SHARING ECONOMY: A MULTIFACETED PHENOMENON

Gabriella Muscolo,1 Andrea Minuto Rizzo2,3

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Abstract: Online platforms play a prominent role in the digital economy expanding the “two-sided” or “multi-sided” business model in an unprecedented way. In that context, sharing economy platforms have disrupted some traditional sectors through innovative business propositions, creating and shaping new markets. On the one hand, the sharing economy offers to consumers more efficient, personalized services at competitive prices, exploiting the potential of under-utilized assets and of technology. On the other hand, it blurs the lines between supply and demand, creating significant hurdles to regulators. It can also raise competition concerns as indirect network effects, once the market is disrupted, can determine the creation of a dominant position. The inclusion of some contractual clauses, or some forms of control over prices, might amount to an anticompetitive behavior. Moreover, from a consumer protection perspective, the main issue consists in identifying the conditions necessary to qualify the individual interacting in the digital platform as a professional. The Italian Competition Authority has specifically dealt with the sharing economy applying its broad set of advocacy powers in the sectors of ride-sharing, home-sharing and home restaurant in relation to market access requirements and/or taxation. More in general, it has also tackled conducts by digital platforms, that might be implemented also by sharing economy operators, applying its antitrust enforcement and consumer protection tools. To conclude, the sharing economy is a cross-sector phenomenon that intersects various disciplines, including competition, and several primary public policy interests are at stake. The main issue tackled in the present contribution is how to balance them and who, between policy and decision makers, is better placed to do so.

1. INTRODUCTION: DIGITAL, DISRUPTING AND SHARING ECONOMIES

The rapid development of Internet has greatly affected the functioning of the economy and digital technologies such as big data, artificial intelligence and the internet of things will continue to shape the transformation of European industries. In that context, online platforms - that include a wide range of activities such as search engines, social media, e-commerce and sharing
economy portals - play a prominent role as they are the most accessed websites. The nowadays ubiquitous connectivity have, indeed, expanded the platform business model in an unprecedented way.

Moreover, platforms may have the ability to innovate, sometimes in a disruptive way. Indeed, innovations not only consist of incremental and predictable improvements of a given product or process, but can also create and shape new markets.

Disruptive innovation may be classified in several ways, as it can affect both highly regulated and un-regulated markets, extends to new businesses, as well as concerns traditional ones, can be implemented both by established firms and start-ups and may disrupt the previous business model of the company itself or the activity of competitors.

The features of sharing economy platforms are similar to those of other digital platforms. Platforms generally operate as "two-sided" or "multi-sided" markets where different groups of users are brought together by an intermediary in order to facilitate their interaction and network effects play a central role.

The sharing economy has disrupted some traditional sectors through innovative business models, especially in the ride-sharing and home-sharing sectors. Its rise is paradigmatic of the unforeseen development of entirely new market propositions.

On the one hand, the sharing economy offers to consumers more efficient, personalized services at competitive prices, exploiting the potential of under-utilized assets and of technology. On the other hand, it blurs the lines between supply and demand, creating significant hurdles to regulators.

It is a cross-sector phenomenon that intersects various disciplines - such as public safety, health, taxation, employment - including competition, especially the dynamic one. There are several primary public policy interests at stake. One of the main issues determined by the rise of the sharing economy is how to balance them and who is better placed to do so.

The remainder of this contribution is organized as follows: section 2) describes the sharing economy phenomenon and its economic and legal definitions; section 3) illustrates the issues that might arise both in the competition and consumer protection areas; section 4) illustrates the Italian Competition Authority’s (hereinafter, also ICA) interventions; section 5) concludes on the balance to be found between competition and other primary public interests and on who should intervene.

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2. The Phenomenon and Its Definition: Economic and Legal Aspects

Given the great variety and diversity of business models, there is no universally accepted definition of the sharing economy.

From an economic perspective, there seems to be consensus on the fact that it concerns the temporary usage of under-utilised assets and that the underlying products and services should be offered through an online platform.

Other possible categorizations refer to whether they should facilitate only consumers-to-consumers, or also business-to-consumers, transactions and if they should only be aimed at sharing costs or include also for-profit business models. Most definitions seem to consider a narrower perimeter limited to exchanges among individuals, as taking into consideration also business-to-consumers exchanges would include also supplies that are already offered on the market.

