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AIRBNB AND UBER: LEGAL PLATFORM BUT ILLEGAL NETWORKED BUSINESS

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Abstract
Airbnb’s and Uber's popularity and scope of their networked business has significantly grown in the last few years. Both companies are engaged in sectors, which are regulated. The purpose of this paper is to discuss the legal issues related to Airbnb networked hospitality business and to Uber's networked transport business, with focus on EU member states solutions and Slovenian approach. The research was carried out from July 2017 to March 2018. We used the method of content analysis of secondary sources, methods of compilation and comparisons, analyses of qualitative data, collected in semi-structures interviews and explanatory case studies. The results show that Airbnb and Uber have become victims of their own success. The hospitality and transport business that participants perform using Airbnb or Uber platform do not comply with sectorial regulation of majority of EU member states. European Commission suggested some guidelines to solve the issues related with networked businesses. Moreover, European Court of Justice pointed out the exact solution on Uber's case. The research opens a debate on legal issues related to new technology-based business models and questions the rationale that stand behind legal solutions.

Keywords: networked business, P2P platforms, Airbnb, Uber, sharing economy, regulation

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Introduction

Few years ago, the emergence of networked business was hardly a topic of academic or commercial interest (Oskam and Boswijk, 2016). However, issues that appeared subsequently with the explosive growth of Airbnb’s networked hospitality business and Uber’s networked transportation business have significantly changed the interest of public,

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accommodation and transport sector, academics, European Union, policy makers and local governments on businesses of both companies.

The most visible forms of networked economy began in the United States. Due to the expansion of platforms to other countries, networked economy has become a global phenomenon (Schor, 2014). Europe is generally tuned to the stated values of fairness, sustainability, openness and cooperation. Thus, not all companies in the networked economy "family" were equally embedded in political, social and regulatory European contexts. E.g., the growth of Airbnb and Uber platform explosive growth led them to regulatory and political battles (Guttentag, 2015; Schor, 2014) or to formal legal disputes (Court of justice, 2017).

Airbnb and Uber developed their own platforms to allow service providers and users to connect to the benefit of both (Marr, 2016); however, the networked parties that are supported with Airbnb and Uber P2P platform do not always respect the traditional regulation of those particular sectors (Guttentag, 2015). Thus, Guttentag (2015) understands them as a part of the informal economy in accommodation and transport sector.

In existing literature – academic and professional – networked business of Airbnb and Uber is generally categorised as a part of sharing (or collaborative) economy (Botsman 2010, 2015a, 2015b; Schor, 2014; Heo, 2016; EC Exploratory study, 2016). Thus, the majority of academics explore different areas of sharing economy, related mostly to Airbnb and Uber. Some researchers investigate psychological approach of sharing; other topics are related to the characteristics of peer-to-peer (P2P) sharing transactions (Heo, 2016). Some focus on the *legal* and financial perspective, on Airbnb mostly (Dogru and Pekin, 2017; Heo, 2016; Guttentag, 2015; Zervas et al.; 2014).

The EU has recognised the complexity of the phenomenon of sharing economy and its positive and negative effects in the European market. The research carried out by the EU in 2016 on sharing / collaborative economy clearly showed that sharing economy provides new opportunities for citizens and innovative entrepreneurs[2]. On the other hand, it creates tensions between the new service providers and existing

[2] Sharing economy could add EUR 160-572 billion on the EU Economy (EC European Agenda, 2016). Over 191 million citizens across EU-28 spend EUR 27.9 billion per year on online P2P platforms; total peer revenues are estimated at EUR 17.3 billion. Peer consumers spend *most money on renting accommodation* (EC Exploratory study, 2017).

market operators (EC Collaborative economy, n.d.) and raises *issues on application of existing legal framework to new business models* (EC European Agenda, 2016).
In this paper, we look for answers to the following research questions: what kind of legal issues arise from accommodation and transport services performed through Airbnb and Uber networking platforms and how those issues have been solved in the EU member states, including in Slovenia.

Theoretical background

Business models, sharing / collaborative economy, P2P platforms, networked business

New technology and the Internet have opened a wide space for running businesses and brought new terms related to them. Some of the terms came into widespread use, e.g. business models, sharing/collaborative economy, networked economy, peer-to-peer (P2P) platforms, peer-to-peer economy etc. Schwab (2016) talks about on-demand economy. Those terms have been – just like technology – still in development; thus, scholars and practitioners do not agree, what each from the particular terms should exactly mean or comprise.

A common topic among scholars is that *business model* emphasizes "a system-level, holistic approach to explaining how firms 'do business'" (Zott et al., 2011, p. 2). Baden-Fuller and Haeflinger (2013) define the term as a system that solves the problem of identifying who is the customers of company products or services, how the company engages with the needs of their clients, how it delivers satisfaction and how it monetizes its value. This definition comes from Drucker's theory of the business – "assumption of what company gets paid for"; Drucker introduced the concept of business model in 1994, but never explicitly mentioned the term (Ovans, 2015).

The term business model was triggered by the advent of personal computers and the Internet (Ovans, 2015). The term is mostly linked to the technological innovation (Baden-Fuller and Haeflinger, 2013). Thus, those models, where business unlocks latent value of technology (Chesbrough and Rosenbloom, 2002), are usually named *technology-based business models* (Botsman, 2015a), internet-based business models, *technological platforms* etc. From 1990s on, some start-ups that launched their business models around technological platforms (e.g. Amazon in retail business, Booking.com, Airbnb in tourist accommodation, Uber, Lyft, Blablacar in transport etc.) have developed to mega corporations.

