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## Sharing Economy and Regulation

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# Sharing Economy and Regulation

Heidi Dittmann<sup>♦</sup>, Björn A. Kuchinke<sup>♠</sup>

1	Introduction .....	1
2	Literature on Sharing Economy.....	2
3	The market conduct of Sharing Economy.....	5
	Illustration I: Two-sided-market .....	6
4	Implications .....	9
5	Final remarks .....	13
	Literature.....	14

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## 1 Introduction

The Sharing Economy shows growing popularity, not only amongst its users. An increasing interest in the economy of sharing can also be observed in the scientific discourse. On the one hand it is being described as innovative, resource saving and welfare increasing<sup>1</sup>, on the other hand a series of questions arises regarding the legal treatment. One main aspect within, is the regulation of sharing enterprises. Such regulation is demanded for by several authors. A specific concept, however, is not yet existent. Although further agreement has emerged on the need of action in this area, perplexity can be recognized when coming to the way and manner of doing so.

It is argued that there are no market conduct rules for these enterprises, as existing rules of traditional markets cannot just be adapted for the Sharing Economy and governments have not responded to the growing importance of these companies so far by creating fitting laws.<sup>2</sup> Thus currently, companies like Uber and AirBnB operate under ignorance of Standard Economy regulations, such as safety and tax laws. This could seem justified by the often proclaimed special characteristics of sharing goods and services.

Furthermore, literature on competition economic only took the topic up rudimentarily. The hereby presented contribution serves to close the described research gap. Before, however, regulatory issues are addressed, the imputed innovative character of the Sharing Economy is first discussed critically. Subsequently the debate on regulation will be taken on. Regulation herein describes the setting of market rules of conduct for individual industries or sectors. From a theoretical perspective, regulation first implies the existence of a general market failure. This must occur within a clearly defined product and geographic market. To justify a treatment, deviating from the one traditional businesses experience, those businesses would have to act on other markets as the enterprises of the Sharing Economy do. At this point, the subsequent analysis steps in. To base a discussion of the differences between traditional and sharing companies the characteristics of Sharing Economy (chapter 2) as well as the market behavior of sharing enterprises (chapter 3) found within current literature is critically examined. The actual analysis is carried out in chapter 4. The paper concludes with final remarks in chapter 5.

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<sup>1</sup> cf. Zobrist/Grammp, 2015, p. 4, Rauch/Schleicher, 2015, p. 11, Koopman/Mitchell/Thierer, 2015, p. 2, Koopman/Mitchell/Thierer, 2014, p. 5, Demary, 2014, p. 7.

<sup>2</sup> cf. Rauch/Schleicher, 2015, p. 5 f.

## 2 Literature on Sharing Economy

A universal and final definition of the Sharing Economy could not prevail so far. Basically, the Sharing Economy describes the exchange of goods or services through a web-based platform.<sup>3</sup> Thereby peer-to-peer sharing and so-called asset hubs have to be distinguished.<sup>4</sup> In the case of peer-to-peer sharing, the sharing company acts as an intermediary between buyers and sellers of certain goods or services. The exchange itself takes place exclusively between the suppliers and demanders. The platform however provides no goods or services, but limits its activities to the mediation between both sides of the market.<sup>5</sup> While it is in fact the platform that represents the sharing companies, the exchange of services is usually done between private individuals. The basis of exchange constitutes of already existing resources. Thus, no new resources are claimed, rather the existing ones are led to better utilization, which can result in the effect of decreasing fix costs.<sup>6</sup> In contrast to the peer-to-peer sharing, Asset Hubs have their own resources and thus occur as a supplier of goods or services. As Asset Hubs show no considerable differences to Standard Economy<sup>7</sup> and therefore can be assigned to be standard rather than Sharing Economy<sup>8</sup>, they are excluded from the following analysis. A number of special features are assigned to Sharing Economy, in which are also seen its main advantages in comparison to the Standard Economy. From the perspective of some authors the ability to review evaluations in forums, social networks or own review sites on the internet, the Sharing Economy leads to a significant reduction of information asymmetries between buyers and sellers of goods or services.<sup>9</sup> Hence both sides of the market would be allowed to inform extensively about the characteristics of the opposite market side. The easy access to relevant information would result in a decline of search and information-costs and therefore ultimately to a significant reduction of transaction costs.<sup>10</sup>

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<sup>3</sup> cf. Koopman/Mitchell/Thierer, 2015, p. 2, Bond, 2015, p. 77, Hamari/Sjörklint/Ukkonen, 2015, S. o. A., Fraiberger/Sundararajan, 2015, p. 5, Cusumano, 2015, p. 32.

