Exploratory study of consumer issues in online peer-to-peer platform markets

Executive Summary

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ABSTRACT

This study explores consumer issues in five online peer to peer platform markets: (Re)sale of Goods; Sharing/renting of goods, Sharing/renting accommodation; Sharing/hiring rides; and Odd jobs.

The study estimates that 191m citizens across the EU-28 spend EUR 27.9 billion per year on online P2P platforms. Of this total, an estimated EUR 10.61 billion consists of platform revenues and revenues of third parties.

The study defines three main peer-to-peer platform business models: (a) hosting of listings where platforms do not get involved in the peer to peer transaction (b) active management of transactions where platforms foster trust among peers to facilitate a larger number of transactions and (c) platform governed peer transactions where the platform sets one or more contractual terms for the peer-to-peer transaction and exercises control over the performance of the transaction.

The study identifies five key consumer issues that emerge from this new kind of economy: (1) transparency and clarity regarding the nature of transactions concluded through online P2P platforms, applicable consumer rights and obligations, the applicable legal framework and its enforcement; (2) reliability of peer review and rating systems and accuracy of identity information provided on the platform; (3) discrepancy between exclusion of platform responsibility and liability for the performance of online P2P transactions and platform practices; (4) access to redress for peer consumers and peer providers; and (5) data use and data protection issues.

EXECUTIVE SUMMARY

The exploratory study on consumer issues in peer-to-peer (P2P) online platform markets investigates five P2P markets and identifies the main issues for peer consumers and peer providers from the perspective of consumer policy.

The study focuses on P2P online platforms for a) (Re) Selling or Buying of Goods - like eBay; b) Sharing or Renting of Goods – like Peerby; c) Sharing or Renting Accommodation – like Airbnb; d) Sharing or Hiring rides – like BlaBlacar or Uber; and e) Hiring people to do Odd Jobs – like Yoopies. With the exception of the (re) sale of goods sector, these sectors are part of what the European Commission has defined as the "collaborative economy", or what is more generally referred to as the "sharing economy".

The study comprises six tasks: a review of existing literature and 485 platforms across the EU and Norway; a consumer survey and focus groups covering 10 EU Member States; 10 case studies of selected platforms, a Legal Analysis covering 28 EU Member States and two workshops with stakeholders.

Economic analysis of P2P markets

It is estimated that 191m citizens across the EU-28 have actively engaged in peer to peer markets between May 2015 and May 2016, concluding at least one transaction involving payment. Total peer expenditure over this period in the EU across the five sectors considered is estimated at EUR 27.9 billion per year; total peer revenues are estimated at EUR 17.29 billion. The difference of EUR 10.61 billion includes platform revenues and revenues of third parties providing services via platforms, e.g. payment services, background and ID checks, insurance services.

In the sharing/hiring rides sector peer providers reported revenues add up to 81% of expenditure; in the (re)sale or renting/sharing of goods, accommodation sharing/renting and odd jobs sectors, this is only about 60 to 65%. Expenditure and revenue on both collaborative and (re)sale of goods platforms are driven by a small share of peer consumers and peer providers. More than half of the revenue and expenditure is generated by 10% of peers. This indicates the presence of 'very active private' consumers and providers, and/or of commercial and professional sellers in P2P markets.

Among the 485 platform websites screened, 20 platforms, or 4% of them, are very large and have more than 100.000 unique visitors per day; a large majority (81%) are small or medium-sized (below 10,000 daily visitors). Almost 80% of sharing/hiring rides and almost 70% odd jobs platforms are small, with less than 500 daily unique visitors. The platforms provide a wide range of services to peers which they monetise through selling advertising or promotion of listings on the platform, data use and reuse for their own or third party (marketing) purposes, and by charging fees. These include transaction fees, charged to peers on each transaction concluded on the platform; subscription fees, charged to peers on a periodical basis for access to platform services; add-on services fees for optional services; other fees such as cancellation fees, hotline fees, B2B fees etc.

Combining findings on monetisation strategies and platform services with the case studies, three main platform business models are identified:

1. **Hosting of listings**: this model is characterised by passive matching of peer demand and peer supply: publishing listings and enabling contact and feedback between peers by publishing information from peers. These platforms earn revenues mostly by offering featured listing options, adding photos to the listings, etc. The key feature of this model is that platforms do not become involved in the peer to peer transaction.

