

Consumer Protection in the Digital Economy and Its Legal Challenges

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Abstract

The 21st century is the era of the digital economy and technological achievements. Digital business models have created unprecedented socio-economic relationships and quickly dominated the market share of traditional business models in the same industry. These new business models are praised for their economic effects. On the contrary, they are criticized as the parties involved and the relationships created seems to be moving away from the norms determined by applicable business laws. Facing with the digital economy and its business models, many governments are confused because they have not found yet the right way to adjust them. Regarding the relationships between the parties of digital business model, how to protect legitimate interests of consumers is one of the most essential legal issues that has attracted widespread attention. To answer this question, the article will examine and analyze the legal role of consumers in the relationship with other parties, thereby finding out the legal challenges and giving suggestions on building a legal framework to protect consumers in the digital economy.

Key-words: Digital Economy, Digital Business Model, Consumer Protection, Legal Framework, Challenges, Uber, Grab, Airbnb.

1. Introduction

Right from the early years of the 21st century, the fourth industrial revolution has quickly shaped and affected all the aspects of society. The combination of artificial intelligence and digital technologies and its applications has spawned new, unprecedented socio-economic relationships. Digital economy with many alternative names such as sharing economy, peer to peer economy, renting economy, and gig economy, or on demand economy... is one of the central achievements of the industrial revolution. It has created three-sided business models, in which the digital platforms act as digital intermediaries in transactions between service providers and consumers (Kane, 2016).

No matter somewhat difference in the names, the ways of organization, and the areas of operation, all digital business models exhibit the same new philosophy of *owning less and renting more, together exploiting the available assets for mutual benefit* (Codagnone and Martens, 2016). Since its inception, digital business models have quickly overwhelmed and dominated the market share of traditional ones in the same industry. It is not difficult to realize that the passenger transport business models of Uber, Grab, Lift... are causing great pressure on the survival of traditional taxis; Airbnb is gradually occupying the average hotel segment in the residential areas of the cities.

There has been controversy about the role and contribution of the digital economy to the socio-economy. On the one hand, digital economy is praised as a great achievement of technology applied to human life, helping to exploit the assets that are either excess or not used up at full capacity, enabling their owners have more jobs and income; giving consumers more optional prices for the same service; increasing the consumers' power in relation to the service providers (Koopman et al., 2015). On the other hand, there have also been many criticisms that digital business models are challenging the governments and society by disrupting traditional business lines, creating unfair competition, exploiting the service suppliers, in fact are the workers, and especially not interested in consumer protection (Ganapatia and Reddickb, 2018). The debate has not yet to come to an end since most countries have not had the final conclusion about the digital economy and how the governments treat its business models. However, consumer protection in the digital economy is a common, urgent issue that needs concern of all countries.

In digital business models, only digital platforms meets the requirements of the traders, the other peer partners (including service providers and consumers) are individuals who use digital platforms to transact with each other. This peer to peer relationship is shown in the consumer to consumer business model (C2C) (Jacquemin, 2019, OECD, 2014). This core factor has led to the concerns about how to protect consumers in digital business models, as the current legislation only aims to protect consumers in their consumption transaction with traders in the traditional business model (B2C). This raises questions for the lawmakers about how to deal with requests for the right to information, the right to protection of personal information, the right to claim damages, and to resolve disputes between the service providers and the consumers (Jacquemin, 2019).

In spite of later appearing in Vietnam than in developed countries, typical business models, such as Uber, Grab in the passenger transport and Airbnb in the short-term rental sector, have quickly dominated the market, attracting mixed attention from the public opinion, from competent agencies and the lawmakers, the legal scholars, and the economists. Like other countries where digital business

models are present, consumer protection is facing unparalleled challenges that require legally extensive analysis and interpretation.

This article will examine and analyze the nature and characteristics of the digital economy, showing consumers' position in relation to digital platforms and service providers. Thereby, the article will analyze the consumer protection requirements and the legal challenges that the existing legal system is faced with to give suggestions on how to establish a legal framework for customer protection. In the scope of the study, the article only mentions the typical digital economic models that are widely available in the world and in Vietnam such as Uber, Grab and Airbnb without mentioning digital business models in other areas like peer-to-peer leding or job sharing.

The article is divided into four parts: Part 1: Introduction, Part 2: Discussion, Part 3: Research results, and Part 4: Recommendations and Conclusion. The employed methodology is based on traditional legal methods, analytical and critical ones combined with insights from other disciplines including the use of comparative methods and legal classification.