According to market structure technological platforms could have *peer-to-peer /P2P/* structure or business-to-peer/customers /B2C/ structure; their market orientation can be non-profit or for-profit (Schor, 2014). The EU defines three main *P2P business models* (EU Exploratory study, 2017):

- Hosting of listings (platforms do not get involved in the P2P transactions);
- Active management of transactions (platforms foster trust among peers to facilitate transactions);
- Platform governed peer transactions (platforms set one or more contractual terms for P2P transactions and exercise control over its performance).

Some of the P2P platforms are considered *collaborative or sharing economy*[3] and some are not.

The term ‘sharing economy’ entered the Oxford dictionary in 2015 (Heo, 2016; Botsman, 2015b,) and it is explained as the “economic system in which assets or services are shared between private individuals, either free or for fee, typically by means of the Internet” (Oxford dictionary, n.d.). In the past, sharing practices have been more common in working-class, poor and minority communities (Schor, 2014). With technology-based platforms in 21t[h] century sharing has become more accessible.

Sharing economy covers a wide range of digital platforms and offline activities, from financial successful companies like Airbnb – a P2P lodging services – to a smaller activity, e.g. tool libraries etc. (Schor, 2014). In most cases, technology is used to create the efficiency and trust to match millions of ‘wants’ with millions of ‘haves’ (Botsman, 2015a, p. 17). Participants create value from ‘idling capacity’ of assets: empty spaces on Airbnb, spare seats in cars on Lyft, skills and time on Taskrabbit (ibid.).

The European Union (EU) gradually builds its attitude toward collaborative / sharing economy in its documents. E.g., in European

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[3] The terms ‘sharing economy ’or‘ collaborative economy’ are mostly used interchangeably. Scholars and practitioners more often use the term ‘sharing economy’ (e.g. Zervas et al. 2016; Heo, 2016; Schor, 2014; Guttentag, 2015; Koopman et al., 2015 etc.). There is a minority of them who use the term ‘collaborative economy’ (e.g. Dredge and Gyimothy, 2015). In its documents, the EU uses both terms (European Parliament Briefing, 2015); although the term ‘collaborative’ prevails in its latest documents (EC A European agenda, 2016; EC Exploratory study, 2017).

Agenda on collaborative economy, the term refers to "business models where activities are facilitated by collaborative platforms that create an open marketplace for the *temporary usage of goods or services* often *provided by private individuals*" (EC A European agenda (2016, p. 3).

There are three categories of actors involved in it:

- Service providers (who share assets, resources, time, skills);
- Users of these services;
- Intermediaries, who connect providers with users and facilitate transactions between them on online platforms (ibid.).

In the EU, the sectors of sharing/collaborative economy are explored through four P2P markets (EC Exploratory study, 2017): sharing or renting of goods (e.g. Peerby), sharing or renting accommodation (e.g. Airbnb), sharing or hiring rides (e.g. Blablacar, Uber) and hiring people to do odd jobs (e.g. Yoopies).

Several authors emphasised that it is impossible to come up with a solid definition of sharing economy that reflects common usage (e.g. Koopman et al., 2015; Schor, 2014). Moreover, the picture what is sharing economy and what is not is increasingly confusing (Botsman, 2015b). While the majority of scholars and practitioners understand Airbnb and Uber a part of sharing economy (e.g. Schor, 2014; Botsman, 2015a and 2015b; EC Exploratory study, 2017), Oskam and Boswijk (2016) argue that neither Airbnb nor Uber comply with a concept of sharing. Both companies just created a commission-based web-platform for travellers and passengers, which is a far cry from the idea of sharing.

Rationales for regulation economic sectors

The principal rationale for regulation economic sectors is protecting consumer welfare: from externalities, inadequate competition, unequal bargaining power and other perceived market failures (Koopman et al., 2015). However, there is a question, if regulations that were justified on the grounds of consumer protection in the past are still needed today. In new market conditions, existing regulation can become barriers to innovation, new entries and entrepreneurship. (ibid.).

Koopman et al. (2015) expose that the historical analysis of regulation demonstrates that in practice regulation does not always live up to the normative goals of those who seek it in "public interest". In the real world, policymakers might implement (or not) certain rules due to their ignorance, sectorial pressure, private interests, lobbying etc. Moreover, legal solution may result in limiting entry for new entrants to the sector, raising rival's costs that suit to already regulated firms. One of the most

visible example is strict regulation of taxicab industry, which remains only to protect established incumbents from increased competition (e.g. in the form of Uber or Lyft). This is also true for many of the regulatory efforts prohibiting or limiting Airbnb and other innovative corporations (ibid.).
Development of technology-based business models from 1990s on in the existing regulatory framework are clear examples that companies running business on the base of new technology often *outpace the relevant legislation.* Therefore, they encounter issues associated with general legality (e.g. Paypal, Relay Riders, Uber) or taxes (e.g. Online Travel Agencies, Amazon) (Guttentag, 2015).

Legislation and taxation issues in sharing-driven businesses are particularly difficult to solve, because *new business models blur established lines* between (EC European Agenda, 2016):

- Providers and consumers;
- Employees and the self-employed;
- Professional and non-professional provision of services.

Methodology
The research started in July 2017 and was completed in March 2018. The methods of data collection and processing have been adapted to the research goals.