<sup>4</sup> cf. Rauch/Schleicher, 2015, p. 11, Demary, 2014, p. 5 f.

<sup>5</sup> cf. Rauch/Schleicher, 2015, p. 2, 13.

<sup>6</sup> cf. DuPuis/Rainwater, 2015, p. 2, Zobrist/Grammp, 2015, p. 4, Schor, 2014, p. 3.

<sup>7</sup> Als Pendant zur Sharing Economy werden fortan die Begriffe der klassischen Economy, der traditionellen Economy sowie der Standard Economy verwendet. Abgestellt wird dabei auf eine Negativabgrenzung: Alles, was nicht der Sharing Economy zugeordnet werden kann, fällt dann unter den Begriff der Standard Economy. Henceforth, the concepts of classical economy, the traditional economy and the Standard Economy will be used as a counterpart to Sharing Economy. Thus also the negative definition is put down: Everything that cannot be assigned to Sharing Economy falls within the definition of Standard Economy .

<sup>8</sup> cf. Demary, 2014, p. 5 f., Rauch/Schleicher, 2015, p. 11.

<sup>9</sup> cf. Demary, 2015, p. 9, Koopman/Mitchell/Thierer, 2014, p. 5.

<sup>10</sup> cf. Zobrist/Grammp, 2015, p. 4, Rauch/Schleicher, 2015, p. 11, Koopman/Mitchell/Thierer, 2015, p. 2, Schor, 2014, p. 2 f., Koopman/Mitchell/Thierer, 2014, p. 5, Demary, 2014, p. 7.

Falling transaction costs in turn, allow the supply and demand of any small quantities. It comes to the so-called disaggregation of the offer. Thus it would be possible to better adapt to the individual needs of consumers than conventional transactions. The Sharing Economy thus enables a higher degree of satisfaction of needs than the Standard Economy.<sup>11</sup> At the same time the possibility to split the offer in arbitrarily small amounts, as well as the use of temporarily idle assets or skills would cause a higher utilization of existing resources. According to this argumentation, the Sharing Economy could contribute to the reduction or even the overcoming of the shortage problem. As economic policy implication out of this a subsidy of the Sharing Economy is required sometimes.<sup>12</sup>

The described higher degree of flexibility compared to traditional companies not only extends to the degree of aggregation of goods offered, but at the same time to the prices of goods and services.<sup>13</sup> Sharing companies are therefore known to be in a position to adjust both, the type of offered services as well as the prices, better to the individual user needs as it is the case in Standard Economy. Although on the one hand a wide range of literature exists with respect to the special character and benefits of the Sharing Economy, along with a strong consensus in this regard, little remarks can be found about the legal handling. In addition, no consensus can be found in this issue either so far. There is agreement however, with respect to the determination that there are no market conduct rules for companies in the Sharing Economy so far.<sup>14</sup> In the resulting freedom some authors see a significant advantage of Sharing Economy and therefore ask for regulatory freedom.<sup>15</sup> Within a possible regulation of the Sharing Economy sometimes even a threat to the underlying business model is seen. By a regulation their growth would be limited.<sup>16</sup> Sharing Economy could regulate itself.<sup>17</sup>

Other authors indeed also state the lack of explicit rules, however, they see in it a number of problems. These may be of insurance-law and tax nature in particular. Concrete recommendations for action are not derived, though.

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<sup>11</sup> cf. Koopman/Mitchell/Thierer, 2015, p. 3.

<sup>12</sup> cf. Rauch/Schleicher, 2015, p. 5.

<sup>13</sup> cf. Skift Report, 2013, p. 22, Rauch/Schleicher, 2015, p. 17.

