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5 May 2021

Dear Commissioner Schmit

**RE: PLATFORM WORKERS IN THE EU**

I am writing to you following our virtual meeting on Monday 26 April 2021 during which we discussed the status in employment law of platform workers in the European Union.

Bolt was founded in Estonia in 2013 and operates now in over 200 cities in more than 40 countries around the world, including in 19 EU Member States. Over 50 million customers and more than 1.5 million drivers and couriers globally use Bolt to offer transport and food delivery services. **400,000 Bolt drivers provide services in European Union Member States.**

Bolt has closely followed the debate within the European institutions and in the Member States on the status in employment law of platform workers. These debates reflect very real concerns about the treatment of its workforce by certain platforms. As you know, employment law across Europe is very different to its American counterpart. For example, there is no equivalent concept in Europe to 'at will employment' where a worker can be fired at any time, for any reason, with little if any notice. Similarly, several US states do not even have a minimum wage.

Bolt is a European platform and is proud to uphold the social protections which underpin the social contract in Europe. Bolt urges you not to let European policy-making be led by distaste at the conduct of ride-hailing platforms in California, a state with a \$14/hour minimum wage where it was recently alleged by UC Berkeley that ride-hailing drivers are paid \$5.64/hour<sup>1</sup>.

In such circumstances it is perhaps not surprising that in 2019 legislators in California attempted to mitigate the worst effects of the gig economy in a labour market with few social protections -

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<sup>1</sup> Jacobs, Ken and Michael Reich (2019) *The Uber/Lyft Ballot Initiative Guarantees only \$5.64 an hour*, UC Berkeley Labor Center and UC Berkeley Center on Wage and Employment Dynamics  
<https://laborcenter.berkeley.edu/the-effects-of-proposition-22-on-driver-earnings-response-to-a-lyft-funded-report-by-dr-christopher-thornberg/>

hence (the ultimately unsuccessful) Assembly Bill 5 with its minimum income protections and prohibition on at-scale engagement of contractors (subject to certain sectoral carve-outs, e.g. construction)<sup>2</sup>.

Bolt would argue that no such equivalent need exists in Europe. As I explained on the call, **Bolt offers some of the highest paying opportunities in the labour market for unskilled labour**. In every European (and indeed African) market in which Bolt operates, in gross<sup>3</sup> equivalent<sup>4</sup> **average hourly earnings are everywhere a significant premium over the minimum wage, and in many cases a multiple of the minimum wage. In Bolt's home market of Estonia, more than 3 times the national minimum wage<sup>5</sup>**. If Bolt were to be forced to employ its drivers, these jobs would likely be offered at or around the minimum wage, reflecting the low to no barriers to entry.

**Bolt drivers do not want a minimum wage job.** If they did, they would have one. What they want is the total flexibility of platform work, and the enhanced earnings they enjoy in Europe even if the same is not true of North American ride-hailing drivers. To evidence this contention, Bolt recently carried out a survey<sup>6</sup> in 8 Member States about drivers' preferences.

Bolt's survey results are overwhelmingly clear: drivers prefer the flexibility of being able to set their own hours and want the earnings premium over the minimum wage which they receive, to conventional employment patterns. **85% of drivers told us that they prefer having the freedom to choose when they drive instead of working in a set shift. 70% of drivers stated that they prefer switching between platforms instead of working on a single platform. 84% of drivers said they value a flexible schedule (46%) or higher earnings (38%) more than social protection (12%), paid holidays (2%) or sick leave<sup>7</sup>**. These survey findings echo those by one of Bolt's American competitors<sup>8</sup>.

