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

Exchanges btw multiple groups
Trust
Scale
Innovative business models

“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.”
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, accommodation 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

- Taxation
- Labour law
- Consumer Protection
- Privacy, Data Protection & Retention
- Access to emergency services
- Security
- Portability
- Interoperability

Collaborative platforms
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?

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<tr>
<th>Areas of Regulation</th>
<th>Network Operators</th>
<th>OTT Players</th>
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<tbody>
<tr>
<td>1. Applicable laws</td>
<td>Domestic law or In Europe EU regulations</td>
<td>Home jurisdiction maybe, many gaps in applicable laws</td>
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<td>2. Taxes</td>
<td>Local and domestic taxes</td>
<td>Located in low cost locations and tax havens</td>
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<td>3. Licensing</td>
<td>Must be granted or acquire licence from national Governments</td>
<td>Mostly exempt</td>
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<td>4. Operating Area</td>
<td>Only serve customers within the jurisdiction</td>
<td>Serve any user globally</td>
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<td>5. Infrastructure/Network</td>
<td>Investing in new technology networks to deliver services to end users</td>
<td>No investments in networks that reach end users while telcos must deliver competitors services</td>
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<tr>
<td>6. Competition</td>
<td>Strict rules applying including ex ante &amp; per se rules, M&amp;A restrictions</td>
<td>Mostly exempt except M&amp;A if OTT subject to domestic competition law</td>
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<td>7. Fees</td>
<td>Customers' charges contributes to the costs of network provisioning</td>
<td>Services offered without any relationship to the underlying costs; two sided markets</td>
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<td>8. Quality of Service</td>
<td>License requirements include SLAs and/or mandatory QoS standards</td>
<td>No QoS guarantee</td>
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<td>9. Interconnection</td>
<td>Required as part of regulatory regime Additional costs</td>
<td>OTTs have no interconnection requirements for calling or messaging</td>
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<td>10. Net neutrality</td>
<td>If applicable, best effort data transport without discrimination, independent of source or nature of data. Only typically traffic management permitted</td>
<td>No obligations (control over content and freedom of choice concerning customers)</td>
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<td>11. Emergency services</td>
<td>Mandatory provisioning as part of licence conditions</td>
<td>Typically no such obligations</td>
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<tr>
<td>12. Interception</td>
<td>Strict regimes with costs borne by operator</td>
<td>Typically no such obligation</td>
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<td>13. Retail Prices</td>
<td>Regulators' approval is typically needed in advance</td>
<td>No need for approval and maybe free for users</td>
</tr>
<tr>
<td>14. Universal Service</td>
<td>Mandatory USO contributions as a percentage of network revenues</td>
<td>No contribution</td>
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<tr>
<td>15. Spectrum fees</td>
<td>Required to acquire in an auction or pay market based fees for usage</td>
<td>No additional costs for OTT</td>
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<tr>
<td>16. Privacy</td>
<td>Strict data protection and privacy requirements for users</td>
<td>Practised on a limited and generally voluntary basis</td>
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<tr>
<td>17. Number Portability</td>
<td>Obligation to offer number portability between providers</td>
<td>OTT service independent from mobile number</td>
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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 not 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.
– 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


• Analysis Mason, ‘A policy toolkit for the app economy - where online meets offline’, March 2016
