishes correct equilibrium prices, this may not be necessarily true[[20]](#footnote-20). The third point of analysis shall regard, then, the existence of price calculating methods.

The fourth competition concern that deserves attention regards the provisions on minimum quality standards. According to DEE-CADE, if there is a regulation, it should addressed these standards[[21]](#footnote-21). In addition, considering a scenario with market imperfections and externalities, it would also be important for local authorities to have at least some information to ground public policy decisions. This information could, for example, be related to vehicle fleet and to infrastructure impacts, which states fifth and sixth questions, respectively. All the criteria will be resumed by the end of this part of the article.

The second study, “*Post-entry rivalry: The immediate impact of the Uber application on door-to-door taxi rides”* (*“*Second Study*”*), was published by DEE-CADE in December 2015. The study aimed to verify the immediate economic impacts of Uber’s entry in Brazilian capitals São Paulo/SP, Rio de Janeiro/RJ, Belo Horizonte/MG and Brasília/DF, during the first half of 2015, specifically compared to cab-hailing apps performances. Therefore, a comparative method was adopted through the establishment of time periods, control and treatment group references.

The results indicate that it was not possible to assume that services provided by Uber were in the same relevant market as services provided by taxis ride apps. A new demand was created by Uber, according to the study. It is important to consider, however, that the analyzed data referred to an entrance and consolidation period of the market, so the fact of services not being part of the same relevant market by that time do not mean that they could never be. According to DEE-CADE, the rivalry between the ridesharing services and taxi rides is expected to grow over time, creating different kinds of substitutability in different niches of consumers, a scenario that is commonly faced by most economic agents[[22]](#footnote-22). That tendency has been proven true so far[[23]](#footnote-23).

Finally, CADE’s General-Superintendence (“SG”) has opened, in February 2017, a thematic study procedure, and asked DEE-CADE to develop a new study on the market’s organization (Procedure No. 08700.000924/2017-87)[[24]](#footnote-24). To do that, SG instructed DEE-CADE to contact companies, entities and individuals on behalf of CADE and to analyze the data obtained.

Uber, Cabify, 99 Taxis and Easy Taxi, were asked to provide complete data indicating: cities covered[[25]](#footnote-25), number of rides, night rides, distances, length of time, prices, and number of drivers. In addition, official information regarding technical studies and opinions that established economic and legal justifications for the progressive pricing model adopted in São Paulo was required from the City Hall.

By the time Federal Law No. 13.640/2018 was published, the study was still being produced and DEE-CADE had issued only one official Technical Note, dated of October 30, 2017. In summary, DEE-CADE concluded that Uber had created a new demand (capturing users who did not use cab-hailing apps) and was also rivaling and conquering passengers from cab-hailing apps. In addition, ridesharing apps were capable of minimizing market failures previously mentioned (asymmetric information, over quality and prices, and negative externalities, such as traffic conditions and air and noise pollution), so that the market would need less regulation[[26]](#footnote-26).

On April 12, 2018, DEE-CADE published a third study, entitled “*Competition effects of the sharing economy in Brazil: Has Uber's entry affected the cab-hailing app market from 2014 to 2016?*” (“Third Study”). In this study, DEE-CADE has analyzed competition impacts of Uber's entry into the market, using a sample of 590 Brazilian municipalities between 2014 and 2016.

The Third Study brings important new conclusions regarding the interactions between the two markets in a post entry period. However, considering it was released 15 days after Federal Law No. 13.640/2018 was published, this study will not be considered in the composition of the analysis guide utilized in this article (organized with information form the first two Studies), once it is not included within the period methodologically fixed and none of the regulators had time to make legislative changes considering its new conclusions and recommendations. Though, considering the Third Study brings relevant contributions to the regulatory debate, references to its highlighted points will be made in footnotes throughout this article[[27]](#footnote-27).

Therefore, DEE-CADE’s Studies indicate that the debate regarding the need for regulation is still open, but list main competition topics that should or should not be addressed by authorities if regulations are issued. Through the analysis of the Studies, the six most relevant competition concerns and, thus, topics to be carried out on the comparative analysis of regulations are: (Q.1) Is there regulation regarding ridesharing apps at that location? (Q.2) If positive, does the regulation prohibit the use of the apps? (Q.3) Are there fixed prices or price calculation basis/methods established by the regulation? (Q.4) Are there provisions about service’s quality standards? (Q.5) Are there provisions on vehicle fleet? (Q.6) Are there provisions for enabling the measurement of impacts on urban infrastructure?

With these main competition concerns organized into an analysis guide, the regulatory scenario will be drawn on the following part, making it possible to identify contradictory and convergent points between regulations.

# **Analysis of capitals’ regulation**

Before entering the analysis of the existing regulations, it is necessary to comprehend the methodology adopted by the research carried out in the present article. Methodology delimitations were necessary considering that Brazil has over 5.570 cities[[28]](#footnote-28) and had no federal regulation regarding ridesharing apps until March 27, 2018. Therefore, topic 4.1 is destined to justify the delimitations and to explain some characteristics of the Brazilian legislative process. The comparative analysis of regulations will be carried out in topic 4.2.

# **Methodology**

To enable the analysis of the regulations, it was necessary to make both space and temporal delimitations. The first delimitation regards the cities: the 27 Brazilian state capitals, including the Federal District. This delimitation, in addition to the purpose of not excluding any Brazilian region, was made considering that such localities have greater number of inhabitants, greater urban infrastructure, greater transportation demand and, therefore, greater probability of regulation existence.

Regarding temporal delimitation, the reference adopted was March 27, 2018, date of the publication of Federal Law No. 13.640/2018 on the Official Gazette. As previously exposed in topic 2.1, both municipalities and the Federal Union have the authority to legislate on the matter, though with different forms and scopes. Federal regulation is an important reference to the analysis, once local governments should follow its guidelines. This temporal delimitation also enables the comparison between local regulations and the Federal Law.

To make the comparison more detailed and complete, the same methodology was applied to existing local regulations by the time Federal bill was first approved by the Chamber of Deputies and forwarded to the Federal Senate, back in April 4th, 2017[[29]](#footnote-29). This way, it will be possible to verify changes in municipal regulations during the federal legislative procedure, over an almost one-year period.

To identify the existing regulations, a research was carried out in state capitals’ Official Gazettes’ websites, as well as City Halls and City Councils’ websites, using as search key-words "individual transport" (“*transporte individual*”) and "transport applications" (“*aplicativos transporte*”). In addition, information requests were made both on City Halls and City Councils’ websites of all capitals, through the Information Access Law (“*Lei de Acesso à Informação*”, or “*LAI*”), the Federal Law No. 12.527/2011[[30]](#footnote-30)-[[31]](#footnote-31).

Finally, it is necessary to reaffirm that the present article aims to analyze the existence of regulations and their coherence compared to competition concerns indicated on DEE-CADE’s Studies. Therefore, judicial decisions will not be analyzed. Even though they may suspend regulations’ effects, or even declare them unconstitutional – which is known to be happening in some cities[[32]](#footnote-32) – this work is focused only in comprehend the regulatory dynamics and the political impacts of competition concerns.

# **Comparative analysis**

The research carried out on the municipal scope verified that 18 out of the 27 Brazilian state capitals had regulation considering ridesharing apps. The table below summarizes the regulations identified.