2. Discussion

2.1. Perceptions and Characteristics of the Digital Economy

There has been no official definition of the digital economy so far. However, this phenomenon has gained interest, explanation and understanding from different angles due to its attractiveness. The digital economy, in the simple and linear understanding, is defined as a "digital economy based on digital technologies" (European Commision, 2013), and the digitalization of all economic aspects of the social life (EuroFound, 2018). From the technology perspective, digital economy is a paradigm of global information society that is centered on technology platforms, such as the internet, mobile or other electronic devices, used for producing, distributing, exchanging and consuming goods/services in global markets (Afonasova et al., 2018). From the socio-economic perspective, digital economy (sharing economy) is economic models built on crowd-based capitalism in which individuals decentralize through digital platforms for peer-to-peer sharing of goods, services, skills and other needs (Sundararajan, 2017). From another perspective, with less supportive, the digital economy is described as an increase in a large number of individuals providing services that puts negative impacts on the society in many aspects (Zale, 2016). Despite being viewed from many different angles, those definitions and explanations share the common that digital economy has the following characteristics:

First, unlike the traditional two-sided model with traders and consumers only, digital business models always have three parties together: digital platforms, service providers and consumers. From the viewpoint of the traditional business model, the role of the parties in the digital is unclear (Zale, 2016). In order to perform transactions in the marketplace, both service providers and consumers must complete two types of behavior (1) Completing the subscription to the network created by the digital platform through the act of accepting the terms of conditions or terms of service and (2) Performing specific service transactions between consumers and providers. This is completely unfamiliar to traditional business (European Parliament, 2017).

Second, digital platforms act as intermediaries, connecting service providers and consumers to each other and enjoy their brokerage commissions on successful transactions. However, unlike traditional brokers, these digital intermediaries are creating and controlling transactions by setting terms and standards of those, setting fees to be paid by the service users, and other relevant conditions (Katz, 2015).

Third, the digital economy attracts individuals with surplus or underutilized wealth to provide services (Wirtz et al., 2019). For example, they use their private car to join the Uber, Grab to carry passengers or to rent their excess rooms on Airbinb. However, the professional service providers such as taxi drivers or hostel owners can also join the network. This is blurring the lines between the professional and amateur non-professional providers. Short-term, casual jobs overtake and replace the stable jobs (Sundararajan, 2017).

Fourth, unlike contributing capital to a company, the participation in a digital platform does not take away the service provider's ownership of its assets (Barbu et al., 2018), so it is difficult to define them as employees or independent contractors of the digital platform.

Fifth, without legal intervention, digital platforms have set up their own system of rules to regulate the behaviors of the parties involved since the beginning of their operation. For example, they have used screening criteria to enroll service providers and customers in the network; and have encourages the customers to evaluate the reputation and the quality of the service of the drivers, the owners on the peer to peer review of Uber, Grab or Airbinb. If they do not reach a certain level of credibility, service providers will have to leave the network (Cohent, 2017). In addition, studies have shown that digital platforms are silently collecting information about users from social networks to encourage follow-up connections.

2.2. Legal Status of the Parties Involved in Digital Business Models

* Digital Platform

Digital platforms consider themselves as digital intermediaries, which perform the function of connecting information between service providers and service users, facilitating transactions between the two parties, rather than providing the goods or services themselves. (Nielsen and Ganter, 2018). For example, the Grab's Vietnam has claimed to be a technology solution provider (Grab, 2017). If only acting as intermediaries, digital platforms are not responsible for the risks in transactions between the service providers and the service users.

However, the way in which these digital intermediaries work is quite different from that of traditional commercial intermediaries. In fact, digital platforms are performing a series of functions including: (i) Proactively recruiting and enrolling parties into the trading network, setting the conditions to control the status of the parties, including data collection on the service providers and consumers, (ii) Suggesting or pricing services for the providers, (iii) Supporting payment and proactive sharing revenue, (iv) Applying service provider reward and punishment policies, and (v) Providing peer to peer review tools to self-correct the behaviors of the involved parties without legal intervention (Stanoevska-Slabeva et al., 2017).

In addition, digital platforms also build the user community, collect and accumulate their "social capital" through data that they have registered on other social networks such as Facebook, Tweeter, LinkedIn...(Woolcock and Narayan, 2000); thereby encouraging the connection and predicting the future effectiveness of the connections (Sutherland and Jarrahi M.H., 2018), which raises the concern that the information could be exploited in the disadvantageous manner to the users.

