The App & Sharing Economy – Regulatory implications

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The views expressed in this presentation are purely personal

Outline

- The App & Sharing economy - Challenges, market power & other regulatory implications

- Regulation versus innovation?

- Levelling the playing field between telcos & CAPs – EU initiatives

- Concluding remarks

The app & sharing economy - new actors

CAP/OTT providers/services, platforms & apps

Source: CWT Travel Management Institute

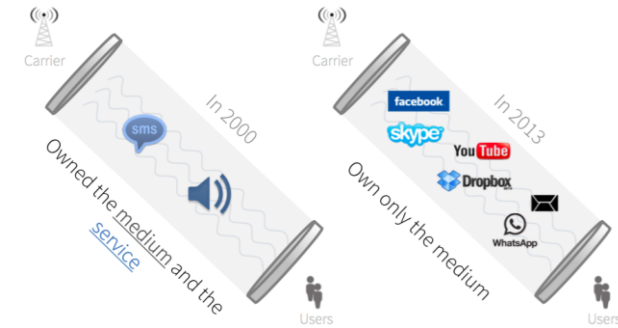So what is a platform?

"A platform is a plug-and-play business model that allows multiple participants (producers and consumers) to connect to it, interact with each other and create and exchange value."

Exchanges btw multiple groups

Trust

Scale

Innovative business models

Challenges for telecoms operators

- The internet & apps have decoupled applications from networks. Voice and messaging services need no longer be integrated, but can operate over-the-top on a network independent basis.

- Recent debate in EU about whether applications/content are creating unsustainable burdens on broadband infrastructure which require reevaluating the economic relationships between ISPs & CAPs.

- Is there a trade-off between increased usage of applications & content and investment in telecoms infrastructure or a virtuous circle where e.g. apps developers and consumers benefit from the availability of wireless (and fixed) networks, whilst network owners benefit from the demand for data and ubiquity that applications provide?

- Increasing use of apps weakens the market power of telecoms companies? Is demand for bandwidth being commodified?

The app & sharing economy - market power

- Rise of globe-spanning technology-driven companies operating international disrupting business models (Apple, Facebook, Uber, Airbnb).

- Shifting power against traditional providers: telcos, banks, accomodation and transportation providers.

- Market power derives from ownership of technology-enabled market places, pronounced economies of scale and scope, network effects, branding benefits.

- Abuse of a dominant position?   Google

- Recurring waves of technological change - successive waves of disruption? (IBM, Microsoft, Google).