2. **Actively managed peer transactions:** this model is characterised by the active facilitation and management of the matching of demand and supply. These platforms create value by fostering trust among peers and actively managing the matching, so as to facilitate a larger number of transactions. These platforms manage trust-building and advanced matching tools, and charge transaction fees or subscription fees. They may also charge for add-on services like insurance or premium listings. The key feature of this model is that the platform influences the peer to peer transaction but does not control it.
3. **Platform governed peer transactions:** this model, which concerns mainly the larger platforms, is characterised by setting one or more of the contractual terms of the peer to peer transaction, and exercising control over its performance. Setting contractual terms may include rules for P2P interactions, rules and fees for cancellations, and rules for refunds; (optional) automated price setting or maximum prices. Platforms in this model manage payments - receiving and holding payments of peer consumers -, monitor the success of the P2P transaction before paying out to peer providers, and frequently retain fees in case of cancellations. They further actively intervene in case of a complaint, resolve disputes and award refunds and they may include insurance against damages as part of the transaction fee. Most of these platforms charge transaction fees and re-use peer data. The key feature of this model is that these platforms restrict the ability of peers to decide contract terms between them, and give the impression (explicitly or implicitly) that they assume (partial) responsibility for the performance of the transaction.

The three business models are to some extent “incremental”: platforms that actively manage peer transactions also provide hosting and matching services, and platforms that govern peer transactions offer most of the services of the other two. Platform business models evolve over time from the simpler to the more complex models and offer a wider range of services as their user base grows.

Peer experiences in online P2P markets

More than three quarters of internet users in the ten countries surveyed for this study have over the past 12 months concluded one or more transactions on a P2P platform - 73% had used platforms for the Sale and Resale of Goods; 8% platforms for Odd Jobs, 12% platforms for Sharing/Renting of Goods, 14% Accommodation Renting/Sharing to 15% of the online population using Ride Sharing/Hiring platforms. About half of both peer providers and consumers (54%) use these P2P platforms monthly or weekly. A substantial proportion of peer providers in the accommodation sector report that they rent out accommodation on a regular basis, 15.9% once a week and 20.6 % once a month. Most peers (77% of peer providers and 83% of peer consumers) are satisfied or very satisfied and want to use the platform again in the future.

Peer consumers report frequent problems with transactions on P2P platforms. More than half (55%) have experienced at least one problem over the past year. The most frequent problems relate to the poor quality of goods or services, or to the goods and services not being as described. Problems with the quality of products/services appear to be almost twice as frequent in P2P markets (29%) as in online purchases in general (15%). However, peer consumers rate the personal detriment they experienced as low to medium. Furthermore, focus group research indicates that peer consumers may accept a higher level of risk and problems on P2P platforms as "part of the game" - in exchange for the opportunity to save money, and because most transactions are relatively low value.

More problems are reported on collaborative platforms than on (Re)sale of goods platforms. Problems on accommodation platforms were less likely to get resolved than problems on other collaborative platforms. Peer providers report fewer problems (14%)

than peer consumers; most relate to cancellations (over 40%) and various payment issues (47.5%).

Consumer issues and policy options

The emergence and development of online peer to peer markets has both positive and negative effects on consumers. On the one hand, online platforms offer efficient matching of supply and demand, reduce transaction costs, and facilitate monetising of under-utilised resources and new employment opportunities. On the other hand, significant consumer issues were identified regarding a) transparency and clarity of the legal nature of transactions on P2P platforms and the applicable rights and responsibilities; b) the reliability of peer review and rating systems and accuracy of identity information; c) the discrepancy between exclusion of platform responsibility and liability for the performance of online P2P transactions and platform practices; d) access to redress for peer consumers and peer providers; and e) data use and data protection issues.

Some of the consumer issues that arise on online P2P platforms could be solved through self-regulation by the P2P platforms, notably through greater transparency about rights, obligations and responsibilities. However, self-regulatory approaches of platforms are often voluntary, they do not address all consumer issues and they mainly rely on incentives rather than systematic enforcement or sanctions. Because addressing the consumer issues above may not directly promote transactions on the platform - which is the main source of revenue of the major platforms - self-regulatory measures alone might not be sufficient.

