

Platform capitalism and regulation: a false opposition?

Jeremy Brice highlights the challenges of regulating new business models

If the newspaper headlines of recent years are to be believed then digital marketplaces for goods and services do not mix well with regulation. Not only do such platforms often disrupt traditional business practices and the regulatory protections configured around them, but many appear determined to evade regulatory oversight. Stories abound of taxi platform Uber, recently stripped of its licenses to operate in London and York over passenger safety and data protection concerns, launching its services in defiance of local regulations and deploying specialist software to impede regulatory investigation. City authorities in Barcelona have fined accommodation rental service Airbnb €600,000 for facilitating the letting of unlicensed and untaxed holiday apartments. Meanwhile, takeaway delivery platform Deliveroo remains embroiled in seemingly endless legal disputes against couriers contesting its employment practices.

That convoluted regulatory proceedings against companies less than a decade old now qualify regularly as front-page news underlines how rapidly these new digital intermediaries have infiltrated everyday activities from hailing a taxi to purchasing groceries. The mundane business of food shopping, the focus of my own research, aptly illustrates their growing reach. Many London residents now purchase their groceries through Amazon Fresh, or eat lunches delivered by Uber EATS. Meanwhile, with roughly half of all takeaway meals in the UK now being ordered via an online marketplace, the recent merger between leading takeaway order aggregation platforms Just Eat and Hungryhouse has attracted extensive scrutiny from competition regulators concerned by its potentially anti-competitive effects (CMA, 2017). Yet if these online intermediaries are becoming increasingly vital to the business of food, they nevertheless bear little resemblance to conventional food businesses. They do not produce, package or prepare food. Nor do they buy food from its producers before selling it on to customers, as would a traditional food distributor or retailer.

Instead, companies such as Uber, eBay and Deliveroo provide a digital infrastructure or 'platform' which two or more groups – typically vendors eager to advertise and sell goods, and buyers seeking to purchase them – use to interact and transact with one another. For instance, online takeaway ordering platforms such as Just Eat or Deliveroo enable restaurants to advertise their meals to many consumers and, simultaneously, allow those consumers to compare and choose between a wide range of restaurants. Unlike suppliers to traditional

retailers, these restaurants use the interface provided by the platform operator to sell their own wares to consumers – typically managing their own product range, maintaining ownership over their inventory and setting their own prices. By gathering numerous different buyers and sellers of takeaway meals in a single location, and by facilitating the exchange of payments for goods, such platforms create an online marketplace in which users may trade with one another. In exchange, the platform operator typically extracts a monetary rent (such as a sales commission or administration fee) from each transaction between users – a business model which Nick Srnicek (2017) has termed 'platform capitalism'.

Political economists such as Srnicek argue that ownership over the infrastructures of digital commerce offers such firms unparalleled discretion to shape the design of online marketplaces, and thus to define the terms on which much contemporary economic activity takes place. This, they contend, has created an innovative apparatus of commercial surveillance and control which displays powerful tendencies towards monopoly. These tendencies reflect that in order to be effective (and profitable), marketplace platforms must attract, and facilitate wisely chosen exchanges between, at least two distinct user populations: namely vendors and buyers. Just as a marketplace shunned by shoppers would generate few sales for vendors, so one with no vendors would be unattractive to consumers seeking a wide selection of goods or services. Therefore, as Srnicek (2017: 45) observes: 'the more numerous the users who use a platform, the more valuable the platform becomes ... more users beget more users, which leads to platforms having a natural tendency towards monopolisation.'

This cycle can generate pronounced power asymmetries between operators of dominant platforms and users who rely on a platform's services to do business with one another, particularly in highly fragmented markets such as that for takeaway meals. Events such as the recent Competition and Markets Authority investigation into the merger between Just Eat and Hungryhouse signal that regulators are increasingly alert to this danger. Regulation scholars, too, are increasingly examining how leading online marketplace platforms' tendencies to accumulate disproportionate market share and commercial influence might be restrained (e.g. Ranchordas, 2015). Yet even as regulators confront these challenges, other platforms are emerging which pose somewhat different regulatory issues.

