



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES

WORKING PAPERS

RSCAS 2019/35
Robert Schuman Centre for Advanced Studies
Florence School of Regulation

“If I can make it there, I’ll make it anywhere”
Online platforms meet the European Union

Pierpaolo Settembri

European University Institute

Robert Schuman Centre for Advanced Studies

Florence School of Regulation

“If I can make it there, I’ll make it anywhere”

Online platforms meet the European Union

Pierpaolo Settembri*

EUI Working Paper **RSCAS** 2019/35

* Pierpaolo Settembri is an EU official currently working at the European Commission. He writes in a personal capacity and his opinions do not necessarily reflect the position of the European Commission. This article is based on the author’s keynote speech at the 7th Conference on the Regulation of Infrastructures (Fiesole, 21 June 2018).

This text may be downloaded only for personal research purposes. Additional reproduction for other purposes, whether in hard copies or electronically, requires the consent of the author(s), editor(s). If cited or quoted, reference should be made to the full name of the author(s), editor(s), the title, the working paper, or other series, the year and the publisher.

ISSN 1028-3625

© Pierpaolo Settembri, 2019

Printed in Italy, June 2019

European University Institute

Badia Fiesolana

I – 50014 San Domenico di Fiesole (FI)

Italy

www.eui.eu/RSCAS/Publications/

www.eui.eu

cadmus.eui.eu

Robert Schuman Centre for Advanced Studies

The Robert Schuman Centre for Advanced Studies, created in 1992 and currently directed by Professor Brigid Laffan, aims to develop inter-disciplinary and comparative research on the major issues facing the process of European integration, European societies and Europe's place in 21st century global politics.

The Centre is home to a large post-doctoral programme and hosts major research programmes, projects and data sets, in addition to a range of working groups and *ad hoc* initiatives. The research agenda is organised around a set of core themes and is continuously evolving, reflecting the changing agenda of European integration, the expanding membership of the European Union, developments in Europe's neighbourhood and the wider world.

For more information: <http://eui.eu/rscas>

The EUI and the RSCAS are not responsible for the opinion expressed by the author(s).

Florence School of Regulation

The Florence School of Regulation (FSR) is a partnership between the Robert Schuman Centre for Advanced Studies (RSCAS) at the European University Institute (EUI), the Council of the European Energy Regulators (CEER) and the Independent Regulators Group (IRG). Moreover, as part of the EUI, the FSR works closely with the European Commission.

The objectives of the FSR are to promote informed discussions on key policy issues, through workshops and seminars, to provide state-of-the-art training for practitioners (from European Commission, National Regulators and private companies), to produce analytical and empirical researches about regulated sectors, to network, and to exchange documents and ideas.

At present, its scope is focused on the regulation of Energy (electricity and gas markets), Communications & Media, and Transport.

This series of working papers aims at disseminating the work of scholars and practitioners on current regulatory issues.

For further information

Florence School of Regulation
Robert Schuman Centre for Advanced Studies
European University Institute
Casale, Via Boccaccio, 121
I-50133 Florence, Italy
Tel: +39 055 4685 878
E-mail: FSR.Secretariat@eui.eu
Web: <http://fsr.eui.eu/>

Abstract

For many years, the European Union (EU) has treated online platforms like any other business, using existing policy tools and regulatory approaches whenever it interacted with them. More recently, but especially during the Juncker Commission (2014-2019), this position has evolved significantly. In fact, the EU should be credited for being the first political system to have developed legislation exclusively targeting online platforms. This transition has been incremental and is far from concluded. But as the emergence of online platforms has called for dedicated regulation, it has also exposed the limits of the EU to deal with them, especially in terms of competence. While neither the EU nor its Member States have, on their own, the necessary tools and resources to regulate online platforms effectively and holistically, they cannot avoid working together if they are to preserve the integrity of the single market, one of Europe's greatest assets.

Keywords

European Union; online platforms; single market; regulation; transport.