<sup>14</sup> cf. Rauch/Schleicher, 2015, p. 20 ff.,

<sup>15</sup> cf. Rauch/Schleicher, 2015, p. 60,

<sup>16</sup> cf. Zobrist/Grammp, 2015, p. 11. Similar: Demary, 2015, p. 15.

<sup>17</sup> cf. Horney, 2015, p. 3.

The described freedom of sharing companies regarding their market conduct has led to significant protests by businesses of the Standard Economy.<sup>18</sup> The traditional businesses found themselves disturbed and disadvantaged in their market conduct, as they had come to compete with companies now, that were not imposed the same rules as the ones they had to face. The protests and reaction of the courts and governments in Germany cannot be shown conclusively and are therefore exemplarily described according to the US driving service Uber. Its market entry led to a massive resistance from the traditional taxi company. The courts responded with a general prohibition of UberPOP.<sup>19</sup> An authorization would not be applicable, neither as a taxi or as car rental company nor could §1 paragraph 2 no.1 PBefG be applied as exception rule on Uber, as the US driving service would not meet the necessary requirements for that, offering a free or cost-covering transport.<sup>20</sup> Taxi services are still considered as an element of general interest<sup>21</sup> and as an "outstanding important common good"<sup>22</sup> by the Constitutional Court. A provision by other modes of transport is being rejected.<sup>23</sup> New features like Ubers' would present a risk for the functioning of German taxi services markets.<sup>24</sup>

In Spain, the Netherlands, Indonesia and Thailand Uber was banned 2014, France followed in 2015. In New York City there are efforts, to limit the annual growth by law to 1% p. a. In addition, the effects of Ubers activities on the environment and (local) public transport sector ought to be monitored.<sup>25</sup> The reaction of the respective states is limited so far to the prohibitions or in the case of New York on the limitation of growth and monitoring of behavior. Attempts to specify a concrete regulatory framework, as it already exists for companies within the Standard Economy, have failed to appear so far. With the exception of growth restriction in New York City, legislators have shown no aspiration to overcome the existing problem, that would exceed beyond a general ban of Uber.

In summary, literature agrees with a broad consensus on the number of positive characteristics of Sharing Economy. In particular, their liberties regarding their product creation as well as the

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<sup>18</sup> Exemplarily: cf. Handelsblatt, 2015 [www].

<sup>19</sup> cf. VG Hamburg, 27.08.2014, Az. 5 E 3534/14, OVG Hamburg, 24.09.2014, Az. 3 BS 175/14, VG Berlin, 26.09.2014, Az. 11 L 353.14, LG Berlin, 11.04.2014, Az. 11 L 353/14. LG Frankfurt, 8.09.2014, Az. 2-06 O 318/14.

<sup>20</sup> cf. LG Berlin, 11.04.2014, Az. 11 L 353/14.

<sup>21</sup> cf. BVerfGE 81, 70, (86 f.), BVerfGE 11, 168 (186 f.).

<sup>22</sup> BVerfGE 11, 168 (186). This view is also represented by Wimmer/Weiß, 2015, S. 83 (own translation).

<sup>23</sup> cf. BVerfGE 11, 168 (186).

<sup>24</sup> cf. BVerfGE 81, 70, (86).

<sup>25</sup> cf. Handelsblatt, 2015 [www].

price setting are being emphasized. However, a solution for the accompanying regulatory economic problems is not yet in sight.

### **3 The market conduct of Sharing Economy**

When considering the definition of Sharing Economy as mentioned in the previous part, the proximity to the definition of two sided markets becomes clear immediately. These are marked by a platform that brings together two separated groups of demand, among whom two-sided indirect network effects consist.<sup>26</sup> Indirect network effects describe the dependence of the utility degree for one of both groups, regarding a transaction, to the size of the user group on the other side of the market.<sup>27</sup> Then not only the specifically requested product or service is crucial regarding the benefit for a demander, but (to a significant extent) the number of providers present on the platform. Mirror-inverted the benefit of providers increases with the number of users on a platform.<sup>28</sup>

To get both sides on board, for platforms on two-sided markets a pricing is required that is deviating from unilateral markets.<sup>29</sup> Prices are not set on the basis of necessary costs for the provision of goods or services on the regarding market side. The decisive factor is rather the relative strength of the indirect network effects.<sup>30</sup> The user group that is more important for the functioning of the platform has to pay a lower price than the other side of the market, having viewer net-effect on the other user group.<sup>31</sup>