**Table 1** – Synthesis of ridesharing apps’ regulations identified in Brazilian state capitals

| **State Capital** | **Regulation** |
| --- | --- |
| Aracaju/SE | Law Decree No. 4.738, of December 28, 2015 (“Law Decree No. 4.738/2015”) |
| Belém/PA | Law No. 9.233, of December 6, 2016 (“Law No. 9.233/2016”) |
| Belo Horizonte/MG | Law Decree No. 16.832, of January 23, 2018 (“Law Decree No. 16.832/2018”) |
| Brasília/DF | Law No. 5.691, of August 2, 2016 (“Law No. 5.691/2016”), Law Decree No. 38.258, of June 7, 2017 (“Law Decree No. 38.258/2017”) |
| Campo Grande/MS | Law Decree No. 13.157, of May 16, 2017 (“Law Decree No. 13.157/2017”) |
| Curitiba/PR | Law Decree No. 1.302, of July 18, 2017 (“Law Decree No. 1.302/2017”) |
| Fortaleza/CE | Law No. 10.553, of December 23, 2016 (“Law No. 10.553/2016”) |
| Goiânia/GO | Law Decree No. 2.890, of October 6, 2017 (“Law Decree No. 2.890/2017”) |
| Maceió/AL | Law No. 6.683, of August 9, 2017 (“Law No. 6.683/2017”) |
| Palmas/TO | Law No. 2.330, of July 13, 2017 (“Law No. 2.330/2017”), Law Decree No. 1.428, of July 31, 2017 (“Law Decree No. 1.428/2017”), Resolution No 5, of September 20, 2017 |
| Porto Alegre/RS | Law No. 12.162, of December 9, 2016 (“Law No. 12.162/2016”), Law Decree No. 19.700, of March 13, 2017 (“Law Decree No. 19.700/ 2017”) |
| Recife/PE | Law No. 18.176, of October 28, 2015 (“Law No. 18.176/2015”), Law Decree No. 29.558, of April 4, 2016 (“Law Decree No. 29.558/ 2016”) |
| Rio de Janeiro/RJ | Law No. 6.106, of November 25, 2016 (“Law No. 6.106/2016”) |
| Salvador/BA | Law No. 9.066, of June 1, 2016 (“Law No. 9.066/2016”) |
| São Luís/MA | Law n° 429, of November 23, 2016 (“Law n° 429/2016”) |
| São Paulo/SP | Law Decree No. 56.981, of May 10, 2016 (“Law Decree No. 56.981/2016”) |
| Teresina/PI | Law No. 4.942, of September 2, 2016 (“Law No. 4.942/2016”) |
| Vitória/ES | Law Decree No. 16.770, of July 28, 2016 (“Law Decree No. 16.770/2016”), Law Decree No. 16.785, of August 18, 2016, Order No 16, of August 26, 2016, Order No 25, October 12, 2016 |

Source: author’s elaboration.

As previously exposed, DEE-CADE’s Studies indicate that ridesharing apps are capable of minimizing market failures such as asymmetric information (over quality and prices) and negative externalities (traffic conditions and air and noise pollution). According to these Studies, authorities must think about the real need to maintain regulations in these markets[[33]](#footnote-33).

Considering that there is no statement imposing the need for regulation, more than 66.6% of the capitals would be contradicting DEE-CADE’s Studies. Similar conclusion could be applied to federal analysis with the sanction of Federal Law No. 13.640/2018 (Q.1).

Following to the analysis of whether regulations prohibit the use of the apps (Q.2), the municipal scenario deserves even more attention: 8 out of the 27 Brazilian state capitals prohibited it. In 7 state capitals (Aracaju/SE, Balém/PA, Fortaleza/CE, Rio de Janeiro/RJ, Salvador/BA, São Luís/MA e Teresina/PI), the prohibition was expressly stated:

*“****Article 1 - It is prohibited, within the scope of the Municipality of Rio de Janeiro, the remunerated transportation of passengers in private cars, by ways of collective and/or individual transportation, whether registered or not in applications or sites.”*** Law No. 6.106/ 2016, Rio de Janeiro/RJ[[34]](#footnote-34).

*“****Article 1 -******It is prohibited, within the scope of the Municipality of Salvador, the remunerated transportation of people in private vehicles****.*

***Sole paragraph.*** *Private vehicles are those not included in the municipal registers as approved for the transportation of people, by authorization, permission or public concession and compliance with all rites contained in federal, state and municipal legislation.”* Law No. 9.066/2016, Salvador/BA[[35]](#footnote-35). (Author’s highlights)

In Recife/PE, there was a different scenario. Law No. 18.176/2015 established, in its Article 3:

*“****Article 3*** *-* ***The service offered by application softwares under the terms of Article 1 may only be provided by drivers and vehicles with registration and valid authorization within Recife’s City Hall,*** *being forbidden the provision of drivers and vehicles that do not meet the requirements of Federal Law No. 12.468/2011 or* ***the municipal legislation that regulates the individual transport of passengers****”.* Law No. 18.176/2015, Recife/PE[[36]](#footnote-36). (Author’s highlights)

In this sense, Law Decree No. 29.558/2016, which regulated Law No. 18.176/2015, stated, in its first Article, paragraph first, that:

*“****Article 1 -***  *[…].*

***§ 1 - The individual service of remunerated passenger transportation may only be provided by individuals or legal entities that, as established in Municipal Law No. 17.537/2009, and subsequent amendments, integrate the Municipal Taxi Service of Recife - SMTX/Recife.****”* Law Decree No. 29.558/2016, Recife/PE[[37]](#footnote-37). (Author’s highlights)

Therefore, in Recife/PE there was an indirect prohibition of ridesharing apps, once the service could only be provided by taxis. Considering that the activities of ridesharing apps consist precisely in providing a service with peculiarities compared to the individual public transport, a regulation that establishes that the transportation can only be provided by taxi drivers ends up prohibiting the availability of this new service.

In a national analysis of state capitals – if it is assumed that cities that do not have regulations are considered not to prohibit the service –, a scenario divided in Brazilian political regions was drawn as follows: the Northeast region was the one with major percentage of prohibition (66.6%), followed by Southeast (25%), North (14.3%), and Midwest and South regions, both without capitals prohibiting the apps. In national scenario, 29.6% of the capitals prohibited the use of apps through regulations, as illustrated by Figure 1.

**Figure 1** – Analysis of ridesharing apps’ prohibition in Brazilian state capitals by political regions

**N/A (%)**

Source: author’s elaboration.

“N/A” – cases in which there is no regulation and, therefore, no prohibition to apps.“IND.” – indirect prohibition

In these capitals, the research verified that the violation of the provisions was punishable with pecuniary fines that may reach up to R$ 1,700.00 (approx. USD 418.20), doubled in hypothesis of recurrence, in addition to the seizure of the vehicle and possible criminal responsibility[[38]](#footnote-38).

Moving forward to the analysis of questions (Q.3) to (Q.6), considering they address specific disposals of regulations that do not prohibit ridesharing apps, only the following capitals were considered in the analysis: Belo Horizonte/MG, Brasília/DF, Campo Grande/MS, Curitiba/PR, Goiânia/GO, Maceió/AL, Palmas/TO, Porto Alegre/RS, São Paulo/SP and Vitória/ES, as well as the Federal Law No. 13.640/2018.

The Federal Law No. 13.640/2018, following the attributions determined both by Brazilian Constitution and by Federal Law No. 12.587/2012, fixes a general basis for regulation, but continues to guarantee municipal authorities the competence to regulate specific points according to their individual realities. The only question addressed in a more specific way by Federal Law No. 13.640/2018 regards (Q.4), once it establishes, in its Article 3, vehicles should attend to maximum age and other characteristics required by municipal authorities[[39]](#footnote-39).

Regarding the existence of defined prices or price calculation basis/method (Q.3), provisions about service’s quality standards (Q.4) and provisions for enabling the measurement of impacts on urban infrastructure (Q.6), the research verified that all of them were addressed by all capitals’ regulations.