1. Platform transparency

One of the main issues concerning the relationship between platforms and their users relates to the lack of transparency in online P2P platform rules and practices. The survey and focus groups have shown that most peer consumers (60%) are not aware or uncertain of their rights and responsibilities in P2P transactions or who to turn to when something goes wrong. About 40% of peer providers say they do not know or are not sure about their rights and responsibilities, and about 30% think they know more or less.

At the same time about 85% of peer consumers find it important or very important that P2P platforms are clear and transparent about who is responsible when something goes wrong, and their rights in case of a problem with the price or quality of a product or service. Peer providers attach similar importance to clarity and transparency about regulations and responsibilities when something goes wrong.

To determine rights and responsibilities, distinguishing between those acting in a commercial/professional capacity and individuals acting in a private capacity is essential. The Legal Analysis finds that the ‘continuity’ and the ‘professional nature’ of the activity are the two main elements Member States use to assess, on a case-by-case basis, whether an individual is acting in a private capacity or as a trader. Sector-specific thresholds and/or tax thresholds differ from sector to sector, as well as between countries, or even regions and cities, and are not necessarily relevant to distinguish consumers from traders for consumer law purposes. Potential policy options include monitoring legal initiatives adopted at Member State level and assessing their effectiveness; and a statute of ‘prosumers’ or 'micro entrepreneurs' - as used in France - as a new type of economic operator.

Irrespective of the actual definition of traders and consumers, the case studies show that in practice some platforms do not allow or make it difficult for commercial peer providers to operate alongside private peers; others allow both types of peers and require peer providers to clarify whether they are acting in a private capacity or not – while others do not require providers to give any such information. This may not generate any substantial problems in the case of platforms serving smaller local communities, and/or where transaction amounts are low. But on some of the larger platforms which give peer providers opportunities to make significant profit, this lack of transparency raises concern: not identifying those who are acting as professionals or traders implies they may act as 'hidden traders'. Platforms possess the data to assess relevant indicators, such as frequency of transactions and number of listings, and they can monitor the validity of the information given by peer providers.

Further transparency is also necessary in pricing practices. The search results on many platforms do not give the total price; platform fees which range from 10% to 25% are often added only at the booking stage. Among the 10 case study platforms only the French language version of BlaBlaCar displays prices in search results that include the transaction fee.

Transparency issues could be addressed by requiring platforms to clearly indicate the (self-declared) status of the peer provider, and that consumer law applies exclusively in transactions with traders. Platforms should ensure that peer consumers receive pre-contractual information when they engage in transactions with commercial providers. In addition, platforms could make their Terms and Conditions more user-friendly and ensure that key information about rights and responsibilities is presented more clearly and at the point of the transaction when it is most useful. Platforms could inform providers where they can find information about applicable national or local registration, licensing or authorisation requirements. Finally, awareness raising campaigns could boost online P2P platform user knowledge about their rights and responsibilities - making appropriate funding available, for example to trusted stakeholders such as consumer associations.

2. Reliability of peer review and rating systems and accuracy of identity information provided on the platform

"Trust building tools" are often presented by platforms as their main instrument for protecting peer consumers and peer providers against fraud and other risks and for ensuring the quality of goods and services and reliability of providers. While conventional businesses generate consumer trust through compliance with governmental regulations, platforms generate trust by managing peer review, rating and reputation systems and identity verification. The results of the screening of 485 platforms, the user survey and focus groups, and the case studies, indicate that the core trust building tools, peer review and rating systems as operated by most platforms and their identity verification practices, are neither fully reliable nor transparent. Their effectiveness is therefore subject to serious doubt.

Online P2P platform users do not use peer reviews and rating systems systematically and they do not always trust them. In addition, most platforms do not appear to monitor systematically whether reviews or ratings are generated by actual and genuine users. Moreover, many platforms do not offer these core trust building services. While about half (52%) of the 485 platforms screened for this study offer a peer review and rating system, almost half of them do not offer such a service. User data checks and identity verification services were identified on only 25% of platforms. Among the case study platforms, nine out of ten manage peer rating systems, and eight out of ten peer review systems.

