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PROTECTING CONSUMERS IN PEER PLATFORM MARKETS

EXPLORING THE ISSUES

2016 MINISTERIAL MEETING ON THE DIGITAL ECONOMY

BACKGROUND REPORT

2016 MINISTERIAL MEETING
THE DIGITAL ECONOMY:
INNOVATION, GROWTH
AND SOCIAL PROSPERITY

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BETTER POLICIES FOR BETTER LIVES

FOREWORD

To help support the discussion in the Consumer Trust panel at the Cancun Ministerial on the digital economy the Committee on Consumer Policy (CCP) has prepared this report on peer platform markets. The initial draft of the report was prepared by Dr. Natali Helberger, Professor at the University of Amsterdam, working as a consultant to the Secretariat.

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EXECUTIVE SUMMARY

Peer-to-peer transactions have long played a role in commerce, but today's online platforms enable them on a much greater scale. Early examples include platforms for the sale of goods (e.g. online auction sites). Newer models include the rental of short-term accommodation and transport or mobility services. Using real-time geo-locational data accessed through mobile apps, mobility services enable the rental of private cars, rides and parking spaces. Other areas undergoing transformation involve small jobs, meal services and financial services.

These business models are often described as the "sharing" economy or "collaborative consumption". This paper uses the term "peer platform markets" and only covers those involving commercial exchange. These business models open up economic opportunities for the individuals supplying the goods or services ("peer providers") and for the platforms making the connections ("peer platforms"). For consumers of these services ("peer consumers"), there are advantages in terms of price, selection, convenience and social experience. Some may also be attracted to the prospect of more sustainable models of consumption.

In addition to these benefits peer platform markets raise new policy and regulatory challenges, including consumer protection issues. It can be difficult to apply existing consumer protection frameworks to business models that blur the boundaries between consumers and businesses. Some peer providers may generate sufficient commercial activity to suggest that they should bear consumer protection responsibilities, while at the same time appearing to be in a consumer relationship with the platform. Peer platforms employ trust-building mechanisms for the users of their services (e.g. reputation or rating systems, pre-screening and verification, insurance, and complaints handling and dispute resolution) which may help meet consumer protection objectives, but their effectiveness can be hard to assess.

Although there is significant diversity among peer platform markets, a number of common characteristics contribute to the challenge of applying a legal framework fashioned for a traditional business to consumer (B2C) model. In peer platform markets, consumers may have a far more active role not only as consumers, but also as producers and reviewers. Another key dimension of peer platform markets is the prominent role of platforms. The main function of these intermediaries is to match up peer consumers with peer providers to facilitate transactions, rather than provide the goods or services themselves. This is a different role than a traditional retailer or manufacturer. A third key element is the data-centric technology that is central to the effective functioning of the platforms, but may also raise issues related to privacy, reputation and switching costs. Although peer platforms are not unique among e-commerce markets in raising such issues, they do bring an important set of challenges for consumers.

How can consumer protection frameworks be applied or adapted to provide effective consumer protection on peer platforms while encouraging innovation? As a general principle, consumer laws should be considered to apply to the basic offer of services to peers by peer platforms. These might include, for example, rules about unfair commercial practices and prohibitions on deception. The revised OECD E-commerce Recommendation indicates as much, expressly including business practices that facilitate consumer to consumer transactions. The Recommendation does not, however, specify how its provisions should apply to peer platform markets and a number of issues in particular can be identified as requiring further consideration:

- How well are the initiatives put in place by peer platforms to build trust among consumers working? Can we assess the effectiveness of pre-screening and verification functions? What about the reputation and rating systems? How well do the guarantees, insurance programmes, and payment protections work? How effective are the community guidelines, and dispute resolution and redress systems? And how can policy makers ensure that these mechanisms are effective in protecting consumers and promoting informed choices?

- How do these types of trust-building mechanisms interface with existing consumer laws and other types of consumer protection and public safety regulations? How do they compare to other, more formal types of self-regulation, which often involves codes of conduct, accountability measures and enforcement mechanisms? To what extent can these initiatives be considered an effective substitute for consumer protection laws and regulatory oversight?

- What are the criteria for determining when commercial peer activity falls under the ambit of consumer laws? How can consumers know when they are dealing with amateur sellers or providers versus professional sellers and providers?
- When peer providers are considered as needing to comply with consumer protection laws, should the rules and standards apply in the same way as would be the case for a more traditional business? Many of the requirements imposed by consumer laws will not be well adapted to the capabilities of peer providers – can specific guidance be provided in such cases?

- What responsibility should a peer platform bear for consumer injury arising from transactions undertaken through the platform? How might such responsibility vary depending on the type of peer platform?
- To what extent should peer platforms be held accountable for the behaviour of peers on their platforms? Do they have a role in ensuring that the peer providers on their platforms comply with acknowledged principles of consumer protection? How could such a responsibility be articulated, given the dynamism and variety that characterise these marketplaces?

This paper provides context and framing for consideration of these questions. It suggests that peers and peer platforms may need to work together to use the technical and legal infrastructure and arrangements offered by the platforms to help achieve consumer protection goals. In this sense effective consumer protection is likely to be considered a shared responsibility. More generally, the paper recognises that consumer polices in this area should be part of a wider spectrum of relevant policies in areas such as competition, taxation, worker protection, licensing and insurance.

1. INTRODUCTION

Digital platforms that enable commercial transactions between providers of goods and services and buyers of those products or services seem to be everywhere these days. In the past few years, consumers have increasingly turned to peer platform markets for short-term accommodations and shared work spaces, short and long-distance transportation options, monetary loans and capital funding, second-hand goods and artisanal crafts, and a variety of freelance and staffing services. Other sectors where peer markets are expanding include health, beauty and wellness, education and learning, food delivery and meal sharing, logistics and storage, utilities, and identity and reputation services (Owyang, 2016). According to a recent study in the United States, 72% of respondents said they could see themselves becoming consumers of peer platforms in the next two years (PwC, 2015: 17).

Consumers' quick embrace of these peer platform marketplaces, the uptick in financial investments in digital platforms and the potential for greater innovation and growth have made this a prominent topic for consumer policy makers. Of course, renting, swapping, sharing, bartering, lending, exchanging and selling goods and services are traditional activities, as old as civilisation and deeply engrained in the human nature as a "cooperative species" (Pagel, 2012). But the Internet and digital technologies have taken peer platform markets to a new level, expanding the scale, scope and geographic reach of peer transactions spectacularly (PiperJaffray, 2015: 12). While relatively small, the market is expanding rapidly. House-sharing site Airbnb acquired more than one million listings in only seven years (PiperJaffray, 2015: 20). ShareYourMeals is expected to grow by 20 000 users per year (Business Innovation Observatory, 2013). And 5 year-old ride-sharing service Uber has been valued in July 2015 at more than USD 50 billion, reaching the mark even faster than Facebook (MacMilian & Demos, 2016). Recent investments in BlaBlaCar, a long distance ride-sharing site, have put it into the top five most valuable European start-ups.

Although some peer platform markets involve the sharing of resources at a local level, participants in these marketplaces need no longer live in the same village, meet at the same market or even speak the same language. In peer platform markets, nearly anyone with access to the Internet can become a seller, a trader, a creator, producer, a driver, a tasker or a host. Offering goods and services is no longer the privilege of professional actors. While this opens up economic opportunities for providers, it creates new challenges and risks for consumers who encounter a wide range of participants – from hobbyists and amateurs to free-lancers, semi-professionals and even professionals – through these digital platforms. To encourage and promote participation in peer platforms, there is a need for measures to generate consumer trust, and mechanisms to protect them in case things go wrong.