Introduction

Those who studied private law in Italy will remember in many handbooks a famous quote from Arturo Carlo Jemolo, opening the chapter on family law: "The family is an island, which the sea of the law should only lick." Until not long ago, the same quote could have applied, *mutatis mutandis*, to European law and online platforms¹: online platforms are a gigantic economic phenomenon that the EU should have only considered, if at all, at the points of intersection with its *acquis* and its policies. Today, this quote is obsolete as regards family law and equally, as I will argue here, for online platforms. The article is organised in four parts: first, I will describe how, over time, the points of intersection between online platforms and the EU policies have grown in number and importance; second, I will argue that online platforms' activities have not only exposed the limits of the internal market, but have also led to the erection of new barriers, thus increasing regulatory fragmentation; third, I will claim that the EU level does not possess yet and is unlikely to acquire in the short term a complete toolkit to address online platforms holistically; fourth, I will conclude with some considerations on the political stakes and policy choices ahead, mainly in the area of transport.

1. Points of intersection

Whether online platforms had to be regulated at EU level has been a debated issue in scholarly and political circles. The prevailing approach has however been, for long, not to treat them as a new economic phenomenon requiring new rules and tools, but as an economic development that existing rules and tools could address sufficiently well. After all, privacy, taxation or labour issues did not emerge with online platforms. The obvious example is competition policy, which proved flexible enough to tackle specific practices. In one way or another most if not all largest platforms have come under the focus of the Commission and have become the target of some decisions, based on different angles of competition policy.² Most notably, in June 2017 and July 2018, the Commission fined Google €2.42 billion and €4.43 billion respectively.³

An evolutionary variant of this approach has been to recognise that some adaptations to existing rules and tools were necessary, but still within the pre-established framework. Online platforms have rarely been the only reason for these revisions, but the opportunity was seized to adapt the rules to their specific business model and environment. The General Data Protection Regulation (GDPR), which is applied since May 2018 and updates the existing rules of the 1995 Data Protection Directive, is a case in point. It foresees for example that businesses will be able to collect and process data only for a well-defined purpose and that they will have to inform the user about new purposes for processing, thereby tackling a common practice by certain platforms.

A further step has been marked when the EU started to address digital single market issues, which inevitably have a bearing on the work of digital platforms. Some of these initiatives have an enabling

¹ There is no universally accepted definition of "online platforms", as showed i.a. by a public consultation conducted by the European Commission in 2015-16, whose results are accessible here: <https://ec.europa.eu/digital-single-market/en/news/results-public-consultation-regulatory-environment-platforms-online-intermediaries-data-and> . For the purpose of this article, online platforms are broadly defined as in the Commission Communication "Online Platforms and the Digital Single Market: Opportunities and Challenges for Europe": <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0288&from=EN> - COM(2016)288.

² In some cases not related to their activities as platforms, for example Amazon, which received illegal tax benefits from Luxembourg worth around €250 million, and Facebook, which was fined €110 million for providing misleading information about WhatsApp takeover.

³ In 2017, for giving illegal advantage to its own comparison shopping service; in 2018, for illegal practices regarding Android mobile devices.

impact on online platforms (the termination of roaming charges, the new framework for the free-flow of non-personal data or the new rules on cross-border parcel delivery); others have a constraining or disciplining effect on their activities (measures to tackle fake news and illegal content online or to ensure stronger privacy in electronic communications).

Finally, in April 2018 the Commission put forward the first proposal for a legislative instrument targeting specifically (and only) online platforms. It's the (draft) EU Regulation on fairness and transparency in online platform trading. It aims to put in place a harmonised framework for minimum transparency and redress rights, to protect companies that use online platforms as intermediaries to reach consumers across borders, without (hopefully) compromising the innovation potential these platforms can bring.⁴

What accounts for this increasing regulatory appetite? The growing awareness that, while online platforms offer enormous opportunities for European business and consumers, they do bring specific challenges. Even if most of the issues they raise are not new, it is their scale and growth rate, fuelled by positive feedback loops, that make a difference and lead very large companies to dominate their respective environment. And with awareness came also the corresponding political pressure to do something about them. For example, the European Council debated the digital economy at regular intervals in the last years. Some specific issues reached the top political level: Uber practices, Amazon labour disputes, the endless debate about digital taxation, the Facebook/Cambridge Analytica scandal. At the end of this trajectory it's clear that, after some hesitation and possibly illusion, online platforms are today very much in the focus of EU regulatory action.

2. The augmented limits of the single market

The completion of the single market is Europe's eternal aspiration. Some of the limits to its completion have been known for long time and pre-date the digital era. The mobility of professionals, for example, is still hindered by the requirement of specific qualifications to access or exercise the profession in another Member State. This concerns more than 5,000 professions across Europe. Similarly, SMEs, start-ups and young entrepreneurs find it difficult to operate in different markets, due notably to the complexity of VAT regulation, company law, access to finance, compliance with different regulatory requirements.

