



# Legal and Commercial Implications of the Lagos State Motorbike Ban.

It is no longer news that the Lagos State Government (“LASG”) has officially banned motorbike and tricycle-taxis, otherwise known as *Okada* and *Keke*, respectively, from operating in select locations across Lagos, Nigeria’s commercial hub.

This singular development has stirred up a lot of controversy in view of the impact on commuters and equally so, the motorbike hailing businesses. These businesses operate a business model that is premised on providing technology enabled mobility solutions to commuters.

The impact of these businesses in the Nigerian innovation ecosystem is without doubt: In 2019, out of the over half a billion dollars funding secured by Nigerian startups, mobility solutions related businesses accounted for about 20%.<sup>1</sup>

Based on the foregoing, this newsletter aims to highlight the commercial and regulatory implications of this development viz-a-viz the trickle-down effect on the wider spectrum of the innovation ecosystem.

## The Legal Basis for the Ban

The LASG cited disregard for existing law, impermissible movements of the commercial transport operators on highways and traffic

congestion as some of the reasons for the ban and there is actually a legal basis for the ban.

Section 46(1) of the Lagos State Transport Sector Reform Law 2018 (the “**Law**”) which came into effect on the 26<sup>th</sup> of February 2018 provides that ‘no

<sup>1</sup> TechCabal, OPay does it again: fintech raises \$120 million Series B round <<https://techcabal.com/2019/11/18/opay-does-it-again-fintech-raises-120-million-series-b-round/>> accessed 06/02/2020

*person shall ride, drive or propel a motorcycle or tricycle on a major highway within the state, and any person in contravention of this provision commits an offence liable on conviction to imprisonment for a term of three (3) years with such motorcycle or tricycle forfeited to the State’.*

Interestingly, Section 15 of the Lagos State Transport Reform Law (Road Traffic) Regulations (the “**Regulations**”) made pursuant to the Law creates an exemption for motorcycles and tricycles with an engine capacity above 200cc. Therefore, the question becomes, does the motorbikes and tricycles used by these bike hailing companies have a capacity above 200cc? If the answer is in the affirmative, one could argue that these businesses should be exempted from the ban. However, the downside to this argument is that the Law empowers the Commissioner of Transport to make regulations on issues regarding the transportation sector. Therefore, it can be argued that the ban [which effectively modifies the Regulation] was an exercise of the powers of the commissioner under the Law. Nonetheless, it is imperative to note that the exercise of such power by the Commissioner of Transport cannot be contrary to the clear letters of the Law.

A further argument put forward in defence of the ban is that the 200cc engine capacity exemption was to accommodate mail distribution and courier services companies at the time and not motorbike hailing businesses as seen today. From a mischief rule perspective, it can be argued that the Law did not contemplate the emergence of motorbike hailing businesses which is a recent invention of technology.

In view of the foregoing, there is legal basis for the enforcement actions of the LASG although it must be noted that the Law does not make special provisions for motorbike hailing businesses whose activities, however, different from the traditional okadas, still come under the purview of the Law.

### **Federal Roads vs. State Roads**

Amongst other things, the 1999 Constitution of the Federal Republic of Nigeria (as amended) (the “**Constitution**”) provides for the legislative powers of the Federal and State government.

The Constitution provides an Exclusive List for matters that can only be legislated upon by the Federal government. It also provides a Concurrent

List for matters that can be legislated upon by both the Federal and State government while matters on the Residual list are under the legislative purview of the State government.

This categorization creates a jurisdictional separation, such that the legislative powers of the Federal and State government are limited to the subject matters provided in the exclusive, current and residual lists.

On this basis, there are concerns that some of the roads in which the ban is enforced are federal roads. Therefore, it becomes pertinent to determine whether the Law (and the ban by extension) which effectively restricts the movement of motorbikes on some federal roads is a direct interference with the legislative powers of the Federal government and if so, the ban can be challenged or a legal interpretation may be sought in court.

Regardless of the argument, this is a constitutional issue for the courts to decide. More so, it is one thing to assert jurisdiction and another to enforce jurisdiction. Therefore, motorbike hailing businesses that are affected should be willing to consider testing these issues through the courts if for nothing else as a means of survival.

### **The Absence of Regulation**

A significant challenge to the evolution of innovation in Africa is the near absence and uncertainty of corresponding laws and regulations. The dearth of regulation has impeded the growth of startups coupled with the infrastructural deficit that has compounded the problem.

In most jurisdictions, the existing regulatory framework is either outdated or does not make adequate provision for the dynamics of innovation. Whereas in other jurisdictions, there is a risk of overregulation which will not only stifle growth but may ultimately deprive consumers from enjoying the seamless experiences and access to mobility services that innovation has to offer.

Whilst there are generic laws and regulations that are applicable to motorbike hailing businesses in Nigeria, there is no singular regulation that specifically addresses the licensing and regulatory needs of these businesses. For example, in July 2019, it was speculated that the LASG was planning to introduce a licensing regime for motorbike

hailing businesses.<sup>2</sup> However, the speculated licensing regime came under heavy criticism based on the licensing fees estimated to be about ₦25,000,000 (twenty-five million Naira) (circa \$70,000),<sup>3</sup> a relatively high licensing fee for startups that are still struggling to settle into the market. If these speculations on the proposed licensing fees are anything to go by, it will definitely serve as a market barrier for motorbike hailing businesses.