The Committee on Consumer Policy (CCP) has a long experience in analysing issues of consumer trust, empowerment and protection in digital markets. With the recently revised OECD Recommendation on Consumer Protection in E-commerce (OECD, 2016), the OECD has not only established the core characteristics of effective consumer protection online but also provided guidance on newer trends in the digital economy. The revised Recommendation acknowledges the growing importance of peer platform markets by recognising the development of these new business models and bringing within its scope "commercial practices through which businesses enable and facilitate consumer-to-consumer transactions."

Peer platform markets pose a number of challenges to applying existing principles and rules in consumer law. Some arise in e-commerce transactions generally, while others relate to the particular characteristics of these marketplaces. It can be difficult to apply existing consumer protection frameworks to business models that blur the boundaries between consumers and businesses. Some peer providers may generate sufficient commercial activity to suggest that they should bear consumer protection responsibilities. At the same time they appear to be in a consumer relationship with the platform. Peer platforms employ trust-building mechanisms for the users of their services (e.g. reputation or rating systems, pre-screening and verification, insurance, and complaints handling and dispute resolution), which may help meet consumer protection objectives, but their effectiveness can be hard to assess. And what is the role and legal responsibility of peer platforms? The aim of this paper is to provide context and framing for consideration of these issues, which are identified in greater detail in the conclusion.

1.1 Terminology

There are several key terms used throughout this discussion paper. The phrase "**peer platform markets**" is used to describe a wide range of new and emerging production and consumption models that involve the commercial exchange of goods and services between peers through Internet platforms. Early examples include the sale or auction of goods on sites like eBay. More recent examples involve the rental of short-term accommodation and transportation or mobility services. When talking about peer platform markets it is important to realise that there is no single marketplace, but rather thousands of different, decentralised markets, with large variations and different dimensions. These different dimensions influence the roles of peers and peer platforms, the relationships among peers, as well as the relationships between peers and peer platforms.

These emerging practices and markets are often referred to as the “sharing” economy or “collaborative consumption” – expressions that are often used interchangeably. Others refer to “access-based consumption”, “the mesh”, “collaborative economy”, “circular economy” or the “maker movement”. Each highlights different facets of the phenomenon. Some of these terms, however, do not capture the fact that payment is typically required for such transactions or that the various production and consumption models are distinct marketplaces rather than a unified economy. The phrase “peer platform markets” better reflects the commercial focus and the large variations among the different types of markets that are using the Internet to mediate transactions.

There are three types of key participants in peer platform markets: “peer providers,” “peer consumers” and “peer platforms.” This paper adopts the expression **"peer providers"** to refer to the individuals (or sometimes, micro-businesses) supplying the goods or services and **"peer consumers"** to refer to the consumers purchasing, acquiring or renting such goods and services. The Internet businesses providing the platforms to facilitate, organise and mediate the interactions between peer providers and peer consumers are called **"peer platforms"** in this paper. It should be noted that many peer platforms are also used by professional sellers, though the discussion in this paper is not focused on those actors. Likewise, this paper does not cover platforms that are non-profit or otherwise non-commercial in character. One unique feature of peer platform markets is that the same participant may find themselves in two different roles at the same time. For example, peer providers supplying goods or services may at the same time be in what appears to be a consumer relationship with the peer platform.

1.2 Scope and objectives

The focus of this paper is the protection of consumers in peer platform markets. More specifically it looks at how consumer protection laws apply to transactions in such markets as well as the role of platform-based initiatives such as reputation and ratings mechanisms. Consumer protection is understood in this context to include the generic rules governing the relationships between businesses and consumers, such as laws governing consumer sales and contracts, advertising and marketing, e-commerce, consumer product safety, unfair or deceptive commercial practices, and dispute resolution and redress. Other issues such as taxation, worker protections, and the application of sector-specific regulation in areas like transportation, the financial sector, food safety, insurance and the environment fall outside the scope.

Competition issues also fall outside the scope of this paper; however, it should be recognised that some consumer protection issues in peer platforms are inextricably linked with competition concerns. For example, providers of goods and services in regulated sectors of the economy often argue that failure to apply existing laws and regulations to peer platform markets creates an unfair competitive advantage, favouring market entrants at the expense of incumbents who may be subject to regulatory structures that often are decades old. Conversely, outdated regulations can entrench the status quo and protect incumbents from competition by, for example, maintaining overly restrictive measures that discourage entry by innovative new providers. In addition, peer platform markets tend to feature "network effects" that may lead to market concentration and potential competition issues.

Points of reference in this report will be existing OECD recommendations and policy guidance, with occasional references to national or regional legal frameworks. It does not reflect, however, a comprehensive comparative legal analysis among the OECD countries.

It is important to note that many of the peer platform developments discussed in this paper are both recent in origin and changing rapidly. At this stage, it is difficult to predict the future dynamics and direction these markets will take. It also means that, on a more fundamental level, it may be premature to prescribe concrete policy measures for these markets and this paper does not make recommendations regarding the future policy and legal framework. What this paper does do is signal some of the main developments and possible implications for the policy and regulatory frameworks. In so doing, it hopes to lay the basis for an informed in-depth policy discourse and future work.

2. EMERGING TRENDS IN PEER PLATFORM MARKETS

2.1 The rise of peer platform markets

The proliferation of personal computers – especially mobile devices – the growth of geo-location capabilities, and developments in data sharing and analysis enabled new forms of peer-to-peer interactions over the Internet beginning in the early part of the 21st century. Early forms of peer interaction online, such as the exchange of music and video (YouTube), knowledge (Wikipedia) or personal information (Facebook) were – at least for the peers – largely non-commercial activities.

With the arrival of early commercial peer platforms such as eBay, Craigslist, Etsy, and Autotrader, some types of peer-to-peer interactions were transformed into potentially profitable commercial endeavours. They increased the geographical reach and scope of peer markets for consumers, and substantially lowered the barriers for peers who wished to sell goods online by providing services such as advertising and search (which matched potential buyers and sellers), easy and convenient payment mechanisms, and dispute resolution and redress. Consumers began to engage in transactions via peer platforms with other individuals as a viable complement or alternative to traditional and online businesses. Attracted by lower prices and wider selection, the willingness of peer consumers to fulfil their shopping needs through previously owned or locally crafted goods was one of the early surprises of the early ecommerce era. These early peer platforms generally enabled outright purchases of goods or services on platforms, although some peer platforms facilitated short term rentals of assets owned by the platform.

Now, newer types of peer platforms have emerged, which allow consumers to rent unused assets or resources and provide time-limited access to goods, skills and services from peer providers (see Table 1 below). The most prominent models today allow consumers to rent short-term accommodation and transportation or mobility services from peer providers, rather than from businesses that themselves own these assets. Using real-time geo-locational data accessed through mobile apps, shared mobility services enable consumers to rent private cars, rides and parking spaces. Other areas increasingly being transformed by these platforms include small jobs, meal services, and financial services.

Table 1. Examples of peer platform marketplaces

Accommodation & physical space	Airbnb (short term vacation stays), HomeAway, HomeStay, FlipKey, Wimdu, Villas.com, FlatClub, onefinestay, HouseTrip, Guesthop (support services for home sharers), DesksNearMe (workspace), Landshare (land, gardens)
Transportation & mobility	Uber, Hitch, Lyft, BlaBlaCar, Getaround, ParkingPanda (parking spots), Freecycle Network
Food consumption	Feastly (connects diners with chefs), LeftoverSwap, EatWith (matches diners and hosts), MamaBake (homecooked cakes), EatWithMe (homecooked food)
Retail & consumer goods	Ziplok, Tradesy, Neighboorgoods, eBay, Poshmark, Yerdle, Spinlister (sports equipment), Kidizen (kids clothing and toys); Rockbox (jewellery rental service); StubHub, viagogo, GetMeIn, Seatwave (secondary tickets)
Skills & services	TaskRabbit (all kinds of tasks)
Financial services	Prosper (lending), Kickstarter (funding)

2.2 The main actors in peer platform markets, and how they relate

Understanding peer platform markets involves moving beyond traditional categories of buyer and seller, consumer and professional. As described above, there are three types of key participants in peer platform markets: peer providers, peer consumers and peer platforms. Peer consumers and peer providers may bring different skills and expectations to transactions than do consumers in more traditional forms of commerce and even e-commerce. Peer platforms likewise might operate on different assumptions and play different roles than those of a typical retailer, service provider, or manufacturer.