The survey findings show that neither peer consumers nor peer providers use peer reviews or ratings systematically. Only about 40% of peer consumers and peer providers use reviews regularly, and more consult reviews before the transaction than write them afterwards. This indicates that reviews are unlikely to reflect the experience of all platform users, but those of a smaller number of more involved peers. In particular, as only 20% of peers said they left a negative review or rating after encountering a problem with a transaction, there are indications that rating and review systems may be biased.

The survey shows that although most peer consumers evaluate user review systems positively, three quarters of peer consumers have at least some reservations about their reliability and their ability to generate trust, provide adequate information, safety and protection. The focus group research indicates that, instead of relying only on peer reviews and ratings, peers evaluate the overall reliability of a platform through a combination of elements.

The case studies raise further questions about the transparency, reliability and neutrality of the management of peer review and rating systems. Most platforms do not inform users whether positive or negative reviews or ratings influence the search results or access to the platform; and those who do so, do not explain clearly how this is done. All platforms reserve the right to delete reviews if they do not respect certain standards. While some platforms systematically check reviews before publication, or monitor them afterwards, on other platforms it is not clear whether the platform monitors reviews or relies on peers to signal suspicious content. None give information to users about the representativeness and reliability of user reviews or ratings - although they hold the data to establish the relevant percentages.

The Legal Analysis and case studies found that most platforms set minimal identification requirements for registration and access (e.g. name and email address), and usually do not adopt adequate measures to verify users' identity. Almost all platforms deny responsibility for the accuracy of user information. Most case study platforms rely on user information checks through email or social media accounts. Some offer optional identity verification services and very few require official identity documents for registration.

There is therefore a need for platforms to be transparent about the mechanisms they use to manage review and rating systems, and to ensure consumer understanding of the underlying quality control system. Along the same lines as the Key Principles for Comparison Tools, platforms featuring peer review, rating or reputation systems should at least be required to be clear and transparent about how they manage and/or verify reviews; publish only genuine reviews with a date; and give information to users about the representativeness and reliability of user reviews or ratings, and on how positive or negative reviews or ratings influence the search results or access to the platform.

The professional diligence duties and the transparency requirements of the UCPD, as interpreted in the UCPD Guidance, refer to checking user identity for example when considering that platforms should ensure that reviews originate from real users and are not fake. To deal with the lack of identity verification, platforms which actively manage or govern the transactions concluded between their users, could further be required to adopt tools that help to adequately ascertain the users' identity. This may for instance include ID verification systems to check peers' identity at the time of registration, interviews, and checks against official databases or similar means.

3. Discrepancy between exclusion of platform responsibility and liability for the performance of online P2P transactions and platform practices

The business models of the largest online P2P platforms are built on the volume and value of P2P transactions they facilitate, and on their - at least partial - control over the terms and quality of these P2P transactions. Most case study platforms set at least part of the contractual terms of the P2P transaction. This may create the impression among users that the platform shares a certain degree of responsibility in case of non-performance or non-compliance of the performance. Such impressions can for instance be created by holding payments until performance/compliance of the service is confirmed or withholding payment in case of non-performance or non-compliance by peers; by imposing rules and fees for cancellations by peer consumers or providers; and by intervening to solve problems between peers through management of complaints, mediation of disputes and award of refunds.

But the terms and conditions of these platforms systematically exclude any liability of the platform in relation to the contracts concluded between the peers, and explicitly state that the platform is not a party to such contracts. For instance, all case study platforms exclude liability for the accuracy of information provided by the peer to establish whether they are a commercial or a private provider; non-performance, non-compliance of the performance by the peer providers; and the accuracy of information provided in peer-to-peer reviews.