As for the impact of the sharing economy, revenues increased significantly especially in some core sectors such as ride-sharing, home-sharing, collaborative finance, household services and professional and technical services. A research estimates that, depending on the scale of regulatory obstacles, the economic theoretical benefit deriving from the sharing economy can add up in the medium/longer term from 134 to 572 billion euros annually across the EU-28.

Technological developments - consisting mainly in the advent of the Internet and the diffusion of smartphones - facilitates the rise of the sharing economy. More specifically, the instantaneous scalability of the business proposition provides an immediate access to a worldwide demand. Also the growth of the reach of digital reputation mechanisms as well as of online electronic payments provide a safe and efficient context where to build consumer trust.

Many sharing economy platforms are likely to be two-sided markets. Those markets are widely developed both offline and online and are characterized by some common features: (i) two distinct group of users operate on the

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9 The various definitions provided by the literature have in common the exploitation of under-utilised assets through online platforms. For a review of such definitions see Petropoulos G. (2017), “An economic review of the collaborative economy”, Policy Contribution, Issue n. 5, Bruegel.


platform, (ii) because of the existence of indirect externalities, the utility that each group of users derives from the participation to the system increases with the number of users active on the other side of the market, (iii) the users of each side of the market do not take into account the effects of their decision - to participate or not to participate - to a given two-sided market - on the other side of the market, while the intermediary - the online platform - can internalize those network externalities through the price structure.\(^{13}\)

Among possible classifications elaborated in the literature\(^ {14}\), online platforms may be distinguished between attention and matching ones. Attention platforms normally provide free services subsidized by advertising, alimented by users data and attention, while matching platforms are essentially transaction marketplaces where frequently the side of the market with higher elasticity of demand is subsidized by the other side of the market.\(^ {15}\)

The sharing economy gives rise to platforms that are mostly classifiable as matching platforms, where the intermediary’s revenues derive from commissions drawn directly from one or both users groups.\(^ {16}\) Moreover, both user groups have their data collected to improve the matching algorithm and, ultimately, the quality of the platform in terms of personalized intermediation.\(^ {17}\)

The analysis of sharing economy platforms does not include the additional complexities typical of attention platforms in terms of the definition of the relevant market, the assessment of market power and the determination of the appropriate theory of competitive harm.\(^ {18}\)

From a legal point of view, the European Commission’s definition includes “business models where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods or services often provided by private individuals”.\(^ {19}\)


\(^{15}\) OECD (2016), “Big data: bringing competition policy to the digital era - Background note by the Secretariat”.


\(^{19}\) European Commission (2016), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “A European agenda for the collaborative economy”.

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On the supply side, it considers, in addition to individuals, also “micro entrepreneurs and (small) businesses to offer services”.

These service providers can share with users, that operate on the demand side, assets, resources, time and/or skills.

3. SHARING ECONOMY, COMPETITION AND CONSUMER PROTECTION

The antitrust analysis of sharing economy platforms largely coincides with that of other online two-sided platforms.

On one hand, sharing economy platforms increase consumer welfare in many ways and are inherently pro-competitive. First of all, as most online platforms, they display features such as the reduction of search and transaction costs, through better interaction between suppliers and users, as well as the reduction of information asymmetries, taking advantage of users ratings.

Then, the asset-sharing typical of sharing economy platforms increases allocative efficiency through the use of under-utilised capital. This increases the possibility of choice of consumers, through the supply of innovative services that are often different and cheaper than traditional ones.

Furthermore, it reduces barriers to entry achieving scale on the supply side due to the involvement of individuals as service providers and making markets more competitive, as well as it determines a distributive effect as it allows access to services also to consumer categories that do not benefit from existing services.

However, on the other hand, the sharing economy might raise competition concerns. The main competitive implication of the above described features of two-sided markets is that indirect network effects, once the market is disrupted, can determine the creation of a dominant position and become an insurmountable barrier to entry in digital markets for new entrants.

In order to attract demand, platforms need to enroll an adequate number of sellers on the supply side. At the same time, to attract sellers, the platform has to subscribe enough buyers. This positive feedback, also referred to as a “snowball effect”, can lead to a position of market power immune to entry. Indeed, if a


new entrant does not have a sufficient number of users on each side of the market, there would be no interest for one side to interact with the other.

