Collaboration, Innovation… Regulation? The disruptive shifts taking our economy by storm

Joël Vanoverschelde
Partner
Advisory & Consulting Leader
Deloitte

Charles Delancray
Director
Technology & Enterprise Application
Deloitte

Louisa Bartolo
Consultant
Technology & Enterprise Application
Deloitte

Setting the scene: what are we talking about?

Who do you trust more? Your beloved mother or a person whom you've never met in person, whose online profile you merely scanned briefly, but who's offering you the chance to join them on a long-distance car trip to the next country, at no personal profit? Yup, you've guessed right: you're more likely to trust your mother—but only marginally[1].

Given the choice, would you opt for a reasonably priced hostel by a widely known and respected brand or a cottage in a quaint but cut-off rural village belonging to a woman you've never met in person, vouched for by a handful of people whom you have also never met in person? Judging by Airbnb's booming business, there's a pretty good chance you'd pass on the hostel.

Welcome to the collaborative economy, where everything you thought you knew about business models—but also your own willingness to trust in them—is being redefined.

At Deloitte, we're excited about this new business ecosystem and by the disruptive innovation it is creating. We know, from our extensive experience with innovative businesses of all forms, that regulators face very real challenges when it comes to implementing optimal legislation that promotes fair competition and consumer protection on the one hand, whilst simultaneously encouraging marketplace innovation and stimulating growth on the other. This is why we'd like to focus quite specifically on the regulatory debate here.

1 See Chronos and BlaBlaCar 2012. Trusted online communities: Signs of a brighter future. 5 December 2012: http://www.betrustman.com

Regulating what?

Consistent with the definition provided in our article "Collaboration Generation", we understand the "collaborative economy" as the practice of individuals using online platforms to directly transact with one another rather than going to traditional companies to serve their needs[2], and ordinary users can engage with the platforms either as providers or consumers. Our focus here is on platforms that facilitate access to goods or services, but we're excluding peer-to-peer lending and crowdfunding, simply because the regulatory challenges here are quite unique and we want to dive into that specifically in a future issue.

Regulating successful "deviants": the fundamental tension

An inherent tension underlies the debate about regulating the collaborative economy. As our Deloitte report on this new "business ecosystem" has highlighted, for the most part, the companies that have thrived in this new structure have done so by being regulatory "deviants"[3]. Lacking the economic muscle and political clout (at least in their embryonic "start-up" stage), to lobby regulators in order to create rules that protect and promote their interests, they found creative "workarounds" or—as our Deloitte report puts it—"back doors" to squeeze through[4]. Uber was not a transportation service, but a technology platform. BlaBlaCars were not taxis, but vehicles shared by connected strangers-turned-comrades en route to the same long-distance destination. Airbnb was not an accommodation or hotel business but a sharing platform allowing individuals to offer their free space to adventurous travelers in search of "alternative" lodging on a budget. There is a sense that this innovation spree has been made possible and lucrative precisely because it creatively found its way into this regulatory "grey" area. As one impassioned attendee at a recently hosted forum on the topic in the US put it:

"The sharing economy is like the secret beach that hasn't been discovered by the rule makers yet. There's no lifeguard on duty. It's swim at your own risk… and that's what makes it great."[5]

What's more, this "innovation versus regulation" debate is perhaps especially pertinent in the EU context. The EU's much touted "Digital Single Market Strategy", which is about removing existing barriers within the EU's digital market and bridging, as far as possible, the intra-European digital divide, could be a boon for EU-based tech startups of the kinds that typify the collaborative economy[6]. To date, and for all its evident promise, Europe's collaborative economy is still in its infancy compared with the U.S.[7]. The wrong regulatory move now could nip collaborative hopefuls in the bud, further undermining Europe's competitiveness.

