

Application of Competition Law Against Business Communities Using Disruptive Innovation

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Abstracts. In this globalization era, competition among businesses in the relevant market is very tight. The businesses still struggle to compete with business competitors in the relevant market. The method used is doctrinal and non-doctrinal. The data used are primary data directly from the source and the respondents and secondary data from the literature. Analysis of the data used is the qualitative analysis. Research results are for to know application of competition law to businesses that use disruptive innovation has a major impact on competition in the market concerned, namely the consumers can be prosperous, and against the competition, then the conventional business operators must improve in order to compete. The first step that must be carried out by the Commission in analyzing whether the behavior of taxi online or not anti-competitive conduct in the market concerned, the Commission specifically define the relevant market definition in advance. The online system of transportation is honest and does not impede competition there is no dominant position in the online business of transportation in producing and market share as qualification monopolistic practices and unfair business competition. Other online transport entrepreneurs to enter the market is not hampered transport other online who want to enter the transportation market online.

Keywords: Competition; Business Communities; Disruptive Innovation.

1. Introduction

In this globalization era, competition among businesses in the relevant market is very tight. The businesses still struggle to compete with business competitors in the relevant market. Competition is pushing businesses to improve the quality of its services and products or services to sell their products or services at competitive prices. For that businesses strive for efficiency and innovation .

Disruptive innovation spearheaded by Clayton M. Christensen in an article in the journal fit in the Harvard Business Review in 1995. According to Clayton M. Christensen 'Disruptive Innovation' refers to: "A process in which a product or service is rooted initially in simple applications at the bottom of the market and then without stopping moving into the market, eventually displacing established competitors."

Furthermore Christensen explained that the deployment of disruptive innovation through two stages: (i) in the first stage, innovation do bad performance along some dimensions that are important to traditional customers and at a lower price, so targeted - and used - by new customers in new markets ; (ii) in the second stage when a disruptive innovation is formed, in a new market, it is expanding rapidly to meet the needs of major customers and lower the leading companies in the mainstream market

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With the disruptive innovation beat the big companies compete in the market concerned. For example, with the presence of Uber, GrabCar, and Gocar changing constellation of competition in the taxi. Taxi online using the application system to book the passengers, which is an important potential passengers have android and applications as well as internet networks. If someone wants to go to a particular destination, so he can order and not long after the taxi line will slide to pick up the passengers in which it is located. Because the online taxi closest to the buyer will receive the ordered items, so that online taxi will arrive quickly in places where the customer location. It turned out that with the presence of online taxi reduce the market share of conventional taxis .

The purpose of competition is to protect competition itself is not secure business actors an sich and for the welfare of consumers. While the purpose of the Act No. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition (Act No. 5 of 1999) is to improve the welfare of society (consumers), to create a conducive business climate through the setting of fair competition, prevent monopolistic practices and or unfair business competition and creation of effectiveness and efficiency in business activities.

In upholding the Act No. 5 1999 basic consideration is to achieve the purpose of the Act No. The 5 1999. Therefore, disruptive innovation in the context of online taxi, because the business pattern has not been set in the Traffic Act, it is stipulated in the Regulation of the Minister of Transportation No. 32 2016 on the Implementation of Transport People Not In Route refurbished into Permenhub No. 26 in 2017 to recognize the legality of online taxi in Indonesia.

So disruptive innovation has a major impact on competition in the market concerned, namely to the consumer, the consumer can be prosperous, and to the competition, the conventional business operators must improve in order to compete. The first step that must be carried out by the Commission in analyzing whether the behavior of taxi online or not anti-competitive conduct in the market concerned, the Commission specifically define the relevant market definition in advance. Even when the market changed or created by a disruptive innovator, competition authorities (Commission) faced with the need for the existing market segmentation or determining a new market. Determination of the relevant market is very important to analyze whether a taxi online anti-competitive conduct and whether it has market power and dominant position which may misuse .

Based on the above description, authors are interested in studying, by doing research entitled "Application of Competition Law Against Business Communities Using Disruptive Innovation".

2. Methods

The research was based on legal research conducted by doctrinal and non-doctrinal approach. This study was also based on the concept of legal positivists argue that identical legal norms with the norms of the written and created and promulgated by

agencies of the state.³ The main method of the study is observation that belongs to the methods of qualitative research and involves primary data collection by means of observation over objects under study and recording all facts significant in the context of set goals. The method of observation is used in marketing to solve a wide range of problems⁴.