Data were collected from:

- *Secondary sources* – existing scholarly researches on the topic; media articles on Airbnb and Uber[4]; Airbnb and Uber websites; EU documents on sharing economy; Slovenian regulations on home-rentals in hospitality and transport;
- *Primary resource*s – qualitative data from two semi-structures interviews.

In semi-structured interviews, both interviewees were asked his/her position-specific questions on Airbnb only, because Uber has not entered Slovenia yet. We chose the representatives of two different interest groups – tourism regulator and tourism practitioner – who gave us relevant answers to the research topic. The *representative of tourism regulator* in Slovenia was asked the following: a) how does the Government of Slovenia view the Airbnb business and b) what

[4] Airbnb and Uber are privat companies and they do not reveal their business data and financial statements.

measures does the Government intend to undertake for Airbnb in Slovenia. The *Airbnb "host"* has been in tourist accommodation business for almost two decades. His company offers different types of tourist accommodation in the Slovenian capital on different reservation platforms, including Airbnb. We asked him: a) what is the difference if one offers accommodation on Booking.com or on Airbnb, and b) why Airbnb in Slovenia is so disturbing compared to traditional accommodation business.

The explanatory case study method was selected to point out the scale and the scope of networked businesses of Airbnb and Uber. The case studies are limited only to Airbnb networked accommodation business (homes – apartments, rooms) and Uber ride-hailing (taxicab) business.

Data were processed by using the method of content analysis, interpretation, comparison and synthesis.

Results

Results of the study are presented according to the research goals.

EU approach to legal and taxation issues of P2P on-line businesses

In EU-28, there are two major concerns for the authorities and market operators regarding P2P business in sharing / collaborative economy (EC European Agenda, 2016):

- Whether – and if so to what extent – under existing EU law sharing-driven platforms and service providers can be subject to *market access requirements* and
- Tax obligations.

National regulatory approaches of EU-28 member states differ in various sectors. Regulatory intervention is usually motivated by *varying public interest objectives,* depending on the type of service: protection of tourists, paying taxes, public safety, health and food safety, remedying scarcity of affordable housing for citizens etc. The common market access requirements are the following: authorization of the business, licensing obligations, minimum quality standard requirements etc. (EC European Agenda, 2016).

Under the EU law, market access requirements need to be justified and proportionate to specific account of the new business models and innovative services; one business model should not be favoured over the other (ibid.). Thus, member states should consider whether the objectives in existing legislation remain valid in relation to both: a) the sharing economy models and b) traditional service providers. Furthermore, EU member states should take in consideration:

- The specific features of sharing economy business models and
- The tools they may put in to address public policy concerns.

A specific feature of sharing economy is that *service providers are private individuals* that offer assets/services on *an occasional P2P basis*. In practice, micro entrepreneurs and small businesses also use the sharing-driven platforms. EU member states use various thresholds, developed on a sector-specific basis, to differentiate between professional services and P2P services. Thresholds may be, e.g. level of income and short-term rental days per year etc. (EC European Agenda, 2016). Thus, member states should establish sector-specific thresholds under which economic activity is considered a non-professional P2P activity. Furthermore, in cases where sharing-driven platforms are not only an intermediator but also a provider of the underlying services (short-term car rental service), the sharing-driven platforms could be subject to the relevant sector-specific regulation (including business authorization, licensing). Where service providers are required to obtain authorization based on national law, the conditions to obtain it should be proportionate, justified and objective. Thus, the member state *should review, simplify and modernize the existing sector-specific rules* and relieve operators from necessary regulatory burdens (ibid.).

Operators in sharing economy are subject to *taxation rules*: personal income, corporate income, value added tax and other sector-specific taxes (e.g. tourist tax). Due to the lack of information on service providers and insufficient exchange of information, the following difficulties appear (EC European Agenda, 2016):

- Identifying tax payers and
- Identifying the taxable income.

In the first step for solving the taxation issues it is necessary to distinguish between those acting in a commercial – professional – capacity from the individuals acting in a private capacity. To determine whether an individual acts in a private capacity or as a trader the main elements that have to be assessed are *continuity and professional nature* (EC Exploratory study, 2017). There are no relevant common criteria among sectors and member states to distinguish consumers from traders, thus, the judgement has to be done on a case-by-case basis.

Airbnb case study

Airbnb short-term home rentals

Airbnb presents itself as a community that creates a world where people are – when they travel – connected to local cultures and have unique travel experiences (About us, n.d.). It is an online platform on which people (Explore Airbnb, n.d.):

- Offer their spaces as accommodation for tourists;
- Offer various experiences (workshops, concerts, arts) and
- Market restaurants.

Airbnb community marketplace provides access to millions of unique accommodations from apartments and villas to castles and treehouses in more than 65,000 cities and 191 countries (About us, n.d.). In the accommodation sector – *homes* – the host of a space may be living there at the time of the rental, as with typical Bed & Breakfast (B&B) or may be absent (e.g. on vacation). Traditional B&B are permitted to list themselves, but blocks of identical rooms are not. The majority of listings are entire apartments and homes (Guttentag, 2015).

One can become an Airbnb host after creating a free-of-charge listing on Airbnb platform (with place description, photos and other details). Airbnb advices potential hosts to learn about local laws and rules, about other hosting responsibility and community standards (on security, safety and reliability) and hospitality standards[5] that help host to earn good guest reviews. The Airbnb service fee for the host is 3%. Airbnb Host Guarantee provides host up to USD 1 million of coverage in case property damage occurs. (Host on Airbnb, n.d.).