Also the collection of data from both users groups can increase barriers to entry in these digital markets. The data accumulated by the incumbent platform, and the resulting increased quality of its intermediation algorithm, can represent a further significant competitive advantage, incentivising suppliers and buyers to continuing using the dominant platform.25

Furthermore, those platforms tend to display a very specific cost structure. High sunk costs are often accompanied by low marginal costs possibly generating economies of scale.

Consequently, such markets tend to be concentrated and often lead to so-called “winner takes all” outcomes.

Once a dominant position has been achieved, Antitrust Authorities need to monitor the incumbent’s conduct in order to keep digital markets open, assessing firms’ conduct in view of a possible prejudice to innovation in a dynamic vision of competition.

Even if the option not to interfere with this innovative process might often be the best option, some possible anticompetitive issues have been identified. More specifically, the inclusion of some clauses in the contracts between suppliers and platforms may exclude entry in digital markets.

First of all, most favoured nation (hereinafter, MFN) clauses require that sellers always apply to the contracting platform the lowest price. Those clauses can restrict competition on specific online markets, as a possibly lower commission applied by a new entrant to the sellers cannot be translated into a lower price applied by the sellers to the consumers.26

The literature has also identified other possible sources of competitive harm in relation to platforms that can exploit their monopoly position for access, on one side of the market, to single-homing users when dealing, on the other side of the market, with multi-homing ones, leading to higher prices being charged to the multi-homing side.27

Competition Authorities should, consequently, monitor the possible imposition by sharing economy dominant providers of rules that favor exclusivity, or single-homing, to their platforms.28

Furthermore, the data collected by the European Commission from about 500 sharing economy platforms show that a large majority of them set terms and conditions and that a

substantial number of platforms go as far as fixing prices or giving guidance on prices.\textsuperscript{29}

In that regard, it has also been envisaged that some forms of control that sharing economy platforms exert over the providers of the underlying product or service might amount to an anticompetitive behavior. Some authors, for example, argue that the pricing algorithms used by Uber might be considered as a so-called “hub and spoke” illegal agreement, reducing downstream competition between independent professional drivers.\textsuperscript{30}

Furthermore, some National Competition Authorities (hereinafter, also NCAs) - and among them the ICA - can intervene not only as antitrust enforcers, but also through their consumer protection powers.

More specifically, the sharing economy gives rise to the progressive confusion between the definition of consumer and the one of professional, creating the new term of “prosumer”. The main issue consists in identifying the conditions necessary to qualify the individual interacting in the digital platform as a professional.

For instance, on the basis of the Italian Consumer Protection Code, the consumer “acts for purposes unrelated to any entrepreneurial, business, artisanal or professional activity”, while the professional “acts in the exercise of its own entrepreneurial, business, artisanal or professional activity”.

In this respect, the European Commission\textsuperscript{31} observes that the circumstance that a person exercises a business activity in the context of the sharing economy does not automatically involve its qualification as a professional. It is recommended to act case by case, since there could be some quantitative thresholds above which the provider’s activity could be defined as professional.

The Commission identifies some factors, which combined with each other can be useful to the qualification of the user exploiting the service/platform of the sharing economy as a professional, such as: a high frequency in the supply of the service could indicate that the provider acts as a professional activity; the existence of a profit-seeking purpose should be considered as pursued in case of a real compensation being paid by the passenger and not only of a simple cost sharing; the higher the turnover generated by the provider the higher is the probability that the provider qualifies as a professional.

These indications might be helpful to determine if a specific case falls within the application of the Consumer Protection Code, therefore assessing the possible existence of unfair commercial practices, consumer rights violations or unfair clauses.


Moreover, the sharing economy activities are mainly conducted through online platforms, in respect to which attention must be paid to the composition of prices, and their communication to customers, to consumer rights and to the truthfulness and the role of consumer reviews as a mutual trust instrument. Indeed, the reviews are one of the main instrument of choice in the sharing economy business.32

4. The Italian Competition Authority’s interventions

ICA has specifically dealt with the sharing economy applying its broad set of advocacy powers, also those that go beyond the traditional possibility to deliver non-binding opinions on existing and draft legislation.33