Even though regulations did not fix exact prices to be charged from the final consumer – as it is done for taxis –, all of them fixed public prices, tariffs and registration fees (for both apps or for each vehicle registered). Considering these values may be passed on to the final consumer, authorities should be cautious when interfering in prices through different forms (Q.3)[[40]](#footnote-40). These tariffs were imposed in addition to the municipal service tax (“*Imposto Sobre Serviço de Qualquer Natureza – ISS”*). In Brasília/DF, for example, the first authorization for apps may cost R$ 490.00 (approx. USD 120.54), plus R$ 40.00 (approx. USD 9.84) for each vehicle every year[[41]](#footnote-41). In Campo Grande/MS, public price corresponded to 7% of each kilometer[[42]](#footnote-42). In Curitiba/PR, the amount for each kilometer was R$ 0.08 (approx. USD 0.02)[[43]](#footnote-43). The values, it is noticeable, vary in a large scale from city to city.

Fixing taxes may result in undesired consequences for markets, increasing prices for final consumers and making harder, for example, the access to the service for a larger part of the population, or increasing the barriers of entry. Considering DEE-CADE’s position that apps are presenting a satisfactory mechanism of self-regulation, authorities should avoid interfering in prices[[44]](#footnote-44).

Regarding provisions about service’s quality standards (Q.4)[[45]](#footnote-45), DEE-CADE explains, based on studies carried out in developed countries on the deregulation of the taxi market, that these standards should be addressed regardless of the desired regulatory model[[46]](#footnote-46). In different ways, all regulations analyzed, including Federal Law No. 13.640/2018, had provisions regarding consumer welfare.

Most regulations had maximum age requirements for vehicles, required drivers had taken customer service’s courses, and disciplined the use of badges on vehicle windows. There were regulations that went further, with rules regarding inclusion policies of female drivers (São Paulo/SP Decree No. 56.981/2016) and accessibility (Brasília/DF Law No. 5.691/2016, Porto Alegre/RS Law No. 12.162/2016 and Palmas/TO Law Decree No. 1.428/2017).

Finally, regarding provisions on the measurement of impacts on urban infrastructure (Q.6), the research looked for provisions that would enable the Public Administration to reform strategies regarding traffic and improve public transport policies[[47]](#footnote-47). All regulations analyzed had provisions establishing that data on origin and destination, time and distance, ride’s maps, drivers’ identification, composition of total value charged, and consumer evaluation should be available to the Public Administration[[48]](#footnote-48). According to DEE-CADE, considering a scenario with market imperfections and consumption externalities, it would be important for local authorities to have at least some information to support public policy decisions. Through the data collected, authorities may work on concrete proposals and solutions – including the improvement of their regulations – to deal with traffic issues, since they are an externality that might arise from the very service provide by the apps.

Even though DEE-CADE considered important for authorities to have this kind of information and develop public policies considering traffic impacts, it also pointed out that regulations should avoid defining an exact number of vehicle fleet (Q.5). This restriction could cause distortions between supply and demand, result in price increases, and create barriers to the entry of new players.

The only capital in which the research has identified a provision that could result in a restriction of maximum vehicle fleet was Palmas/TO, whose Decree No. 1.428/2017 established that:

*“****Article 10*** *- The intensive exploitation of the road network by services of private and paid motorized transport of passengers shall be subject to authorization to be granted together with the authorization referred in art. 2º of this Decree, by the Municipal Public Administration,* ***within the available vacancies****. […]*

*§3º - The OPT shall indicate the number of places required,* ***and if there are more requirements than vacancies available, ARP shall make a proportional division between enterprises****.* Decree No. 1.428/2017, Palmas/TO[[49]](#footnote-49). (Author’s highlights)

The following table summarizes all provisions made by state capitals’ regulations regarding questions (Q.3) to (Q.6):

**Table 2** – Synthesis of answers to questions (Q.3) to (Q.6), by locality

|  |  |  |
| --- | --- | --- |
| **Q.3** | **Locality** | **Regulation** |
| Belo Horizonte/MG | Article 6, Law Decree No. 16.832/2018 |
| Brasília/DF | Articles 4 and 14, Law No. 5.691/2016; Articles 20, 21 and 22, Law Decree No. 38.258/2017; Order No 51, September 27/2017; Order No 56/2017 |
| Campo Grande/MS | Article 9, Law Decree No. 13.157/2017 |
| Curitiba/PR | Articles 7, 9 and 10, Law Decree No. 1.302/2017; Articles 10 and 11, Resolution No 3/2017 |
| Goiânia/GO | Articles 6 to 10 and 26, XVIII, Law Decree No. 2.890/2017 |
| Maceió/AL | Article 3, Law No. 6.683/2017 |
| Palmas/TO | Articles 5 and 16, Law No. 2.330/2017; Article 10 §4º, Law Decree No. 1.428/2017 |
| Porto Alegre/RS | Article 4, Law No. 12.162/2016; Article 8, Law Decree No. 19.700/2017 |
| São Paulo/SP | Articles 8 to 12, Law Decree No. 56.981/2016; Article 1, Resolution No 3, Municipal Road Use Committee |
| Vitória/ES | Article 8, Law Decree No. 16.770/2016 |
| **Q.4** |  |  |
| Federal | Article 3, Federal Law No. 13.640/2018 |
| Belo Horizonte/MG | Articles 11 and 12, Law Decree No. 16.832/2018 |
| Brasília/DF | Articles. 3 to 6, 9 to 11 and 14, Law No. 5.691/2016; Articles 11, 16, Law Decree No. 38.258/2017; Order No 81/2017 |
| Campo Grande/MS | Articles 7, 12, and 15 Law Decree No. 13.157/2017 |
| Curitiba/PR | Articles 6 and 14, Law Decree No. 1.302/2017 |
| Goiânia/GO | Articles 16 to 18 and 26 to 28, Law Decree No. 2.890/2017 |
| Maceió/AL | Articles 4 and 8, Law No. 6.683/2017 |
| Palmas/TO | Article 17, Law No. 2.330/2017; Articles 5 to 7, Law Decree No. 1.428/2017 |
| Porto Alegre/RS | Articles 3, 5, III, IV and VI and 11, I and II, Law No. 12.162/2016 |
| São Paulo/SP | Articles 6, 12, 15, 16 e 35 Law Decree No. 56.981/2016; Law Decree No. 58.084/2018; and Articles 5 to 9 Resolution No 1 and Article 5, Resolution 5/2016, Municipal Road Use Committee |
| Vitória/ES | Articles 6, 14 and 21 Law Decree No. 16.770/2016; Order No 25/2016 |
| **Q.5** |  |  |
| Palmas/TO | Article 10 §3º, Law Decree No. 1.428/2017 |
| **Q.6** |  |  |
| Belo Horizonte/MG | Article 8, IX, Law Decree No. 16.832/2018 |
| Brasília/DF | Article 4, IV, 18, III, 23 and 61 Law Decree No. 38.258/2017; Order No 54/2017; Order No 77/2017 |
| Campo Grande/MS | Articles 4, 25 and 26 Law Decree No. 13.157/2017 |
| Curitiba/PR | Articles 4, 6 and 15, Law Decree No. 1.302/2017; Articles 5 and 12, Resolution No 3/20172017 |
| Goiânia/GO | Article 26, XIV to XVII and XIX, Law Decree No. 2.890/2017 |
| Maceió/AL | Article 2 §2º, Law No. 6.683/2017 |
| Palmas/TO | Articles 8 and 9, Law No. 2.330/2017 |
| Porto Alegre/RS | Articles 3 and 35 Law No. 12.162/2016 |
| São Paulo/SP | Articles 4, 35 and 36 Law Decree No. 56.981/2016 |
| Vitória/ES | Articles 21 and 22 Law Decree No. 16.770/2016 |

Source: author’s elaboration.