Airbnb website for 'homes' resembles traditional accommodation booking websites. A click on 'Homes' button enables a potential traveller to further research, which is based on different parameters: destinations, date, type of guests (adults, children), home type (entire place, private room, shared rooms) price range, trip type (for families, for work trips) and other filters (amenities, facilities, property type, neighbourhood etc.) (Explore Airbnb, n.d.). Each listing has photos, detailed description of the place (price, location, amenities, house rules, cancellation policy, grades and reviews, data about the host and contact information) (ibid.). Potential guest contacts directly his potential host. Guests are charged when a reservation is made (price and Airbnb commission up to 15 %),

[5] It is expected that guests get clean spaces and are provided with essentials, e.g. clean sheets, towels, toilet paper.

but host are paid 24 hours after the check-in. Payments are processed through secure Airbnb online payment system. The results of the Dogru and Pekin (2017) empirical study reveal the following guest value of Airbnb accommodation: space, number of photos, cleanliness, handicap accessibility, family friendliness, free breakfast, location and unique experience.

The prices for Airbnb homes are lower than the prices of hotel rooms. Guttentag (2015) reports that the median Airbnb rate for the entire home or apartment is generally lower than those in four and five-star hotels; for private rooms the rates are roughly comparable to those of one- or two-star hotels. The results of the study on Airbnb in four European cities (Amsterdam, Berlin, London and Madrid – in continuation: ABLM cities) for 2017 show a similar pattern (Oskam, 2018).

Drivers for Airbnb accommodation use are social appeal and economic appeal (Tussyadiaah and Pesonen, 2016). Value placement on Airbnb accommodation is closely tied to the price guests pay for it; thus, the cost-saving (economic) purpose may be one of the prime motives for guests to choose accommodation via Airbnb. Guests can also be motivated by other triggers. Staying in residence rather than in a hotel may provide some other benefits for them, e.g. access to kitchen, washing machine etc. By ‘living more like a local’ and interacting with hosts or neighbours, guests can feel more like travellers than tourists (Guttentag, 2015). Moreover, guests may value the sociability, trustworthiness and friendliness of their Airbnb host and the experience they enjoy during their stay. Airbnb argues that home-sharing visitors are likely to stay longer; overall, they spend more money and bring new income to the neighbourhood (Gurran and Phibbs, 2017).

Airbnb started their business in 2008, when three co-founders rented air mattresses to guests and offered breakfast in their apartment in San Francisco (Carson, 2017). Since then, Airbnb has become the largest accommodation firm in the ‘sharing economy’ marketplace (Dogru and Pekin, 2017) and the most successful P2P platform in the field of accommodation (Gutierrez et al., 2017). In the beginning of 2018, Highley (2018) reported on more than three million listings (including entire homes, shared rooms), which is more than the world’s largest three hotel chains combined (IHG, Marriot and Hilton). Blecharczyk (2018), one of the three co-founders of Airbnb, reported on more than four million listings.

There is evidence that the majority of home listings are entire apartments; furthermore, one host usually lists more than one apartment and some host earn substantial amount of money from that. Schneiderman (2014) reports for New York that the majority of Airbnb hosts in the city offer one or two homes; some hosts have tens or hundreds of them. The majority of night stays via Airbnb in New York comes from multi-listing hosts (hosts that list two or more properties on the Airbnb platform). In less than four years, those “commercial hosts” received USD 168 million (ibid.). In 2014, one host had 227 listings in New York and received revenue of USD 6.8 million during the period from 2010 to 2014 (ibid.). Oskam (2018) reports similarly for ABLM cities. In 2017, more than a half of the revenue from short-term home-rentals listed on Airbnb platform in ABLM cities was gained by multi-listing hosts (ibid.).

Airbnb has a strong backing from venture capitalists and it is highly integrated into existing economic interests (Schor, 2014). Airbnb market capitalization is valued at USD 30 billion; and the company has been recently labelled as an “alternative-accommodation mega platform” (Highley, 2018).

As Airbnb supply dynamic is more flexible than those in traditional accommodations are, its large ‘supply capacity’ might gradually create a substantial threat to the logging sector (Haywood et al., 2017). Hoteliers tend to see Airbnb as unfair competition because they are evading regulations (Heo, 2016).

Violation of regulations in the USA and in the EU

In the USA, the widespread illegality of Airbnb results from zoning codes and other restrictions many cities have to prohibit short-term rentals (e.g. San Francisco, New York etc.). Other restrictions may include short-term rentals to geographic areas, or limiting the number of time per year per residence etc. (Guttentag, 2015).

Cities have legitimate reasons for maintaining codes and restrictions. Firstly, streams of tourist may be unpleasant for the neighbours (noise, safety). Secondly, the short-term rentals limit housing supplies and therefore have a negative effect on the housing market; it raises rents (ibid.). Furthermore, when staying in traditional accommodations, guests often pay special accommodation tax, which is normally intended for certain tourism-related uses (for destination promotion). However, Airbnb guests are not taxed and they provide no revenue to local governments from this source. Moreover, even Airbnb hosts do not necessary pay income tax from their earnings (Guttentag, 2015; Schneiderman, 2014).

According to Schneiderman (2014), in particular USA cities (e.g. New York, San Francisco etc.) Airbnb has dramatically expanded the use of traditional homes to transient hotel rooms; some cities see Airbnb business as a threat to safety, affordability of properties and residential character of the local communities. The platform is also understood as the one that fuels a black market for unsafe hotels.