By removing many other barriers (physical, linguistic, technological, expertise), digitalisation and ultimately online platforms have made these regulatory barriers even more visible and less tolerable. Platforms do increase in principle the potential for the cross-border investment, trade in goods or provision of services because their technology enables them; yet, the potential has remained in large part unfulfilled, especially for the cross-border provision of services.

But the impact of online platforms went beyond exposing or even exacerbating existing barriers. They entered the European market with already a critical size acquired elsewhere, typically in the US, and found (or pretended to find) a largely unregulated market. Fragmentation here resulted from the different regulatory reactions by each Member States to the various new players (such as Uber or Airbnb), but also from the business practices platforms themselves applied to their users, including business users. Obvious examples are the non-portability of digital content, the localisation restrictions, the different price of Apple devices in different Member States, the national Apple stores with different prices and different Apps available across the EU, just to name a few.⁵ By erecting new barriers they

⁴ Shortly later, in September 2018, the Commission also put forward a draft Regulation on preventing the dissemination of terrorist content online. While not targeting them exclusively, it concerns primarily the work of online platforms.

⁵ It should be mentioned that in 2018 the EU adopted legislation against unjustified "geo-blocking" and on cross-border portability of on-line content.

“If I can make it there, I’ll make it anywhere”. Online platforms meet the European Union.

also generated new demands and expectations of a uniform approach that the EU was not (yet) in a position to offer.

Conversely, SMEs were traditionally limited in expanding their innovative businesses, sometimes even between cities and often across national borders, due to different framework conditions. This is particularly true for the transport sector: diverging conditions range from safety requirements and market access to taxation and legal definition of services. We hear far more complaints by entrepreneurs about these framework conditions than about lack of access to finance. EU start-ups have not erected new barriers, but rather fell victims of the existing ones and rarely made it to reach a critical mass.

The case of Uber is a particularly telling one as regards new expectations and new barriers. The EU has never adopted any specific legislation on local passenger transport on demand. It was not felt necessary and appropriate, also as regards subsidiarity, to regulate so heavily on a local matter. There was not a single market of taxi services in the EU and there was no intention to create one.

Yet the arrival of Uber altered the perspective. As a service provider coming from a larger (less regulated) market, it entered several EU national markets at the same time, having to comply, at least in theory, with different regulatory frameworks. On the consumer side, Uber users – which are usually young and mobile (and by definition digital) – developed some expectations that they could use the same App anywhere they were travelling and receive a similar service, soon to realise that, in Madrid, the App didn’t work; in Berlin, it sent them a regular taxi; in Rome, it sent them a limo with higher tariffs than cabs.

In the space of few months UberPop (and in some cases Uber as such) had been prohibited in many Member States. Uber became very active at European level, invoking provisions of the EU single market to continue to offer its services. This led to litigation and, in one case, also to a preliminary ruling by the Court of Justice of the European Union in December 2017 (case C-434/15). As a consequence of these events also taxi drivers organised themselves to address the EU level with their demands and concerns. They even founded TaxiEurope Alliance, the first trans-national association of public taxi services. As functionalists would say, online platforms have exerted (functional) pressure for integration.

In sum, online platforms put the EU single market under additional pressure. It was far from perfect before but appeared highly fragmented and even outright inadequate when these new players came in. And even worse, fragmentation de-incentivises, demotivates or simply prevents EU start-ups and entrepreneurs to scale up their services and to reach a critical mass to counter players from US and Asia.

3. The EU’s limited toolbox

There is hardly any area of social activity – let alone economic activity – that is immune from the presence and the dynamics of online platforms. The same could be said of European Union policies, but at a closer look the situation is more nuanced and there are clear limits to what the EU currently can or is willing to do.

At a very basic and preliminary level, not all the issues these platforms raise are issues that the EU is (yet) competent to address. An obvious starting point is cybersecurity. While it is clear that the cross-border nature of the threat requires stronger coordinated action at EU-level and that the EU has even taken decisive steps to build EU-level capabilities, it is a fact that Member States remain responsible for national security. Any viable approach at EU level rests on the willing cooperation of EU actors, Member States and also non-state actors such as industry.