I have referred above to drivers' gross earnings, after deduction of platform commission (typically 15% in Bolt's case; in excess of 25% in some markets in the case of some of Bolt's non-European competitors). Obviously every driver's circumstances are unique but Bolt's

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<sup>2</sup> Reintroduced in 2020 as Assembly Bill 2257

[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB2257](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB2257)

<sup>3</sup> i.e. before out of pocket costs such as fuel and insurance

<sup>4</sup> Equivalent in employment law terms, so average hourly pay **includes** the approximately 50% of their time that drivers spend logged in to the platform, waiting to be offered a job. Much of this 'waiting time' will be spent providing services via another, competing platform - so called 'multi-homing' in the employment law jargon

<sup>5</sup> See Appendix I to this letter: Bolt drivers gross hourly equivalent average hourly earnings in Europe

<sup>6</sup> Bolt April 2021 survey: responses of 4,500 Bolt drivers in France, Sweden, the Netherlands, Portugal, Croatia, Estonia, Lithuania and Latvia

<sup>7</sup> See Appendix II to this letter

<sup>8</sup> See for example <https://bit.ly/34rXl9c> and <https://bit.ly/3baMD9P>

analysis indicates that driver's net earnings vary between between 65% of gross earnings in Western European markets, and 55% of gross in Baltic, Central, Southern and Eastern European markets; the principal difference being in the availability of cheaper vehicle financing which is harder for drivers to find outside of Western Europe.

It is also important to bear in mind that a key element of the ride-hailing and delivery sectors is that drivers and couriers can connect to any platform they wish to, meaning that there is no exclusivity of the relationship between a driver or a courier and a platform. Overwhelmingly drivers and couriers work on several platforms concurrently.

If Bolt were to be required to employ its drivers and couriers (whether directly or, more likely via employment agencies) this would impose a number of costs on the business such as a large-scale payroll and long term liabilities such as pension contribution and/ or administration. Inevitably these costs would be passed on to the end consumer, whether passenger or food delivery customer. Bolt's directors' company law obligations to Bolt's shareholders would oblige that drivers would be paid the minimum wage and required to work defined shift patterns (inevitably requiring regularly working late nights and early mornings) to the Working Time Directive limit. Moreover drivers would be obliged to accept every job allocated to them with granular control over drivers for example, requiring them to work in defined geographic areas.

This 'maximum utilisation' model is common in the logistics industry where drivers are employed. In **Bolt's case, the platform would be able to service its current passenger demand in the EU using a maximally utilised workforce approximately one third the size of its current 400,000 drivers**. To be clear, requiring Bolt to employ its service providers would both reduce their existing pay and conditions *and* result in a large number of job losses at almost the worst time imaginable, just as Member States begin to unwind furlough schemes and other forms of public sector support for the European labour market.

Bolt is however pragmatic enough to recognise that there has been in employment law a decades-long shift in the balance of power, away from labour and toward management and capital. Further, Bolt recognises that there *is* a qualitative difference between the autonomy, earnings and working patterns of, for example, highly skilled IT professionals and Bolt's service providers. Bolt strongly believes that a policy intervention exists which would enable labour markets to retain the benefits of platform work, while introducing further social protections in recognition of the imbalance in power between a single individual and a multinational technology company.

In this regard, Bolt would commend the Platform-to-Business Regulation 2019/1150 (P2B Regulation) which introduces employment law type protections where a driver contracts with Bolt via a professional service company or microbusiness, as is common in many markets.

Among other things the P2B Regulations require a written contract, notice to be given in respect of changes thereto and what is in effect an appeal procedure in the event of the termination of the relationship by the platform. Obviously Bolt cannot have a two-tier workforce so the P2B Regulations protections are offered to all of Bolt's service providers, regardless of how Bolt contracts with them; as a natural person or via a corporate entity. In a very real sense this means that the **EU has already created social protections for platform workers, which recognises their unique status.**

Bolt would urge the Commission to go further and examine in more detail the whether platform work should occupy an intermediate employment status, with many of the freedoms of self-employment, with a recognition of subordination and control, which is indicative of an employment relationship in the employment law of most of the Member States. Such a harmonisation might proceed from the same basis as it did when the EU previously regulated mediated access to the labour market, namely European legislative acts regulating employment agencies, principally Directive 208/104/EC on Temporary Agency Work adopted in 2008.

**Intermediate employment status which pragmatically recognises the position of dependent contractors exists in employment law across the Member States.** Examples include: Italy ("parasubordinato" status), France ("auto-entrepreneur"), Spain ("TRADE" status), Austria ("Dienstnehmer") and in Germany ("Arbeit auf Abruf").