33 Traditional powers consist essentially of non-binding opinions - ex officio or requested by other administrations - that might concern all legislative and regulatory measures, adopted by central or local administrations, which restrict competition. Among new powers, ICA has the possibility to challenge before administrative Courts any administrative act - by central or local administrations - which restricts competition. It is a two steps process where ICA, firstly, delivers a reasoned opinion to the concerned administration and, then, should the administration fail to comply within sixty days, ICA may lodge an appeal before the competent administrative Court within the following thirty days. ICA has also used in an innovative way the power to intervene - on issues relating to the application of Article 101 or Article 102 of the Treaty on the Functioning of the European Union (hereinafter, also TFEU) - amicus curiae towards national Courts on the basis of article 15.3 of Council of the European Union (2002), “Regulation n. 1/2003 on the implementation of the rules on competition laid down in articles 81 and 82 of the Treaty”.

More in general, it has also tackled conducts by digital platforms applying its antitrust enforcement and consumer protection tools. Similar behaviors could take place also in the context of sharing economy platforms.

As for its advocacy activity, ICA has intervened in three sectors of the sharing economy, namely ride-sharing, home-sharing and home restaurant. In all sectors the intervention concerned market access requirements, while only in relation to home-sharing it also regarded taxation.

In the sector of ride-sharing, one of the main issues related to the non-scheduled transportation services is that the supply of taxi services is often structurally lower than urban demand because of the insufficient number of licenses issued by municipalities. This incites non-professional drivers, authorized by neighboring municipalities, to operate in the municipalities with higher demand.

In recent years, digital platforms that intermediate between demand and supply have risen both in relation to traditional providers (taxi and professional drivers) and to new non-professional drivers that utilize their vehicle after having subscribed to a platform.

These platforms determine some clear competitive benefits such as a more efficient use of existing capacity, a better usability of the service, a better coverage of a demand that is
often unmet and a possible reduction of prices for users.

In Italy, a Law dating back to 1992\(^{34}\) still disciplines the non-scheduled transportation services, including both licensed taxis and authorized professional drivers.

That Law has been emended, however, the effectiveness of these emending rules has been suspended several times, recently until the end of 2018\(^{35}\), creating a legal uncertainty that often determined different outcomes in civil Courts. These suspensions have been justified by the necessity of a legislative reform involving transport services.

In July 2015\(^{36}\), the Court of Milan issued an injunction against the use of Uber Pop’s application, that connects non-professional drivers to consumers, in the Italian territory, ascertaining the violation of the Civil Code and highlighting that the platform’s activity cannot be provided at the detriment of the overriding public interest of passengers safety.

Moving to ICA’s activity, in recent years it has intervened several times in the ride-sharing sector\(^{37}\), using its advocacy powers to tackle also the issue of non-professional drivers. In that regard, as a general remark, ICA whishes the introduction of a minimal regulation aimed at balancing the different primary public interests - competition and road safety - at stake.

That regulation could define, in addition to taxi and professional drivers, a third category of suppliers of non-scheduled transportation service consisting of digital platforms connecting passengers to non-professional drivers. More specifically, ICA advocated that such regulation should be the less intrusive possible, limited to foreseeing the registration of platforms in a public register and the identification of specific requirements and obligations for platforms and drivers.

As the Uber issue has expanded to a broader European context, a Spanish Court requested, in 2015, a preliminary ruling of the European Court of Justice (hereinafter, also ECJ) on the regulation applicable to Uber Pop.\(^{38}\)

In its ruling, the Court of Justice stated that Uber must be classified as “a service in the field of transport”, rather than an intermediation service through an application for smartphones, since Uber also influences the conditions of the service. It is, therefore, for the Member States to regulate the conditions under which such services are to be provided.

April 2017\(^{38}\) that inhibited the services of Uber Black, a platform providing professional drivers services to consumers, throughout Italy.

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\(^{34}\) Law No. 21/92.

\(^{35}\) Budget Law for 2018.

\(^{36}\) Court of Milan (2015), Decision of the joined cases No. 35445/2015 and 36491/2015.