Another example is freedom of speech and the responsibility of online platforms as regards the offending content they host. Not only are there different sensitivities across the EU Member States about what constitutes offending content, but there are different national legal frameworks to address them. There are certain Treaty-based areas (e.g. racism and xenophobia, terrorism, child pornography) for

which common rules have been adopted at European level, but largely it is still for Member States to decide which practices should be criminalised and how they should be prosecuted and sanctioned. Incremental steps are being taken to create a common European base.

This is problematic also when it comes to personal data, which are so central to the business model of online platforms. Differences exist, across EU Member States (and *a fortiori* with third countries!), on what constitutes personal data that cannot be asked to a person and on what constitutes "non-disposable" personal data, i.e. data that a person is not allowed to give away, not even with consent. In the former case, the prohibition usually stems from anti-discrimination principles and law requirements, which in turn depend to a large degree on national sensitivity. The latter category is also subject to variation depending on national law and case-law. GDPR is neutral in this respect. One can assume that the level of protection is at least satisfactory in each EU Member State, but the point here is that variations across Member States on how these issues are addressed do affect the way platforms operate across borders and are not likely to be levelled any time soon.

Even when the EU is competent, there are very different shades of competence. For one, many disputes around online platforms concern **labour**, in a variety of ways. The media provide us with examples on a daily basis: the salary and conditions of German workers in Amazon warehouses; yet another lawsuit – in Europe or in the US – about the determination of platform workers' status between "independent contractors" and "employees"; the conditions, including social protection, of delivery workers – the so-called "riders" – for companies such as Foodora and Deliveroo.

When it comes to this policy area the role of the EU is not clear cut. It can coordinate the employment and social policies of Member States and is competent for social policy within the limits of the Treaty. This, even combined, falls short of addressing the range of issues online platforms bring about. The EU institutions recently proclaimed the European Pillar of Social Rights. They encompass the key rights and principles (fair wages, health care, lifelong learning, work-life balance, gender equality, minimum income), but the text is also very clear to recall that making these principles a reality for citizens is a joint responsibility where most of the tools to deliver are in the hands of Member States (and also social partners and civil society).

As a follow-up to the proclamation of the European Pillar of Social Rights, at the end of 2017, the Commission came forward with the proposal for a Directive on Transparent and Predictable Working Conditions to set new rights for all workers, particularly addressing insufficient protection for workers in more precarious jobs such as in the context of the digital economy. The level of harmonisation that will be achieved through the adoption of this Directive will be a telling proxy of the ability to find common European solutions in this area.

If the nature of the competence is one obstacle, another is the principle of subsidiarity. This plays out both legally (need to demonstrate that objectives are achieved better at EU level and to motivate decisions on this basis), but also politically, with issues arising in this area usually having a strong local dimension, with the risk of EU action being perceived as too intrusive and unwelcome.

Another relevant area where EU action is constrained – but for different reasons – is taxation. Here the issue is not the competence to act and not even subsidiarity. It's the voting rule. There is no doubt that the taxation of the digital economy affects directly the functioning of the internal market, including its very resilience. There is equally no doubt that the level to take action is at least European, due to the cross border dimension of the phenomenon. And yet agreement will be hard to find because contrary to most internal market legislation, taxation is subject to unanimity rule.

Despite this limitation, the Commission did put forward legislative proposals to make sure profits are taxed where businesses have significant interaction with users through digital channels. The Commission also tabled a legislative proposal imposing an interim tax on revenues from certain digital activities that are currently not effectively taxed, with a view to close the most urgent gaps and loopholes

“If I can make it there, I’ll make it anywhere”. Online platforms meet the European Union.

in the taxation of digital activities and to generate immediate revenues for Member States. This is to remain in place until the common EU solution is implemented by the Member States.

The list could go on but there is also another residual, all-encompassing category of issues that the EU would be competent to address, where added value of EU action – relative to what the Member States can do individually – would be easily demonstrable, subject to qualified majority rule and yet nothing is done, as ultimately political opportunity or sheer political will play a role. Providing a European response to the emergence of Uber by regulating, even with a light touch, transport service on demand could be an example.