The discrepancy between the platforms' level of intervention in the P2P transaction and the liability clauses in its T&Cs risks to confuse or mislead users with regard to the responsibility of the platform in case of problems with the P2P transaction. Most importantly, in the current legal environment there is a significant lack of clarity about the liability of platforms that do more than mere hosting of listings. When the platform actively manages P2P transactions or governs them (business models 2 and 3) it is more likely that its users have the impression that the platform will also share a certain degree of liability – for example for unlawful behaviour on the platform, posting false or misleading listings or reviews, and non-performance or poor performance of transactions. To deal with this, stakeholders suggested clarifying the interpretation of the already existing obligations arising from EU legislation, notably with respect to platforms that actively manage and govern the transaction between the peers; taking legal initiatives at EU level to tailor the responsibility of the platform for the P2P transaction to its degree of intervention in that transaction; and testing the effectiveness of Codes of Conduct in addressing this.

4. Access to redress for peer consumers and peer providers

In most EU countries, the legal framework applicable to transactions between private peers, (i.e. C2C transactions) is not tailored to contracts concluded online through P2P platforms. For example, in C2C transactions concluded online or via online platforms, in most cases, the parties or the good are not physically present, the identity of the other peer is often not clear, and part of the terms of the contract may be determined by the platform. While no extra regulation is necessary with regards to C2C contracts concluded between two parties whose identity as consumers is clear, in cases of C2C contracts concluded online, it could instead be beneficial to make existing C2C legislation fit for digital purposes. For example, a recent amendment to the French Civil Code introduced a new provision setting out that unfair contract terms included in contracts whose content has been pre-formulated by one of the parties are void.

It could be assessed whether certain aspects of national unfair contract terms legislation could be extended to online C2C contracts where the content of the contract is to a large extent pre-determined by one of the parties, or by a third party, i.e. the platform, the parties of or the object of the contract are not physically present and there are uncertainties relating to the actual identity of one of the parties. In order to enhance the effective enforcement of existing C2C legislation in transactions on online platforms, stakeholders suggested expanding the competence of national consumer protection authorities to C2C transactions on online platforms; promoting the use of the European Small Claims Procedure on online P2P platforms for online C2C disputes with a cross-border element up to EUR 2,000; and encouraging platforms to collaborate with competent authorities to facilitate peers’ compliance with local regulations.

The survey indicated that peer providers and consumers consider the platform to be an important channel for resolving issues in the P2P transaction, and found a large number of instances where they obtained solutions through the platform. The case study analysis has shown that redress and refunds in case something goes wrong are often left to the discretion of the platform which evaluates complaints on a “case by case” basis, and that the criteria for its decisions are not clearly explained to peers. This could be addressed by requiring platforms which govern P2P transactions (business model 3) to offer clearly explained, platform-managed redress options to peer consumers and peer suppliers in case of disputes. At a minimum, all platforms should in their terms and conditions set out rules and fees for cancellations/withdrawals of transactions and entitlement to refunds; the rules that apply in case of non-performance or poor performance, or if the good or service does not fit the description, including entitlements to refunds and any administrative fees. Furthermore, all platforms should also inform peers about external informal and formal redress options, including, when relevant, Alternative Dispute Resolution and cross border Online Dispute Resolution.

5. Data use and reuse

Data use and reuse are common among the platforms analysed in this study and an essential part of their business models. Especially in the case of larger platforms these user data represent significant value, for the platform itself as well as for third parties, for price setting, dynamic pricing, marketing and other commercial purposes. But the information given by platforms about their data use, re-use, sharing and selling practices is in many cases not fully transparent, and it is therefore not clear if current national data protection rules are fully respected. In particular, the case study platforms do not have a clear data use policy regarding transfers to third parties. All indicate they share data with third parties, but they do not always mention that they only do so with user consent. Only BlaBlaCar mentions explicitly that they do not sell data to third parties.

Such practices, or lack of clarity about current practices of data use and reuse raise concerns regarding the protection of personal data, especially when they are shared and/or transferred to third parties for commercial purposes. As the survey and focus group results have shown, transparency about the personal and behavioural data that platforms collect, how they use them, who they share them with or sell them to, as well as information about data protection rules that apply are of utmost importance for both peer providers and peer consumers. As of 25 May 2018, platforms need to comply with new obligations set out by the General Data Protection Regulation (GDPR). It is suggested that the accompanying measures to facilitate the implementation of the GDPR include specific measures focusing on its implications for online P2P platforms.