Peer relationships

Peers play a central role in the peer platform markets. They are the ones that obtain goods and services or supply and provide them. But the role of peers may go beyond that of simply consumer or provider in some instances. As members of a peer platform market community, peers may also play an important role in shaping the norms and values that set expectations and regulate the behaviour within a given community.

For peers, the motives to interact can differ significantly, depending on the type of transaction and the community involved. For example, in a study of Norwegian users that engage in monetary marketplace exchanges, researchers found that the prime motive for peers to engage in peer platforms is a financial one – either to avoid costs or to make money – closely followed by the convenience aspects of using peer platforms (Stene & Holte, 2014: 25-26). Peers can be brought together in large peer-pools that have little in common except that they use the same peer platform to hail a ride or rent a vacation home. Peers can also form close-knit communities, with shared goals, values and norms in which each peer feels strongly responsible and part of a bigger entity. One take-away from this is that the role and expectations of peers in peer platform markets can differ greatly, and will very much depend on the type of peer platform market and the communities involved.

The role of peer platforms

The other central player in most peer markets is the peer platform. A type of online intermediary, peer platforms vary considerably in their degree of involvement in the underlying peer relationships. Peer platforms are an example of two-sided or even multi-sided markets that serve both peer providers that offer skills or assets, and peer consumers that demand them. The primary role of many peer platforms is to facilitate, organise and mediate the activities of peers.[1] More concretely, important functions of peer platforms are to offer search facilities, match peers with peers, to set up reputation and other trust-enhancing mechanisms, and to exercise (differing degrees of) control over the organisation, sharing and peer interaction (e.g. through the set-up of payment, mediation or messaging services) (Smolka & Hienerth, 2014: 11). In addition to linking up peer providers with peer consumers, the platforms can serve other roles, such as advertisers, data analytics firms, and insurance providers.

Peer platforms operate with a variety of business models.[2] Some are subscription or membership based (Sorted, HomeAway), while others obtain revenues through the selling of insurance (Peerby), merchant commissions, surcharges (Sorted, ShareYourMeals, HomeAway), or various fees such as transaction, matchmaking (Fixura) or booking fees (Airbnb) (Bardhi & Eckhardt, 2012). Some have become very successful businesses.[3]

The Relationship between peers and platforms

An important aspect of the relationship between peer platforms and consumer protection are the rules that govern relationships between peers and peer platforms. One set of rules stems from existing consumer protection laws in such diverse areas as advertising and marketing, privacy and data protection, consumer payments and consumer product safety. There are also regulations in areas such as transport, housing and labour that are often characterised as consumer protection measures. Although some have argued that there is a mismatch – at least in some peer platform markets – between existing regulations and newer peer platform business models, many of these laws and regulations presumptively apply to peer platform markets. There are also existing laws on intermediary liability in almost all OECD countries that may be relevant in defining relationships among peer platform marketplace participants.

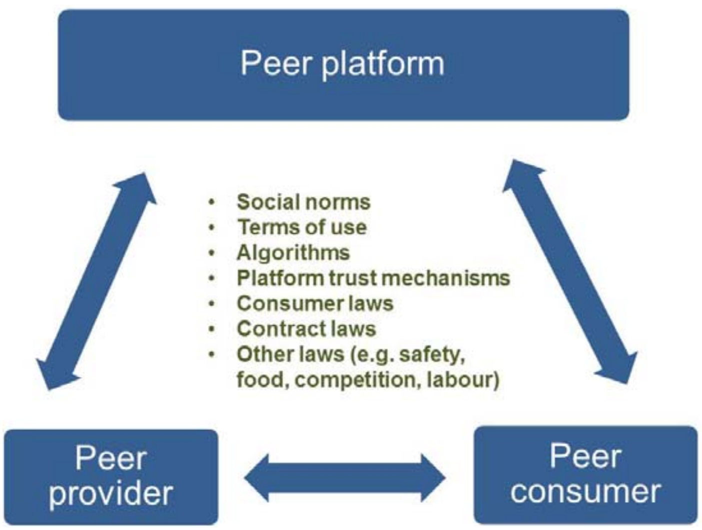
Another set of rules originates from the peer platforms themselves, through their terms of use, privacy policies and community guidelines and standards for peers. Examples include Airbnb's hospitality-standard, eBay's rules for sellers and buyers, and Couchsurfing's "Values." To enforce these guidelines, some peer platforms use incentive-based forms of regulation, and nudges rather than sanctions. They identify, celebrate and reward members that commit to, and excel in the application of the values and rules of the peer platform. For example, Couchsurfing has established an Ambassador program, in which it "celebrates a group of active members and their contributions to the community." Airbnb defines so-called "super hosts," and grants them several advantages, such as a 'super host seal,' faster client service and travel vouchers. Airbnb also encourages hosts to learn from each other or to ask each other questions, as do other peer platforms, such as eBay.

In the case of peer platforms, there is evidence that in smaller, community-oriented services, members can develop a collective sense of responsibility and social norms (Stene & Holte, 2014: 33), though how well this will scale as platforms grow larger and more diverse is not clear. In one study 64% of respondents said that in the sharing economy, peer regulation would be more important to them than government regulation (PwC, 2015: 16). It is not clear to what extent this perception is influenced by the lack of clarity about how regulation applies. The fact remains that peer trust in the judgment of other peers is an important influence on peer behaviour (Nielsen, 2013). It is important to realise, though, that these social norms and community values are typically community specific, with considerable variation among them.

The interface between regulation and private rule-making by peer platforms is an important area for consideration and future work. In addition, the extent to which peers internalise and comply with these community values and the ways in which peer platforms enforce such norms is an area that requires additional research.

The relationship between peer platforms and peers is not mediated by rules only. Algorithms, too, play an increasingly important role in shaping the relationship between peer platforms and peers, as well as between peers – through the profiling of peers, the automated sorting and matching, rating, but also the calculation of prices and other conditions. This area, too, may be an area for further research and policy analysis.

Figure 1. Different layers of rule-making on peer platforms



3. CONSUMER EXPERIENCES OF PEER PLATFORM MARKETS

Sound consumer policies and laws are informed by evidence of the actual detriment and benefits that consumers experience. Assessing the nature and magnitude of consumer detriment is therefore a critical step in the policy making process as set forth in the OECD's Consumer Policy Toolkit (OECD, 2010) and the OECD Recommendation on Consumer Policy Decision Making (OECD, 2014). In the case of peer platform markets, doing so is rendered difficult by the current lack of access to data. Peer platforms are a rather recent phenomenon, and there is not yet much experience with these markets. There, are, however, some important exceptions such as in early peer platforms like eBay, where millions of peers have had experience buying, selling, lodging complaints, and resolving disputes through eBay's Dispute Resolution Center. Particularly with regards to peer platform marketplaces, most existing studies tend to concentrate on the benefits of peer platforms rather than on possible instances of consumer detriment. Also, much of the available evidence is focused on experiences in the United States. Although some of this evidence might be generalised to consumers in other OECD countries, this is clearly an area where more research and investigation would be helpful to policy makers. Based on the evidence available, the following section gives some preliminary indications of the benefits and detriments that consumers can experience in peer platform economies.

3.1 Consumer benefits

There is a growing body of research into the reasons and motives of why consumers engage in peer platform markets (see e.g. Business Innovation Observatory [2013], Botsman & Rogers [2010], Smolka & Hienerth [2014], Gansky [2012], Nelson, Rademacher, & Paek [2007], Sundarajan, [2013]).