Considering all the information exposed, the comparative analysis between Federal Law No. 13.640/2018, state capitals’ regulations and DEE-CADE’s Studies are summarized in the following table:

**Table 3** – Comparative synthesis between DEE-CADE’s Studies, Federal Law No. 13.640/2018 and state capitals’ regulations, through answers to questions (Q.3) to (Q.6).

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Q.3** | **Q.4** | **Q.5** | **Q.6** |
| Federal Law No. 13.640/2018 | No | Yes | No | No |
| Belo Horizonte/MG | Yes | Yes | No | Yes |
| Brasília/DF | Yes | Yes | No | Yes |
| Campo Grande/MS | Yes | Yes | No | Yes |
| Curitiba/PR | Yes | Yes | No | Yes |
| Goiânia/GO | Yes | Yes | No | Yes |
| Maceió/AL | Yes | Yes | No | Yes |
| Palmas/TO | Yes | Yes | Yes | Yes |
| Porto Alegre/RS | Yes | Yes | No | Yes |
| São Paulo/SP | Yes | Yes | No | Yes |
| Vitória/ES | Yes | Yes | No | Yes |
| DEE-CADE | No | Yes | No | Yes |

Source: author’s elaboration

The comparative analysis indicates, therefore, that none of the state capitals’ regulations was in absolute harmony with the recommendations made by DEE-CADE’s Studies, since all of them had provisions that interfered on price calculation basis/method, through different forms (Q.3). Besides, the regulation of Palmas/TO established provisions on vehicle fleet (Q.5). On the other hand, all capitals’ regulations had provisions regarding service’s quality standards and measurement of impacts on urban infrastructure, as recommended by the Studies.

Federal Law No. 13.640/2018, as previously exposed, fixes general basis for regulation, addressing more specifically only service’s quality standards (Q.4), which was followed by all capitals that regulated the apps. Although it does not address provisions for enabling the measurement of impacts on urban infrastructure (Q.6), it does not prohibit municipalities to do so. Therefore, it is possible to consider that the Federal regulation is in accordance DEE-CADE’s Studies recommendations, especially considering its preoccupation with a federal regulatory standard to be applied indiscriminately in heterogeneous cities[[50]](#footnote-50).

When the same research was carried out in April 4, 2017, when the Federal bill was first approved by the Chamber of Deputies and forwarded to the Federal Senate, a different scenario was identified. By that time, Federal Congress was still analyzing three federal bills. In addition, 10 out of the 27 capitals prohibited ridesharing apps, and only 5 of them allowed the service and provided regulations (Brasília/DF, Campo Grande/MS, Porto Alegre/RS, São Paulo/SP and Vitória/ES). None of the regulations was in accordance with the recommendations made by DEE-CADE’s Studies, including the federal bills, as may be verified by the table below[[51]](#footnote-51):

**Table 4** – Comparative synthesis between DEE-CADE’s Studies, Federal Law bills and state capitals’ regulations, through answers to questions (Q.3) to (Q.6), in April 4, 2017

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Q.3** | **Q.4** | **Q.5** | **Q.6** |
| Federal bill 28/2017 | N/A | N/A | N/A | N/A |
| Federal bill 530/2015 | Yes | Yes | No | No |
| Federal bill 726/2015 | No | Yes | No | No |
| Brasília/DF | Yes | Yes | No | No |
| Campo Grande/MS | No | Yes | Yes | Yes |
| Porto Alegre/RS | Yes | Yes | No | Yes |
| São Paulo/SP | Yes | Yes | No | Yes |
| Vitória/ES | Yes | Yes | No | Yes |
| DEE-CADE | No | Yes | No | Yes |

Source: author’s elaboration

“N/A” – not applicable, considering bill prohibited ridesharing apps.

Therefore, even though not all state capitals’ regulations perfectly matched the criteria addressed by DEE-CADE in its Studies, in an almost one-year-period a sensible movement in that direction could be noticed. A major important step was that the Federal Law sanctioned does not prohibit ridesharing apps, as one of the federal bills previously did. In addition, the number of capitals that prohibited ridesharing apps suffered a reduction from 10 to 8 (once Belo Horizonte/MG, João Pessoa/PB and Maceió/AL no longer prohibited the apps, and São Luís/MA edited a prohibiting regulation meanwhile). Furthermore, by 2018, all capitals with regulations had provisions regarding service’s quality standards and measurement of impacts on urban infrastructure.

# **Conclusion**

The present article proposed a comparison between the main competition concerns addressed by DEE-CADE in its Studies and the municipal and federal regulations regarding ridesharing apps, measuring actual challenges faced by Brazilian regulators dealing with innovative services and markets.

The empirical analysis has revealed that, by the time the Federal Law No. 13.640/2018 was published, on March 27, 2018, 18 out of the 27 Brazilian state capitals had regulation regarding ridesharing apps. Of those, 8 capitals prohibited the apps, fixing pecuniary fines for violations, among other penalties. The prohibition of ridesharing apps is not only in disagreement with Federal Law No. 13.640/2018, but also with the recommendations made by DEE-CADE’s Studies.

The Federal Law No. 13.640/2018 itself may be considered to follow DEE-CADE’s recommendations, especially its concerns with a federal regulatory standard to be applied indiscriminately in heterogeneous cities. In this sense, the federal regulation fixes a general basis for municipalities, addressing more specifically only service’s quality standards (Q.4), a criteria followed by all state capitals that had regulated the apps by that time.

Even though Federal Law No. 13.640/2018 does have rules that interfere on prices (Q.3) and does not address provisions for enabling the measurement of impacts on urban infrastructure (Q.6), all 10 state capitals’ regulations addressed these points as well.

Considering that fixing taxes and interfering in price calculation may result in undesired consequences for markets, and DEE-CADE’s position that apps are presenting a satisfactory mechanism of self-regulation (so that prices could be determined, for example, with reference to changes in supply and demand), state capitals’ regulations did not fully match the criteria addressed by the Studies. Finally, the city of Palmas/TO also had a provision that could result in a restriction of maximum vehicle fleet.

The regulatory scenario, therefore, did not match the exact criteria and concerns highlighted by the Department of Economic Studies of the Brazilian antitrust authority. However, in an almost one-year-period, a sensible movement in that direction could be noticed, given: (*i*) the issuance of a Federal Law that does not prohibit ridesharing apps, as one of the bills previously did; (*ii*) the reduction in the number of capitals that prohibited ridesharing apps, from 10 to 8; and (*iii*) all capitals with regulation had provisions regarding service’s quality standards and measurement of impacts on urban infrastructure by 2018.

Although the research has identified that municipal regulations were not in fully accordance with DEE-CADE’s Studies by the time the federal legislation was issued, it should be noted that the Studies had great relevance on the discussions in the National Congress, influencing the edition of a regulation sensitive to competition concerns. In addition, DEE-CADE’s Studies have been considered essential to substantiate important judicial decisions, such as the recent ruling by the Federal Supreme Court on the claim of non-compliance with a fundamental precept (ADPF) No. 449, on May 8, 2019, which ruled that the Fortaleza Municipal Law No. 10.553/2016, that prohibited the use of apps, was unconstitutional.

It is yet necessary to study several ridesharing apps’ related topics, such as transparency to consumers about variations on dynamic prices, as well as the protection and restriction of the use of passengers’ personal data, among many others. Efforts are still needed to identify externalities and, throughout them, multiply debates and ideas.