But for every impassioned advocate of light/no regulation, there is an equally vigorous counter-narrative accusing these companies of attempts at "corporate nullification"[8] the flipside of which is a call to bring collaborative companies in line with the law, with the latter opening up a subsequent and no less impassioned debate about whether and to what extent that law should be adapted or changed in light of this new reality. If Airbnb doesn't have to abide by the same regulations as hotels when it comes to taxing tourists, and fulfilling fire and safety and zoning requirements, for example, isn't that a case of unfair competition for traditional hoteliers? And doesn't it harm consumers (by potentially placing them in unsafe accommodation) and society (by reducing tax revenue which is such an important source of government spending, and by creating disturbance for neighbors who never signed up to live beside a hotel but suddenly find themselves beside an Airbnb home, and consequently subjected to the same inconveniences, for example)[9]?

2 *Cf. Mahidhar, V. and Schatsky, D. 2014. Big companies now have a hand in the collaborative economy, p.1. Deloitte University Press: http://dupress.com/articles/collaborative-economy*

3 *Chew, B.; Derosby, D.; Kelly, E. and Miracky, B. 2015. Regulating ecosystems. "Business ecosystems come of age". Deloitte University Press, p. 45*

4 *Chew, B.; Derosby, D.; Kelly, E. and Miracky, B. 2015, p.45*

5 *Medium 2015. Policy Challenges and Economic Opportunities in the Sharing Economy: https://medium.com/ondemand/policy-challenges-and-economic-opportunities-in-the-sharing-economy-b6876efe77a*

6 *Zubascu, F. 2015. The sharing economy is bringing disruptive innovation to Europe. Science|Business 2 July 2015: http://www.sciencebusiness.net/news/77109/The-sharing-economy-is-bringing-disruptive-innovation-to-Europe*

7 *Business Innovation Observatory (2013). The Sharing Economy: Accessibility Based Business Models for Peer-to-Peer Markets. http://ec.europa.eu/enterprise/policies/innovation/policy/business-innovation-observatory/files/case-studies/12-she-accessibility-based-business-models-for-peer-to-peer-markets_en.pdf, p.5*

8 *See Pasquale, F.; Vaidhyanathan, S. 2015. Uber and the lawlessness of "sharing economy" corporates. The Guardian 28 July 2015*

9 *Baker, D. 2014. Don't buy the "sharing economy" hype: Airbnb and Uber are facilitating rip-offs. The Guardian 27 May 2014*

And while it is undoubtedly true that regulatory application and development have lagged relative to the exponential speed of the collaborative economy's growth, regulators have most certainly been keeping busy. By January 2014, Uber was simultaneously fighting a whopping 40 legal battles against regulators globally[10]. In the same year in Barcelona, Airbnb received its first ever—albeit small—fine, of €30,000 for failing to register with the Tourism Registry of Catalonia[11]. French, Belgian and German regulators clamped down on UberPop, whose operation French MP Thomas Thevenoud described as "flagrantly illegal"[12](UberPop was developed as a "carpooling" service, allowing individuals to transport others for a fee—a situation which has drawn the ire of regulators because it effectively means that drivers are not licensed as taxi drivers of any kind, although the grounds for restricting or outright banning its operations have varied from one country to another)[13]. Class action lawsuits are being filed against collaborative economy giants like Uber, for alleged "worker misclassification"[14]—a charge, which, if upheld (as the California Labor Commission did in June 2015[15]), could seriously undermine the business model that has made these companies so successful and profitable[16], and which have already led some key collaborative players to re-classify workers in a bid to pre-empt any regulatory clampdown[17]. Most recently, a Spanish judge referred a case brought against Uber to the European Court of Justice (ECJ). The move, which follows European Commission investigations into whether German and French regulation of Uber's services unfairly limit competition[18], has raised the hopes of Uber's EMEA public policy head Mark MacGann that the case will set the stage for pan-EU regulation that is less hostile to the one being adopted in a number of EU countries[19].

Indeed, the EU is most definitely paying close attention to the collaborative economy. A study into Uber has been planned for September 2015[20], and the Commission has vowed, in a communication released last May, to "launch before the end of 2015 a comprehensive assessment of the role of platforms, including in the sharing economy, and of online intermediaries, which will cover issues such as… transparency… platforms' usage of the information they collect… relations between platforms and suppliers… constraints on the ability of individuals and businesses to move from one platform to another and will analyze… how best to tackle illegal content on the Internet."[21] Deloitte will be following developments closely.