This study uses a qualitative method, which according to Setiono, researchers from certain informants or from certain social situations to be interviewed or observed that from it will roll like a rolling snowball. The first informant that is normally needs to be stated in the proposed / draft qualitative research. Further roll rolling process will stop when it reaches a certain point.⁵

Therefore, this study uses doctrinal and non-doctrinal approach, then the source and type of data include two (2) different sources, namely:

a. Primary data

Namely data obtained directly from primary sources intangible views, thoughts, aspirations, actions, events and legal relations and the words.⁶ This type of data provides direct information or information about everything related to the object of the study, which was obtained directly through the field in the form of words and actions by means of in-depth interviews (depth interview).

b. Secondary Data

The type of data used in the doctrinal approach is secondary data, when viewed in terms of the information given library materials can be divided into three (3) groups, as follows⁷:

- 1) Primary law materials, ie materials which have the force of law legally binding. Primary legal materials in this study include:
- 2) Constitution of the Republic of Indonesia of 1945, the Civil Code, UNIDROIT, the Banking Act, Act No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Competition, Decisions of the Court, Bank Indonesia Regulation (PBI) Regulation of the Minister of Transportation No. 32 of 2016 on the Implementation of Transport People Not In Route refurbished into Permenhub No. 26 2017,
- 3) Secondary law materials, namely the library material that contains information about the primary ingredient. As used in this research include books, literature, thesis, dissertations, term papers, research reports,

³Ronny Hanitiyo Soemitro, *Metodologi Penelitian Hukum*, Ghalia Indonesia, Jakarta, 1990, p. 32.

⁴ Eboli, L., & Mazzulla, G. (2009). A new customer satisfaction index for evaluating transit service quality. *Journal of Public transportation*, 12(3), 21-37.

⁵Setiono. op.cit., p.29

⁶ Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, Remaja Rosdakarya Offset, Bandung, 1998, p.112.

⁷ Evans, M., Jamal, A., & Foxall, G. (2006). *Consumer behaviour*. John Wiley&Sons Ltd, Chchester, England, p.404

international journals, the internet and so forth relating to competition law.

- c. Tertiary law materials, ie materials that provide guidance and clarification on the primary and secondary legal materials namely Indonesian Dictionary, Dictionary of Law, encyclopedias, newspapers etc⁸.

As for the reason for selection of this research sites, *First*, Semarang is a city in Central Java, which is a very densely populated, *Secondly*, largely as a business, as an industrial city, many businesses that have a business and compete with other businesses. *Thirdly*, companies financing in Semarang not behave firm in business competition problems that occur in the community.

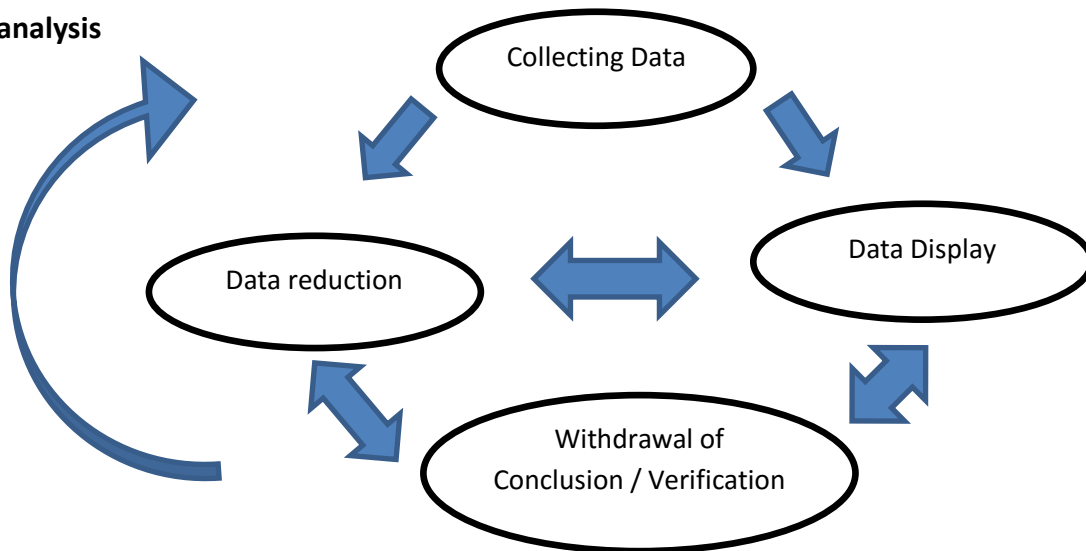
This study analysis was done by two (2) phases:

- a. The first phase which was based on doctrinal approach, analysis is conducted using qualitative methods of normative analysis. At this stage the researchers conducted an inventory of the legal rules that describe the law with legal logic qualitative analysis using the method of deductive logic. The data obtained (collected) in this study were analyzed using qualitative data analysis techniques.
- b. The second phase which was based on an empirical approach, analysis conducted using qualitative analyzes were performed using interactive analytical methods (interactive models of analysis). According to HB. Sutopo, is an interactive model that the data collected will be analyzed through three (3) phases, namely reducing the data, presenting data and draw conclusions. Models of analysis carried out a cyclic process between the stages, so that the collected data will relate to each other and actually the data that supports the preparation of research reports. The third stage is:
 - 1) Data Reduction, ie activities that aim to reinforce, shorten, making the focus, throwing things do not matter that emerged from the records and data collection. This process is ongoing until the end of report writing is completed.
 - 2) Data Display, which is a set of information that allows the conclusion that research can be implemented which include various types of matrices, images and tables. All are designed to assemble information on a regular basis so easily seen and understood in a compact form.
 - 3) Conclusion Of Data, which attempts to draw the conclusion of all matters contained in the data reduction and presentation of data, where the data previously tested its liquidity in order to become stronger conclusions. This is illustrated by the following chart⁹:

⁸ Fox, K. F. A., Skorobogatykh, I. I., & Saginova, O. V. (2005). The Soviet evolution of marketing thought, 1961-1991: From Marx to marketing. *Marketing Theory*, Vol. 5, No. 3 283-307.

⁹ <http://dx.doi.org/10.1177/1470593105054899>/Fox, K. F. A., Skorobogatykh, I. I., & Saginova, O. V. (2008).

Data analysis



The analysis model each spin and complementarity between the respective components of the analysis, or in other words experiencing cyclical process. When the researchers began collecting data, the data that has been collected will be directly in order to obtain data reduction analysis and presentation of data temporarily. When the authors began collecting data to draw conclusions based on all of these things together in a reduction of the data and data offerings. If the result is less than satisfactory because of the persistence of data which is not covered and grain reduction data, the researchers will try to dig up the data that has been collected from a special notebook which contain data collected from the field¹⁰.

3. Results And Discussion

Free trade continues to roll and difficult to avoid. Especially in the era of information and technology sophistication, as now, anything can traded easily and quickly, even without having to meet face between producers and consument in two areas far apart. As a result, any business competition is becoming ever tighter and harder. Where once our competitors is the "player" locally, now we will deal with "players" on national, regional and even international. Not only that, in the development of today's business competition tends to lead to illegal competition practices that justifies any means (machiavelistik)¹¹.

Development of business in Indonesia has led to the emergence of groups of giant conglomerates. In addition there are positive elements, these developments have inflictnegative effects in the form of unprotected exposure to small businesses and consumers. Monopolies and trusts have become a crucial problem in this country.In this current era of competition among businesses in the relevant market is very tight.

¹⁰ Philip Kotler's influence in the Soviet Union and Russia, *European Business Review*, 2, 152-176.

¹¹ <http://dx.doi.org/10.1108/09555340810858298>

The businesses still struggle to compete with business competitors in the relevant market. Competition is pushing businesses to improve the quality of its services and products or services to sell their products or services at competitive prices. For that businesses strive for efficiency and innovation.

"*Disruptive Innovation*" is a global phenomenon within the last decade thanks to the use of information and communication technology. This innovation has changed a lot in the business perspective, which in essence gives consumers more profitable option. Therefore, innovations like this can not and indeed should not be inhibited, given the market an innovative (innovative market) is one of the prerequisites for economic growth¹².

The innovations are rife these days is through the so-called digital economy. Digital economy is a general term used to describe a market that focuses on digital technology. This usually involves the trading of goods or services through electronic commerce information¹³.

To understand the idea of the digital economy, it is important to understand the meaning of 'disruptive innovation'. Disruptive innovation pioneered by Clayton M. Christensen in an article in the journal *fit in the Harvard Business Review* in 1995. According to Clayton M. Christensen 'disruptive innovation' refers to: "A process in which a product or service is rooted initially in simple applications at the bottom market and then without stopping moving into the market, eventually displacing established competitors."