It is also important to remember that ridesharing apps’ market dynamics is still changing, so that regulatory needs may be in constant change as well. It is necessary that organizations and researchers continue to develop studies on this market, making it possible to establish a constant and coherent agenda between antitrust and regulatory authorities.

# **References**

Administrative Council for Economic Defense. *Individual Passenger Transport Market: Regulation, Externalities, and Urban Balance*. CADE’s Department of Economic Studies. Available at <http://en.cade.gov.br/topics/about-us/dee/working-paper-001-2015.pdf>. Access: 9.1.2019.

 . *Post-entry rivalry: The immediate impact of the Uber application on door-to-door taxi rides*. CADE’s Department of Economic Studies. Available at <http://en.cade.gov.br/topics/about-us/dee/working-paper-003-2015.pdf>. Access: 9.1.2019.

 . *Nota Técnica No 39/2017/DEE/CADE*, CADE’s Department of Economic Studies. Available at <https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.php?DZ2uWeaYicbuRZEFhBt-n3BfPLlu9u7akQAh8mpB9yOga6sYPx-zVdZE9mniP_nGN9ZYEOAjLUQraO13nEdXPegV54qhH9WdPt2xe1DgYIwoJc5h7mBbQioCCvAyDWHy>. Access: 3.24.2018.

 . *Competition effects of the sharing economy in Brazil: Has Uber's entry affected the cab-hailing app market from 2014 to 2016?* CADE’s Department of Economic Studies*.* Available at http://www.cade.gov.br:8080/cade\_english/topics/publications/papers/working-paper-uber.pdf. Access: 10.21.2018.

BOOTH, Wayne C. *A arte da pesquisa.* São Paulo: Martins Fontes, 2005.

CARVALHO, Vinícius Marques de; MATTIUZZO, Marcela. *Plataformas de compartilhamento: nova lógica econômica?* Available at <https://jota.info/colunas/coluna-do-vinicius/plataformas-de-compartilhamento-nova-logica-economica-28072017>. Access: 3.18.2018.

DAVIS, Don. Ph.D. *Thesis Research: Where Do I Start?* Nova York: Columbia, 2011.

DEMPSEY, Paul S. *Taxi Industry Regulation, Deregulation & Reregulation: the paradox of market failure*. Transportation Law Journal, v. 24, p. 74-116. 1996. Available at <http://rankandfile.ca/wp-content/uploads/2016/02/Price2.pdf>. Access: 3.18.2018.

DUNLEAVY, Patrick. *Authoring a PhD*. Nova York: Palgrave Macmillan, 2003, cap. 3.

ECO, Umberto. *Como se faz uma tese.* São Paulo: Perspectiva, 2005.

FELSON, M.; SPEATH, J. Community structure and collaborative consumption. *American Behavioral Scientist*, 41, 614–624, 1978.

FERRAZ JR., Tércio Sampaio. *Introdução ao estudo do direito: técnica, decisão, dominação*. 7ª edição. São Paulo: Atlas, 2013.

FERRAZ, Octávio Motta; COUTINHO, Diogo Rosenthal; CUNHA, Luciana Gross. *Inovação dos Métodos de Pesquisa em Direito e Renovação da Produção Científica: Mesas de Debates*, 2011.

FORGIONI, Paula A. *Os Fundamentos do Antitruste*. 8ª edição. São Paulo: Revista dos Tribunais, 2015.

LOPES, José Reinaldo de Lima. et al. *A pesquisa em direito e a pesquisa em ciências sociais.* Available at <http://reedpesquisa.org/wp-content/uploads/2012/06/Mesa-de-Debates-1-I-EPED.pdf>. Access: 3.18.2018.

MENDES, F. S.; CEROY, F. M. *Economia Compartilhada e a Política Nacional de Mobilidade Urbana: Uma proposta de marco legal*. Brasília: Núcleo de Estudos e Pesquisas/ CONLEG/Senado, Novembro/2015 (Texto para Discussão No. 185). Available at <https://www12.senado.leg.br/publicacoes/estudos-legislativos/tipos-de-estudos/textos-para-discussao/td185>. Access: 3.18.2018.

Ministério Público Federal. *Nota Pública sobre o “Uber”.* Federal Public Prosecutor’s legal opinion. Available at <http://www.mpf.mp.br/pgr/documentos/nota-publica-uber>. Access: 3.18.2018.

PÁDUA JÚNIOR, Fábio Pimenta de; ALENCASTRO, Mario Sergio Cunha. *Desafios do Consumo Colaborativo no Brasil.* Available at <https://www.researchgate.net/profile/Fabio_Padua/publication/289376723_Desafios_do_Consumo_Colaborativo_no_Brasil/links/568c067208ae153299b637e4.pdf>. Access: 3.18.2018.

QUEIROZ, Rafael Mafei Rabelo. *Monografia Jurídica Passo a Passo: Projeto, pesquisa, redação e formatação*. São Paulo: Método, 2015.

SALANOVA, J. M., ESTRADA, M., AIFADOPOULOU, G., & MITSAKIS, E. *A review of the modeling of taxi services*. Procedia-Social and Behavioral Sciences, 20, p. 150-161. 2011. Available at <http://www.sciencedirect.com/science/article/pii/S1877042811014005>. Access: 3.18.2018.

SALOMÃO FILHO, Calixto. *Regulação e Desenvolvimento*. São Paulo: Malheiros, 2002.

 . *Direito Concorrencial*. São Paulo: Malheiros, 2013.

 . *Regulação da atividade econômica*. São Paulo: Malheiros, 2008.

SALOMÃO FILHO, Calixto; AMARAL JR, Alberto do; GOUVÊA, Carlos Portugal, CEREZETTI, Sheila Christina Neder; CARVALHO, Vinicius Marques de. *Regulação e Desenvolvimento: Novos temas*. São Paulo: Malheiros, 2012.

SAMUELSON, Pamela. *Good Legal Writing.* Pittsburgh: The University of Pittsburgh Law Review, vol. 46, 1984, pp. 149-169.

SCHOUERI, Luís Eduardo. *Direito tributário.* 2ª edição. São Paulo: Saraiva, 2012.

STIGLER, George J. *The Theory of Economic Regulation*. In: Bell Journal of Economics and Management Science, v.2, p.3, 1971. Available at <http://www.jstor.org/stable/3003160?origin=JSTOR-pdf>. Access: 3.18.2018.

VOLOKH, Eugene. *Academic Legal Writing: Law Review Articles, Student Notes, Seminar Paper and Getting on Law Review*. Nova York: Foundation Press, 2010, caps. I, II, VI, VIII, IX.

XIMENES, Julia M. *O Processo de Produção Científico-Jurídica – O Problema é o Problema.* Florianópolis: Fundação Boiteux, 2008, pp. 4791-4805.

ZANATTA, Rafael A. F.; PAULA, Pedro C. B. de; KIRA, Beatriz. *Contribuições para o debate sobre regulação do aplicativo Uber no Brasil*. Research developed by the Associação InternetLab de Pesquisa em Direito e Tecnologia. São Paulo: 2015. Available at <http://www.internetlab.org.br/wp-content/uploads/2015/06/Contribui%C3%A7%C3%B5es-ao-debate-Brasilia-Vers%C3%A3o-final.-Aprovada.-16.06.2015.pdf>. Access: 3.18.2018.

 . *Inovações regulatórias no transporte individual: o que há de novo nas megacidades após o Uber?* Research developed by the Associação InternetLab de Pesquisa em Direito e Tecnologia. São Paulo: 2016. Available at <http://www.internetlab.org.br/wp-content/uploads/2016/01/Relato%CC%81rio-InternetLab.Inovac%CC%A7o%CC%83es-Regulato%CC%81rias-no-Transporte-Individual.pdf>. Access: 3.18.2018.