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10 Silk (2015), "A world of Uber troubles" cited in Chew, B.; Derosby, D.; Kelly, E. and Miracky, B. 2014, p. 44

11 Kassam, A. 2014. Airbnb fined €30,000 for illegal tourist lets in Barcelona. The Guardian 7 July 2014

12 Sustainable mobility.org, February 2014: http://www.sustainable-mobility.org/innovating-for-tomorrow/services/uberpop-is-given-a-frosty-welcome-in-europe.html

13 Ibid

14 Hill, K. 16 April 2015: http://fusion.net/story/118401/meet-the-lawyer-taking-on-uber-and-the-on-demand-economy/

15 Kosoff, M. 17 June 2015: http://uk.businessinsider.com/uber-and-lyft-employee-lawsuits-could-change-business-models-2015-6?r=US&IR=T#ixzz3hT2q2yip

16 Hill, K. 16 April 2015

17 Owyang, Jeremiah: http://www.web-strategist.com/blog

18 Lunden, I. 2015. TechCrunch 20 July 2015: http://techcrunch.com/2015/07/20/uber-europe

19 Ibid

20 Fioretti, Julia (Reuters) 28 August 2015: http://venturebeat.com/2015/08/28/to-regulate-or-not-to-regulate-eu-to-launch-study-on-uber/

21 European Commission 2015: http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf. P.12

As collaborative economy platforms largely circumvent the regulations designed for traditional business platforms, there is increasing concern that consumers engaging with the platforms may be left vulnerable and exposed

In the absence of EU-wide collaborative economy-specific regulation, various European governments have been developing different approaches, beyond mere clampdown or outright bans. The Dutch government has been especially active in pushing for collaborative-economy friendly regulation, for example, with economy minister Henk Kamp stating that "If we in the Netherlands want to be first to profit from the benefits of innovation, then we have to make room for that in our rules.[22]" Regulations forcing Airbnb to collect tourist taxes from guests were introduced in Amsterdam in December 2014[23] as a way to accommodate the new business model within the hospitality sector and last May, the Dutch Minister of Infrastructure and Environment vowed to ease taxi laws in a bid to remove unnecessary barriers preventing disruptive innovation in the industry[24]. In Portugal, new home sharing legislation introduced last March was hailed by Airbnb as "common sense" and "smart and streamlined"[25]. In the UK, HM Revenues and Customs and the Treasury are currently trying to devise new ways of allowing individual participants earning revenue through the collaborative economy to calculate their owed taxes more easily[26]—a notoriously difficult activity[27]. The UK government is also working on the piloting of "sharing cities" in Leeds City Region and Greater Manchester in 2015-2016, which would concentrate and promote collaborative economy activity—including skill-sharing and accommodation-sharing joined together—with residents being "encouraged to share as part of their daily lives" for the fulfilment of wider socioeconomic objectives and a boost to local growth[28]. These approaches provide interesting test cases that the EU will no doubt draw upon in its attempt to develop a common European strategy.

Consumers: navigating unregulated waters

A raft of regulations exists at European level to protect consumers, both in traditional retail settings and in digital contexts[29]. These regulations, however, long predate the advent of the new business ecosystems that we are seeing. As collaborative economy platforms largely circumvent the regulations designed for traditional business platforms, there is increasing concern that consumers engaging with the platforms may be left vulnerable and exposed. As Commissioner for Justice, Consumers and Gender Equality Věra Jourová put it in a speech to mark European Consumer Day, "those who use the sharing applications or benefits need to be aware that they do so in a sphere without rules and rights, outside of the protection of existing legislation."[30]

Claims about perceived potential for consumer detriment are rife. To take just a few examples, in 2014, when Berlin banned Uber from operating, it cited "passenger safety concerns" as one of its motivations[31]. The unwarranted holding of individuals' personal data was one of the charges brought against the two Uber executives arrested in France and both Uber and Airbnb have come under fire for falling short when it comes to providing adequate options for passengers and guests with disabilities[33].