The spread of disruptive innovation through two stages: (i) in the first stage, innovation do bad performance along some dimensions that are important to traditional customers and with a lower price, so targeted - and used - by new customers in new markets; (ii) in the second stage when a disruptive innovation is formed, in a new market, it is expanding rapidly to meet the needs of major customers and lower the leading companies in the mainstream market¹⁴.

With the disruptive innovation beat the big companies compete in the market concerned. For example, with the presence of *Uber*, *GrabCar*, and *Gocar* changing constellation of competition in the taxi. Taxi online using the application system to book the passengers, which is an important potential passengers have android and applications as well as internet networks. If someone wants to go to a particular destination, so he ordered and not long after the taxi line will slide to pick up the passengers in which it is located. Because the online taxi closest to the buyer will receive the ordered items, so that online taxi will arrive quickly in places where the pengorder located. It turned out that with the presence of online taxi reduce the

¹² Friman, M., & Felleson, M. (2009). Service supply and customer satisfaction in public transportation: the quality paradox. *Journal of Public transportation*, 12(4), 57-69.

¹³ Iancu, A. (2010). Marketing for the public transport <<http://www.apas.admpubl.snsps.ro/handle/2010/141>>. Access date 16.11.2015

¹⁴ James, S. (2001). Put the passenger first in integrated transport. *International Railway Journal*, 9, 15-19.

market share of conventional taxis¹⁵.

Competition between taxi online with a conventional cab was inevitable, although the business in terms of different work patterns. Different because the company did not provide automobile application providers. In general, cars are owned by the driver himself and the relationship between the driver with the company's application is done through a cooperative relationship where the driver joined the cooperative. The definition of the relevant market from the perspective of competition law is also an issue.

It is a challenge for the Business Competition Supervisory Commission (KPPU) to conduct an assessment of the competition between the two, because as mentioned by Christensen that effort disruptive innovation are cheaper, easier to obtain and use a business model with the advantages of structural costs (structural cost advantages). The question is how institutions assess the impact of competition on disruptive innovation to the competition and how application of competition law to businesses that use disruptive innovation, which in fact can distract buyers from the incumbent businesses to businesses with disruptive innovation?.

The purpose of competition is to protect competition itself is not secure business actors an sich and to prosper consumers. While the purpose of the Act No. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition (Act No. 5 of 1999) is to improve the welfare of society (consumers), to create a conducive business climate through the setting of fair competition, prevent monopolistic practices and or unfair business competition and creation of effectiveness and efficiency in business activities¹⁶.

In upholding the Act No. 5 1999 basic consideration is to achieve the purpose of the Act No. 5 of 1999. Therefore, disruptive innovation in the context of online taxi, because the business pattern has not been set in the Traffic Act, it is stipulated in the Regulation of the Minister of Transportation No. 32 of 2016 on the Implementation of Transport People Not In Route refurbished into Permenhub No. 26 of 2017 to recognize the legality of online taxi in Indonesia.

So when it comes up, especially concerning the relationship between innovation and competition policy, a common understanding is that the Commission must protect the innovation process by allowing the open market for potential innovators. Therefore, determining the relevant market or to clarify the structure of the market is very important to determine whether the actions taken by the business in the relevant

¹⁵ König, A. (2002). The Reliability of the Transportation System and its Influence on the Choice Behaviour - Paper presented at the 2nd Swiss Transport Research Conference, March 20-22, Monte Verità/Ascona.

¹⁶ Kotler, P. & Lee, N. (2006). Marketing in the public sector. A roadmap for improved performance. Wharton School Publishing. Pearson Education.

market are anticompetitive or not¹⁷.

Market definition is particularly relevant in the context of disruptive innovation, as one of the distinctive characteristics of the disorder is the ability to "disturb" the existing market and destroy the incumbent firms. Do the taxi online with conventional cabs are in the same relevant market? In terms of market demand can be simply answered yes, but from the opposite side of the market (supply) needs to be studied more deeply, because innovations conceived by taxi online is precisely the application that created systems that facilitate passengers to ordered.