Other regulatory implications
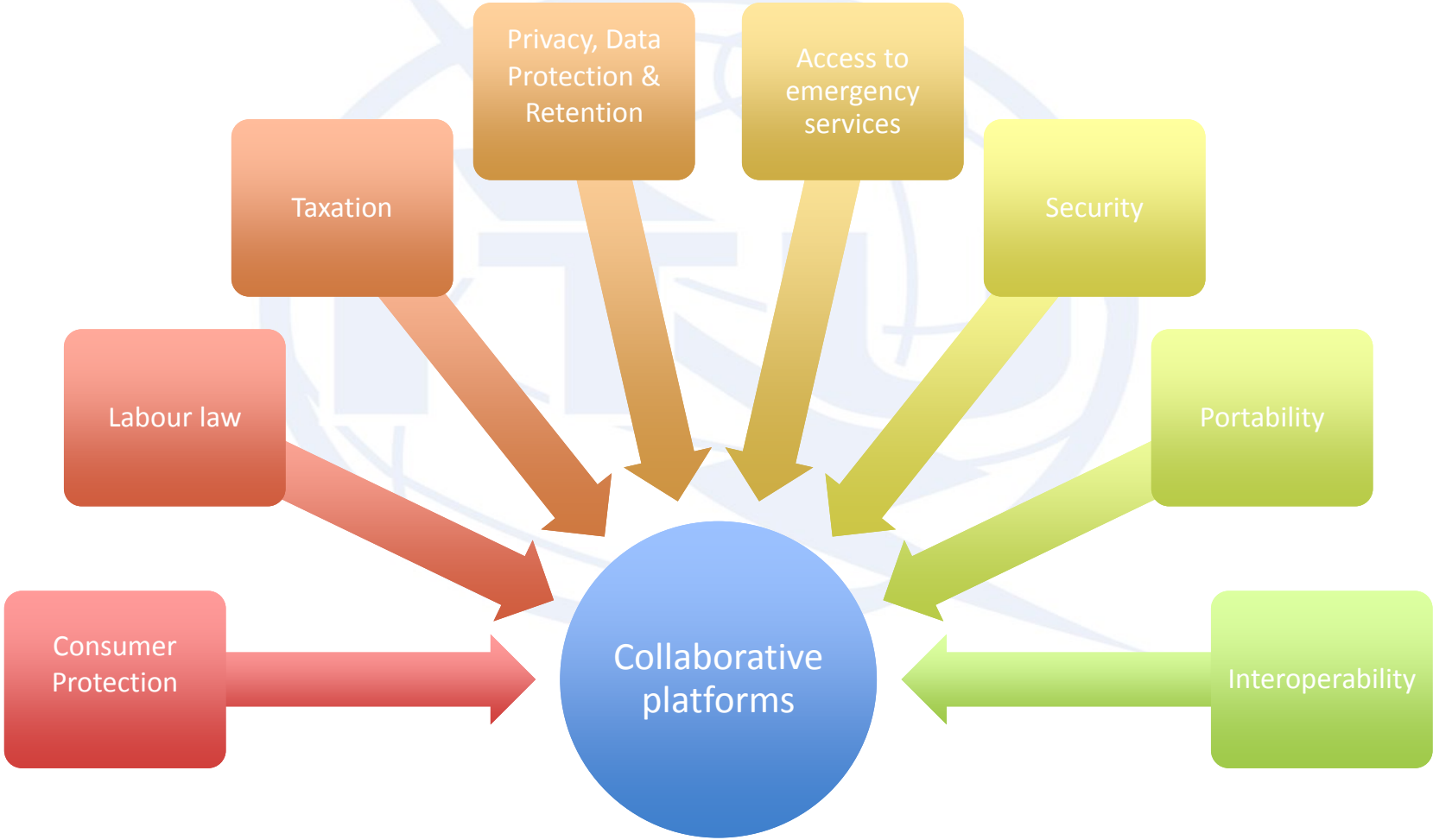
Regulation versus innovation? Key questions

- Regulators must find the best trade-off between consumer protection, investment and innovation – maximise the benefits of the disruptive app economy while countering the market power of the leading players and balancing sector regulation.

- How to balance regulations for established businesses & newer innovative businesses?

- What is the optimal regulatory approach? Reclassify traditional services & reorganise obligations? "Two-track regime" for old and new business models? Apply *ex ante* or *ex post* regulation?

- Public policy rationale justifying regulation?

Regulatory imbalances between telcos & CAPs?

	Areas of Regulation	Network Operators	OTT Players
1.	Applicable laws	Domestic law or in Europe EU regulations	Home jurisdiction maybe; many gaps in applicable laws
2.	Taxes	Local and domestic taxes	Located in low cost locations and tax havens
3.	Licensing	Must be granted or acquire licence from national Governments	Mostly exempt
4.	Operating Area	Only serve customers within the jurisdiction	Serve any user globally
5.	Infrastructure/ Network	Investing in new technology networks to deliver services to end users	No investments in networks that reach end users while telcos must deliver competitors services
6.	Competition	Strict rules applying including ex ante & per se rules, M&A restrictions	Mostly exempt except M&A if OTT subject to domestic competition law
7.	Fees	Customers' charges contribute to the costs of network provisioning	• Services offered without any relationship to the underlying costs; two sided markets
8.	Quality of Service	License requirements include SLAs and/or mandatory QoS standards	• No QoS guarantee • QoS issues blamed on network provider
9.	Inter-connection	• Required as part of regulatory regime Additional costs	OTTs have no interconnection requirements for calling or messaging
10.	Net neutrality	• If applicable, best effort data transport without discrimination, independent of source or nature of data. • Only typically traffic management permitted	No obligations (control over content and freedom of choice concerning customers) OTTs could be affected if Network operators apply traffic management restrictions
11.	Emergency services	Mandatory provisioning as part of licence conditions	Typically no such obligations
12.	Interception	Strict regimes with costs borne by operator	Typically no such obligation