It can be seen that digital platforms are proving themselves to go beyond the role of a normal commercial intermediary by creating and controlling all transactions between service providers and consumers by using the rules set by themselves (Giaglis et al., 2002). The way digital platforms govern the relationships among peer partners raises the question of whether or not there is equality, freedom, voluntary agreements among the parties in the trilateral contractual relationship among digital platforms, service providers and consumers. This ambiguity has created negative effects on the socio-economic. A typical example is the case of the Uber and Grab when they did not pay sale tax as a passenger transport company but only claimed them as a technology platform providing transaction solutions. This has sparked a fierce conflict between the Uber, Grab and traditional taxi companies over unfair competition conditions. In Europe, in the case *Asociación Profesional Elite Taxi v Uber*

Systems Spain, SL., C-434/15 (2017) the European Court of Justice refuted Uber's arguments, and ruled that Uber was a transport service company (InfoCuria, 2017).

For the purpose of raising capital and increasing profits, most digital platforms have chosen the legal form of a public help corporation to implement their digital business model. It is clear that this form is consistent with the "Crowd-based capitalism" nature and facilitates the digital platforms to expand in terms of the number of people involved, the equity and the "social capital" as well (Sundararajan, 2017).

***Legal Status of Service Providers**

In the operational policies, the digital platforms such as Uber, Grab, Airbnb... often use the term *independent partners/ contractors* to recruit individuals providing services to join their network. This means that these will get their income by cases only, no social security such as minimum salary, vacation, sick leave, social insurance or occupational accident insurance. It also implies that the service providers must be liable for the consumers' risks happening during the consumption transactions. There is a deliberately neglected fact that under the tight control of a digital platform, the service providers do not have the same freedoms as the independent partners/contractors do. Researchers have found that these "independent partners" are actually participating in an "App-driven labor market" (Selloni, 2017, Lunden, 2018). However, these "on-demand laborers" are not recognized as workers (Reich, 2015). This argument has impacts on the governments and the judiciary of countries where the digital business models are present.

Individuals service providers find difficult to protect themselves from the pressures of the digital platforms. They are not also protected by the labor unions because they work independently and have little connection with each other even being in the same city or town (Koopman et al., 2015). The digital platforms often seek to limit the service providers' associations and the rights to pursue class action lawsuits. Uber, for example, introduced a mandatory clause requesting arbitration as part of a contract that drivers had to sign in order to join the network and get a job, which preventing them from initiating a class action lawsuit against Uber (Frankel, 2018).

This dependency shows that the service providers are not the independent partners of the digital platforms. However, under current Labor Laws in most countries, they are also not considered as workers for the following reasons: (1) They are not recruited through paid labor contracts, (2) They directly trade on their assets when joining the network and (3) They still have certain independence in deciding whether or not to provide services.

The controversial position of the service providers results in another legal corollary that under the current laws, it is also not possible to ask them to be responsible for the consumer protection since they are not traders. The nature of their transaction to consumers is C2C not B2C as traditional business transaction.

***Legal Status of Consumers**

Consumers or service users of the digital platforms is probably the least controversial parties involving in the digital economy. They are still determined by traditional legal standards compared to the two above mentioned parties. Digital business models are bringing both advantages and disadvantages to consumers. On the one side, they are benefiting from convenient, flexible transactions, and exceptionally, various choices of services at competitive prices compared to the same services offered by traditional sectors. Additionally, digital platforms empower consumers by engaging them in their self-regulation system through a peer to peer reputation feedback mechanism where consumers have the right to express their satisfaction through the ratings of service providers (Koopman et al., 2015).

On the other side, consumers also have to face a lot of disadvantages from digital transactions. They are:

Unstable service prices: Service prices may change undesirably because they are calculated by algorithms based on the supply and demand basis. For example, on the same route, Uber, Grab always offer a transporting price many time higher during peak hours than other times.

Asymmetric information: Like in traditional transactions, consumers are only provided with certain information by digital platforms about the services, so it is difficult for them to predict all the risks when deciding to enter into a contract (Dermawan et al., 2020).

Privacy of personal information: that the customers provide the platforms with information related to their personal identity and financial capacity such as their name, address, phone number, location, ID card number, social network account, card credit, bank account...to agree on the terms of service and to sign specific service contracts(calling a car, renting an accommodation...) via websites and electronic applications are most likely to be illegal stored and exploited by the digital platforms or to be leaked out due to a cyber attack or intentional internal leakage (Ranzini et al., 2018).

Personal safety and liability for damages: As analyzed above, the laws of most countries have not yet clearly defined the true legal status of the digital platforms and the service providers. However, there is an obvious problem that service providers are individuals, not traders. The service

provider and consumer relationship is C2C, so it is difficult to oblige them to be fully liability for the personal safety and compensate to the consumer's damages under the applicable laws.