Motivations range across financial, experiential and societal, ideological and political categories. Examples include environmental and health benefits, the productive use of existing assets, creating value for underserved consumers, fostering local communities, social cohesion and innovation. The benefits for individual consumers relate either to financial considerations or to the quality and experience of products and services.

Financial benefits

Peer consumers may engage in peer platforms to save money on goods and services that are sometimes available at lower prices than those are offered by more traditional business to consumer (B2C) markets. There may be several factors that account for this price differential: peer platform marketplaces may be lower because of increased utilisation of assets, increased supply and/or lower costs. In addition, consumers can save on ownership costs for maintenance, insurance, and repair by renting assets rather than buying them.

Quality and Experience Benefits

Aside from financial reasons, consumers may engage in transactions on peer platform markets to obtain better quality goods or services or a better consumer experience. There may be benefits associated with the way consumers experience the overall service, for example, the different look-and-feel (living in a real home like a local instead of staying at a hotel), a more tailored service (e.g. if local hosts can give personal recommendations), greater variety (instead of owning one type of car, peers have access to an entire car fleet), or the local proximity (food service from a neighbour instead of having to walk or drive to a restaurant). The consumer experience may also be impacted by a different set of expectations that peer consumers may bring to their interactions in peer platforms, when it is clear that the other party is not a professional.

- **Quality**. Peer platforms are sometimes thought to provide access to higher quality goods and services, perhaps because of the widespread use of rating systems, more opportunities for niche or "bespoke" products, competition among peer providers, and the ability to incorporate newer innovations more quickly.

- **Convenience and ease of use**. Consumers may find peer platforms a convenient way to access the goods and services they want. Peer platforms can also make accessible resources outside of a consumer's geographic area, which has been cited as an important benefit of engaging on peer platforms (Stene & Holte, 2014: 25) (Owyang, 2014). There may also be lower search and transaction costs for consumers, though more research may be needed on this point.

- **Choice and variety**. Closely related is the aspect of increased choice and variety. Sharing can enable access to resources that are normally not available ("being at a real home abroad"), or offered at higher prices (prices for rides on Uber may be significantly less than those of commercial taxi undertakings) (PiperJaffray, 2015: 6). Another, important aspect is "sampling," the ability of consumers to test and experience goods or services that they are curious about but unfamiliar with, and/or would have normally not considered buying (Huygen, et al., 2009).

- **More social experience**. An important motive for some engaging in peer platforms is the social aspect of the experience, which may consist of both the social interaction as well as the feeling of belonging to a community. A related aspect is the fact that some users seem to have greater confidence in their peers, and to prefer doing business with them, rather than with large impersonal corporations (Stene & Holte, 2014: 33-34). This aspect seems to reflect a growing dissatisfaction with the commercialisation of goods, services and resources (McArthur, 2014: 240), broader societal concerns (e.g. concerns relating to environment and excessive consumption) (Belk, 2010), as well as a growing desire for more of what has been called "nonreciprocal pro-social behaviour" (Benkler, 2004). Again, this is an interesting aspect that may not only affect the design of consumer protection measures, but also the competitiveness of established commercial players, particularly where peer platforms succeed in conveying feelings of trust and belonging to a community, unlike their more established competitors.

3.2 Consumer detriment

Identifying and measuring the nature and magnitude of possible sources of consumer detriment (e.g., the type, prevalence, and extent of consumer harm) is a crucial component of evidence-based policymaking. As set forth in the OECD Recommendation on Consumer Policy Decision Making, consumer detriment means the:

> "harm or loss that consumers experience, when, for example, i) they are misled by unfair market practices into making purchases of goods or services that they would not have otherwise made; ii) they pay more than what they would have, had they been better informed, iii) they suffer from unfair contract terms or iv) the goods and services that they purchase do not conform to their expectations with respect to delivery or performance" (OECD, 2014).

In short, consumer detriment can arise when market outcomes fall short of their potential resulting in losses to consumer welfare. This may occur, for example, "when the goods or services that they have purchased do not conform to their reasonable expectations with respect to quality, performance or conditions of delivery. This also may occur if the goods or services are not provided in a timely fashion, are defective or dangerous, do not meet operational expectations or are inconsistent with information provided to the consumer prior to the transaction" (OECD, 2014).

In considering possible detriments, it is helpful to recognise that consumer detriment can take many forms. It may be structural in nature (i.e., affecting all consumers) and have broader societal and macro-economic effects, or personal in nature with narrower effects. Detriment can be financial or non-financial. Consumer detriment may be apparent to consumers immediately, may take time to emerge, or remain hidden (OECD, 2014). In assessing consumer detriment in peer platform markets, it might be useful to compare any possible or actual detriment with the alternatives. For example, there is a debate over whether safety-related detriments associated with ride sharing services are greater than safety-related detriments associated with more traditional taxi and limousine services (Lafrance, 2015).

Table 2. Types of financial and non-financial detriment

Financial detriment
Inflated prices
Cost of flawed products (e.g. insurance policies that, because of misleading information or misleading omissions, fail to deliver expected coverage)
Cost of repairing or replacing product
Administrative and travel costs incurred resolving the problem (e.g. telephone costs, petrol)
Reduction in value of asset (e.g. poor house repairs reducing value of house)
Cost of expert advice or assistance (e.g. legal costs)
Lost earnings (e.g. due to loss of time or injury)
Damage to other property (e.g. electrical fault causing house fire)
Non-financial detriment
Restricted choice (which can also have financial implications)
Psychological detriment (e.g. stress, anger, embarrassment)
Compromise of personal information or privacy
Time required to address problems
Inconvenience
Injury or adverse effect on health

Source: OECD Consumer Policy Toolkit (2010).

Given the limited data available and the anecdotal nature of the evidence, it may be premature to assess detriment, especially structural detriment. Examples of the types of structural detriment that might occur in certain peer platform marketplaces include the effects of house sharing platforms on the supply of rental properties, a particular issue for cities with housing supply shortages. Other possible instances of structural detriment could be the impact on competition and innovation, or the effectiveness of laws that are meant to protect public health and safety, such as food laws.[4] Conversely, where regulations act as barriers to the entry of peer platform market participants, consumers may experience structural detriments due to higher prices or reduced choices.

Similarly, it is difficult to assess reliably personal detriment given the limited data available. There are, however, a number of sources of possible consumer detriment that have been identified in more traditional e-commerce markets that may present similar or related issues in the peer platform marketplace. These include:

- **Costs of flawed products or inadequate services.** One potential source of consumer detriment is goods that either do not live up to their description or are otherwise defective (Peters & Bodkin, 2007: 24). With respect to rentals or services, problems are more likely to revolve around the accessibility of resources, the conditions of access and the quality of the products and services accessed, as well as the availability of mechanisms to solve conflicts should they occur.
- **Inflated or unfair pricing** (e.g., surge pricing or drip pricing). A pricing practice that has already caused controversy is surge pricing: driving prices up when the demand is high in order to balance offer and demand. For example, during a snowstorm in New York, prices for Uber rides were reportedly 8.25 times higher (Lowry, 2014). While such "dynamic pricing" practices may bring economic efficiencies, and are already widespread in areas such as airline ticketing and hotel room pricing, they also risk generating consumer frustration and anger. Another pricing practice that has already drawn attention from regulators is the practice of drip pricing on peer platforms.
- **Injury or adverse effects on health**. Safety issues can arise from the services provided or assets rented (e.g. food or cars), as well as the lack of qualification and trustworthiness of the peers offering them. Again, evidence is anecdotal at most, and can include accidents through unqualified riders, theft and vandalism and other possibilities for abuse that may come with sharing one's own resources with relative strangers.
- **Compromise of consumer data.** Peer platforms markets rely extensively on the collection and use of personal data about the peer consumers and peer providers and their interactions. Like other ecommerce and online businesses, peer platforms have to navigate the complex challenge of appropriate governance for the collection and use of this data and provide reasonable security safeguards to avoid the data security breaches and other privacy or data protection problems that have become common place. But there is an additional challenge for peer platform markets, which is the responsibilities that are also placed on the peers for protecting the data they obtain about each other in the course of their transactions. Relying on these non-professional actors to take appropriate steps to avoid compromise of consumer data may present an even greater risk of consumer detriment.
- **Restricted choice.** While on the one hand peer platform markets greatly expand consumer choice, these markets also have characteristics that create switching costs that may reduce choices. Where they operate, the switching costs may not only cause personal consumer detriment but may also bring a broader structural detriment that reduces competition. Switching costs on peer platforms could include the social costs of switching between peer platforms, including the loss of social capital. Peer providers often invest considerable effort to receive good ratings and build reputation. This is likewise the case for peer consumers, who may invest time and energy to become familiar with the peer platform, its trust mechanisms, write reviews and otherwise engage with the community (Stene & Holte, 2014: 28-29). If switching to another platform means losing the positive reviews, social capital or the link with the community, this can be a serious disincentive.