Then the relationship between taxi drivers online with the application provider should be confirmed whether the employment relationship or cooperation, because according Permenhub No. 26 of 2017 application providers that enter into an agreement with a public transport company, namely in the form of cooperatives. Thus, to analyze the market with its power and its dominant position should be explained these things in order to calculate the cost of production so as to assess whether the price offered by online cab was reasonable or not.

So disruptive innovation has a major impact on competition in the market concerned, namely the consumers, consumers can be prosperous, and against the competition, then the conventional business operators must improve in order to compete. The first step that must be carried out by the Commission in analyzing whether the behavior of taxi online or not anti-competitive conduct in the market concerned, the Commission specifically define the relevant market definition in advance. Even when the market changed or created by a disruptive innovator, competition authorities (Commission) faced with the need for the existing market segmentation or determining a new market. Determination of the relevant market is very important to analyze whether a taxi online anti-competitive conduct and whether it has market power and dominant position which may misuse.

If there is a view that this innovation impact "disruptive" to businesses that have been established, then the impact is what must be managed properly by the state. The inability of the management will only damage the structure of the market, led to economic instability, and social. Any management scheme should not be simply left to the free market mechanism, but must examine the philosophical underpinnings and the constitutional state, the social welfare and social justice as its final destination.

1. State (c.q Government) should determine what is really basic policy (*Basic policy*) we are in the face of the phenomenon of "disruptive innovation", which in turn will color our regulations in related sectors. Meanwhile, during this transition, too, must have taken concrete measures more flexible to react to the rapidly expanding phenomenon. Steps had been obliged to reflect the balance between competition and innovation. The bottom line is: absolute healthy competition is maintained, while on the other side of creativity is also worthy of respect (among others, have an impact on

¹⁷ Liksutov, M. (2014). The number of cars on Moscow roads exceeds acceptable value by 500 thousand. Retrieved from <http://vm.ru/news/2013/11/26/kolichestvo-avtomobilej-na-moskovskih-dorogah-na-500-tisyach-previshaet-dopustimoe-224364.html?page=1082> Access date 11.04.2019.

property protection intellectual).

2. In setting policies and concrete measures, the Government was asked to consider seriously the needs at the local level, which is probably not always uniform with the impact that will be very complex and multidimensional. This is where the academic study and space needed constructive dialogue among stakeholders, and for that, the academics who are interested in the study of business competition open to engage in such activities.

There is a possibility that the policies were taken to specific areas and / or in certain regions, giving a strong impression as a transitional policies. This is where a basic policy which is comprehensive (departing from multidisciplinary academic study) earlier needs to be brought first to knit umbrella and sectoral policies and the transitional. Thereby, it is expected that any measures taken will demonstrate the country's commitment to: (a) creating a climate of healthy competition, with the close barriers for new businesses to enter the relevant market (entry barriers) and / or abuse of dominant position; and (b) provide protection of consumer rights optimally (covering, among other basic rights such as the right to security / safety, the right to the right information, the right to vote, and the right to be heard).

Taxi *on line* is one of the innovations that are categorized as disruptive innovation. Competition between taxi online with a conventional cab was inevitable, although the business in terms of different work patterns. In contrast, because the company does not provide automobile application providers. In general, cars are owned by the driver himself and the relationship between the driver with the company's application is done through a cooperative relationship where the driver joined the cooperative. The definition of the relevant market from the perspective of competition law is also an issue.

How the application of competition law to businesses that use disruptive innovation, which in fact can distract buyers from the incumbent businesses to businesses with disruptive innovation. The purpose of competition is to protect competition itself is not to protect businesses and consumers to prosper. While the purpose of the Act No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition is to improve the welfare of society (consumers), to create a conducive business climate through unfair business arrangements, and the creation of effectiveness and efficiency in business activities.

Market definition is particularly relevant in the context of disruptive innovation, as one of the distinctive characteristics of the disorder is the ability to "disturb" the existing market and destroy the incumbent firms. Do taxi online with conventional cabs are in the same relevant market? In terms of simple market can be answered yes, but from the opposite side of the market (supply) needs to be studied more deeply, because innovations conceived by taxi online is precisely the application that created the system by enabling passengers to ordered. Then the relationship between taxi drivers online with the application provider should be confirmed whether the employment

relationship or cooperation, because according Permenhub No. 26 of 2017 application providers who enter into an agreement with a public transport company, namely in the form of cooperatives. Thus, to analyze the market with its power and its dominant position should be explained these things in order to calculate the cost of production so as to assess whether the price offered by online cab was reasonable or not.