Indirect network effects have indeed not been previously discussed for the Sharing Economy, nevertheless they can be accepted as plausible. For example, it only becomes of interest for individuals to register as a driver at Uber if they can reach a high number of users with their offer. A high number of users is materialized only if many drivers are available, though. With only a few drivers providing their services, high waiting times are the result. Therefore, two-

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<sup>26</sup> cf. Evans, 2003a, p. 192, Evans, 2003b, p. 332, Evans, 2008, p. 3 f., , Dewenter/Haucap, 2009, p. 39.

<sup>27</sup> cf. Katz/Shapiro, 1985, p. 424, Roson, 2005, p. 144, Schmalensee, 2002, p. 106, Armstrong, 2006, p. 669, Dewenter, 2006, p. 58 f., Dewenter/Haucap, 2009, p. 39.

<sup>28</sup> cf. Dewenter, 2007, p. 8, Dewenter/Haucap, 2009, p. 39 f., Wright, 2004, p. 47, Evans, 2010, S. o. A.

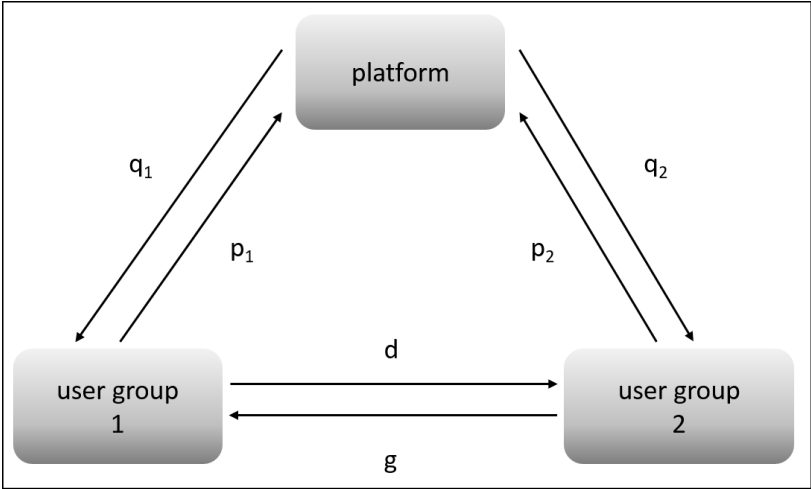
<sup>29</sup> cf. Rochet/Tirole, 2003 p. 990, Schmalensee, 2002, p. 105, Evans/Schmalensee, 2007, p. 154, Evans, 2003b, p. 338.

<sup>30</sup> cf. Schmalensee/Noel, 2007, p. 6, Dewenter, 2007, p. 10, Dewenter/Kaiser, 2005, p. 52, Evans/Schmalensee, 2012, p. 6. As well: Argentesi/Filistrucchi, 2006, p. 1257, Roson, 2005, p. 144.

<sup>31</sup> cf. Rochet/Tirole, 2003 p. 1017 f., Klein et al., 2006, p. 579, Dewenter/Haucap, 2009, p. 40.

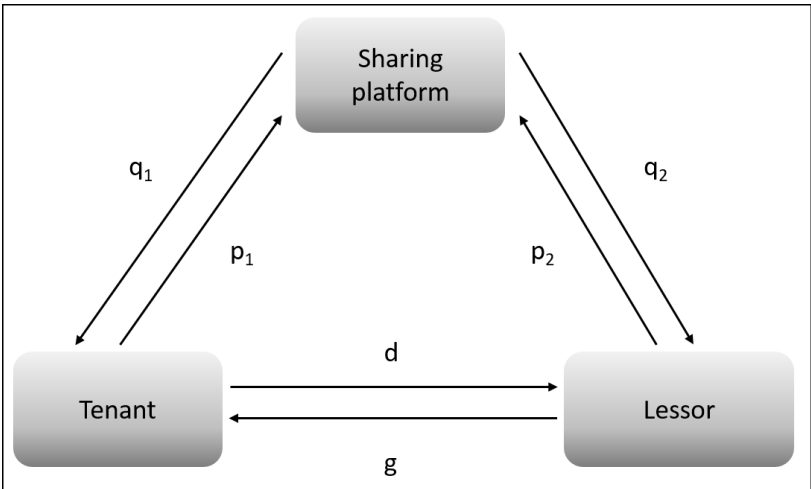
sided indirect network effects exist between the two sides of the market even in the case of Sharing Economy platforms.<sup>32</sup> The following illustrations demonstrate this graphically:

**Illustration I: Two-sided-market**



Source: Own presentation, modelled after Dewenter, 2006, p. 58 f.