\(^{37}\) ICA, (2015), “Opinion concerning the regulation of the transportation of persons by public non-scheduled transportation services”, AS1222; ICA (2017), “Opinion on the reform of the non-scheduled transportation services”, AS1354. Moreover, using for the first time this power, the ICA also intervened amicus curiae in the appeal procedure which annulled (Court of Rome, 26 May 2017) the precautionary measure granted by the Court of Rome (7
In the field of home-sharing\textsuperscript{39}, ICA observed that the regulation introduced by the Lazio Region that established unreasonably demanding requirements for non-hotel accommodation facilities resulted in an unjustified limitation of competition.\textsuperscript{40}

The Regional Administrative Tribunal of the Lazio region, that confirmed the appeal filed by ICA against the legitimacy of these regulatory provisions, reiterated the principle that “access to and operation of service activities, as an expression of the freedom of economic initiative, cannot be subjected to unjustified and discriminatory limitations and these limitations, to be legitimate, must in any case be justified by imperative reasons of general interest”.\textsuperscript{41}

As for taxation\textsuperscript{42}, the ICA observed that market access is not the only limitation that can be introduced to unduly restrict competition. Indeed, ICA recently adopted an opinion concerning the possible anticompetitive impact of the fiscal legislation of home-sharing, as only the intermediaries that collect the rental fee are also requested to intervene as a tax collector and proceed for the payment of the collected tax to the State.

Even acknowledging that the purpose of the legislation is to fight tax evasion, in ICA’s opinion such restriction appears not to be proportionate, as it can discriminate among different possible business models of online intermediation.

In relation to online intermediaries, the fiscal burden represents an additional administrative cost only weighing on those platforms which participate in the process of the payment of the rents to the house owners, thus discouraging them from making digital payment available to renters. Competition among online operators might therefore be affected, to the detriment of those allowing online payment, which is, moreover, often associated to commercial guarantees in favor of renters.

Lastly, the legislator also intended to regulate home restaurant activities, consisting of social eating events in private homes of non-professional cooks.\textsuperscript{43}

The ICA highlighted several restrictions that do not apply to traditional providers. First of all, by considering digital platforms as the only means to carry out home restaurant activities, the proposed legislation excludes any direct

\textsuperscript{39} ICA (2017), “Opinion pursuant to article 21-bis on the new discipline of non-hotel accommodations”, AS1447.

\textsuperscript{40} More specifically, the regulation introduced limitations on access to the market, providing dimensional constraints on some specific spaces. For example, it provided that the living room should have a minimum mandatory size. Moreover, it introduced constraints on the operation of these structures, increasing the duration of the mandatory closing period and establishing a minimum duration of three days.

\textsuperscript{41} After the decision of the Regional Administrative Tribunal of the Lazio Region, in February 2017, the ICA - see, ICA (2017), “Opinion concerning obstacles to the access and exercise of accommodation services in the Lazio Region”, AS1351 - used its advocacy powers in order to highlight the unjustified restrictions introduced again by the Lazio Region in two circulars.


\textsuperscript{43} ICA (2017), “Opinion on the draft law concerning the rules applicable to home restaurant services”, AS1365.
relationship between supply and demand outside such platforms.

Then, it sets out the maximum number of cover charges and the annual income of home restaurant activities and it precludes non-professional accommodation service providers from offering a home restaurant service.

In the ICA opinion, such measures appear to be unnecessary and not proportionate to the declared aim of guaranteeing fair competition in the sector and of promoting the culture of traditional food and quality. Home restaurant providers are deprived of the freedom to autonomously organize their economic activity.

Furthermore, health is anyway guaranteed by regulations on food safety and insurance obligations.

Moving to ICA’s antitrust enforcement practice in relation to another category of digital platforms, the one of e-commerce of services, it has intervened in relation to MFN clauses included in the contracts between hotels and online travel agents (hereinafter, OTAs) active in the online intermediation of hotel accommodations.44

The ICA was concerned that the MFN clauses might significantly restrict competition on the commissions required by OTAs to hotels, affecting final prices for hotel rooms, to the detriment, ultimately, of final consumers.

During the investigation, conducted in collaboration with the NCAs of France and Sweden, with the coordination of the European Commission, Booking.com - the market leader in Italy - submitted commitments consisting in a significant reduction of the scope of the MFN clauses. By limiting significantly the scope of MFN clauses, OTAs should be able to more effectively compete on the level of the commissions applied to hotels.