Disruptive innovation have a major impact on competition in the market concerned, namely the consumers, consumers can be prosperous, and against the competition, then the conventional business operators must improve in order to compete. The first step that must be carried out by the Commission in analyzing whether the behavior of taxi online or not anti-competitive conduct in the market concerned, the Commission specifically define the relevant market definition in advance. Even when the market changed or created by a disruptive innovator, competition authorities (Commission) faced with the need for the existing market segmentation or determining a new market. Determination of the relevant market is very important to analyze whether a taxi online anti-competitive conduct and whether it has market power and dominant position which may misuse.

The forms of legal relationships between subjects of law which may result in legally vary. Online transport law relationship model also shows a distinctive difference between the provider of electronic means, as the drivers who use consumer applications with users of transport services online. Subject of law and the legal relationship of three parties subject application business law and legal subjects one side of the providers and users of transport services on the other hand. Causes Of course, this legal relationship due to different laws and different responsibilities.

ITE Law and regulations on the subject of legal online legal entities in any field of business activities, in particular the implementation of applications in the transportation business. Qualifications booked transport modes through the application of *Gojek* is an act of electronic transactions, the legal act performed by using a computer in this case through the media gadget to book transport services *gojek* driver. The relationship between penyelenggara transportation applications online with app users who book transportation online services.

Transportation online application serves as a facilitator or legal subjects in the transport business, transport online application owners claimed not operating within the scope of the transport business but engaged in efforts to reconcile the application of transport services with transport service providers in this case the driver.

Thus the triangular legal relationship model in the transport line between online app provider producers and consumers should be clarified first. Limitation of liability as a legal subject of legal entities in the transportation business online application the extent of the responsibility. Under the laws relating to the legal entity must sphere of responsibility of legal entities is regulated and contained in the constitution of the legal entity itself. The scope and responsibilities of legal entities governed the rights and obligations of legal entities in the statutes and households (AD / ART entity).

Responsibility three party or two parties among the companies running applications online motorcycle, the driver as a provider of ground transportation services and

consumer service users. The legal relationship between providers and consumers online with the driver on the other. In the legal relationship of the organizers online only related legal relationship with the driver. Drivers in a sense got the facility of online organizers not only the legal relationship as employer and employee. While the legal relationship between a motorcycle taxi driver online with consumers online motorcycle taxi service has its own legal relations. The legal relationship between the driver with only limited application providers to facilitate the course of an application between a motorcycle online provider to users of the application and the relationship with the driver as a provider of online consumer transport service users is another.

The online system of transportation is honest and does not impede competition there is no dominant position in the online business of transportation in producing and market share as qualification monopolistic practices and unfair business competition. Other online transport entrepreneurs to enter the market is not hampered transport other online who want to enter the transportation market online. Evidently many online businesses transport both two (2)-wheel or four (4)-wheel rampant in many cities. Competition among transport business online should be compared with other transportation business online rather than with non-transportation business online.

4. Conclusion

Application of competition law to businesses that use disruptive innovation is disruptive innovation has a major impact on competition in the market concerned, namely the consumers, consumers can be prosperous, and against the competition, then the conventional business operators must improve in order to compete. The first step that must be carried out by the Commission in analyzing whether the behavior of taxi online or not anti-competitive conduct in the market concerned, the Commission specifically define the relevant market definition in advance. Even when the market changed or created by a disruptive innovator, competition authorities (Commission) faced with the need for the existing market segmentation or determining a new market. Determination of the relevant market is very important to analyze whether a taxi online anti-competitive conduct and whether it has market power and dominant position which may misuse. Model law relationship triangle in the transport line between online app provider producers and consumers should be clarified first. Limitation of liability as a legal subject of legal entities in the transportation business online application the extent of the responsibility. Under the laws relating to the legal entity must sphere of responsibility of legal entities is regulated and contained in the constitution of the legal entity itself. The scope and responsibilities of legal entities governed the rights and obligations of legal entities in the statutes and households (AD / ART entity). The online system of transportation is honest and does not competition there is no dominant position in the online business of transportation in producing and market share as qualification monopolistic practices and unfair business competition. Other online transport entrepreneurs to enter the market is not hampered transport other online who want to enter the transportation market online. Evidently many online businesses transport both two (2)-wheel or four (4) wheel rampant in many

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