In light of these structural and political difficulties one of the key challenges for the years to come will be to ensure a consistent and joined-up approach within the EU, bringing together the EU level and the Member States. For one thing is clear: if the EU is ill-equipped to regulate online platforms on its own; even more so are the Member States. While the EU lacks competence in crucial policy domains, Member States lack scale. Without a harmonised approach there is a risk that online platforms either rule-shop across national jurisdictions to exploit legal loopholes or, where they cannot, they need to comply with different national legal requirements, which reduce their ability to offer seamless services across Europe, at low cost.

There is thus a need for a mechanism that monitors developments broadly in the online platform economy, identifies emerging issues and prepares the ground, if necessary, for a further coordinated policy response across all the relevant government levels. In April 2018, together with the proposal on platform regulation, the Commission set up the Observatory on the Online Platform Economy with a broad remit to provide the Commission with advice and expertise on the evolution of the online platforms, including but not limited to potentially harmful practices. It could hopefully develop into such mechanism.

4. Future perspectives

Those who study online platforms detect a concentration and consolidation process. Fewer and bigger platforms that appear asset-less are in fact becoming "the owners of the infrastructures of society" – writes Srnicek in his 2017 *Platform Capitalism*. Despite their different starting positions – Google as a search engine, Amazon as an online shop, Facebook as a social network, etc. – they are converging towards one and the same business, which is value extraction from data. And it's in relation to this activity that infrastructure is built and expanded. Amazon Web Services – a subsidiary of Amazon.com – has a market share of the cloud business (which includes infrastructure as a service and platform as a service) that is larger than its three next competitors combined (Google, Microsoft and IBM).

The more human activities can be subjected to data extraction the more the algorithms can be perfected, processes optimised and business opportunities boosted. As a result of this convergence, platforms have become more similar to one another and are developing the same capabilities independently from one another, so as to gain autonomy, for example as regards processing payments or using mapping services. This might lead to competition only between a handful of large platforms, but not anymore with new market entrants.

Seen from this angle, transport infrastructure is – among other things – a data goldmine, encompassing thousands of km of highways, fully equipped with sensors, cameras and radars of all sorts, crossed by vehicles permanently connected with each other and with the infrastructure, with passengers that are active on their smartphones generating even more data. And we should not be led to believe that this is an opportunity seized only by US digital platforms. With its Belt and Road project

China is not only dictating its own way to finance infrastructure building or construction standards. It is also silently targeting data management outside of its territory (Bloomberg, 6 May 2018)⁶.

What does this mean for the EU? Two basic imperatives stand out: (1) establishing clear red lines to rule out developments it wishes to avoid, but at the same time (2) identifying and harnessing the opportunities any new players can bring and shape its policies accordingly, particularly to enable (future) innovation. There is no magic formula to identify the exact boundaries between these imperatives and to develop the right regulatory framework; the choices to be made are inherently political and the tools to deploy will require coordinated or at least consistent action at both EU and national level. Instead of grand approaches valid for any policy area at any time, solutions will more likely have to be developed on a case-by-case and also trial-and-error basis. What is probably insufficient – looking at the way and the speed at which platforms operate – is to rely solely on *ex post* corrective tools such as competition policy.

Starting with an example that looks at opportunities, there is no doubt that online platforms make it possible to organise markets and serve customers in ways that were not available until a decade ago. The way taxi services are organised is a good case in point. This is a highly regulated sector at national and local level. Regulations change enormously from one country to another and also from one city to another, with different degrees of protection and openness, but when the service a taxi provides is considered to be a public service it is so for the entire market (typically a city or a country).

This is different from what happens in aviation and railways where public service obligations are limited to some pre-identified routes or lines that are commercially unprofitable but considered necessary to attain other public policy objectives and that therefore are subsidised.

Before geolocalisation and other technologies made it possible to know virtually everything in real time of the taxi market in a city (how many trips, how long, from/to where, for how much, etc.), there was no other choice than considering the whole taxi activity in a given market as a public service, with the corresponding rights and obligations.

Today, the same approach as in aviation and railways could in theory work for taxi services. The market could be organised as a competitive market – no cap on licences, no fixed prices (maybe ceilings), minimum requirements to enter the profession, etc. – but in order to ensure that the service covers also unprofitable journeys, targeted support measures could be envisaged where and when needed, for example in the form of a top up paid by the city.