**Illustration 2: Sharing companies as two-sided market**



Source: Own presentation, modelled after Dewenter, 2006, p. 58 f.

Illustration 1 presents the classical triangle configuration according to the theory showing the business consisting of a platform that mediates among two independent user groups. Figure 2

<sup>32</sup> For more detailed information cf. Dittmann/Kuchinke, 2015, p. 15.



shows the case of peer-to-peer sharing. Hereby a company as platform brings together individuals, offering private resources as share-provider to others, and individuals, that are seeking for goods and services they can consume as Share-Taker.

The similarities between Sharing Economy and the platforms according to the theory of two-sided markets do not limit to the definition of terms, but also extend to their market conduct. Dittmann & Kuchinke have investigated this in regard to pricing comparing examples like UberPOP and AirBnB with the taxi app myTaxi and HRS as a platform of Standard Economy. Both Uber and AirBnB show the typical characteristic of price setting behavior that fits the description of behavior in two-sided markets: The market possessing the lower indirect network effect has to pay a higher price than the other market side showing a higher indirect network effect.<sup>33</sup>

At this level no particularities of Sharing Economy compared to the Standard Economy can be seen. Subsequently the findings of special characteristics named in literature are examined critically for their validity.

As a key feature of the Sharing Economy the reduction of information asymmetries was mentioned. On closer inspection, however, it becomes clear that it rather causes a mixture of the different stages of transactions. The possibility of obtaining information relates to the time before the actual transaction takes place. The exchange of services as such will follow after. Before the conclusion of contract different review sites, social networks and forums are furthermore not limited to users of the Sharing Economy, but basically open to all users for any kind of good or service. The scope of the existing information is determined on the willingness of individuals to share their experiences with manufacturers, their products, prices and quality in the Internet with others, and not on the nature of the later held transaction. Individuals could, for example, get information about a particular product on the Internet and then purchase it in the stationary trade. Hence, this cannot be seen as constituting characteristic of Sharing Economy. It is rather the result of increasing distribution and use of the Internet as well as the increasing exchange of information from personal experiences on the Internet. Therefore, the level of information on the demand side in Sharing Economy does not differ from that of the consumers in the Standard Economy.

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<sup>33</sup> cf. Dittmann/Kuchinke, 2015, p. 18.

As the purchase of fewer search and information costs within the Sharing Economy cannot be confirmed, the argument of transaction costs obviates as well. Referring to the height of transaction costs, the Sharing Economy should therefore differ just as little from the Standard Economy.

Further critical examination should also be done for the earlier described disaggregation of offers and hence the resulting flexibility of the offer, which is not only caused by the refutation of the transaction costs argument. It is also questionable whether Sharing Economy in any case mandatorily offers smaller and therefore more individual quantities of goods or services than for example platforms that are managed in terms of two-sided markets theory, or as in stationary trade or the service sector. In Standard Economy prepared food can be purchased in arbitrarily small amounts, rides in taxis serve as transportation from a starting point to a destination, such as in the case of Uber. Nights in a hotel do not differ in this respect from booking nights at AirBnB, and garments can be rented from theaters for example. This episodic display of counter-examples does not exclude cases in which the level of aggregation in the Sharing Economy actually is lower than the Standard Economy. However, as long as numerous conclusive counterexamples can be found, disaggregation and flexibility of offers cannot involve a point, which indicates a significant difference to the market behavior of the conventional companies.