For the last few years, European metropolises have been faced the same problems regarding short-term home-rentals than cities in the USA: they are overcrowded with tourists who do not pay tourist tax and hosts who do not pay income tax. Thus, some European metropolises started to regulate short-term home-rentals[6] (European Parliament Briefing, 2015):

- Berlin has passed law banning unregistered short-term rentals and inspects properties to check if the law is correctly implemented.
- In Brussels, hosts have to ask permission from the commune and co-owners of the building; French cities (Paris, Marseille, Lyon) do not require any authorization from co-owners if the rented residence is the primary residence of the host.
- Amsterdam, London, Paris, Marseille, Lyon regulate short-term home rentals in a way more in favour of Airbnb peers; they mostly limit the short-term rentals through the number of rooms that can be rented and through the rental period. Amsterdam also limits the number of people that a host can accept (up to four).
- In Barcelona, the rentals fall under the laws on B&B type of accommodation; the rules require the host to be present during the rental period.
- In some cities, Airbnb is collecting the city taxes from each reservation.

[6] The name for this tipe of rentals varies from city to city.

Airbnb in Slovenia

Airbnb opened its platform for short-term rentals of private accommodation in Slovenia in 2011. The first listings in 2011 on the Airbnb platform were for accommodations in Ljubljana – 31 (Zabukovec, 2017); in March 2018, the platform showed over 1,500 listings (Vacation rentals in Ljubljana, n.d.). 74% of home listings in Ljubljana were apartments and only 24% private rooms; the data shows multi-listings and only less than 10% of hosts, who were officially registered according to the Slovene regulations; other rentals were illegal (Zabukovec, 2017).

There were around 1,400 listings on Airbnb Slovenia platform in 2015; a year later the number was close to 3,000 (Lončar, 2017). In March 2018, hosts listed more than 5,000 accommodation units (Find apartments in Slovenia, n.d.). Airbnb does not reveal the exact number.

In 2014 and 2015 guests spent 56, 000 nights in rented homes via Airbnb in Slovenia, in 2016 almost three times more (164,000 nights). On average, host received EUR 2,000 income from short-term Airbnb rentals (Lončar, 2017).

For the first few years, the hotel sector in Slovenia (apart from hostels) did not consider the Airbnb short-term home-rentals as competition (Rokavec, 2014). However, during the subsequent years, the situation has significantly changed. In 2017, there was a strong disapproval to Airbnb online business among Slovene hotel managers: Airbnb was labelled “intruder to traditional tourist accommodation sector”, an unregulated disruptor, a violator of existing regulations whose participants do not pay taxes (Lončar, 2017). Moreover, residents of city centre of Slovenian capital started to complain about overtourism in the city centre, limited possibility of long-term rental of apartments etc. (Ploštajner, 2017).

However, hosts had different opinion to hoteliers and locals about Airbnb. For them, Airbnb is a new reality. The solution should be how to adapt existing legal conditions to ease the short-term rentals for host and not how to prevent them (Zabukovec, 2017). Short-term rentals can become legal but there are too many obstacles to achieve this goal (Pravni SOS, 2017).

According to Hospitality industry act (ZGos, 2007 and on) short-term rentals of private apartments or rooms (to tourists) are treated as hospitality business. ZGos (ibid.) enables private individuals to rent rooms and apartments (maximum 15 beds) for a limited time in a year (5 months) if they are registered. There are around 20 regulations that private or business entities have to respect (general regulations and sector-specific rules) for running this activity. However, the major obstacle in multi-apartment buildings can be how to get a permission for short-term rentals from at least three thirds of co-owners (according to Housing law – SZ, 2003 and on).

Governmental discussion on how to make Airbnb networked business more host-friendly started in 2015 when the Slovenian government viewed Airbnb in the frame of sharing /collaborative economy. It was expected that a working group of representatives of relevant ministries should have come up with the proposal on how to adapt relevant accommodation-specific and housing regulation to make short-term rentals easier. The first attempt of ministries was to (STA, 2016):

- Differentiate occasional short-term rentals (which should have been treated as a collaborative economy) from professionals in tourist accommodation business;
- Adapt existing regulation to the new reality.

After a year, no solution had been found and the Ministry, responsible for the tourism, repeated the procedure with another group of relevant experts; there was no agreement reached among the members of the working group either (Lončar, 2017).

In 2017, the Slovenian government thoroughly changed the opinion on Airbnb networked business. According to Štravs Podlogar[7] (2017) the scope of short-term home-rentals in the European cities and in the cities in Slovenia (using Airbnb platforms) strongly indicated that Airbnb networked business had become a part of hospitality business. The original concept of sharing accommodations, implemented with "couch surfing, have been transferred to Airbnb business model". However, the Airbnb business model is quite different to couch surfing in its early age; there is not much sharing in it. Airbnb is just "a different way of marketing accommodations, a new distribution channel". It has all the characteristics of hospitality business: it is a B&B type accommodation, which has been already regulated in Slovenia (ibid).

Thus, the *problem is not in regulation, but in strict implementation of the regulation* (Štravs Podlogar, 2017). It is up to tax authority and inspectors to supervise Airbnb short-term home-rentals in Slovenia more strictly that they had in the past.

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[7] Interviewee is a secretary of state for tourism.

Štravs Podlogar (2017) pointed out that Airbnb accommodated guests are usually not registered, which raise the question of (national) security and safety and tourist tax avoidance. Residents of multi-apartments building in local community started to complain about the noise guests cause particularly in the evening or during the night.

