Regulating Platform Services, the Case of Airbnb

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Abstract

Platform services, such as Airbnb, Uber, eBay, Amazon, TaskRabbit and many more have rapidly emerged and taken over parts of existing markets for services. Airbnb’s peer-to-peer accommodation rental platform competes with hotels in many cities, whereas Uber has entered existing markets for taxi services in many large cities around the world. Innovative services such as these have been welcomed by many users but they also create new challenges: how can users be protected against health and safety risks, are payment systems safe, are effective dispute resolution mechanisms available? Besides typical private law issues concerning the division of responsibilities between the platform and its users, also broader concerns have arisen in relation to market regulation and public order.

My aim is to ‘unpack’ the legal relationships within one platform service—Airbnb—to provide a basis for discussion of the question whether regulation of platform services is needed and if so, in what form.

The first part of my presentation will describe Airbnb’s business model. It will explain how users can connect on the platform, which legal relationships arise between the three parties—Airbnb, the host and the guest—and how this business model compares to that of other platform services. In comparison to Uber, for example, Airbnb leaves much more freedom to its users for determining key characteristics of their contract. That can influence what legal responsibilities might be attributed to the platform provider.

The second part of the presentation gives an overview of the most important terms and conditions set by Airbnb, highlighting potential problems with those terms. It discusses Airbnb’s privacy policy, its guest refund policy, its host guarantee, and its health and safety policy.

Part three looks into the routes that are available for dispute resolution between Airbnb users and between users and the platform providers. It assesses the possibilities for online dispute resolution through Airbnb’s own mediation services, and the alternative route to litigate disputes before a court. Users also have a role in monitoring the behaviour of other users of the platform, namely through reputational feedback mechanisms. I will briefly discuss the benefits and potential risks of this mechanism as an alternative means of enforcing consumer rights.

Finally, part four discusses broader policy concerns that have arisen in relation to Airbnb, but also other platform services. In the case of Airbnb, particular concerns
are that hosts often breach the terms of their own rental agreements, that ‘illegal hotels’ pop up which do not conform to health and safety regulations and which avoid local (tourism) taxes, and that some cities find it hard to cope with the increasing number of tourists that visit each year (e.g. Barcelona, Amsterdam, Berlin). Some cities have introduced bans on short-term rentals. In the light of the European Commission’s recent communication on platform services one might wonder, however, whether that is the appropriate response—the Commission regards absolute bans as a ‘last resort’.

That brings me to a final evaluation of the question ‘to regulate or not to regulate?’ Without intending to provide a definitive answer to that question, I would like to raise a few points for discussion based on the case study of Airbnb. For example, is regulation needed to protect users against unfair terms, to guarantee health and safety, and perhaps to direct liability towards Airbnb in cases where that would be reasonable? Also, how should we deal with different business models—is it even possible to regulate all platform services under one regime? Whilst regulation can perhaps provide some solutions, the European Commission appears favourable to solutions found in self-regulation and co-regulation. That suggestion also merits further discussion.

The balance to be struck in relation to platform services is between innovation and regulation. The emergence of new services is in many ways beneficial and restrictions on their operations must be carefully thought through. Yet, business practices can and should be restricted when users or others affected by the platform are harmed.