The challenges of regulation of the sharing economy

The growth of the sharing economy offers its users the possibility to enjoy the benefits associated with this new way of doing business, from better prices, to greater flexibility, to a more efficient use of underutilised assets.[1] However, all that glitters is not gold: business models related to the sharing economy also pose new and exciting regulatory challenges. This should not surprise us, considering that the current regulations have not yet been fully adapted to such business models. Besides, these business models did not even exist when many aspects of the regulatory framework were designed, such as consumer protection rules or the taxation framework.

Thus, the challenge that governments face is significant. In fact, there is already a debate regarding the possibility of creating a specific regulatory framework that reflects the new arrangements specific to the sharing economy. In this article, we classify the challenges faced by regulatory agencies into three categories: challenges related to consumers, those related to companies and those related to the competitive framework that determines the relationships between consumers and companies.

Let us start with how the regulation of the sharing economy should focus on aspects concerning consumers. There are already some figures available which can help us to assess how consumers perceive this phenomenon. The results of a survey conducted by the European Commission revealed that, in 2016, more than half of respondents were aware of the collaborative economy, but only 17% had used the digital platforms which coordinate these activities.[2] In this same survey, individuals who were aware of the sharing economy were asked which aspects of these new business models they considered the most unsatisfactory. Two out of every five agreed that one of the main drawbacks as consumers was the lack of knowledge about who should be held responsible for any problems that might arise when entering into a transaction.

This response perfectly exemplifies the existence of gaps that give many consumers a certain feeling of uncertainty when using goods and services provided by the sharing economy. In transactions within the traditional economy, consumers are protected by various rights bestowed on them by the regulatory framework which clearly define how transactions with companies must be carried out. In the collaborative economy, however, the responsibilities of each party involved in transactions are not usually well defined. Therefore, situations can arise in which consumers cannot claim a refund for a product, they do not have all the information regarding the nature of the product or service that they expect to receive, or in which the product or service does not comply with minimum health and safety requirements. This latter situation could occur, for instance, in the case of platforms which allow users to share meals prepared in individuals' homes. Yet the challenges of regulation are not easy to overcome: is it appropriate for the private kitchens of these amateur chefs to have the obligation of passing the same hygiene checks as restaurants? Not necessarily, given that such regulation could create a very high barrier to entry, which would discourage the use of these activities. One argument used to prevent over-regulation in the sharing economy is that it can «self-regulate» through the different reputation and certificate models which enable users to rate one another, thus ensuring minimum quality and safety standards in a decentralised and informal manner. However, there are limitations to these methods, since it is not always possible to verify the truthfulness of these ratings. This example highlights the need (and how difficult it is) to define a regulatory framework to protect consumers, without discouraging innovation and the development of these business models.

We will now consider the regulation of the sharing economy in relation to businesses. One point to bear in mind is that companies in the sharing economy currently operate under a regulatory framework that was not designed specifically for them. This leads to regulatory gaps, which can make it difficult for tax agencies to trace transactions, thus favouring an increase in the submerged economy. The regulation should therefore be able to distinguish correctly between transactions involving non-professionals and those involving companies that use the platforms to sell their goods or services while reducing their tax burden. In this regard, the non-binding recommendations of the European Commission consider it good practice for member states to establish minimum thresholds, above which providers cease to be considered non-professionals and are treated as companies for the purposes of the legislation and taxation rules. Nevertheless, this proposal lacks specifics, since the recommendations do not determine what these limits should be, or even what metrics should be used to measure the thresholds, which are left to each member state (or even to regional and local authorities) to choose.

1. See the article «The sharing economy: from emerging phenomenon to a key part of the digital revolution» in this same Dossier.
2. See European Commission (2016), «European agenda for the collaborative economy - supporting analysis», Commission Staff Working Document.

At the tax level, there is a need for greater harmonisation across Europe. On the one hand, it is well known that the lack of coordination between EU member states enables some companies to benefit from the more favourable tax regimes. On the other hand, the regulatory segmentation between countries makes it difficult for many companies linked to the sharing economy to expand internationally. The scalability of these platforms is a key factor in their development and adapting to each member state's regulatory idiosyncrasies limits this scalability. As a result, online platforms in Europe are smaller in market capitalisation and scope than those in the US.[3]

Finally, with regards to the competitive framework, the emergence of these new companies can improve the situation for various players involved in the sharing economy. Their entry into the market has increased competition in each sector, which directly benefits consumers, who have a wider variety of suppliers to choose from, often at lower prices. Traditional competitors can also benefit from the entry of these new players if they are able to incorporate the disruptive technology into their business model and thus improve their productivity or reach a greater number of consumers.

However, the new business models pose at least two challenges for maintaining a proper competitive framework. The first is the lack of competition that can occur between companies in the sectors in which platforms linked to the sharing economy are emerging. This possible absence of competition is due to the fact that these platforms are based on interaction between different users and they generate what is known as network effect: the utility of a good or service increases with the number of users.[4] As such, these markets may end up being dominated by a relatively small number of companies. It is therefore essential for the regulatory framework to take the idiosyncrasies of these activities into account and to ensure a healthy competitive environment that is free of monopolies, in order to prevent innovation from being restricted.

The second challenge posed by the emergence of new business models related to the sharing economy is defining a competitive framework that is equally rigorous for all companies in order to ensure a level playing field. As we have discussed, some platforms associated with the sharing economy have found loopholes in the current regulatory environment that have enabled them to gain certain competitive advantages (such as a lower tax or administrative burden). The challenge for regulators is to establish a flexible and agile framework which stimulates innovation and activity in the sharing economy without undermining legal clarity, which is essential in order for all players to be on an equal footing. This is clearly a difficult task: regulators will have to tread very carefully to find the best way to combine the need for greater flexibility, on the one hand, with the safeguard of legal certainty, on the other.

In addition to the complexity of all the challenges described in this article, these platforms are innovating at an astonishing rate – much faster than the regulatory authorities can adapt. As a result, to date, the regulation has been trailing behind the changes in the business models. The new regulatory framework should therefore be able to contain the problems mentioned above, while also seeking to remain relevant in relation to the future challenges that innovations will pose.

In summary, the sharing economy has brought many opportunities for consumers and businesses, but it has also created uncertainty for consumers, businesses and the competitive environment of the economy. What is certain is that it is here to stay. Authorities should therefore adapt the regulation to fit this new paradigm, and they should do so fairly, quickly and responsibly.

Ricard Murillo Gili
CaixaBank Research

3. See G. Petropoulos (2017) «An economic review of the collaborative economy», Bruegel.
4. As an extreme example of a network effect, when the telephone was invented, the consumer who purchased the first one was not able to use it. However, as other consumers bought the new device, the utility of the first consumer increased as they were able to make calls to other people.