Digital technologies would enable to design this scheme in a more flexible way, for example identifying the part of the market that needs support for a limited duration (e.g. outside peak hours), only in specific parts of the city, depending on objective criteria such as demand/supply or the special needs of the client. This scenario is similar to what the Norwegian Ministry of Transport submitted in response to the Reasoned Opinion of the EFTA Surveillance Authority on the market for taxi services in Oslo.⁷

A different example where on the contrary the EU might have to insist on its red lines is the commoditization of aviation services (or any other service, for the matter). ‘Google flights’ – just to name one – is imposing itself as the gateway for all flight searches, building on its position as a meta-search engine. It can present results in a way that directs consumers to ‘Google flights’ offers rather than

⁶ Accessed here in May 2018: <https://www.bloomberg.com/view/articles/2018-05-06/china-is-quietly-setting-global-standards>

⁷ Accessed here in May 2018: [http://www.eftasurv.int/media/esa-docs/physical/Reasoned_opinion___Failure_by_Norway_to_fulfil_its_obligations_under_Art_31\(1\)_EEA_by_mainta.pdf](http://www.eftasurv.int/media/esa-docs/physical/Reasoned_opinion___Failure_by_Norway_to_fulfil_its_obligations_under_Art_31(1)_EEA_by_mainta.pdf). Please note that just last 7 June the Luxemburgish competition authority has exempted an algorithm price fixing mechanism for taxis in light of the efficiencies it generated and the advantages (lower prices) for consumers: <https://chillingcompetition.com/2018/06/13/>

“If I can make it there, I’ll make it anywhere”. Online platforms meet the European Union.

airlines' own websites, with higher costs for airlines and loss of control over distribution. Experts say that it is partly for the airlines themselves to respond to this challenge, by sharing their databases more carefully, offering better digital products and improving the customer experience. Yet there is scope for regulatory action too. The Commission has tabled a legislative proposal that demands transparency and fairness in the way online platforms deal with business that use their services, including on how they rank them.⁸

Is this enough? A scenario where there are no longer airlines in competition among themselves but brand-less planes directed by a few (competing) online platforms that will have established themselves as the predominant entry point for flight searches is not science-fiction. There are many firewalls before this scenario materialises (competition rules, data handling restrictions, etc.) but political choices should be among them. The aviation market would likely be more efficient and more affordable for consumers as a result of this development. Yet, defending a strong and prestigious European aviation industry, its know-how, its labour force, its manufactured products, etc. is also a legitimate policy objective. In fact, the EU should take a proactive role in identifying the high-value sectors to build its future growth, or else accept that others define them on its behalf and make it a bystander. It is about who is able to capture the value added that comes with innovative and high-quality products and services, as opposed to providing just ‘inputs and raw materials’. Here as well, we should not be led to believe that this is just US dominance. Skyscanner – the market leader in Europe for flight searches – is owned by the Chinese travel service provider Ctrip (while Google is banned in China). It’s a global phenomenon, with Europe still in search of a role.

The same is true also for the global logistics business. Amazon’s role in this area is still limited in terms of both assets and investment, with traditional players such as DHL, FedEx and UPS growing, still benefitting from the e-commerce boom. A 2018 analysis by The Economist⁹, though, shows clearly what the future could look like. Amazon does not need to own the infrastructure or the vehicles to dominate the logistics business but only to control the platform (and with Amazon Web Services ... it already does!) that makes those services available, thereby giving the logistics industry the same leverage hotels have with Booking.com. As an illustration of what big data could bring to this area, the same analysis suggests that Amazon – with all the data it possesses about its clients – could easily ship a good even before the order comes in, confident that the order will come in during the shipping time and having also the tools to induce that order if needed (e.g. with a promotion).

As multimodal transport solutions, such as mobility as a service (MaaS), emerge as new mobility concepts in the EU and globally, the positive role online platforms could play should also be harnessed, without stifling innovation that also benefits EU platforms. For some services their edge is clear: if you have been able to plan a multimodal trip, this is more likely thanks to Google Maps than to Bonvoyage, the EU funded research project that promised to deliver the same service by 2018. Unless we introduce radical changes and disrupt ‘business as usual’, it is not unlikely that a truly multimodal ticketing system covering all transport modes – be they public or commercial services – will materialise thanks to the mighty and leveraging power of online platforms and thus coming from outside the transport sector rather than through scaling transport specific solutions that have been found in some cities.¹⁰