The pricing must be distinguished from the flexibility of forming the offer. Most of the currently important sharing companies occurred in markets that have a high level of regulation. As examples Uber and AirBnB can be named again. Taxi service markets are among other things regulated in terms of payment. In addition, joining the taxi service delivery requires the fulfillment of certain regulatory requirements to ensure safety standards. Likewise, hotels must meet certain requirements. So far, neither Uber nor AirBnB meet comparable specifications or pay taxes to an extent that could actually be expected. Higher pricing flexibility is therefore indeed not surprising. But again this is not a characteristic of Sharing Economy due to the form of its offerings or of its contracting. It is rather the result of ignorance towards existing regulations.<sup>34</sup>

Sometimes even subsidy is being requested for Sharing Economy, as its characteristic of using temporarily unused resources increases their utilization and lowers consumption of resources. Thereby it has an ecological advantages on the one hand and can, on the other hand, help overcoming the shortage problem.<sup>35</sup> To test this blanket argument, however, a more sophisticated

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<sup>34</sup> In current practice Ubers price-setting freedom by its efforts to fall under derogation of § 1 para. 2 no. 1 PBefG, is limited. In order to fulfill this, charges must only cover the operating costs of the trip. For this purpose Uber has cut prices to exactly fit this value.

<sup>35</sup> cf. Rauch/Schleicher, 2015, p. 5.

approach is required: distinguishing goods which are no longer used and the ones only not being used temporarily. If a good is no longer required, it is essential for its utilization, whether it is given out, exchanged or rented out to other individuals via Sharing Economy, or sold on eBay, Amazon or a flea market. With respect to its utilization there are no differences. This therefore also is no fundamental characteristic of Sharing Economy. In return, the utilization of temporarily unused resources may well increase if, e.g. a private car is used as Uber vehicle. With the utilization also the wear of regarding the vehicle is increasing, so that their service life is reduced and it has to be replaced earlier. The short-term resource conservation is therefore, depending on the characteristics of the goods, compensated in medium to long-term. In what way environmental benefits or the overcoming of resource shortage are resulting out of this, is not evident.

In summary, the essential difference between sharing and Standard Economy is the degree of price flexibility. However, this does not result from the nature of the Sharing Economy, but from the special position, Sharing Economy takes in so far, not obeying any order or regulation guidelines in force of the respective markets.

#### **4 Implications**

##### *Random information*

The analysis of market behavior by companies in the Sharing Economy brought some important findings for the earlier raised questions on the need and the possible configuration of market conduct rules for the Sharing Economy: No general differences between enterprises of the sharing and the Standard Economy in respect to their market conduct can be named. Instead, the analog operation of the peer-to-peer sharing and the platforms according to the theory of two-sided markets became clear. This is especially true in terms of pricing. Whereby it is acknowledgeable that platforms that once started off as a social network, also set a price, a fee or something equaling after a short period of time. Differences in market conduct exist only insofar as a general framework and sometimes regulatory requirements exist for the markets of Standard Economy, while the companies in the Sharing Economy claim regulatory freedom for themselves. The status quo is therefore characterized by differing rules for sharing and standard. This would only be justified from a competitive economic point of view, if objective differences existed or sharing and standard companies served different markets.

As was shown in chapter 3, the reputation of uniqueness following Sharing Economy does not reveal from an economic perspective. To justify the institutional inequality, new markets would

have to be created by the Sharing Economy for which so far obviously no rules would exist and thus the institutional design would have to be discussed about.

As for the question whether new markets arose from Sharing Economy, the definition of product markets is crucial. This is carried out by the German antitrust authorities mainly by the demand market concept, for European and US authorities using the SSNIP test. According the demand market approach those goods and services are combined into a market that meets the same needs in consumers view.<sup>36</sup> Regarding the SSNIP test, simply put, the market affiliation of goods and services shows by the consumer response to price changes.<sup>37</sup> Both concepts focus on the substitutability of goods and services. Would new markets be found by Sharing Economy, they would have to satisfy needs that could not be satisfied by the standard businesses. The remarks in chapter three, showed however that this is not the case. Uber rides satisfy the need for overcoming a certain distance. Whether this is done by a taxi or with Uber is irrelevant. Taxis and Uber therefore belong to the same market. AirBnB also offers the possibility of an overnight stay in the same way hotels do. Both serve as accommodation for travelers for a certain period. Leftovers offers prepared food just like restaurants do. Whether these foods were already prepared for other people or not is irrelevant for market definition.