It was of course a 1960s German referral to the European Court in the landmark *Lawrie Blum*<sup>9</sup> case which considered the slippery concept of the 'worker' as referred to in Articles 45 and 56 of TFEU but nowhere formally defined. The ECJ grappled again with this concept in the *Yodel*<sup>10</sup> decision but an absence of clarity on this point is a meaningful lacuna in the Community *acquis*.

**Bolt urges the Commission to think ambitiously about questions about employment status across the Member Status.** In this regard, I would be glad to make available both Bolt staff, and external counsel. I would put these resources at the disposal of your Unit B1 and Commission Legal Services.

Perhaps a virtual round table to explore the viability of this option would be a sensible first step? Bolt would be glad to provide a legal analysis ahead of any such virtual meeting. I will ask Dominick Moxon-Tritsch who was on our recent call to follow up with your Cabinet and your officials in this regard.

The EU has a valuable opportunity to make a meaningful intervention in the labour market of the Community. Unacceptable abuses of workers such as zero-hours contracts and bogus self employment should be stamped out while real innovation, responsibly administered to the

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<sup>9</sup> *Lawrie-Blum v Land Baden-Württemberg* (C-66/85)

<sup>10</sup> *B v Yodel Delivery Network Ltd* (C-692/19)

benefits of Europe's workers should be fostered and encouraged. Bolt of course sees platform work in the second category but even if your instincts are to the contrary **I urge you and the Commission to take an evidence-led approach to policy-making and consider carefully the unintended consequences of heavy-handed intervention.**

Please do not hesitate to contact me via email at [redacted] if you would like to follow up anything in this letter.

Yours sincerely



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**APPENDIX I**



## APPENDIX II

### Summary of Bolt drivers survey responses



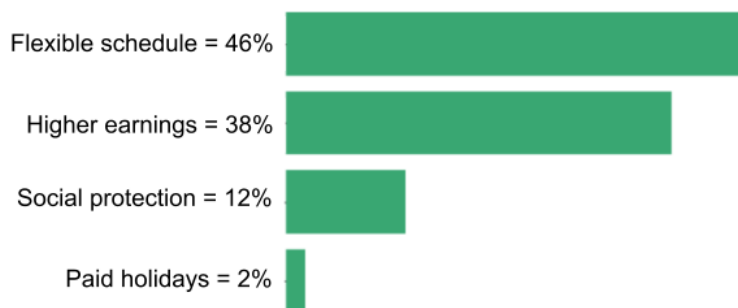
## Drivers' survey - April 2021

### Platform work status

Answers of 4,549 Bolt drivers in France, Sweden, the Netherlands, Portugal, Croatia, Estonia, Lithuania and Latvia

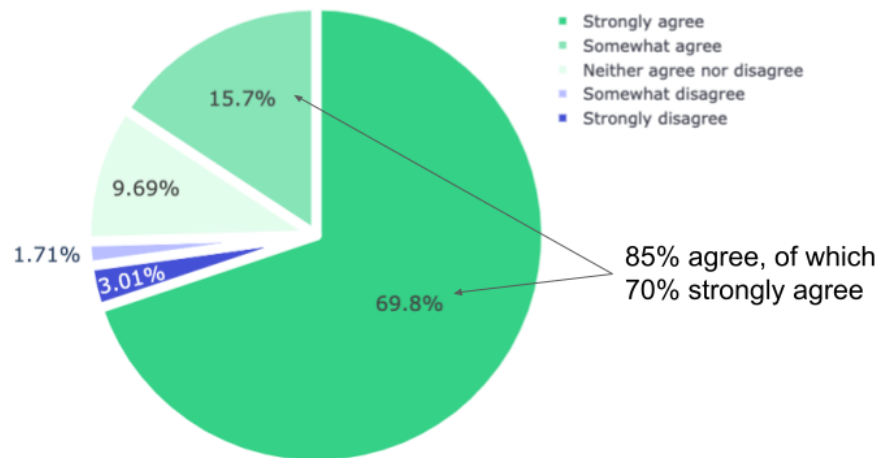


**84% of drivers say a flexible schedule and higher earnings are the most important to them**



*Non significant answers were "sick leave", "none", "all"*

**85% of drivers prefer having the freedom to choose when they drive instead of working in a set shift**



**70% of drivers prefer switching between the platforms that offer the most journeys/best fares at any given time instead of working with only a single platform**