**Comparative analysis between DEE-CADE’s Studies, Federal Law No. 13.640/2018 and Brazilian capitals’ regulations, through answers (Q.1) to (Q.6)**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Capital/State** | **Country Region** | **Regulation** | **Publication Date** | **1. Regulation?** | **2. Prohibits apps?** | **3. Interferes in prices?** | **4. Quality standards?** | **5. Vehicle fleet?** | **6. Urban infrastructure impacts?** |
| **Federal** |
| N/A | N/A | Federal Law No. 13.640, March 26, 2018 | 3.27.2018 | N/A | No | No | Yes | No | No |
| **Municipal** |
| Aracajú/SE | Northeast | Law Decree No. 4.738, December 28, 2015 | 1.6.2016 | Yes | Yes | N/A | N/A | N/A | N/A |
| Belém/PA | North | Law No. 9.233, December 6, 2016 | 12.6.2016 | Yes | Yes | N/A | N/A | N/A | N/A |
| Belo Horizonte/MG | Southeast | Law Decree No. 16.832, January 23, 2018 | 1.24.2018 | Yes | No | Yes | Yes | No | Yes |
| Boa Vista/RR | North |   |   | No | N/A | N/A | N/A | N/A | N/A |
| Brasília/DF | Midwest | Law No. 5.691, August 2, 2016, Law Decree No. 38.258, June 7, 2017 | 8.3.2016 and 6.8.2017 | Yes | No | Yes | Yes | No | Yes |
| Campo Grande/MS | Midwest | Law Decree No. 13.157, May 16, 2017 | 2.24.2016 | Yes | No | Yes | Yes | No | Yes |
| Cuiabá/MT | Midwest |   |   | No | N/A | N/A | N/A | N/A | N/A |
| Curitiba/PR | South | Law Decree No. 1.302, July 18, 2017 | 7.19.2017 | Yes | No | Yes | Yes | No | Yes |
| Florianópolis/SC | South |   |   | No | N/A | N/A | N/A | N/A | N/A |
| Fortaleza/CE | Northeast | Law No. 10.553, December 23, 2016 | 12.23.2016 | Yes | Yes | N/A | N/A | N/A | N/A |
| Goiânia/GO | Midwest | Law Decree No. 2.890, October 6, 2017 | 10.6.2017 | Yes | No | Yes | Yes | No | Yes |
| João Pessoa/PB | Northeast |   |   | No | N/A | N/A | N/A | N/A | N/A |
| Macapá/AP | North |   |   | No | N/A | N/A | N/A | N/A | N/A |
| Maceió/AL | Northeast | Law No. 6.683, August 9, 2017 | 8.10.2017 | Yes | No | Yes | Yes | No | Yes |
| Manaus/AM | North |   |   | No | N/A | N/A | N/A | N/A | N/A |
| Natal/RN | Northeast |   |   | No | N/A | N/A | N/A | N/A | N/A |
| Palmas/TO | North | Law No. 2.330, July 13, 2017, Law Decree No. 1.428, July 31, 2017, Resolution No 5, September 20, 2017 | 7.13.2017, 7.31.2017 and 9.20.2017 | Yes | No | Yes | Yes | Yes | Yes |
| Porto Alegre/RS | South | Law No. 12.162, December 9, 2016, Law Decree No. 19.700, March 13, 2017 | 12.9.2016 and 3.13.2017 | Yes | No | Yes | Yes | No | Yes |
| Porto Velho/RO | North |   |   | No | N/A | N/A | N/A | N/A | N/A |
| Recife/PE | Northeast | Law No. 18.176, October 28, 2015, Law Decree No. 29.558, April 4, 2016 | 10.29.2015 and 4.5.2016 | Yes | Indirectly | N/A | N/A | N/A | N/A |
| Rio Branco/AC | North |   |   | No | N/A | N/A | N/A | N/A | N/A |
| Rio de Janeiro/RJ | Southeast | Law No. 6.106, November 25, 2016 | 11.28.2016 | Yes | Yes | N/A | N/A | N/A | N/A |
| Salvador/BA | Northeast | Law No. 9.066, June 1, 2016 | 6.2.2016 | Yes | Yes | No | No | No | No |
| São Luís/MA | Northeast | Law No. 429, November 23, 2016 | 4.28.2017 | Yes | Yes | N/A | N/A | N/A | N/A |
| São Paulo/SP | Southeast | Law Decree No. 56.981, May 10, 2016 | 5.11.2016 | Yes | No | Yes | Yes | No | Yes |
| Teresina/PI | Northeast | Law No. 4.942, September 2, 2016 | 9.2.2016 | Yes | Yes | N/A | N/A | N/A | N/A |
| Vitória/ES | Southeast | Law Decree No. 16.770, July 28, 2016, Law Decree No. 16.785, August 18, 2016, Order No 16, August 26, 2016, Order No 25, October 12, 2016 | 8.1.2016, 8.25.2016, 8.29.2016 and 11.4.2016 | Yes | No | Yes | Yes | No | Yes |