Another important issue that Štravs Podlogar (2017) stressed is that Airbnb platform did not reveal enough data to identify the hosts. Thus, there is a question of how to get data on Slovene hosts and their earnings. In 2017, the Ministry responsible for tourism asked Airbnb headquarter in San Francisco for those data; it was questionable at that time if they would get it or not.

The government supports Airbnb networked accommodation business in Slovenia as far as it is transparent and as far as those involved in it respect the legal framework (Štravs Podlogar, 2017). Individuals have to be aware that Airbnb networked short-term rental is economic activity, accommodation business. If they decide to perform it, they have to respect relevant regulation and pay taxes (ibid.).

In the following months of 2017, the above mentioned standpoint of the Ministry for tourism become official. Government decided *to strictly control Airbnb networked business: if it is in line with existing regulations and if individuals or professionals pay taxes* (Čeh, 2017). However, this solution can be a temporary one, because there are still debates regarding the understanding of 'sharing/collaborative economy' models in the country and in the EU.

In December 2017, the Ministry of finance announced that it received the data from Airbnb headquarters about Airbnb hosts in Slovenia and their earnings. The financial authority called the hosts on the Airbnb and other accommodation platforms to self-declare their tax obligation and to follow other rules regarding short-term rental activity (Dnevnik, 2017); those who will continue with illegal practices could be fined from EUR 400 to 30,000.

Buda[8] (2018) revealed a detailed insight on short-term home-rentals on the Airbnb platform. "The basic principle and functionality of Airbnb and other platforms for vacation rentals (e.g. Home rentals, Vacation rentals

[8] Interviewee's company offers appatments in Ljubljana and market them in Booking.com paltform and Airbnbn platform.

on Trip adviser) is the same. However, Airbnb managed to make its platform more user-friendly than other similar platforms. The crucial difference between Airbnb and other online accommodation platforms is *Airbnb's story and the image it has managed to create in public"* (ibid.).

According to Buda (2018), the differences between Booking.com and Airbnb platform are the following:

- Booking.com platform enables more sophisticated pricing system; thus, it is more convenient for hotels and similar business than Airbnb.
- Booking.com support is actually available all the time, which is not always the case at Airbnb.
- Booking.com allows more listings in one building, Airbnb only one.
- Booking.com charges hosts 15% commission from the monthly revenue hosts gain from its platform, while Airbnb charges hosts 3% commission the day after the guest's arrival (guests pay commission of 6-12% or up to 15%).
- Booobing.com used to have more strict conditions for listing accommodation than Airbnb; however, even Boooking.com has become less strict as it was in the past.

Buda (2018) supports Airbnb business, however its lack of transparency of the host and avoidance of tax payments are its major disturbing factors:

- A host on Airbnb can be a private individual or a legal entity (professional). The detailed information is visible only to Airbnb headquarters in San Francisco. At Trip adviser, the host have to enter the identification number of its economic activity, which is visible to everyone. It is transparent who the host is.
- If Airbnb worked according to the local regulation, the prices would include the taxes. With tax included in the price, the prices for accommodations listed on Airbnb would be higher and Airbnb would lose a crucial competitive advantage.

Uber case study

Uber's taxicab service

Uber was founded in 2010 in San Francisco by Travis Kalanick[9] and Garret Camp (How Uber works, 2017) as a technological platform for

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[9] In June 2017, Kalanick, Uber's CEO, resigned. He's departure came after month of reports on his toxic workplace culture and occasional public embarasment (Alba, 2017).

connecting users – people who did not like the quality of traditional taxi services with drivers on demand (Gi, 2018). It understood its business as a smartphone-enabled »ride-hailing« service alternative to taxi cabs (Uber, n.d.). Uber's business model brought a revolution in the taxi industry across the world (How Uber works, 2017). Apart from taxi drives with the car, the company offers boats, helicopters and other means of transport on demand. It has recently launched a moto-cycle pickup service in Paris, a delivery service in San Francisco and ice-cream-truck delivery in some cities (ibid.).

Founders designed the following strategy to penetrate the markets: Uber offered a 50% discount for the first ride and its users make blogs and use social media to tell the community about benefits of Uber's service. In six months after the launch, Uber had already over 6,000 users (Abrosimova, 2014).

Uber has developed a unique business model from several other perspectives (How Uber Works, 2017; Glon, 2017). It:

- Offers different segments of cars: Uber X, Uber XL – for users who likes bigger models for more passengers, Uber Black – for those, who prefer black cars, Uber taxi – for users who are looking for cost-efficient solution, Uber SUV – for luxury segments;
- Offers special service to different segments: Uber for Kids – for parents who want their kids to reach home from school in Uber car; Uber for Senior Citizens – special features for senior citizens;
- Uses surge pricing technology: price for a drive is not fixed; if the demand increases, per mile price also increases; the new price depends on the number of available drivers and the number of requests for drives;
- Has determined the growth model: substantial amount of money is payed for incentives for customers and drivers in every city Uber penetrates; use of rock-solid management approaches from previous experiences, known brand, use of local advertising channels.

Uber users have to install a free-of-charge Uber application to their smartphones and create an online Uber account. The credit card number should be attached to the account. When a user needs a drive, they tap on the Uber app to show Uber her/his location. The app confirms the expected waiting time and other information on driver and their car. The payment is handled after the end of the drive. The app automatically pays the driver using the credit/debit card on user's account. After the ride the user rates the driver and vice versa (Gi, 2018; Glon, 2017).