It is also known that when disputes occur, digital platforms often plead the role of intermediaries to avoid their accountability and ask individual service providers and customers to deal with each other (OECD, 2016). The question is whether the digital platforms or the service providers are responsible for the customers' risks. Perhaps the most sensible answer is that both of these parties since they all benefit from the service delivery. The 2017 event of Grab's Vietnam voluntarily registering accident insurance for both the drivers and customers was a remarkable effort to improve the dark side of this digital business model (Grab, 2017).

Discrimination, in particular racism due to origin discrimination and/or physical disability: In multiethnic countries, these problems occurs easily. For example, as an individual, a white Uber driver or a white Airbnb host can reject a color customer and/or his/her physical disability through identifiable features ranging from her/ his personal appearance displayed on app. Also, a service provider might easily refuse to serve a customer with physical disability (ABC News, 2019). If the service provider is a company, not an individual, these unfairness should be prohibited and documented in the company's ethical code of conduct (Benjamin et al., 2017).

In short, it is obvious that neither the digital platforms nor the service providers are willing to take responsibility for consumer protection in the peer services relationships. Consumers are facing a lot of legal risks that they may not foresee or avoid when trading on digital platforms. Meanwhile, the current law does not have specific provisions to limit or address these risks.

3. Research Results

3.1. Legal Challenges for Consumer Protection

The above analysis has proven that consumers in the digital economy are facing risks of loss in peer-to-peer transactions. Therefore, protecting consumers with enforceable legal regulations is a very urgent requirement. In order to establish a legal framework for consumer protection, countries are facing the following legal challenges:

The first challenge is the lack of a defined legal status of digital platforms, service providers and their responsibilities to the consumers. As previously analyzed, determining the legal status of digital platforms is complicated as under the current laws, they can be considered as special

commercial intermediaries. In this status, they are not responsible for the risks occurring between service providers and consumers.

As an independent partners of digital platforms, service providers, actually just individuals, who provide services to the consumers via digital platforms, are not traders. Based on the applicable law, it is difficult to impose responsibility for consumer protection on this type of actor. In fact, an aggrieved peer consumer will find it difficult or even impossible to seek redress from the peers providing the goods or services (Angelopoulos, 2013).

It raises the question about whether digital platforms and service providers should be accountable for the activities of the peer providers using the platforms. This is possible because the behavior of the digital platforms completely transcends the role of a traditional commercial intermediaries. In fact, these platforms are traders that are trading services basing on the advantages of the technology platforms they hold through its peers' participation.

Service providers, in terms of their dependence on the digital base of work and income, can claim that they are the special workers of the digital economy. Of course, this also helps them to deny the obligation to compensate the consumers when damages happen. Therefore, it would be sensible for both digital platforms and service providers to share the responsibility of consumer protection as both benefit from the service fees paid by consumers (Miller, 2016).

The second challenge is the lack of an evaluation of the self-regulation systems provided by the digital platforms to assess its effectiveness in consumer protection. This system, through the trust building mechanism in the digital networks, such as the credit rating system, transaction screening and confirmation, claims settlement, insurance..., empowers the consumers and seems to orient towards consumer protection, but it is difficult to determine its effectiveness. The reason is that it is set up for the specific purposes of each digital platform, not based on the common standards of consumer protection, and it is not guaranteed to be enforced by the laws.

The third challenge is the need to identify the risks of compromising users' privacy. Data-centric technology helps digital platforms operate efficiently but pose a potential threat to the right of the users' privacy. Therefore, it is necessary to have regulations that force digital platforms and relating networks to be legally responsible if this information is exploited against the consumers and service providers as well.

The fourth challenge is to ensure the balance between protecting the legitimate interests of the consumers, service providers and digital platforms and those ones in traditional business models. When digital platforms are the subjects to the consumer protection laws, this does not mean that we can apply the same rules and standards of traditional commerce to these entities. Due to the creation

of the digital business models, many current legal requirements in general and consumer protection ones in particular are no longer suitable with the capabilities of the parties involving the digital economy. Therefore, it is necessary to have an adjustment rules or special instructions for application.

This means that there can be two parallel types of consumer protection in the same industry for the two different models: Traditional business models and digital business models. For example, there should be more preferential tax rates to distinguish the Airbnb host from a hotel owner, a digital platform from a traditional taxi company in order to encourage technological innovation and effective application in the socio-economic life.