From a risk assessment perspective, the absence of a comprehensive regulatory and licensing regime will continue to increase the regulatory risk trajectory. For every prudent investor, the ban on motorbikes cannot be swept under the carpet. It is indeed a red flag that cannot be downplayed especially in view of the checkered history of motorbike regulation in Lagos State.

### Access to Funding

A very common challenge amongst all startups is access to funding. For every startup seeking financing, whether by way of equity or debt, prospective investors will consider a number of factors.

First on the list is whether the business is bankable. This may depend on the projections and market valuation of the business. At this stage, the investors are concerned about the problem the entrepreneur wishes to solve and if there is indeed a problem, the next question is whether the market is big enough to guarantee returns.

Risk assessment also comes into play as part of the valuation and projection processes. Startups must convince investors that the market and regulatory risks associated with their business model is either minimal or can be well managed.

In the case of motorbike hailing businesses, they sought to make their prospective investors comfortable by constantly engaging the LASG to provide a framework that will not only accommodate their business model but accelerate their ability to access financing.

Given the history of government enforcement actions against motorbikes within and outside of Lagos state, investments on motorbike hailing businesses comes with a significant amount of

regulatory risk even if emerging bike hailing companies are of the opinion that they are significantly different from the traditional motorbikes.

Historically speaking, *Okadas* have a longstanding reputation for causing accidents on major highways and in some cases have been used as criminal instrumentalities. On this basis, health & safety has been the major reason put forward by regulators to justify the clamp down on motorbikes. On the flip side, emerging motorbike hailing companies (unlike the traditional *Okadas*) have internal health and safety standards that govern their business operations. Therefore, it is not entirely correct to say that the ban on motorbike hailing businesses is justifiable on health & safety grounds.

Overall, it will be very difficult to secure funding for companies whose business model is based on providing motorbike hailing services in Nigeria, at least, not for businesses resident in Lagos.

Except the ban was anticipated and adequate plans were made to proactively mitigate the economic consequences of the ban, the capability of bike hailing businesses to meet their financial obligations is very unlikely.

Whether as equity or debt financing, most of these companies have secured and unsecured obligations under existing funding agreements. The question is, to what extent will the ban affect the ability of these companies to meet their obligations under these funding agreements. Can it be said that the ban is a force majeure event that exempts these companies from all financial liability?

Further, can it be argued that by investing in a business of this nature viz-a-viz Section 46 of the Law, the investors knew about the risk and waived all rights under the funding agreements in the event of a default which is attributable to the ban?

Another issue for determination is whether the funding agreements between the motorbike hailing businesses and their investors were even valid in the first place. Given that the subject matter was illegal at the time, can it be said that any contractual obligation arising thereof is void?

<sup>2</sup> Bike-hailing startups in Lagos may soon have to pay thousands of dollars in state fees <<https://qz.com/africa/1671857/gokada->

[oride-max-safeboda-to-pay-lagos-25-million-naira-licensing-fees-annually/](https://qz.com/africa/1671857/gokada-oride-max-safeboda-to-pay-lagos-25-million-naira-licensing-fees-annually/)> accessed 06/02/2020

<sup>3</sup> Ibid

Also, are these issues that would have been revealed by due diligence or the investors knew about the risks prior to providing funding?

These are some of the questions that this development brings to the fore. Motorbike hailing businesses are definitely not having a good time. These undertakings, if not managed properly may give rise to a round of litigation.

### Unemployment

An obvious advantage of innovation is job creation, it drives self-reliance, entrepreneurship and business opportunities. This is not any different for motorbike hailing businesses who have contributed to job creation In Lagos. For example, some of the major bike hailing companies (Max.ng, Gokada and Oride) have a cumulative workforce of about 20,000 drivers.<sup>4</sup>

The implication of the ban is that most of these drivers will be rendered jobless, thereby increasing the level of unemployment in Lagos and the world's poverty capital by extension. These are some of the unavoidable consequences of the ban.

### Conclusion

While it remains uncertain if the LASG will reverse the ban, this development represents the various regulatory challenges that innovative businesses are likely to face. Moving forward, regulators (and the government by extension) must strike a balance between regulation and innovation.

For what it's worth and in view of the mobility crisis in Nigeria, many have argued that motorbike hailing businesses should be regulated and not outrightly banned, at least, not until an adequate means of alternative transportation is provided. Therefore, regulators must be very mindful of how they regulate innovation in order to avoid creating more market barriers.

A few things are certain, the ban on motorbikes will increase the uncertainty surrounding the future of mobility solutions businesses in Nigeria. It may also lead to a decline in foreign direct investments on unregulated innovative businesses.

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<sup>4</sup> Technext, #OkadaBan: Gokada Fires 70% of its Workers as the Startup Looks Towards Deliveries to Help Withstand the Ban on its Activities <[https://technext.ng/2020/02/04/okadaban-gokada-](https://technext.ng/2020/02/04/okadaban-gokada)

[fires-70-of-its-workers-as-the-startup-looks-towards-deliveries-to-help-withstand-the-ban-on-its-activities/](https://technext.ng/2020/02/04/okadaban-gokada-fires-70-of-its-workers-as-the-startup-looks-towards-deliveries-to-help-withstand-the-ban-on-its-activities/)> accessed 06/02/2020