### *Market affiliation*

In the considered cases, the performances of sharing companies are attributed to the same relevant product markets to which the comparable performance of standard businesses belong. From an economic perspective therefore no new markets are being created by Sharing Economy. Rather, sharing companies enter existing markets with substitutable products to compete with traditional businesses. Whether goods and services are bought or exchanged, is irrelevant to the market delineation. Also the fact that the conclusion of contracts within the Sharing Economy does not have to include any monetary payment, meaning the price of the exchanged goods or services is zero, does not change this assessment. For platforms due to the mentioned need, to get both sides on board, prices amounting to zero are not unknown, but merely the consequence of the optimum utilization of the indirect network effects. Opportunity costs, such as search and information costs, attention or revealing personal information takes the place of actual prices. Alternatively, the common tax law concept of monetary advantage could be transferred hereon. The key would be the (notional) value, which would be paid for the transaction

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<sup>36</sup> cf. Monopolkommission, 1984, p. 198 f. Tz. 616 f., Motta, 2004, p. 102.

<sup>37</sup> More about the SSNIP-Test cf. Motta, 2004, p. 102 f., European commission, announcement of definition of the relevant markets in terms of competition law of community, ABl. 1997 C 372/5, p. 6, Emch/Thompson, 2006, p.51 f., Filistrucchi, 2008, p. 5, Filistrucchi et al., 2014, p. 295, Brenkers/Verboven, 2007, p. 158.

to obtain this power and its benefits. However, this does not influence the objective market definition. Sharing and standard businesses face each other on the same product markets.

This realization in turn has a significant impact on the discussions about the design of the institutional framework for sharing companies. If these act on existing markets as competitors to traditional businesses, the most widely held position, that there is no relevant regulatory framework for Sharing Economy businesses that governs their market behavior so far, is untenable. Since they are active on the same markets as the traditional companies, the rules that possess validity for these companies should also be valid for platforms of Sharing Economy. Different rules for competitors distort competition, as they were identified in consideration of the price setting freedom of the Sharing Economy. By ignoring existing guidelines and therefore e.g. avoiding costs for compliance with minimum safety standards, sharing companies have cost advantages over traditional business. However, since these advantages do not result from the performance of the companies in the market, but from the institutional inequality, they cannot be justified (from a competition economical view). They can be viewed as an obstacle to fair competition.

#### *Code of business conduct in markets*

In this respect there are already market behavior rules for Sharing Economy. Discussions about specifying an individual framework or even regulations for Sharing Economy are not required. In addition, a central point is thereby being neglected: Sharing Economy is not a separate business sector. Not all sharing companies serve the same market. The sharing of goods or services does not say anything about the allocation of a company to a particular industry or market. It only indicates how the transaction is concluded. The "special" thing solely is the exchange on a platform which brings together different user groups. Markets are, as described, objectively distinguished by the degree of substitutability of goods and services offered, not the kind of contract concluded. Since no consistent market of "Sharing Economy" exists, it may well not have uniform rules for all companies in the Sharing Economy as well as a general assessment of possible needs for regulation. Rather, the relevant markets ought to be considered separately. If the question on regulation for sharing companies is to be answered, a clarification of which markets are affected in each specific case has to be done first. If a sharing company operates for example in the market segment of hotel services, its functionality has to be examined if regulatory issues are being discussed.

Whether the business of Sharing Economy ought to be regulated cannot be finally clarified at this point, since for that, an analysis of all markets concerned would be necessary. For the issue

of this paper, this is not necessary, however. The decisive factor is the realization that for a fair competition sharing and standard companies should be subject to the same market conduct rules. It is initially irrelevant whether a specific rule in the case of regulated markets or general rules regarding the payment of income tax or property taxes are affected. If for example traditional companies are subject to a regulation of fees, so should the sharing companies. If tax liability applies to companies of the Standard Economy, these must also apply to sharing companies.