In considering the possible causes for many of the possible types of detriment identified above, one key factor may relate to the adequacy of information about the nature of the product or service and the conditions of delivery. This is common issue in e-commerce generally, but may be more challenging for peer platforms, where may be more difficult to standardise information provision because of the diversity and number of peer providers on whom the platforms are largely reliant for the descriptions of the goods or services on offer.

One topic that might be addressed here relates to evaluating detriment in context by comparing peer platform markets with traditional business models. Are there possible detriments in existing models that might be reduced or eliminated in the peer platform marketplace? For example, the business model that many peer platforms use, where the platform acts as the payment intermediary, may reduce the number of entities with access to a peer consumer’s payment information: instead of both the driver and the payment mechanisms having access to the consumer’s payment card, only the platform has the information. Other such examples exist and are important to the detriment analysis.

4. CONSUMER POLICY ISSUES

Trust is the key issue for consumers in peer platform marketplaces. Peer consumers can encounter issues of trust in many different contexts: trust into the reliability and qualifications of the peer provider; trust in the asset or service; and trust in the guarantees and safeguards offered by the peer platform. The OECD's revised Recommendation on Consumer Protection in E-commerce sets forth key principles designed to enhance consumer trust in e-commerce generally and in new types of digital business models. These include transparent and effective protection, fair business, marketing and advertising practices, clear information about an online business' identity, the goods or services at offer, and the terms and conditions of a transaction; a transparent confirmation process; secure payment, and fair, timely and affordable dispute resolution and redress, as well as privacy and data security protections.

The question of how to apply these principles to peer platform marketplaces cannot be easily answered without greater experience and evidence. What evidence does exist (as discussed above) suggests that peer consumers can face many of the "traditional" e-commerce challenges that the E-commerce Recommendation was designed to address, as well as some that are particular to peer platform markets.

For example, a core consumer protection principle is that advertising and other claims about a product or service must be substantiated, truthful and non-misleading. But the question of who is responsible for ensuring that representations meet these standards – and how relevant disclosures should be made – may be more complex in peer platform markets than in more traditional e-commerce contexts. There are questions relating to the allocation of responsibility between peer providers and peer platforms. There may also be questions about whether lengthy mandatory disclosures required by some consumer laws actually achieve underlying consumer protection objectives in a context where consumers on some peer platforms seem to derive much more relevant information from pictures, or from the description of the background and experience of peers.

In addition to the "traditional" e-commerce issues that the revised E-commerce Recommendation seeks to address, peer platform markets may raise some additional consumer issues for consideration by consumer policy makers. Some of these are covered below, i.e., the effectiveness of platform-based reputation-related and other trust building regulations in ensuring consumer protection (§ 4.1) and the applicability of existing consumer law to peer providers and peer platforms (§§ 4.2 and 4.3). Other emerging issues include:

- The use of consumer data and algorithms to set the terms and conditions of peer platform transactions, including transparency and non-discrimination;

- Requirements for participation in peer platform marketplaces (e.g., requirements to have a smart phone and provide a credit card or other payment guarantee) that may adversely affect vulnerable and disadvantaged consumers and raise the prospect of a "digital divide" in peer platform marketplaces;

- Switching costs on peer platforms, including "social switching" costs that take into account the social capital that peer providers and peer consumers accumulate on peer platforms in the form of user reviews, followers and friends-lists.[5]

4.1 Peer platform mechanisms for building customer trust

Many peer platforms employ trust-building mechanisms for the peer users of their services such as reputation or rating systems, pre-screening and verification, guarantees and insurance, and complaints handling and dispute resolution. Some observers have viewed these mechanisms as a type of self-regulation, asserting that they may be better suited to prevent or mitigate at least some types of detriment that consumers may experience in peer platform transactions than traditional consumer laws (Cohen & Sundararajan, 2015). Other observers have noted the differences between the platform-specific mechanisms discussed in this section and more formal self-regulation, which typically involves a combination of standards, information collection and dispute resolution mechanisms (Deloitte Access Economics, 2015).[6] They have noted that it is difficult to assess the effectiveness of such mechanisms as a vehicle for consumer protection, and have doubted that such mechanisms can provide such protections without some type of legal and regulatory oversight. In its recent work on self-regulation the Committee on Consumer Policy has recognised that there are a wide range of features (e.g., accountability and enforcement mechanisms) and environmental factors (e.g., industry and market structure) that help determine the success of any particular type of self-regulatory scheme (OECD, 2015a).

Some of the most common types of trust-building mechanisms implemented by peer platforms include:

- **Review and reputation systems.** A central element in helping peer consumers to make informed choices are review and reputation systems. In addition to having a critical trust-building function, these systems can also be a factor in regulating behaviour through monitoring, feedback-systems and the exercise of peer-pressure (Strahlevits, 2006). The effectiveness of these tools depends critically on the active involvement of both peer platforms and peers. Trust and reputation systems, as well as peer-driven screening are clearly less effective without a critical mass of participating peers.
- **Guarantees or insurance.** In response to negative experiences with accidents, but also theft and fraud, a number of peer platforms have introduced guarantees. Airbnb, for example, offers guarantees for both guests and hosts to cover for accidents and instances of intentional theft and vandalism. Similarly, eBay and Uber offer guarantees, as do others, all with varying conditions however.
- **Verified identities.** One cause of consumer detriment can be the inability to contact the peer provider in case of problems. As the OECD emphasised in earlier publications, identity management can be an important means to address risks that are associated with human interactions that help to build trust and lay a foundation for economic and social life (OECD, 2011:9). The ability to verify identities is possibly even more important in a setting in which dispute resolution begins with another peer. Accordingly, some peer platforms do take steps to verify the identity of peers.
- **Pre-screening** (by the peer platform). Some peer platforms offer pre-screening of peer providers, usually through verification of external data bases such as motor vehicle records or criminal background checks.
- **Secure payment systems.** Next to reputation systems and pre-screening, secure and trustworthy payment systems are considered another important enabler of trust and safety in peer transactions (PiperJaffray, 2015: 8). Many peer platforms offer such services, often in co-operation with established external payment systems. It is important to note that many of these payment systems are themselves subject to governmental regulation or oversight.