N/A – Not applicable

1. <https://www.uber.com/pt-BR/newsroom/fatos-e-dados-sobre-uber/>. Access: 1.31.2018. [↑](#footnote-ref-1)
2. <https://veja.abril.com.br/economia/sao-paulo-e-a-cidade-com-o-maior-numero-de-viagens-na-uber/>. Access: 6.4.2018. [↑](#footnote-ref-2)
3. Administrative Council for Economic Defense. *Individual Passenger Transport Market: Regulation, Externalities, and Urban Balance*. CADE’s Department of Economic Studies. Available at <http://en.cade.gov.br/topics/about-us/dee/working-paper-001-2015.pdf>. Access: 9.1.2019. [↑](#footnote-ref-3)
4. Article 22, items IX and XI, and Article 30 of Brazilian Constitution and Article 16 of Federal Law No. 12.587/2012. [↑](#footnote-ref-4)
5. Author’s translation. In the original *“I - prestar assistência técnica e financeira aos Estados, Distrito Federal e Municípios, nos termos desta Lei; e VI - fomentar o desenvolvimento tecnológico e científico visando ao atendimento dos princípios e diretrizes desta Lei”*. [↑](#footnote-ref-5)
6. Author’s translation. In the original “*I - planejar, executar e avaliar a política de mobilidade urbana, bem como promover a regulamentação dos serviços de transporte urbano*”. [↑](#footnote-ref-6)
7. “*Article 22. The Union has the exclusive power to legislate on: IX – guidelines for the national transportation policy; XI – traffic and transportation;”*. [↑](#footnote-ref-7)
8. *“Article 30. The municipalities have the power to: II – supplement federal and state legislations where pertinent;”.* [↑](#footnote-ref-8)
9. Legislation also provides states competence to regulate on specific types of transport, but not on private transport provided by apps. [↑](#footnote-ref-9)
10. In São Paulo/SP, for example, it is possible to sell taxi licenses as long as a tax of R$ 9,000.00 (approx. USD 2,214.02) is payed to the government. [↑](#footnote-ref-10)
11. According to DEE-CADE, there is, on average, one taxi for each group of 376 inhabitants considering only the Brazilian capitals. The numbers vary from 2.058 in Palmas/TO to 135 in Porto Velho/RO. Administrative Council for Economic Defense. *Competition effects of the sharing economy in Brazil: Has Uber's entry affected the cab-hailing app market from 2014 to 2016?* CADE’s Department of Economic Studies, p. 10-11. Available at <http://www.cade.gov.br:8080/cade_english/topics/publications/papers/working-paper-uber.pdf>. Access: 10.21.2018. [↑](#footnote-ref-11)
12. Idem, p. 23. [↑](#footnote-ref-12)
13. Prices in dollars estimated on September 6, 2019. Available at <https://www.bcb.gov.br/conversao>. Access: 9.9.2019. [↑](#footnote-ref-13)
14. <http://www1.folha.uol.com.br/cotidiano/2016/08/1806704-tarifa-unica-para-taxis-de-sao-paulo-estreia-com-improvisos.shtml>. Access: 3.19.2018. [↑](#footnote-ref-14)
15. <http://www.destakjornal.com.br/cidades/detalhe/nova-tarifa-de-taxis-comeca-a-valer>. Access: 3.19.2018. [↑](#footnote-ref-15)
16. Idem. [↑](#footnote-ref-16)
17. Administrative Council for Economic Defense. *Individual Passenger Transport Market: Regulation, Externalities, and Urban Balance*. CADE’s Department of Economic Studies, p. 7. Available at <http://en.cade.gov.br/topics/about-us/dee/working-paper-001-2015.pdf>. Access: 9.1.2019. [↑](#footnote-ref-17)
18. Idem, p. 16. [↑](#footnote-ref-18)
19. Idem*.* p. 7-8. DEE-CADE explains that apps have brought undeniable costumer advantages, such as (*i*) representing a superior substitute for individual private cars; (*ii*) representing a superior substitute for taxis; and (*iii*) competing with taxis and private cars, potentially reducing values of car rents and even vehicle prices. [↑](#footnote-ref-19)
20. Apud. BEKKEN, J. & LONGVA, F. (2003). *Impact of Taxi Market Regulation*. TOI Report. Oslo, Norway. [↑](#footnote-ref-20)
21. *“The quality loss of vehicle fleet does not seem to be associated with a free market entry, and an adamant regulation does not appear to be able to prevent service quality from deteriorating. However, service quality standards should be addressed regardless of the regulatory model desired* ”. Administrative Council for Economic Defense. *Individual Passenger Transport Market: Regulation, Externalities, and Urban Balance*. CADE’s Department of Economic Studies, p. 9. Available at <http://en.cade.gov.br/topics/about-us/dee/working-paper-001-2015.pdf>. Access: 9.1.2019. [↑](#footnote-ref-21)
22. In the same sense of DEE-CADE’s Studies, the Federal Public Prosecutor's Office (MPF) has published a Public Notice in August 2016. The Notice was structured considering DEE-CADE’s first two Studies, as well as technical reports from the Federal Public Prosecutor's Office Support Secretary (SEAP), and from the Secretariat of Economic Monitoring of the Ministry of Finance (SEAE). In general terms, the Note follows a similar position to DEE-CADE, but expressly suggests the adoption of apps’ regulation in federal level. DEE-CADE, on the other hand, points out that it would be necessary to be very careful when applying a single standard to several municipalities, without considering their local specificities. Available <http://www.mpf.mp.br/pgr/noticias-pgr/mpf-defende-regulamentacao-federal-do-uber.> Access: 3.18.2018. [↑](#footnote-ref-22)
23. Administrative Council for Economic Defense. *Competition effects of the sharing economy in Brazil: Has Uber's entry affected the cab-hailing app market from 2014 to 2016?* CADE’s Department of Economic Studies, p. 30. Available at <http://www.cade.gov.br:8080/cade_english/topics/publications/papers/working-paper-uber.pdf>. Access: 10.21.2018. [↑](#footnote-ref-23)
24. <https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?0c62g277GvPsZDAxAO1tMiVcL9FcFMR5UuJ6rLqPEJuTUu08mg6wxLt0JzWxCor9mNcMYP8UAjTVP9dxRfPBcU0qGA_Ab5SJy6v1RW6VK8w8mE7DOrF3XokQcJikhnJt>. Access: 3.25.2018. [↑](#footnote-ref-24)
25. Entrance data of ridesharing and cab-hailing apps may be verified at the Third Study of CADE’s Department of Economic Studies. [↑](#footnote-ref-25)
26. The study published on April 12, 2018 points out that Uber's entry generated an average reduction of 56.8% in the number of taxi rides, and that for every 1% increase in Uber’s rides, taxi rides fell approximately 0.09%. These results suggest that, as well as conquering users that did not use cab-hailing apps, Uber also rivaled with taxis, winning over some of its users. In addition, the segment of apps did not react to the increase of the competition, for example, by offering discounts. Analyzing only state capitals, however, taxi rides were reduced in 36.9%, indicating that competitive effects tended to be smaller in cities with larger markets. The results also suggest that only in the capitals of the Southeast, South and Midwest regions Uber's entry generated a reduction in taxi’s prices (12.1%), which indicates the taxi market reacted by offering discounts on rides after a longer period of exposure to a competitive environment. Concerning regulation, the study points out that in addition to generating benefits for consumers and encouraging entry in the market, the apps addressed some market failures. The study considers that Federal Law No. 13.640/2018 was parsimonious, included safety standards and did not impose major regulatory barriers to entry and price restriction. It recommends municipal regulation to follow the same direction, not being too restrictive. Finally, the study highlights that the debate on the gradual deregulation of taxi market is necessary to encourage business models with more competition, leading to benefits for consumers with innovative services, better quality, security, lower prices and more options. Therefore, in general, legislative recommendations remained the same as those of the previous Studies. [↑](#footnote-ref-26)
27. It is also worth mentioning the recent judgment of cases involving these markets by CADE. In July 2017, CADE’s Tribunal has decided to discontinue an Administrative Procedure that investigated taxi drivers’ associations for exclusionary practices, sham litigation and the attempt to close entry of new apps, understanding there was no sufficient evidence of the alleged conducts (Administrative Procedure No. 08700.006964/2015-71). In October 2018, CADE’s General Superintendence has also recommended that the Tribunal discontinue an investigation against Uber for the alleged practices of dumping, cartel and adoption of uniform practices. The General Superintence has recommended, however, that Uber revises its price-making policy, pointing out that price-multipliers based on an offer/demand system may be anticompetitive if the demand is manipulated by drivers, and that the possibility of competition between drivers for a passenger through the offer of discounts might be a possible alternative (Preparatory Procedure No 08700.008318/2016-29). [↑](#footnote-ref-27)
28. Based on a study conducted by the Brazilian Institute of Geography and Statistics (“*Instituto Brasileiro de Geografia e Estatística – IBGE*”) in 2016, published in the Federal Official Gazette in 30.8.2016. Available at <http://biblioteca.ibge.gov.br/visualizacao/livros/liv97868.pdf>. Access: 1.1.2017. [↑](#footnote-ref-28)