### *Regulatory freedom?*

The sometimes required regulatory freedom, whilst competing companies still have to maintain regulatory requirements, would be comparable to a subsidy of sharing companies. However, from an economic perspective, there cannot be found any conclusive arguments for subsidizing the Sharing Economy. In favor of sharing, no general protection of resources or positive welfare-effects can be named. The same applies to tax considerations. It is not evident why sharing companies should not be amenable to the law of tax same as traditional companies, when meeting the conditions of relevant laws. If it is a corporation, it has to submit to corporation tax. If the legal form of a private company is chosen, the company as such may not be a taxable entity. However, the income being removed from the private company is liable to its full extent to income tax for its shareholders. At the same time tax on economic activities has to be payed as soon as the company starts commercial operations, hence showing economic activities to pursued company profit.

It is irrelevant whether the application of existing rules could eventually represent a threat to their growth or frankly their existence. How viable in the business model of sharing companies remains to be seen under (fair) competing conditions. If it is solely based on the exploitation of benefits arising from bypassing of legislation, its behavior cannot be seen worthy of protection. If complying to the same market conduct as traditional companies consequently prevents the growth of Sharing Economy or even leads to the market exit of many sharing companies, it is not the result of unjustified intervention into the business model, but simply a market cleansing of inefficient providers. Companies like Uber and AirBnB can only prove their true performance if they enter a fair competition with the traditional companies.

While for now, the existing market conduct rules are applicable to the sharing companies, the rise of the Sharing Economy could, regarding medium- to long-term, lead to a reconsideration of existing rules in markets that fall under governmental regulation. This can be illustrated using

the example of Uber. The current regulation of markets for taxi services is based on the assumption of market failure. Taxi services are considered as an outstanding important common good whose supply cannot be left to the market alone. As the record of Uber has shown a market-based solution is quite possible. The specification of minimum safety standards remains unaffected. The previous ignorance of existing regulations can thus prove the functionality of markets and therefore demonstrate deregulation potential. However, a possible (partial) liberalization should be examined both for sharing as well as for the standard companies.

### *Summary*

The governments of many countries so far seems unable to cope with the legal handling of the Sharing Economy. At the same time there is no visible effort to apply existing laws for conventional companies to Sharing Economy companies. As the observations of this chapter illustrate, the Sharing Economy is not an independent sector for which a special framework or a special regulation would be necessary. Sharing and standard companies operate on the same markets for the respective service they offer. Consistent rules would therefore be consequent. Given the political reaction it seems like the general hype about the innovative nature of Sharing Economy prevented the obvious. On closer examination, the special position currently giving to her proves untenable however.

## **5 Final remarks**

Up to now companies within the Sharing Economy act in ignorance of rules of conduct that are imposed on the traditional companies. This extends from conditions of market access such as safety standards, over insurance law and last but not least tax aspects. Governments around the world see themselves overwhelmed by this situation. Obviously Sharing Economy is considered an innovation whose character, massively deviating from the Standard Economy's nature, has created new markets and is therefore excluded from the application of existing rules. There is no consensus however, on how or what type of special rules are to be given in this context. This paper took up the issue to investigate the question regarding the necessity of special regulations for companies in the Sharing Economy.

As a result, it is not apparent from an economic perspective, why the Sharing Economy presents major problems to governments and regulatory authorities regarding legal treatment of the concerning companies. As the above analysis shows, the Sharing Economy does not show any significant characteristics differing from the Standard Economy, that would require a special

legal appraisal of their market conduct. Its central characteristics are similar to those of classic platforms such as eBay, Amazon or HRS. The only real difference lies in the type of contract conclusion: Leasing contracts are usual within the Sharing Economy whereas in Standard Economy sales contracts are primary to be made. However, the way of conclusion of a transaction does not affect the market definition. Since the offers of sharing companies are merely substitutes to the existing products of standard companies, its services are to be assigned the same product markets on which the standard companies operate. Specific rules for sharing companies or even uniform rules for the entire Sharing Economy therefore cannot be economically justified. Hence the rules, that have been obtained for the traditional business since years, could be applied. In some industries, such as taxi services, also a (partial) liberalization could be considered. In many cases, the Sharing Economy illustrates the functionality of markets and thus the possibility of regulation reduction. However, until this can be implemented, the companies of Sharing Economy necessarily have to subordinate to the same rules as traditional companies when competing with them on the same markets. Otherwise distortion of competition occurs.

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