But while regulators scramble to figure out how to extend or adapt existing regulation to accommodate these new business models, others are pointing to the way the business models themselves are reimagining notions of consumer protection, providing new avenues for self-regulation that would obviate the need for state intervention.

22 Bahceli, Y. Reuters 20 July 2015: http://www.reuters.com/article/2015/07/20/dutch-sharing-idUSL5N1002JX20150720
23 Ibid
24 Van Jaarsveldt, J. 20 July 2015: http://www.nltimes.nl/2015/07/20/govt-wants-to-better-regulate-sharing-economy/
25 Robinson, P. 12 March 2015: http://publicpolicy.airbnb.com/portugal-overhauls-tourism-laws-embrace-home-sharing/
26 Independent review of the sharing economy: Government response. March 2015: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414111/bis-15-172-government-response-to-the-independent-review-of-the-sharing-economy.pdf
27 Lipka, M. 15 April 2015: http://time.com/money/3822148/sharing-economy-taxes-uber-lyft/
28 Independent review of the sharing economy: Government response. March 2015
29 The European Commission's dedicated portal for consumer rights and law: http://ec.europa.eu/consumers/consumer_rights/index_en.htm
30 Jourová, V. 16 March 2015: http://ec.europa.eu/commission/2014-2019/jourova/announcements/putting-consumer-centre-more-freedom-more-rights-more-choice_en
31 Reader, R. 14 August 2014: http://venturebeat.com/2014/08/14/berlin-bans-uber-over-passenger-safety-concerns/
32 Schechner, S. 2015: http://www.wsj.com/articles/uber-executives-ordered-to-stand-trial-by-french-prosecutors-1435667386
33 Heideman, E. 4 October 2014: http://news.yahoo.com/uber-airbnb-leave-disabled-behind-104500268--politics.html

"Less regulation, more reputation"?[34]

In his contribution to the book "The Reputation Society: How Online Opinions Are Reshaping the Offline World"[35], Lior Jacob Strahilevitz makes the case for promoting access to reputational data as a key element for consumer protection, alongside regulation. His argument has particular relevance in the context of the collaborative economy, where platforms are increasingly pushing for reputation-and-monitoring systems as a way of creating self-policing communities thought to empower and protect consumers without the need to resort to more traditional forms of consumer regulation

Reputation, it is argued, promotes trust. And trust has been described as the cornerstone of the collaborative economy[36]. After all, as consumer data professional Stephen Ufford notes, it is ultimately only this kind of social glue which "allows someone to take a ride from a stranger or rent a room in a house from someone they've never met."[37] In 2012, BlaBlaCar commissioned a study[38] looking into the nature of trust in the context of its collaborative platform. As a baseline, the first thing the study did was ask respondents to give groups of individuals a trust rating on a scale of 0 (least trusted) to 5 (most trusted), independently of its platform. Individuals were asked to give a trust ranking to close family and friends, online strangers, and strangers in the street whom they could see but did not know. Close friends and family were rated 4.7, whilst a stranger online was rated 1.9. Strangers in the street were given a 2.2 (which the study attributes to the fact that at least these strangers' faces can be seen, as opposed to the situation with online strangers). The study then went on to look at trust ratings amongst users forming part of the BlaBlaCar community. Strikingly, the study found that when individuals had a complete profile (that is, a profile including a photo, a verified phone number and positive reviews by other platform users), they received a trust rating of 4.2—just slightly below the 4.7 reserved for close family members and friends in the baseline analysis. Most exciting, from a consumer empowerment perspective, was the finding that individuals' positive ratings by other platform users was the single greatest contributor to increased trust levels towards those individuals. In other words, collaborative economy platform users acting as providers in a transaction have a clear incentive to give consumers the best possible service, if they want other community members to trust them and win more business. Their assumptions would be well founded; research shows that favorable online reviews have a direct positive impact on revenue generated[39].