Take, for instance, emerging online marketplaces for home-cooked food such as VizEat and HomeFood. These platforms



enable private individuals to sell takeaway meals prepared in their domestic kitchen or tickets to a pop-up restaurant operating within their home and, in so doing, promise to enhance their enterprise's visibility to potential customers and thus its commercial viability. Such relatively informal home food preparation operations sometimes fit awkwardly within, or conform only intermittently to, regulators' established definitions of what constitutes a food business – creating uncertainty about whether their activities should be subject to regulatory oversight and enforcement. Online marketplaces for home-cooked food thus threaten to open up new zones of regulatory underlap in which unconventional vendors fall beyond the reach of state food regulators, meaning that the risks to food safety which they represent go unattended. It is therefore tempting to assume, as might commentators such as Evgeny Morozov (2015) who attribute to platform capitalism a particular antipathy towards regulation, that such emerging online marketplace platforms will become ungoverned spaces rife with substandard goods, suspect traders and illegal practices. Yet as economists Kevin Boudreau and Andrei Hagiu (2009: 169) note, the same characteristics which endow marketplace platforms with monopolistic propensities arguably also provide platform operators themselves with uniquely effective means of governing the behaviour of their users and shaping the rules of online commerce, should they choose to do so: 'control over the platform also conveys the power to exclude from the ecosystem as a whole. The power to exclude also naturally implies the power to set the terms of access ... and thus to play a role somewhat analogous to the public regulator.'

Ownership of the infrastructures of online commerce thus enables platform operators not only to determine the rules of interaction between buyers and vendors, but also to decide who should be permitted to trade within their marketplaces. It confers on them the authority to define minimum standards of conduct and product quality for vendors, the ability to monitor the behaviour of platform users and the commercial power required to enforce compliance with those standards – whether through economic incentives or by expelling substandard vendors from the marketplace. As such it seems possible that in marketplaces where vendors escape the jurisdiction of state regulators, or in which the role of regulators is unclear, much of the work of assuring food safety and quality might fall to marketplace platform operators' own private standards and

compliance systems. Indeed, cases such as Uber's specifications regarding minimum driver qualifications and vehicle standards illustrate that platform operators already play a growing role in governing vendors' ability to access – and the risks posed by their behaviour within – at least some markets. This raises the tantalizing prospect that state regulators might capitalize on platform operators' capacity to select, scrutinize and influence their marketplace's vendors by enlisting their assistance in gathering information about compliance among vendors or in enforcing sanctions prohibiting non-compliant vendors from trading.

Yet if online marketplace platforms provide powerful tools with which to shape and govern the conduct of users, to what extent – and under which circumstances – do their operators choose to fulfil this quasi-regulatory role? Indeed, should they choose (or be encouraged) to do so? And if so, how effective are their efforts to exert their authority likely to be? Such questions are as yet little examined, and even less understood. But while much remains to be learned about the rapidly evolving and often secretive world of online marketplace platforms, two things are becoming clear. First, while academics and regulators have begun grappling with the question of how the growing powers of digital marketplace platforms should be regulated, an effective response to the challenges posed by platform capitalism will also require investigation and understanding of platform operators' own emerging roles in the regulation of online economic activities. In particular, such actors' efforts to identify non-compliant traders and to exclude them from online marketplaces seem likely to inform the governance of commercial activity in increasingly consequential ways in the future. It may even catalyse the invention of new accommodations, or novel forms of partnership, between platform operators and state regulators. For instance, regulators might come to rely on the assistance of platform operators in monitoring the activities of unconventional online vendors with which they may otherwise struggle to engage, or discover that prohibiting non-compliant vendors from trading requires the cooperation of platform operators. Second, therefore, accounts which depict platform capitalism as being simply inimical to regulation are likely at best to prove overly simplistic and, at worst, to encourage counterproductive policy choices. In short, the opposition between platform capitalism and regulation may well be a false one.

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