The person, who wants to be an Uber driver must download the free Uber driver Application form and fill out information about themselves and the car. Uber driver must be at least 21 years old with in-state driver's licence and a few years of driving experience, insured, passed a background and criminal history check. Drivers are Uber partners. The car must not be older than ten years; it has to have four doors and have to pass Uber vehicle inspection. Not everyone is eligible to drive an Uber and not ever car is accepted (Glone, 2017).

At the end of 2017, Uber was present in 377 major cities around the world (Gi, 2018), had more than 50 million users, approximately 7 million drivers and performed on average one million trips per day; the company was valued over USD 70 billion (How Uber Works, 2017).

Violation of regulation

In the last few years, there were severe legal issues related to Uber online platform business in the USA and in Europe. In 2013, a group of Uber drivers in New York and San Francisco filed a lawsuit in federal court claiming that they had been misclassified as independent contractors. According to the Uber business model, drivers are not employees but their partners. After three years, Uber agreed to a USD 100 million settlement but the court declined to approve it (Alba, 2017). In 2017, lower courts in California and in New York adopted the decision that the drivers are employees; however, other federal courts in USA held the opposite opinion (Ben-Shahar, 2017). Thus, the case in the USA have not been closed yet.

In the EU, a professional taxi drivers' association in *Barcelona* brought an action before the Court of Justice of the European Union seeking the declaration that Uber (the company related to Uber Technologies) amount misleading practices and acts unfair competition (in 2014). The plaintiffs claimed that Uber drivers are non-professionals drivers who have no licence required under the regulation on taxi services (Court of Justice, 2017).

In 2016, *British judges* already disagree that Ubers drivers are independent contractors (Kerr, 2016). This decision had serious consequences for all ride-hailing companies, not only for Uber; the judgement was named "gig economy[10] brethren" (ibid.).

[10] Gig economy is a term for workforce in which somebody is hired thorugh a digital marketplace to work on demand on a short term agreement (Kerr, 2016).

Many countries and cities in the EU consider Uber's way of doing business as controversial: it does not check thoroughly driver criminal records, it is not responsible for breaching of the law of its drivers, its price reductions are unacceptable to traditional taxi drivers etc.). Therefore, some countries have already banned the company, e.g. some European countries, Canada (Vnacouver), Taiwan, Australia (in Northern Territory) (Dora, 2017; Rhodes, 2017).

Countries and cities in the EU that have already banned Uber taxi app are the following:

- In the *UK*, the City of London did not renew Uber’s licence in September 2017 due to company’s "lack of corporate responsibility in relation to a number of issues which have potential public safety and security implications” (Rhodes, 2017).
- *Bulgaria* has suspended Uber due to “unfair trade practices” (Rhodes, 2017; Vinocur, 2017).
- In *Denmark*, taximeters are obligatory, thus Uber was forced to pull out of the country (Rhodes, 2017; Vinocur, 2017).
- *Hungary* allowed Uber to operate for two and a half years until the decision that Uber drivers “breach regulations other taxi firms must adhere to”. The new law permits the Hungarian national communications authority to block Internet access to "illegal dispatcher services" (Rhodes, 2017; Vinocur, 2017).
- Uber was suspended also in *Finland, France, Spain* and the *Netherlands* (Rhodes, 2017).
- In Italy, there was only a short-term ban on Uber adopted on April 2017, but after a month, Rome’s court annulled it (Binnie and Jones, 2017).
- In Germany, courts have restricted Uber service in several cities (Vinocur, 2017).
- In March 2018, a Slovak court ordered Uber to suspend its operations in the country (Nacarikova, 2018).

In December 2018, Court of Justice of the European Union declared that intermediation service of Uber and similar ride-hailing companies must be classified as “a service in the field of transport” within the meaning of the EU law (Court of Justice, 2017). The Court decided that Uber exercises decisive influence over the conditions under which the drivers provide services. Such service is excluded from the scope of freedom to provide services in general, as well as from the directive on services in the internal market and from the directive on electronic commerce. Thus, the EU member states can regulate the conditions under which such services are to be provided (ibid.).

Uber commented the Court decision saying that the company "already complied with most of the region's transport laws, so its operations would not be affected" (Vinocur, 2017). However, it is still unknown to what extent the court decision has actually affected Uber business. As national courts have been increasingly forcing Uber to qualify drivers as full-time employees, conditions are getting much tougher (ibid.).

After Uber's sell of operation in China and Russia, the company recently announced (at the end of March, 2018) to sell its Southeast Asian business to bigger regional rival Grab (Aravindan and Somerville, 2018).

Uber in Slovenia

Slovenia was and still is one of the few countries in Europe without Uber transport service (Strniša, 2018). The government signed a letter of intent to cooperate with Uber in September 2016, but for the lawful provision of Uber services the law on public transport had to be changed first (Mlakar, 2017).

The existing regulations on hiring a vehicle with a driver in Slovenia are not adapted to Uber's service (ZPCP-2, 2016). Although the government did not see any particular issues on allowing Uber to enter Slovenia and on amendments of public transport act, the draft prepared by the government was sent to the parliamentary hearing only at the end of January 2018 (Strniša, 2018). In October 2017, one of the parliamentarian political parties prepared the draft of amendments on public transport act referring only to Uber's entrance to Slovenia, but the Ministry responsible for transport opposed it (Koletnik, 2017).