- **Education, checklists and forms.** Many peer platforms invest in educating their users, including with respect to possible legal or other obligations that may apply to traders, drivers, or hosts. For example, Airbnb educates users about ‘responsible hosting’ and Kickstarter gives information on how peers can protect themselves from phishing. eBay dedicates an entire section of its website to legal questions, which includes general information about the legal situation, recent changes in the law or case law, sample forms, and more.[7] Of course the value of this information will vary and be dependant in particular on its accuracy.[8]

Many of these mechanisms have been embraced by peers, but policy makers need more evidence and analysis to determine how effective these mechanisms are in achieving consumer protection outcomes. With respect to reputation and ratings mechanisms, there are, for example, questions about the accuracy and objectivity of some reviews, as well as the selection or presentation of reviews by peer platforms. Ratings can be false, biased or reflect socially desirable behaviour or strategic manipulation (Zervas et al., 2015). The difficulty in establishing the accuracy of peer ratings is even more serious in peer platform markets, as peers will often not be able to fall back on established sources of information, such as the reputation of a brand, tests of consumer organisations, and comparison sites. Similarly, there is evidence that pre-screening mechanisms in place may not always be of high standard, and consumers may be misled about the nature and quality of these screenings (Hui, 2014).

Trust and reputation systems also can invite discrimination. For example, it has been shown that the posting of personal profiles and pictures facilitates discrimination based on the seller’s gender, age, and race (Edelman & Luca, 2014). The reliance on reputation systems and peer-ratings can also invite attempts to harm the reputation of others wilfully, or even blackmail, with a corresponding loss of social capital (Solove, 2007). Privacy issues are another example: Uber and Lyft allow peer consumers to map the progress of their rides to enable them to verify that drivers took the shortest route. This feature is only possible through the systematic collection of location data. More generally, reputation systems generate considerable personal data that may have a high impact on peers and raise difficult privacy issues.

Many of these trust mechanisms, including in particular reputation systems, effectively place the burden of monitoring on consumers, which may come at a particular cost for less able consumers. More generally, more evidence is needed regarding the various consumer protection measures in place, their implementation in practice, their efficacy in preventing or addressing consumer detriment, peers’ awareness of these schemes, as well as their effect on peers choices and behaviour.

4.2 The applicability of laws that protect consumers to peers

What types of laws should apply to peer providers?

Can and should laws that are primarily intended to protect consumers in traditional B2C transactions apply to the relationship between peer providers and peer consumers? Are there other types of laws that peers should comply with, e.g., legal requirements for insurance or safety laws? One of the main characteristics of peer platform markets is that the role of individual users is no longer confined to the role of consumer, as in traditional B2C e-commerce. Instead, users step into the shoes of producers and sellers of goods and services. Does that also mean that peer providers and peer consumers fall under rules that were originally designed to protect consumers in their relationship to businesses? Peers typically lack the scale, experience and resources to comply in the same way as businesses. How effective are the rules and remedies when applied to amateur users? Can users, when engaging in commercial transactions with other users, expect the same level of professional diligence, care and quality? These are difficult issues that have not been widely addressed by policy makers.

Consumer protection law commonly juxtaposes two actors: traders (or sellers) and consumers. It then defines responsibilities and obligations of the former, and rights of the latter. For example, the OECD E-commerce Recommendation is framed in terms of businesses, for whom there are a large set of recommended practices, and consumers, who are to be the principle beneficiaries of those practices. In the peer platform economy, it becomes more difficult to apply this traditional binary distinction.

In the European Union, the Consumer Rights Directive applies "to any contract concluded between a trader and a consumer" [Art. 3 (1)]. In other words, it does not apply to contracts between two traders, two consumers or two peers. The Directive defines a "consumer" as any natural person who is "acting for purposes which are outside his trade, business, craft or profession" [Art. 2 (1)].[9] By contrast, a trader is defined as 'any natural person or any legal person, …, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive'(Art. 2 (2) Consumer Rights Directive). The key question under EU law is under which conditions does a peer who rents out her apartment or offers to cut hair or share a bike does so within or outside her trade, business, craft or profession. This is a difficult question for which comprehensive guidance is lacking. Factors that can matter in this decision vary from country to country (Helberger, et al., 2013: 42). Possible factors include whether a transaction is planned or not, the way it is organised, the number of transactions, their value, the duration of the activity, the impression to the outside world, the way the activity is perceived by consumers, and commercial intentions.

Another example is the definition of "consumer" adopted in the recent update to the United Nations Guidelines for Consumer Protection (and used in other UN instruments). It differs from the EU Directive in that it defines a consumer as a "natural person . . . acting primarily for personal, family or household purposes. . ." (United Nations, 2015). Although this definition also raises questions of applicability in the peer platform context, it may be helpful in focusing more on the purpose of the transaction rather than the status of the parties to the transaction.

From the perspective of both the peers and the platforms (and perhaps regulators) the situation is problematic. Peer providers will want to know under which conditions they qualify as "trader" with the consequence that they also have to comply with the relevant legal obligations. It is likely even more challenging for peer consumers to be able to recognise whether they are contracting with a professional "trader" or not. The platforms may have broader visibility in the scope of provider activity on their networks, but without clear criteria it is difficult to provide advice to their peer users.

Lessons could be learned from peer platforms, such as eBay, that distinguish between 'seller' and 'buyer', or Airbnb, who is talking about 'hosts' and 'guests'. These platforms focus on the actual activity, rather than the link to any professional practice, trade or profession. At the same time, this functional approach may confuse consumers as to whether consumer protection rules do or do not apply, precisely because of the difference in terminology.

Some efforts to clarify this issue are underway, with an increasing number of municipalities having guidelines.[10] For example, Amsterdam has decided that renting out a private house without a license is possible if peers do not rent it out for more than 60 days; beyond the 60 days peers will fall under the rules that apply to commercially operated B&B and hotels.

Need to differentiate between peers and professional traders?

Even if a peer provider technically qualifies as a "trader" in the sense of consumer law, a question may remain as to the extent to which it is desirable to apply the same rules designed for businesses to peer providers. Should a peer selling items on eBay, renting her home or offering her services as a driver be required to observe the same legal obligations as well-resourced companies with in-house legal experts? Will peers have to observe the requirements in some consumer laws for extensive information disclosures, rights of withdrawal, secure payments, transparent confirmation processes and adequate dispute resolution services? It is not only a matter of differences in expertise, experience and scale. It is also a question about feasibility, fairness and the reasonable expectations that peer consumers might harbour in relation to peer providers.

It may be obvious that peers, as non-professional amateurs, will often lack the technical, legal and organisational skills and resources that professional traders and businesses have. The legal knowledge aside, whereas a professional producer of cars or coffee machines can easily repair or replace a faulty product, this requirement from consumer sales law can pose difficulties for a peer who has sold her car or coffee machine. Similarly, complying with the extensive catalogue of information disclosures can be challenging for peers, who may not possess all the information required. If applied inappropriately, poorly-tailored legal requirements and legal risks could amount to a disincentive for peer providers and peer consumers to engage in peer platforms in the first place.

Depending on the level of involvement of peer platforms in the transaction – and the type of services that peer platforms provide – in many instances peers may not be able to comply with consumer law requirements independently of the peer platform. Peer providers may not have control over the timing, format and presentation of disclosures about the goods or services they offer and limited influence in the way that pricing, payments and disputes are addressed. More generally, in peer platform markets the overall level of consumer protection will often reflect the combined and co-operative efforts of peer providers and the platform.

In a number of countries the judicial system has begun to address these issues. For example, in Germany, courts have flexibility to alleviate somewhat the level of care imposed on non-professional sellers. Other examples are Hungary, Norway and the Netherlands. To the contrary, in other countries, such as Finland, Italy and Spain, the possibility to differentiate seems to be explicitly excluded; once a party falls within a certain category, it has to abide by the applicable regulations (CSECL-IViR, 2012).

Even if it were seen as desirable to depart from a one-size-fits-all approach to consumer law and apply some differentiation, participants in peer platforms would probably benefit from greater clarity about the minimum levels of consumer protection that should apply among peers. What this level is will be ultimately also a political question, and may vary among sectors. Factors to be considered could include the goals and regulatory objectives for particular sectors, the level of detriment peers experience and the availability and effectiveness of alternative, non-legal remedies. To give but some examples: While it may be considered just and feasible that peers provide information about themselves, contact details and information about the goods and services, they cannot realistically be expected to make that information available in different languages, or take into account sector-specific information requirements in different nations. While it may be reasonable to suggest that both peer providers and peer consumers have a duty to cooperate in settling disputes, it could not be expected that the peer providers would provide the dispute resolution service.