3.2. Some Suggestions for Establishing a Legal Framework for Consumer Protection in the Digital Economy

For the above legal challenges, there are two possible options for establishing a legal framework to protect consumers in the digital economy as follows:

The first option, the government let the market self-regulate in an appropriate period of time as an experiment, and then intervene by laws when necessary. For instance, instead of actively intervening, the government authorities observe how the self-regulation system works in the digital business models over a certain period of time, and then conduct evaluation of its effectiveness in balancing the relationship among the parties for consumer protection. Based on the results, a legal framework for consumer protection could be formed to enforces the digital platforms and service providers. This resolution will take time to observe, evaluate and then to come to conclusion; especially, during the interim time, the courts and government authorities are likely to face the complaints of traditional business models on unfair competition, and class action lawsuits initiated by service providers to claim their worker status, or the consumers' complaints during this process. However, its positive side is that the relationships are mature enough, and all the parties want positive changes and comply with laws and regulations.

After the verdict that Uber was the transport service company of the European Court of Justice in 2017, the UK.'s Supreme Court, on February 19, 2021, upheld a ruling that Uber's drivers should be claimed as workers rather than independent contractors (Chan, 2021). Under this pressure, in March 16, 2021, Uber's UK. has issued a notice recognizing 70,000 Uber's drivers in the Britain as its workers entitled to a minimum wage, holiday pay and pension plans (Milligan, 2021). As an employers as well as a trader, surely Uber UK. will comply with consumer protection laws. However,

in many other countries, including Vietnam, this digital platform continue to maintain the partnerships, despite the increasing opposition from the company's drivers (Bùi, 2020).

The second option, the government determinedly shape the digital economy with its administrative orders and force the digital platforms to take responsibility for consumer protection. After the trial period of interim regulations, the government will formally express its views on the digital economy and enact legislation to regulate its business models.

Most governments, that regulate the digital economy simply in this way, have determined that digital platforms are traders doing business in certain socio-economic sectors in term of applying achievements of digital technology and creating new modes of business. This attitude has led to a tendency to treat digital business models with the same way to traditional companies in the same business sector. This approach, while making favorable for the authorities in their business management, is raising concerns about discouraging technological innovation and undermining the creative dynamics of the digital economy.

The case of Grab's Vietnam is a typical example of the second option. After four years (from 2016-2019) allowing Grab to experiment with a digital business model in the passenger transport sector, the Vietnamese Government issued Decree 10/2020/ND-CP on auto transport business and conditions for auto transport business. Accordingly, Grab and the digital platforms operating in the passenger transport sector in Vietnam are considered to be passenger transport companies and must comply with all the conditions to operate like traditional taxi companies (Nguyễn, 2020). This is an arguable legal document. The decree has received the support from traditional taxi firms for ending the endless debate between this sector and the digital platforms. Furthermore, it raises the concerns that the government has not recognized the differences between the Grab's business model, the similar digital platforms and traditional taxis. This could led to the elimination of technological innovations in Vietnam (Trang, 2020). In addition, the decree has not ultimately addressed yet the relationship between digital platforms and the involved parties. Since this decree took effect, Grab's drivers have still been in the status of "independent partner"; when an accident occurs, the consumers and Grab drivers only rely on accident insurance (Grab, 2020).

In summary, for both options on how to establish consumer protection legal framework aforementioned, it is important to note that the existing consumer protection laws are highly stable, designed for traditional business models, not for the newly creative models of the digital economy. Therefore, it is necessary to supplement regulations designed specifically for the purpose of protecting consumers in a very specific environment of the digital economy towards encouraging technological innovation. In order to do this requires, the policymakers and lawmakers should be

knowledgeable about how the digital economy works, to ensure that legal regulations do not delay the development of the digital technology and its applications in business sectors.

4. Recommendations and Conclusion

It cannot be denied that the digital economy and its business models have been bringing great material benefits and significantly contribution to the socio-economic development of many countries. What most remarkable thing is that, through the applications of digital technology, the sharing economy has adopted new modes of business operation and redefined the roles of parties in digital economic models, in a way, that are different from traditional business models. Accordingly, consumers are playing a more proactive role, but they still face many risks when entering peer service relationships. The most noticeable thing so far is that, in most of the operating policies, the internal regulations of the digital platforms, the issues of consumer protection has not been adequately addressed. It is required the central role of government to guide and establish the legal frameworks for the operation of digital business models, including consumer protection.

Nonetheless, it must be noted that digital business models have unique characteristics compared with the traditional ones in the same economic industry. Applying the current consumer protection laws designed for traditional business models is not the proper approach. The legal framework for digital economy in general and consumer protection in particular should be carefully developed and guided to ensure that it promotes technological innovations and contributes to the socio-economic development.

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