29. Brazilian Congress composition is similar to the United States of America, with a House of Deputies and a Federal Senate. The legislative process has similarities as well. It starts with the introduction of the following propositions: law project, resolution, legislative decree, provisional decree and proposal of amendment to the Constitution. Parliamentarians have the initiative to the lawmaking process, as well as the President of the Republic, the Supreme Court, the Higher Courts, the Republic's General Attorney and the citizens. All propositions are discussed in both Houses and are submitted to various stages of analysis and voting. The analysis of constitutionality, admission and merits are made in the Committees, which do not have conclusive power, working only as consultants. When a bill process starts at the House of Deputies, the approved text follows to the Senate’s appreciation. If the Senate makes text modifications, the bill must return to the House of Deputies for second approval. After the National Congress deliberations, there is still the Executive deliberation, that is, the President of the Republic may sanction (approve) or veto (prohibit) the proposition or parts of it. In the first case, the project becomes a law. In the case of veto, the project is sent back to the Congress, that decides to maintain or not the restrictions. If the project is sanctioned, it goes to a complementary phase, in which the President of the Republic has a 48 hours term to promulgate it. Information available at <http://www2.camara.leg.br/english/making-laws>. Access: 3.25.2018. [↑](#footnote-ref-29)
30. The Federal Law No. 12.527/2011 regulates the access to public administration information and government acts from all federative members, as determined by Article 5, item XXXIII; Article 37, third paragraph, item II; and Article 216, second paragraph of Brazilian Constitution. Information shall be provided to any citizen and shall be able to be required through official websites. [↑](#footnote-ref-30)
31. All documents obtained during the research, both through the key word research and through requests made with LAI are available and may be verified on: <https://www.dropbox.com/sh/jsb6p3sv9y5q9fl/AADa0D2ITDrT8bgdyW9ej5WBa?dl=0>. [↑](#footnote-ref-31)
32. <https://www.correiodoestado.com.br/cidades/justica-considera-ilegal-lei-municipal-que-proibia-circulacao-de-uber/336902/>. Access: 10.21.2018. [↑](#footnote-ref-32)
33. Administrative Council for Economic Defense. *Individual Passenger Transport Market: Regulation, Externalities, and Urban Balance*. CADE’s Department of Economic Studies, p. 38. Available at <http://en.cade.gov.br/topics/about-us/dee/working-paper-001-2015.pdf>. Access: 9.1.2019. [↑](#footnote-ref-33)
34. Author’s translation. In the original “*Art. 1º Fica proibido, no âmbito do Município do Rio de Janeiro, o transporte remunerado de passageiros em carros particulares, a título de transporte coletivo e/ou individual, estando ou não cadastrados em aplicativos ou sites”*. [↑](#footnote-ref-34)
35. Author’s translation. In the original “*Art. 1º Fica proibido, no âmbito do Município de Salvador, o transporte remunerado de pessoas em veículos particulares. Parágrafo único. São veículos particulares aqueles que não constam nos cadastros municipais como homologados para o transporte de pessoas, mediante autorização, permissão ou concessão pública e cumprimento de todos os ritos constantes na legislação federal, estadual e municipal”*. [↑](#footnote-ref-35)
36. Author’s translation. In the original “*Art. 3º - O serviço oferecido pelo software aplicativo nos termos do artigo 1º só poderá ser prestado por motoristas e veículos com cadastros e autorizações vigentes junto a Prefeitura do Recife, sendo vedada a disponibilização de motoristas e veículos que não atendam às exigências de Lei Federal No. 12.468/2011 ou a legislação municipal que disciplina o transporte individual de passageiros”.* [↑](#footnote-ref-36)
37. Author’s translation. In the original *“Art. 1º [...] § 1º O serviço individual de transporte remunerado de passageiros somente poderá ser prestado por pessoas físicas ou jurídicas que, nos moldes estabelecidos na Lei Municipal No. 17.537/2009, e alterações posteriores, integrem o Serviço Municipal de Táxi do Recife – SMTX/Recife.”* [↑](#footnote-ref-37)
38. In Aracaju/SE and in Belém/PA, for example, Law Decree No. 4.738/2015, and Law No. 9.233/2016, fix pecuniary fines of R$ 1,700.00 (approx. USD 418.20). In Rio de Janeiro/RJ, Law No. 6.106/2016 and Law Decree No. 40.518/2015 establish pecuniary fines of R$ 1,360.29 (approx. USD 334.63). [↑](#footnote-ref-38)
39. In the *original “Art. 3 [...] Art. 11-B […] II – Conduzir veículo que atenda aos requisites de idade máxima e às características exigidas pela autoridade de trânsito e pelo poder público municipal e do Distrito Federal”*. [↑](#footnote-ref-39)
40. It is important to distinguish price regulation from the definition of public taxes. By price regulation, the present article comprehends the hypothesis in which the government fixes the exact prices to be charged for the service. The authorities may, however, not fix the prices, but create taxes and fees. Despite being different mechanisms, both of the interventions may result in direct impacts in the final prices charged on consumers, since the agents may pass on these values. According to Luís Eduardo Schoueri, the transfer of taxes applied to sellers or buyers is a factor that depends on supply and demand’s elasticity, and it is not correct to say that a particular type of tax is transferable to the consumer and the other is not. According to the author, the more elastic the supply is, or the less elastic the demand is, greater will be the share of tributes passed on to consumers. SCHOUERI, Luís Eduardo. *Direito tributário.* 2ª edição. São Paulo: Saraiva, 2012. Cap. I.6 – “A questão da incidência econômica tributária”. [↑](#footnote-ref-40)
41. Order No. 52/2017. [↑](#footnote-ref-41)
42. Article. 9, § 1 of Law Decree No. 13.157/2017. [↑](#footnote-ref-42)
43. Article 10 of Law Decree No. 1.302/2017. [↑](#footnote-ref-43)
44. It should be noticed that regulations seem to make such provisions aiming to implement and finance public policies of traffic control, transportation access and infrastructure investments. In São Paulo/SP, for example, Article 12 of Law Decree No. 56.981/2016 establishes that tariffs should vary according to the period of time and location of vehicles. São Paulo/SP and Vitória/ES also have specific rules to promote pool rides, the ones shared by more than one user. Maceió/AL, on the other hand, prohibits pool rides (Article 4, second paragraph, Law No. 6.683/2017). [↑](#footnote-ref-44)
45. As quality standards, were considered provisions that have as focus consumer welfare, aiming security and the balance of forces between providers and consumers. For more details see: ZANATTA, Rafael A. F.; PAULA, Pedro C. B. de; KIRA, Beatriz. *Inovações regulatórias no transporte individual: o que há de novo nas megacidades após o Uber?* Research developed by the Associação InternetLab de Pesquisa em Direito e Tecnologia. São Paulo: 2016. Available at <http://www.internetlab.org.br/wp-content/uploads/2016/01/Relato%CC%81rio-InternetLab.Inovac%CC%A7o%CC%83es-Regulato%CC%81rias-no-Transporte-Individual.pdf>. Access: 3.18.2018. [↑](#footnote-ref-45)
46. Administrative Council for Economic Defense. *Individual Passenger Transport Market: Regulation, Externalities, and Urban Balance*. CADE’s Department of Economic Studies, p. 9. Available at <http://en.cade.gov.br/topics/about-us/dee/working-paper-001-2015.pdf>. Access: 9.1.2019. [↑](#footnote-ref-46)
47. Idem. p. 13-15. [↑](#footnote-ref-47)
48. As an example, these provisions may be found in Article 8 of Palmas/TO Law No. 2.330/2017. [↑](#footnote-ref-48)
49. Author’s translation. In the original *“Art. 10. A exploração intensiva da malha viária pelos serviços de transporte motorizado privado e remunerado de passageiros é condicionada a autorização a ser concedida conjuntamente com a autorização de que trata o art. 2º deste Decreto, pela Administração Pública Municipal, no limite das vagas disponíveis. [...] § 3º A OPT deverá indicar o número de vagas pretendidas que, caso seja superior as vagas disponíveis, caberá a ARP proceder a divisão proporcional entre as autorizatárias”*. [↑](#footnote-ref-49)
50. Administrative Council for Economic Defense. *Individual Passenger Transport Market: Regulation, Externalities, and Urban Balance*. CADE’s Department of Economic Studies, p. 16. Available at <http://en.cade.gov.br/topics/about-us/dee/working-paper-001-2015.pdf>. Access: 9.1.2019. [↑](#footnote-ref-50)
51. All documents obtained during the research carried out in April 2017, both through the key word research and through requests made with LAI are available and may be verified on: <https://www.dropbox.com/sh/vfyos2p3bmkqrsi/AABz81T8RJePsMitPIuNkV-aa?dl=0>. [↑](#footnote-ref-51)