Those vertical restraints have been assessed as networks of vertical agreements that can restrict competition, but might also fall within the scope of the prohibition of abuses of dominant position.45

A recent case brought by the European Commission, with regard to the MFN clauses applied by an online book sales platform, was, indeed, defined as a possible abuse of dominant position.46

Similar clauses might create competition concerns also if adopted by sharing economy platforms as, likewise the platforms active in the intermediation of hotel accommodations or in online book sales, they could exclude competitors active at the same level of the value chain.

Following ICA’s decision to accept the commitments submitted by Booking.com, the Italian Parliament went further introducing a full prohibition of MFN clauses. Indeed, the Annual Law for Competition approved in

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45 OECD (2015), “Hearing on across platform parity agreements - Note by Italy”.

provided that any covenant whereby a touristic accommodation company undertakes not to apply to the final client, by any means, instruments, prices, terms and any other conditions that are more favorable than those applied by the same company through third parties, irrespective of the law governing the agreement, is void. As part of the legislative procedure for the new bill, ICA’s President expressed concerns about the MFN provision, believing it to be excessively wide. More specifically, ICA’s President observed that the possible anti-competitiveness of such clauses was inextricably linked to the position of the operators in the market, who collectively held a 75% share in online hotel reservations. Moreover, the remedy introduced by the legislator excludes a case-by-case analysis of the actual effects of such clauses on competition. Italy is not alone as also France introduced an equivalent provision to oblige the OTAs not to apply MFN clauses in contracts entered into force with hotels.

Lastly, ICA intervened also using its consumer protection powers in relation to a digital platform active in travel intermediation. The intervention focused on reviews, one of the main instrument of consumer choice. More specifically, the ICA has ascertained the unfairness of the commercial practice implemented by TripAdvisor to disseminate misleading information about the sources of the reviews published on its website.

ICA found that TripAdvisor has adopted inadequate monitoring tools and procedures in relation to the phenomenon of false reviews. Consumers are wrongly induced to believe that the information provided is always reliable as being an expression of true tourist experiences.

5. CONCLUSION: INTERESTS OTHER THAN COMPETITION, WHO SHOULD STRIKE THE BALANCE?

The sharing economy is not only disruptive but often also destructive. First of all, the evolution of digital services represents a process that inevitably generates a tension between incumbents and new entrants, blurring the lines between suppliers and users, professional and occasional services, entrepreneurs and employees.

Secondly, it also raises conflicts among different public interests, other than competition: consumers’ protection, that also means quality standards, as well as health, safety and employees’ protection and taxation.

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47 Article 166 of Law 4 August 2017, n. 124.

48 Hearing of ICA’s President, Italian Senate of the Republic, 28 October 2015.

49 Article L311-5-1 of Law No. 990/2015 of 6 August 2015 states that “the hotel remains free to grant to the client any rebate or pricing advantage, of whatever nature, any clause stating the contrary being deemed void”.

50 ICA (2014), “Tripadvisor - false online reviews”, PS9345. ICA’s appeal against the ruling of the First Instance Administrative Court, that annulled its decision, is still pending before the Council of State.
The two features mentioned above are often inter-connected: disrupted incumbents usually complain that the infringement of the rules protecting such interests results in undermining the level playing field.51

In such a context, a question of roles arises: who should strike the balance among the different and often conflicting interests involved in the surge of the new business models? The main issue regards the role of policy makers versus decision makers.

Facing the dilemma between regulation and enforcement as the proper approach to the sharing economy entails to weigh up the risks of over or under regulation versus the risks of over or under enforcement.

As far as the policy making process is at stake, the alternative between soft or hard law as the better ex-ante regulation of the emerging phenomenon is argued. However, also self-regulation stands as a third pillar in the debate.52

Moreover, the sharing economy represents a challenge to regulation as the interference between current and new services, on one hand, generates uncertainty over the applicability of the already existing rules to the platforms and, on the other hand, asks for fixing the priority between deregulating down old services or regulating up the new ones.

As for the latter scenario, some authors call for a less intrusive economic regulation which relaxes market access restrictions over classic economic regulation53 and others advocate for regulation whose level depends on the degree to which the new technologies solve existing market failures.54

As mentioned above, they make use of the level playing field argument, underlining unfair competitive advantages given to platforms by unjustified differences in regulation, as well as of the quality policy argument, based on the risk of lower quality transactions in case of inadequate regulation.