⁸ The planned evaluation of Regulation (EC) No 80/2009 on a Code of Conduct for computerised reservation systems and repealing Council Regulation (EEC) No 2299/89 and the submissions of the key stakeholders in that context (e.g. Skyscanner, Lufthansa and Ryanair) give a good idea of the issues at stake. All documents are accessible here: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-4870475_en

⁹ Accessed here in May 2018: <https://www.economist.com/briefing/2018/04/26/the-global-logistics-business-is-going-to-be-transformed-by-digitisation>

¹⁰ The paper on "Integrating new mobility services in urban transport" co-authored by 10 public and private mobility actors as diverse as Uber and the European Cyclists' Federation is an interesting development: <https://www.transportenvironment.org/publications/integrating-new-mobility-services-urban-transport>

The same could be said of sharing economy schemes such as carsharing, carpooling or ridesharing. As the prime example of what online platforms can enable, they raise interesting and important policy questions. For one, the impact on both long-distance and urban transport, including any possible undesired substitution effect (e.g. from public transport to private cars), should be closely monitored. Whereas there is evidence in Europe of some competitive dynamics between carpooling, rail and coach services for long-distance transport, carsharing and ridesharing seem to have had a limited substitution effect on mass-transit: they rather substitute the use and sometimes also the ownership of private cars, according to 2017 study for the European Parliament¹¹. Academic and corporate studies abound in this area, reflecting both the complexity of the phenomenon as well as the business and political stakes. Yet developments are still in flux and so is evidence, thus the jury is still out on these correlations. What is clear(er) is that, a few years after Uber's aggressive arrival in Europe, dialogue between these players and public transport operators is not only desirable but is also already happening: Uber joining the International Association of Public Transportation (UITP) is a pertinent example.

Subject to the above uncertainties, in light of the projected growth of mobility demand, both in passenger and freight, these new sharing schemes (especially clean solutions such as electric cars, scooters, bikes, etc.) have the potential to contribute to a needed re-balancing of the different options towards a more targeted, cleaner, safer mobility. At the same time they raise specific new challenges that regulators will have to address, such as the reconciliation of road safety requirements (e.g. mandatory baby seats and helmets) with business models that exclude private ownership or the risk that the concentration of shared options in relatively well-off urban areas will exacerbate the centre-periphery divide.

Yet it is important that the European regulatory framework is fit and capable of capturing the added value created by these schemes, for example in terms of data, and of using it to compensate for possible value erosion in other parts of system, for example at the level of infrastructure funding or energy efficiency/decarbonisation. This is what the current discussion about data is also about. Other proposals based on the 'user pays' or 'consumer pays' principles (such as 'Eurovignette') that further liberalise international coach and bus services or that promote a state-of-the-art and interoperable e-tolling system go in the same direction.

5. Conclusion

The regulatory framework that the EU and its Member States have and will put in place as a response to the emergence of online platforms is and will continue to be the result of different decisions, taken at different times and at different levels. It will reflect at the same time common sensitivities at EU level and local specificities at the level of Member States and below.

For online platforms, compliance with this regulatory player is the litmus test of their viability as a global business, confident as they can be there will be hardly any higher regulatory standard they will face anywhere else in the world. Hence – to paraphrase the title – if they make it there, they can make it anywhere.

The test will be equally compelling and demanding on the EU, on its viability as a political system that is called to address a complex phenomenon requiring a larger set of tools than those in its current armoury. The challenge is compound by the absence yet of a recognised national 'best practice' (in Europe or elsewhere), which could serve as a reference model to export and replicate at European level, just like the agricultural policy of France of the 1950s 'inspired' the European Common Agricultural Policy in the early 1960s.

“If I can make it there, I’ll make it anywhere”. Online platforms meet the European Union.

And yet the EU is the only region in the world to have taken a first dedicated regulatory step towards addressing these challenges. While not sufficient, the contribution of the EU level is a necessary ingredient of any effective regulatory framework, which – to be complete – will require also consistent and supportive action at national level. For the stakes are brutally clear: either the EU and its Member States will jointly seek common answers to these questions and proactively create fair and inclusive framework conditions or they are condemned to focus on ‘damage control’ and run after large players that create their market power in less regulated markets and impose their practices on them.

Author contacts:

Pierpaolo Settembri

European Commission

Rue de la Loi 200

B-1000 Brussels

Email: Pierpaolo.Settembri@ec.europa.eu