

# The three regulatory challenges for the sharing economy

20 February 2015, by Stephen King

New internet businesses are transforming dusty old industries. The current wave includes Uber (hire cars), Airbnb (accommodation) and Freelancer (labour services).

But there have been plenty of others over the past twenty years. Email has bankrupted postal services. Skype put a rocket under telephone companies. Google has transformed information and advertising.

There will be plenty more in the near future.

How do the new wave of internet businesses fit into regulatory structures that were designed for a bricks-and-mortar world?

Badly!

The Productivity Commission is currently investigating the barriers facing new businesses. It is taking particular interest in digital start-ups. However, the problems go much deeper.

There are three regulatory challenges for Australia when dealing with internet businesses in the sharing economy:

1. How do we protect consumer interests?
2. How do we avoid vested interests using regulation to stop entry and competition?
3. How do we prepare for future competition issues?

## Consumer protection

Your Uber car is involved in an accident. The driver has standard insurance, not commercial insurance. So any property loss is not covered.

You rent an Airbnb apartment only to find out that the apartment has been sublet in violation of the lease. You are evicted.

You lease out your apartment on Airbnb. A few days later the police call. The apartment has just been raided. The tenants were using it as a pop-up brothel.

Commercial arrangements can go wrong for any [business](#). Internet businesses are neither more nor less likely to raise problems. However, from the consumers' perspective, these businesses operate outside normal guidelines because they claim to be matching platforms, not direct service providers.

Uber doesn't employ its drivers. It checks them and uses a ratings system to maintain standards, but it would claim that it is not formally liable for poor driver conduct. Similarly, Airbnb states that local laws are the local service provider's problem.

Is this legal and is it good enough?

The Courts will check the legality. But relevant precedent is probably years away. Further, Court decisions may be inconsistent between jurisdictions. In Australia, the High Court ruled that Google is simply a publisher and not liable for third-party advertising content. However, the European 'right to be forgotten' laws make Google liable for third party web-pages that can be accessed through its search engine.

The platforms may ask us to trust them. After all, their reputation depends on the quality of the services provided through their platforms. But this is not good enough. Relying on the market and reputation to sort out [consumer protection](#) issues can lead to lots of damage on the way. And despite the best efforts of a platform, bad operators will get onto the system.

Light-handed accreditation regulation will also be imperfect, but it can help the internet platforms work better for consumers.

So Uber drivers may need to be accredited, to

ensure they have safe cars and appropriate insurance. Tripadvisor reviews will need to be presented with appropriate caveats. Airbnb apartments should not be advertised in a way that is misleading and deceptive. And the platforms cannot simply shrug their shoulders and say, "not our problem". The platform will have some responsibility to check that their suppliers meet appropriate legal standards.

The platforms themselves should recognise this, which perhaps explains Uber's recent change of heart. The alternative is either to operate outside the law and be sued to death, or to watch a new regulatory bureaucracy grow around their business. Cooperation and compliance, death by lawsuit or strangulation by red tape. They are the options facing the internet businesses.

### **Vested interest regulation**

No business likes competition. Existing bricks and mortar businesses will not simply yield to more efficient internet-based businesses. They will put up a fight and part of the fight will be to try and use regulation to strangle the [new businesses](#).

Of course, incumbents will not put it that way. The official line will be about protecting consumers. So when taxi license owners protest against Uber or hotel chains complain about Airbnb, the language is about consumer interest, not profit protection.

But it is competition that delivers value for consumers. Governments need to separate out self-interested claims by incumbents from real consumer concerns.

This is not easy. Vested interests will blow out of proportion any incident involving the internet entrant while ignoring similar incidents that have occurred through their own service.

Governments need to have the courage and insight to recognise incumbent rent seeking and to hold out against it. That can be difficult. The bricks-and-mortar businesses fighting against the entrants may be large (think Harvey Norman and the internet tax debate), and will have a lot at stake.

But as Andrew Leigh has noted:

*"[F]orward-thinking regulators are increasingly realising that the sharing economy can deliver big benefits for consumers. ... the benefits are real and the risks are manageable."*

### **Competition Rules**

In technology, today's small entrants are tomorrow's dominant firms. Shareholders in Uber, Airbnb, Tripadvisor, Freelancer, and so on are investing their money in the hope of a profit. And if they succeed by helping consumers, then that is fantastic. However, as these businesses grow, they may be tempted to make easy money through market power rather than competition.

For example, Uber currently does not require that drivers are exclusive. As David Plouffe of Uber noted at a recent Grattan Institute event, a driver can drive for Uber, Lyft, or anyone else. But will these rules continue to hold if Uber (or someone else) grows to dominate the ride sharing market?

These concerns are not hypothetical. We have seen large businesses use various tactics, including exclusivity arrangements, to make new entry hard. In supermarkets, Aldi had a hard time expanding in Australia due to exclusivity arrangements between the major chains and the shopping centres. These were eliminated after the ACCC's 2008 grocery inquiry. Since then, Aldi has rapidly expanded.

Internet based businesses that grow dominant may try similar tactics.

This means that competition regulators will need to be watchful. In particular, the terms and conditions used in contracts between platforms and both suppliers and buyers need careful scrutiny. If they involve exclusivity arrangements or 'reference competitors' say through 'most favoured customer' pricing, then the alarm bells should start ringing.

Two caveats.

First, these concerns hold for all large businesses, not just those on the internet.

Second, in fast changing areas of technology, attempts by incumbents to hold out entry are often doomed to failure. As historic antitrust cases against IBM and Microsoft in the US illustrate, the market will often act faster than regulators and the courts.

### **Bring internet businesses inside the regulatory tent**

New businesses built on internet-based technologies have, are and will continue to transform many industries. The result is better services at cheaper prices for all Australians.

But these businesses cannot and do not live in a regulatory vacuum. They cannot grow as regulatory cowboys. But, vested interests will be more than happy to strangle them with red tape. Getting the balance right will be difficult for both government and regulators. But if we get it right, the potential gains are huge.

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