Based on its experience, BlaBlaCar has developed what it calls the "D.R.E.A.M.S framework". The acronym cleverly sums up how their system works, with each letter standing for one of the key dimensions that BlaBlaCar believes makes trust on collaborative economy platforms possible: Declared, Rated, Engaged, Activity-based, Moderated, and Social. Briefly put, platform users must declare themselves by volunteering information about themselves to the community (such as their name and age); they should be rated by others, based on a previous transaction, allowing potential consumers to see their reviews by others; they should have a clear signal that the party is "engaged" and will stick to their promise to deliver the product or service in question by means of a pre-payment system. The ratings and reviews should be activity-based (that is, users on a ride-sharing platform should be rated on their capabilities with regard to ride-sharing and not some unrelated activity); the information shared on the platform should be moderated by a third party (to verify and authenticate it); and finally, there should be the all-important social element, which means that platform users should be able to link their platform profiles to their profiles on other social sites (for example, individuals' BlaBlaCar platform profile should be linked to their Facebook and Linkedin profiles)[40].

34 Strahilevitz, Lior Jacob's cited in M. Hassan and M. Tovey 2011: "The Reputation Society: How Online Opinions Are Reshaping the Offline World", US: MIT Press

35 Hassan, M. and Tovey, M. 2011

36 See Botsman, R. 2012: http://www.ted.com/talks/rachel_botsman_the_currency_of_the_new_economy_is_trust?language=en

37 Ufford, S. 2015: http://www.forbes.com/sites/theyec/2015/02/10/the-future-of-the-sharing-economy-depends-on-trust

38 Chronos and BlaBlaCar 2012

39 See Luca, M. 2011, Harvard Business School Working Paper 12-016: http://www.hbs.edu/faculty/Publication percent20Files/12-016_0464f20e-35b2-492e-a328-fb14a325f718.pdf

40 For more about each of these dimensions, see: http://www.betrustman.com/

Reviews never lie… or do they?

So we know that reviews and reputation matter in terms of influencing consumer behavior. But the question is, can they in fact be trusted? Do users leave honest accounts of their engagement with fellow platform users? Here, for all the enthusiasm around reputation-and-monitoring systems as optimal methods of self-regulation, there is good evidence to indicate that some caution is necessary. An analysis[41] of over 600,000 properties listed on the Airbnb platform found that a striking 95% of the properties received an average user-generated rating of between 4.5 and 5 stars (with 5 being the maximum). Almost no properties received anything below a 3.5 rating. The article's authors do not provide any definitive conclusions for why such high ratings can be seen on Airbnb, but one possibility that has been pointed to is that the practice of "reciprocal reviews" (that is, guest and host both reviewing one another), encourages overly-positive reviews (as both want to protect their own reputations). This argument has some strength in view of the fact that ratings of Airbnb listings were so much higher than their counterparts on TripAdvisor, which does not allow for such reciprocal reviews[42]. High ratings can also be seen on Uber, where data for 2014 revealed that a mere 1% of driver ratings were the lowest possible, that is one-star, and that only 5% of all trips were rated as 3 stars or lower[43]. This is good news for Uber drivers, considering that Uber reportedly dismisses drivers with an average score below 4.6[44], but one wonders how valuable ratings are when they are so frequently inflated.

We agree with calls for more trustworthy review systems which "destigmatize" negative ratings[45]. Interestingly, Airbnb has tweaked its rating system in response to the concerns raised that the mutual rating system acts as a disincentive for both host and guest to provide honest feedback about their experience[46,47]. Airbnb's move, which includes, amongst other things, a provision whereby a user's review is only revealed to the reviewed party after the latter has provided his or her own review (to prevent the kind of reciprocal reviewing that discourages honesty referred to earlier) indicates a process of self-correction and development in online reputation-and-monitoring systems that it will be important to continue to follow.