The Ministry's proposal for the amendment to the public transport acts from January 2018 includes the following changes of sectorial legislation (STA, 2018):

- Introduces the possibility of renting a vehicle with a driver;
- Defines regulation at the state level;
- Proposes a reduction of administrative barriers to the implementation of taxi activities;
- Waives the license requirements;
- Transfers the powers to regulate this area almost entirely to the local community.

Similar to other European countries, taxi drivers in Slovenia oppose Uber's entrance to the country and to the part of the amendments referring abandoning an obligatory licence (Strniša, 2018; Lukič, 2018).

Due to forthcoming elections in Slovenia it is difficult to assess when the amendments of public transport act will be adopted and what changes will be implemented to the existing draft.

Conclusion

In this paper, we focus on legal challenges of two companies who based their business on technological platforms: Airbnb and Uber. Both platforms facilitate business in sectors, which are regulated; this business environmental factor has led companies to regulatory and political battles.

The results of the study showed that Airbnb and Uber become victims of their own success. Due to the explosive growth, Airbnb became a threat to traditional tourist accommodation sector, Uber to traditional taxicab sector. Both companies have been labelled disruptors in the sector, companies, which exercise unfair business practices and do not respect state or local regulations and restrictions. The study shows that this is partially true. However, at the same time it opens a dilemma whether the existing regulations and rationales that lie behind them are still suitable in new market conditions for new business models.

The majority of scholars and practitioners understand Airbnb and Uber as part of *sharing economy*. The case studies clearly show they are just intermediaries between the group of people who offer accommodation or transport and those who need those services. The services are payable and both business models are for-profit. Thus, the content and the scope of Airbnb and Uber business clearly show that their platform is about networking “wants” and “haves” in accommodation or transfer sector and not about sharing in the traditional sense of the term “sharing”.

When discussing the *peer-to-peer (P2P*) platforms, the EU uses the term *collaborative* rather than sharing *economy*. According to the EU understanding, collaborative platforms – like Airbnb and Uber – create an open marketplace for activities that are facilitated by them. However, collaborative P2P platforms are supposed to be a market place only:
For the temporary usage of goods or services (on occasional basis)
Provided by private individuals.

The results of this research give a strong evidence that Airbnb hosts do not offer their homes only on occasional basis, and neither do the Uber drivers offer the transportation service in this way. Furthermore, more than half of the hosts on Airbnb platforms in the USA and EU metropolises are multi-listers with two or more “homes”. This fact indicates that they act as professionals and not as individuals. Hosts in Slovenia are not an exception to the rule.

We point out in this research that Airbnb and Uber platforms facilitate networking people in different sectors, which have their own specifics and therefore their own legislative frames. Even more, both sectors are regulated differently in different countries or even differently within each country (local regulations and restrictions). Therefore, Airbnb and Uber do not face the same legal issues and no general solution can be found.

According to the research findings, there are some differences as well as some similarities regarding the Airbnb and Uber networked business. In both, we recognised legal and socio-economic issues. However, in each case, the issues are of a rather different nature.

Airbnb and Uber *legal issues* are the following:
Airbnb:

- disregard of local short-term restrictions in some cities;
- breach of accommodation-specific and housing regulations;
- breach of guest registration regulation;
- tax payment avoidance – income tax, corporate tax, tourist tax;
- breach of unfair competition rules.

Uber:

- breach of licencing regulation on public transport (taxi drivers have to have public licence; Uber drivers don't have it);
- breach of employment regulation (Uber drivers should be employees and not partners).

Socio-economic issues in Airbnb and in Uber are different. Airbnb networked business changes image of local communities, causes price increase of apartments and shortage of long-term rentals. Uber's business decrease payments to Uber drivers compared to taxicab drivers and increases competition.

Novelties in business environment and new market conditions created mostly by ethnological business models has become a new reality in the EU, which is here to stay. The EU encourages:

- Development of new services and platforms;
- Providers of new services to ensure the consumer and social protection, to respect existing rules and other legal obligations;
- Companies that run the platforms to collaborate with competent authorities to facilitate peer compliance with the local regulations;
- Member states towards light regulatory touch that will allow the platforms operate and grow.

Discussion

Innovation, new technology and technology-based business models made regulators face several challenges, e.g. socio-economical, legal, ethical etc. Several examples from the past (e.g. PayPal, Amazon. eBay, Online Travel Agencies etc.), including Airbnb and Uber, indicate that new business models often outpace their relevant legislation and therefore encounter issues associated with general legality. However, in the last few years, consumer services provided on the Internet are moving far beyond restaurant bookings, taxis and hotel rooms: “Silicon Valley innovators”, for e.g., are rolling out web-based alternatives to old models in almost all areas, including medical diagnostics etc. If there is so strong disapproval toward rather unsophisticated activities as accommodation and transport are, it is hard to imagine what kind of legal barriers will new business models have to confront in more sophisticated sectors (e.g. in medicine etc.)

We believe that the results of technological progress and its potential in Industry 4.0 demands from the regulators to reconsider the rationales that lie beyond regulations and encounter the possibilities that markets, competition, reputational systems and ongoing innovation can often solve problems better than regulation. Due to the complex nature of interactions among participants in new ecosystems, those challenges need a holistic approach.

The research contributes to existing literature on sharing/collaborative economy and P2P networked businesses. It opens a dilemma regarding the evaluation of new technology-based on-line business models to achieve two goals: to foster them, but at the same time to prevent unfair competition to those players in the sector which operate off-line.

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