4.3 Consumer law and peer platforms

Application of consumer law to peer platforms

How do consumer laws apply to the peer platform operators? A common argument against regulation of the platforms is that they do not provide the goods or services themselves, but merely connect the parties that do so (Rauch & Schleicher, 2015: 24). The reality is more nuanced. While most peer platforms do not offer the product or service themselves, in at least some models they have control over the core terms and conditions of the transaction, such as, for example, the price of the service on offer.

Even though the peer platform does not provide the primary good or service, in most cases the platform will still be delivering services to the peers in their own right. These can include functions such as advertising and marketing (including search and listings), the administration of reputation and review systems, the provision of messaging systems and dispute resolution services, as well as value-added services such as insurance, guarantees, extra customer service, extra certification, etc. Where access to a peer platform is a service in itself, consumer laws should apply, as is highlighted in the revised OECD E-commerce Recommendation which expands the scope to cover the practices through which businesses enable and facilitate consumer-to-consumer transactions (OECD, 2016). The revised Recommendation does not make clear exactly how its provisions should apply to these commercial practices (i.e. the activities of the peer platforms). However, one could expect that many of the provisions would apply in a straight forward way to the activities of the platforms themselves in their interactions with their peer users (e.g. advertising, marketing, payment practices and dispute resolution services). Less obvious is whether or how the provisions in the Recommendation could impose responsibilities on the platforms for the actions of the peer users (as discussed below). For example, problems related to drip pricing may have more to do with the way the platform structures the transaction than price set by the peer provider (ACCC, 2015).

When applying existing rules to peer platforms it is important to keep in mind that the rules were written for traditional B2C transactions, and may not fit new forms of peer commerce (Business Innovation Observatory, 2013: 14). In the worst case, their application could put a brake on innovation and activity that is beneficial to consumers. Some question the need for the application of existing rules, arguing that through expanding the range of options and information available to consumers, peer platforms are removing the need for regulation (Koopman, Mitchell, & Thierer, 2014: 5). Market parties (including consumers) may find their own ways of ameliorating problems. And finally, regulations can also invite regulatory capture and function as barriers to entry for new, innovative players (OECD, 2015b; Koopman, et al. 2014: 10)

Put differently, the question of what regulations to apply or how to apply them can implicate broader policy objectives related to competition, the environment or employment. A significant element in the ongoing legal controversies around services such as Uber or Airbnb, for example, is the resistance from established players who feel that they are disadvantaged vis-à-vis peer platforms that serve the same markets but may not be obliged to comply with the rules that apply to established industry players. While increasing numbers of jurisdictions are working to confront these issues, there remains considerable uncertainty. The interest of policy makers in stimulating innovation and investment in start-up firms may be relevant in considering the implications of different approaches to applying consumer regulations, though the underlying objective of ensuring consumer trust should be a constant.

The role as intermediary

Apart from the questions about peer platform responsibilities for their own representations, activities and services, is a question about whether they should be accountable for the activities of the peer providers using their platforms. Aggrieved peer consumers might find it difficult or even impossible to seek redress from the peers providing the goods or services. For example, they may not be able to easily contact peer providers residing in another country or speaking another language. Or, peer providers may simply not able to cover the claims, e.g. because of a lack of financial resources. In such situations, it can be attractive for peers to be able to turn to the peer platform (Angelopoulos, 2013; Helberger, et al. 2009: 39).

For peer platforms, the prospect of being held liable for the activities of their users holds considerable financial and legal risks, particularly in situations in which peer platforms exercise little control over the way peers interact, negotiate and execute tasks. There are some policies and regulations in place to address intermediary liability. An early example was the Communications Decency Act of 1996 in the United States, which provided immunity to ISPs for third party content posted by their users. In Europe, the E-commerce Directive foresees liability exemptions for certain categories of intermediaries, including ISPs, caching and hosting services (European Commission, 2003: 12-13). The OECD Recommendation on Principles for Internet Policy Making (IPP Recommendation) recognises the fundamental role that appropriate limitations on liability for Internet intermediaries has played the development of the Internet (OECD, 2011b). At the same time, the IPP Recommendation also recognises the important role that intermediaries can play in addressing misleading and unfair practices, and identifies a number of factors relevant to achieving a balanced approach.

The purpose of the relevant provisions in the EU E-Commerce Directive is to define the conditions under which the three categories of intermediaries (for peer platforms the category of 'hosting services' is the most likely)[11] can be held liable for the activities of their users. In short, hosts cannot be held liable for the activities of their users as long as they have no actual knowledge of illegal activity, or, upon such knowledge act expeditiously to remove or disable access to the information. What is more, EU Member States are prohibited from imposing general, ex ante monitoring obligations on intermediaries. Comparable provisions exist as well in the United States, although on a more fragmented, sectoral basis (Hoboken, 2012).

One structural problem with the liability exemptions for hosting providers is that it may create disincentives for peer platforms to engage in pro-active monitoring or quality and safety control measures (Helberger, et al. 2009: 50). Greater levels of knowledge and involvement on the part of the platform put at risk their ability to rely on the application of the safe harbour provisions. This is, for example, the reason why many peer platforms that host user generated content refrain from engaging in pre-editing, or making sure to place such content in a separate section of the website (Esmeijer, et al., 2012). For some peer platforms the question is probably theoretical: to the extent that a peer platform has implemented a payment system, or identifies "super hosts", or sets the prices for services or defines the terms and conditions under which peers interact, they are likely to fall outside the provisions of the hosting exemption. Where peer platforms fall outside the statutory limitations on liability, the question of whether there might be a legal basis to hold them liable for the actions of their users is a question that would need further consideration and will not likely be subject to a clear and generally applicable rule.

Shared responsibilities

As described above, peer platforms have put in place various mechanisms to protect peers, regulate their behaviour, and build trust. Peers and peer platforms may need to work together to use the technical and legal infrastructure and arrangements offered by platforms to achieve consumer protection goals. Finally, making sure peer platforms are safe to use also aligns with the incentives of peer platforms and the expectations of peers. These are all arguments that might council in favour of policies that encourage peer platforms to take responsibility for providing their peer users with the knowledge and means to behave in ways that comply with essential consumer protection principles. Possible elements of such an approach could include effective reputation, monitoring and feedback mechanisms, educating and informing peers, to make sure peers properly inform other peers, establish secure ways of communication and mediation, and make sure peers can be identified in case matters go wrong. This would suggest that the burden of offering a reasonable level of consumer protection is a shared one (Helberger & Van Hoboken, 2010: 105; Miller, 2016: 22). Making consumer protection effective in peer platform markets points towards a model of co-operative responsibility, which would need to be reflected in the terms of use, values, behaviour and organisational measures put in place. Many peer platforms have already made a head start in that direction.

5. CONCLUSIONS

Digital technology and the arrival of specialised peer platforms allow users to engage in peer transactions, and to do so on a growing scale. Peer platforms can bring consumers significant benefits. By unleashing the power, skills and underutilised resources of peers, peer platforms can generate financial benefits, increase choice and improve consumer experiences. They can also contribute to the realisation of a host of broader public policy objectives, such as making products and services more affordable for disadvantaged groups in society, contributing to the more sustainable use of resources, stimulating travel and cultural exchange and fostering innovation, competition and social cohesion. As such, peer platforms can be a means to advance consumer welfare.