In general, the literature underlines how applying existing regulation to new business models may have the perverse effect of harming the consumers that the policy makers are there to protect and that, in many cases, a permissive presumption towards peer-to-peer businesses appears appropriate even if they do not entirely comply with existing regulations.55


As far as alternatives to regulation are at stake, first of all, the literature analyses the risk of asymmetric information on sharing economy platforms and the role played by feedback systems. Asymmetric information may mean that peers cannot perfectly assess the quality of the transaction being undertaken or of the asset/service being shared. As a consequence, feedback mechanisms may be ineffective and the self-regulation process undermined.\textsuperscript{56}

However, there are authors who stress the importance of the increase in transparency for consumers on platforms, leading to the enhancement in the circulation of information and to the consequent reduction of asymmetry. In such an opinion, the peer reviewing and the peer pressure mechanisms may act as a new form of “invisible hand” on, consequently, unfettered markets.\textsuperscript{57}

In between regulation and enforcement stand the advocacy powers of the Competition Authorities, that result in advocating competition directed to policy makers by enforcers, who in such a role do not act as decision makers.

In this field, in more active jurisdictions, NCAs have already intervened, advocating for the need of a more balanced approach between competition and other legitimate public interests deserving protection, also in order to create a level playing field.

It has been opined that where there are no specific risks, the option not to regulate should be in principle envisaged. Where regulation appears justified by imperative general interests, only a minimal set of rules should be introduced, provided it is proportionate and non-discriminatory. Furthermore, regulation should take a soft approach, as well as being flexible to adapt to unknown developments and should not hinder innovation.\textsuperscript{58}

And then comes the decision making alternative, i.e. a case by case ex post assessment of different interests by the entrusted private and public enforcers involved from time to time. More specifically, due to the recent interventions of national Courts and NCAs in the field, the question has been raised of their entitlement to strike the balance among the different conflicting interests at stake.

As for public antitrust enforcement, the key mechanism to insert public interests other than competition in the decision making process appears to be the proportionality principle: prohibitions that restrict competition may be valid only if indispensable and proportionate to the public interests different from competition that justify them.

In a recent case, for example, ICA stated that the prohibition to operate through third party Internet applications imposed by taxi cooperatives to their members, in order to be harmonized with antitrust legislation, could be valid only if found to be indispensable to


\textsuperscript{58} ICA’s President (May 2017), “Annual Report on the activity carried out in 2016".
guaranteeing the functioning of the cooperatives and proportionate to that objective.\textsuperscript{59}

In applying its enforcement powers, Competition Authorities play their full role as decision makers and their application of the proportionality principle to a specific situation is subject to the \textit{ex post} judicial review.

As it emerges from the above described ICA’s interventions, the proportionality principle appears to be even more relevant in the context of advocacy. Here the promotion of competition should always be balanced against other legitimate public policy goals. This is particularly true for the sharing economy where competition is often opposed to entry requirements that may hinder innovation.

In this context, Competition Authorities do not, however, act as decision makers but as competition advocates, illustrating a competitive problem and a possible solution to it, towards policy makers that have the final responsibility to find the appropriate solution to the conflict among different public interests.

Nevertheless, Competition Agencies, in advocating competition, can also help in finding a balance between the need to promote a competitive market structure and other primary public interests that might be at stake. Service providers can, indeed, be subject to requirements to access markets when justified by legitimate public policy objectives.

Authorizations and licenses should nevertheless be non-discriminatory and proportionate to these objectives.

Eventually, as for the role of Competition Authorities, they combine a set of different powers at their disposal: i) promoting \textit{ex ante} a proportionate and pro-competitive evolution of the regulatory framework, through advocacy powers; ii) assessing \textit{ex post} possible anti-competitive conducts realized both by incumbents and new comers by the means of public enforcement; iii) using consumer protection tools where appropriate.

In this context, any antitrust enforcement in the sharing economy is intertwined with the issues of the digital economy and online platforms as a whole and public enforcers should concentrate on the need to preserve the ability and the incentives of firms to innovate. More specifically, to sustain this innovative process, Competition Authorities need to focus on dynamic competition, overcoming a static approach centered on the efficient allocation of a set of given resources.

Given the complexity and the different stakes involved in shaping the phenomenon of the sharing economy, international cooperation in the enforcement phase and in the analysis of its impact on markets and development of shared best practices appears to be of the utmost importance.\textsuperscript{60}


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