Reputation, it is argued, promotes trust. And trust has been described as the cornerstone of the collaborative economy

41 Zervas, G.; Proserpio, D.; Byers, J. January 2015: http://people.bu.edu/zg/publications/airbnbreviews.pdf
42 Millwood, A. 11 April 2015: http://techcrunch.com/2015/04/11/the-risk-of-reviewing-the-reviewer/
43 Cook, J. 11 February 2015: http://uk.businessinsider.com/leaked-charts-show-how-ubers-driver-rating-system-works-2015-2#ixzz3kQvkyJ4v
44 Ibid
45 Millwood, A. 2015
46 Weber, H. 11 August 2014: http://venturebeat.com/2014/08/11/airbnb-tweaks-review-system-so-guests-dont-fear-retaliation-from-hosts/
47 See http://blog.airbnb.com/building-trust-new-review-system/

Where's my data gone?

In her 2012 Wired article, Rachel Botsman takes these ideas to the next level. Her concept of individuals being able to build "reputational capital" through their engagement with the collaborative economy and to then use this capital in a range of settings provides interesting food for thought. "Imagine", asks Botsman, "a world where banks take into account your online reputation alongside traditional credit ratings to determine your loan; where headhunters hire you based on the expertise you've demonstrated on online forums such as Quora?" This idea is not too far removed from some of the arguments alluded to by co-founder of Deloitte's Center for the Edge John Hagel and Marc Singer who predicted the rise of "infomediaries" that help individuals leverage their online data to get the best out of online providers[48]. As Hagel argues, online providers benefit greatly from access to individuals' personal and consumption patterns data. The infomediary would be the person stepping in to help individuals provide access to that data in a way that benefits them. Thus consumers are empowered not so much via data privacy but rather by getting compensated for sharing their data[49]. It's an interesting idea, but one whose applicability must be assessed in the European context, where studies[50] show that the use of their personal data by third parties still features prominently amongst citizens' concerns.

Conclusion

Regulation disrupted

There are, certainly, no easy solutions to the regulatory challenges surrounding the collaborative economy. Nevertheless, Deloitte has found it useful to identify the three key challenges characterizing this new business ecosystem, and to promote potential solutions or at least approaches to addressing each of these. The graphic below illustrates this. What emerges clearly is that regulation must be nimble, open to diverse perspectives and continuously open to recalibration. We simply cannot accept the argument that the regulation process is by definition slow and clunky. This is not about extending, but rethinking and reimagining, existing regulation.

The collaborative economy is not just disrupting traditional industry, it's disrupting traditional regulation. That's not a bad thing. It's a window of opportunity and we should not waste it. But we must hurry; we're already late.

Figure 1: Regulatory challenges and solutions for evolving ecosystems

Challenges in ecosystem regulation	Emerging solutions
Speed Pace of innovation and shortening regulation life cycles	**Stay agile by standing open** • **Promote self-regulation** where appropriate • **Consider sunset provisions** to time-cap new regulation • **Solicit real-time feedback** allowing constant recalibration
Blurring edges New business models at the edges of existing regulation	**Seek to learn from edge-pushing business models** • **Scan regulatory edges** as areas prone to business model innovation • **Monitor new business** models as indicators of current regulatory caps
Diversity New interactive dynamics as new play-ers emerge and jurisdictions intersect	**Harmonize diverse players through co-creation** • **Regulate to common ends**, not means • **Focus on root causes** across stakeholders • **Embrace contrasting perspectives** as sources of insight
Build the regulatory ecosystem to promote cross-boundary innovation at the speed of business	

Source: Chew, B.; Derosby, D.; Kelly, E. and Miracky, B. 2015. "Regulating Ecosystems" in Chew, B.; Derosby, D.; Kelly, E. and Miracky, B. 2015. "Business ecosystems come of age": Deloitte University Press, p.48

48 Hagel, J. III; Singer, M. 1999. Net Worth: Shaping markets when consumers make the rules. Harvard Business Review Press
49 See Hagel, J.; Rayport, J.F. 1997: https://hbr.org/1997/01/the-coming-battle-for-customer-information/ar/1
50 See: http://ec.europa.eu/justice/data-protection/promo_data_en.htm