But as in all markets, consumers can also experience detriment. Some types of consumer detriment may resemble the challenges that consumers experience in more traditional markets. Arising out of information asymmetries or actual misrepresentation, products and services may not live up to consumer expectations and practical difficulties may be encountered in obtaining redress. Other difficulties may be more particular to the data-centric operations of the peer platforms, relating for example to privacy, reputation and switching costs. At this stage, there is not sufficient evidence to state with confidence the kinds and extent of consumer detriment, or understand more generally what sorts of experiences consumers are having on peer platforms, and further research is needed.

Although there is significant diversity among peer platform markets, a number of common characteristics contribute to the challenge of applying a legal framework fashioned for a traditional B2C model. In peer platform markets, consumers may have a far more active role not only as consumers, but also as producers or reviewers. Another key dimension of peer platform markets is the prominent role of platforms. The main function of these intermediaries is to match up peer consumers with peer providers to facilitate transactions, rather than provide the goods or services themselves. This is a different role than a traditional retailer or manufacturer. A third key element is the data-centric technology that is central to that functioning of the platforms. While this is common to e-commerce markets as a whole, it does bring its own set of consumer issues.

The traditional objectives of consumer protection are relevant to peer platform markets: peer consumers will depend on easy access to relevant information to make informed choices, fairness in the terms of the transactions, and the availability of safe payment options, effective remedies and dispute resolution. It may be necessary, however, to distinguish between those objectives and usual ways in which the rules developed to achieve those objectives are applied. The tools that traditional consumer laws provide may not always be a good fit to the situation of peer platforms. The analysis above suggests that policymakers are presented with a set of key issues for further research and consideration in determining how to apply and adapt existing rules, which extend as well to the monitoring and enforcement of those rules. Two inter-related issues present themselves for further work at the outset:

- How well are the initiatives put in place by peer platforms to build trust among consumers working? Can we assess the effectiveness of pre-screening and verification functions? What about the reputation and rating systems? How well do the guarantees, insurance programmes, and payment protections work? How effective are the community guidelines, and dispute resolution and redress systems? And how can policy makers ensure that these mechanisms are effective in protecting consumers and promoting informed choices?

- How do these types of trust-building mechanisms interface with existing consumer laws and other types of consumer protection and public safety regulations? How do they compare to other, more formal types of self-regulation, which often involves codes of conduct, accountability measures and enforcement mechanisms? To what extent can these initiatives be considered an effective substitute for consumer protection laws and regulatory oversight?

A number of challenging legal questions can be raised as well. In many instances, consumer law will not apply to the relationship between peers, because the activities of peer providers would not be considered that of traders or professionals. But making that determination is not always easy. Participants in peer platforms would benefit from further guidance on:

- What are the criteria for determining when commercial peer activity falls under the ambit of consumer laws? How can consumers know when they are dealing with amateur sellers or providers versus professional sellers and providers?
- When peer providers are considered as needing to comply with consumer protection laws, should the rules and standards apply in the same way as would be the case for a more traditional business? Many of the requirements imposed by consumer laws will not be well adapted to the capabilities of peer providers – can specific guidance be provided in such cases?

Regarding the applicability of consumer law to the peer platforms – who are clearly businesses – consumer law should be considered to apply to the basic offer of services to peers (matching, screening, search functions, pricing, etc.). These would include, for example, rules about unfair commercial practices and prohibitions on deception. The revised OECD E-commerce Recommendation indicates as much, expressly including certain business practices that facilitate consumer to consumer transactions. But determining how the full range of consumer protection provisions apply is not obvious. Allocating responsibility among various peer platform marketplace participants may vary depending on factors such as consumer expectations, the degree of sophistication of the peer providers, and the level of involvement by the platform. Further experience and reflection may be needed to determine:

- What responsibility should a peer platform bear for consumer injury arising from transactions undertaken through the platform? How might such responsibility vary depending on the type of peer platform?
- To what extent peer should platforms be held accountable for the behaviour of peers on their platforms? Do they have a role in ensuring that the peer providers on their platforms comply with acknowledged principles of consumer protection? How could such a responsibility be articulated, given the dynamism and variety of these marketplaces?

More broadly, discussion may be needed about broader social issues raised, for example, about the opacity and fairness of algorithms, digital exclusion and the importance of digital competency if peer platform markets are to maximise their possible contributions to economic and social welfare. Peer platforms come in all forms and constellations. In some situations, the underlying business model is better suited for the application of consumer law than in others. Determining how to ensure that traditional consumer protection objectives are respected in ways that build the consumer trust needed for peer platforms to flourish is now an important policy challenge. Successful approaches will avoid dampening the innovation reflected in markets whose participants fall outside the traditional business-to-consumer dynamic.

NOTES

1 A distinction can be drawn between platforms that operate as ‘asset hubs’ that own physical assets such as cars or bikes and loan these to peers (e.g. ZipCar or BikeShare or the French Velib); and peer platforms, that do not own assets themselves but establish a pool of peers that own particular assets or possess certain skills. The asset hubs resemble in many respects the traditional business model of car rental firms or hotel chains, with the difference of a higher degree of organisation of their customers, now peers, as well as a higher degree of disaggregation (instead of renting a car for an entire day, it is also possible to rent it for an hour, one way, together with others, etc.) (Rauch & Schleicher, 2015: 13).

2 Some peer platforms are non-profit or not primarily profit-oriented, such as Freecycle Network, Couchsurfing, LandShare, IfWeRanTheWorld or Craigslist. While there may be some issues of consumer protection raised by not-for-profits (e.g. matters of data protection, communications security or fraud), because their major focus is not on the selling products and services to consumers they are considered outside the scope of this paper.

3 PriceWaterhouseCoopers, for example, estimate that Airbnb is valued at 13 billion USD, more than traditional players such as Hyatt or Wyndham Worldwide, p. 23; and Uber operates in more than 250 cities worldwide and was valued in February 2015 at 41.2 billion US dollar. PWC further suggests that the five key sharing sectors – travel, car sharing, finance, staffing, and music and video streaming – have the potential to increase global revenues from 15 billion today to approximately 335 billion USD by 2025.

4 For a discussion and overview of some of the current regulatory responses see Miller (2015).

5 See the example of Airbnb: the so called “super hosts” are often able to ask higher prices and are more likely to attract clients, among others on the basis of their user reviews, their level of engagement and participation in the network.

6 The Deloitte paper discusses two different types of mechanisms used by platforms: (1) Enforced quality – those rules imposed by platforms that mandate certain standards or provider history (such as qualifications, absence of criminal record, or standards of vehicle or accommodation); and (2) Reputational quality – mechanisms developed by platforms to allow users to rate each other and develop a ‘reputation’ for the quality of service provided.

7 See e.g. http://pages.ebay.de/rechtsportal/index.html (German version) and http://pages.ebay.com/sellerinformation/index.html (US/international version)

8 Taking the example of eBay again, on its German site eBay does inform about a relevant German judgement about the responsibility of traders on eBay. eBay, however, neither clarifies when peers actually do fall under that definition of trader. Instead, it refers to the original version of the judgement, which will be incomprehensible for most users. http://pages.ebay.de/rechtsportal/index.html (German version visited on 6 September 2015).

9 A more or less identical definition can be found in the Unfair Commercial Practice Directive.

10 Examples include: Philadelphia (http://www.phila.gov/Revenue/businesses/taxes/Pages/HotelTax.aspx); San Francisco (http://www.staywyse.org/2014/10/08/san-francisco-legalises-regulates-airbnb-with-7-4-vote-lots-of-amendments/) Hamburg (http://www.newsweek.com/nyc-battling-airbnb-home-sharing-firm-got-green-light-amsterdam-249256); and Quebec (http://www.cbc.ca/news/canada/montreal/airbnb-montreal-quebec-law-67-1.3351848).

11 According to Art. 14 of the E-Commerce Directive, hosting services are services whose activities are "of a merely technical, automatic and passive nature", which implies that the information society service provider has neither knowledge of nor control over the information which is transmitted or stored.

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