	Areas of Regulation	Network Operators	OTT Players
13.	Retail Prices	Regulators' approval is typically needed in advance	No need for approval and maybe free for users
14.	Universal Service	• Mandated • USO contributions as a percentage or network revenues	No contribution
15.	Spectrum fees	Required to acquire in an auction or pay market based fees for usage	No additional costs for OTT
16.	Privacy	Strict data protection and privacy requirements for users	Practiced on a limited and generally voluntary basis
17.	Number Portability	Obligation to offer number portability between providers	OTT service independent from mobile number

Source: Moktar Mnakri, Regulating "Over-The-Top", Services - Need and Efficiency, Arab Regional Forum on "Future Networks: Regulatory and Policy Aspects in Converged Networks". 19-20 May 2015 as augmented and modified by Windsor Place Consulting.

EC communication on online platforms (May 2016)

- Outlines principles followed by the EC when adopting initiatives & elaborating responses to issues related to online platforms:
  - a level playing field for comparable digital services
  - responsible behaviour of online platforms to protect core values (e.g. maintain intermediary liability regime; code of conduct combating hate speech)
  - transparency and fairness for maintaining user trust and safeguarding innovation
  - open and non-discriminatory markets in a data-driven economy (facilitate switching and portability of data among different online platforms and cloud computing services)
  - a fair and innovation-friendly business environment (e.g. fact-finding exercise on unfair terms and conditions, in particular for access to important databases, market access and general lack of transparency)

EC communication on the collaborative economy (June 2016)

Provides **guidance** on how existing EU rules apply to the collaborative economy & identifies good practices.

Key take-aways:

- Services providers to obtain **business authorisations or licenses** only where strictly necessary to meet relevant public interest objectives. Absolute bans of an activity as measure of last resort.

- Platforms should <u>not</u> be subject to authorisations or licenses where they only match consumers and those offering products and services. Whether their activities go beyond such **intermediary activities** and they also provide the actual service (e.g. transport or accommodation service) must be established case-by-case.

- EU countries should differentiate between individual citizens providing products and services on an occasional basis and providers acting in a **professional capacity**, for example by establishing thresholds based on the level of activity.

EC communication on the collaborative economy (June 2016)

The collaborative economy

– EU countries should help people benefit from the new employment opportunities offered by collaborative economy while ensuring **fair working conditions and social protection**.

– Collaborative economy platforms should act in a responsible manner. They should put in place **voluntary measures to increase consumer trust** and **fully cooperate with national authorities**, e.g. to record economic activity and facilitate tax collection.

– EU countries are invited to **review** and where appropriate **revise existing legislation** according to this guidance, whilst ensuring that social and consumer rights are respected.

Level the playing field – EC electronic communications Code

- New electronic communications services definition – **3 types of services**:
  - internet access service (IAS);
  - interpersonal communications service (ICS):
    - number-based ('traditional' telephony, SMS, Skype In/Out)
    - number-independent (Skype-to-Skype, Whatsapp – number as a mere identifier, not used to connect to PSTN)
  - conveyance of signals (broadcast transmission, IoT)
- Number-independent ICS only subject to a few essential obligations:
  - security provisions
  - interoperability (safeguard power)
  - emergency services obligations (may be extended to all ICS)
  - confidentiality provisions (possibly)
- No authorisation requirements for number-independent ICS

Concluding remarks

- The app & sharing economy brought along new challenges for traditional players and regulators.

- Key to allow competition & new services to flourish while safeguarding consumer protection, addressing market powers and ensuring a level playing field.

- Review and revise existing rules rather than seeking to extend them & regulate only where necessary .

- Establish coordination procedures between regulators (communications, media, competition, financial services, privacy and data-protection).

Thank you for your attention!

Key bibliography

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