The Gig Economy's Dilemma: Are Workers Employees or Entrepreneurs?

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Introduction

Labor platforms – from Uber and Deliveroo to Upwork and Fiverr – 28-million-workers strong in the EU alone and relying on sophisticated algorithms to connect buyers and sellers – have caused quite a regulatory shake-down. With a major piece of legislation due to be finalized later this year, all eyes are set on Europe.

On December 8, 2021, the European Commission took a bold action to regulate the European platform economy in an effort to improve working conditions of platform workers[1]. The proposed Platform Work Directive has three main intents: (1) ensure an adequate employment status for platform workers; (2) provide fairness, transparency, and accountability when it comes to algorithmic transparency, and (3) enhance overall transparency of platform work and improve enforcement of applicable rules.

Among the most contested of these is the first objective, which proposes a rebuttable presumption of employment. Specifically, if the platform fulfills at least two of the five criteria[2] set out by the European Commission, such as dictating rules for appearance or restricting a worker's ability to build a client base, the platform will be presumed an employer.

While the proposed directive has generally received positive critics from legal scholars and unions alike, one criterion stands out: the price-setting ability. Namely, if the price of the service is set by the platform, as opposed to by the platform worker, the working relationship would be presumed to be of an employment type.

[1] https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6605
[2] The five criteria are summarized as follows: (1) determining or setting upper limits for the level of pay; (2) imposing binding rules on gig workers in regards to appearance or conduct of work; (3) supervising work performance or verifying the quality of the results; (4) effectively restricting workers' freedom in regards to choosing work schedule, leave of absence or accepting/rejecting tasks; (5) restricting the possibility to build a client base.

While the criterion may be sound from a legal perspective, considering that the right to set one's own wages has traditionally separated the self-employed from employees, the business perspective reveals another side of the coin.

We envision several possible drawbacks that can have unintended consequences for the welfare of workers and consumers. If these shortcomings are not adequately addressed, the proposed regulations may adversely impact those they are supposed to protect.

We present a seemingly counterintuitive view that price-setting in the hands of workers may be to their disadvantage as well as to the disadvantage of consumers, under certain circumstances. We bring to light specificities of platform-way of organizing work, balancing supply and demand, and providing renumeration, which is much more dynamic than in traditional organizations.

The core of our contribution lies in unpacking conditions in which centralized (prices set by the platform) vs. decentralized (prices set by the platform workers) decision making makes more sense and increases value (and overall welfare) for workers and consumers.

The framework aspires to serve as a guide for platform owners when deciding on control rights as well as for policy makers to evaluate the impact of currently proposed Platform Work Directive. Based on our theoretical model, we propose alternative regulatory actions that may be better suited to the realities of platform work.

A Framework for Centralization vs. Decentralization of Decisions

<u>Centralized Decision Making</u>

Characterized by residual control rights in the hands of platforms. Appropriate when the following are possible/available:

- Standardized offerings determined by the platform – usually one type of product/service (e.g. food delivery) or multiple categories of service (e.g. "Uber black", "UberX")
- Pre-set boundaries for the quality of service and level of effort that should be exerted (e.g. in the case of food delivery, couriers are told in what amount of time the food should be delivered, how it should be carried, handed to a consumer etc.)
- Increasing benefits of data aggregation (demographic data, geo-location, willingness to pay etc.), which can offer superior information about underlying "objective" value of the service to the prospective consumers (price discrimination possible)

- Algorithms/dynamic price-setting in real time (prices may be adjusted in real time in the times of high demand; e.g. Uber's surge pricing) balancing off demand-supply peaks
- Requests standardized by nature (e.g. having food delivered, having a ride from point A to point B – little room for service expansion)
- Price quantifiable (e.g. determined by the distance and supply/demand at any given time in the case of ride-hailing and food delivery, among other things)
- Price mainly related to and defined by characteristics of the service, which can be dimensionalized based on average, task-related value

Example: Uber relies on sophisticated algorithms to set prices in real-time. In times of high demand (e.g. bad weather conditions), Uber's 'surge pricing' kicks in, incentivizing more drivers to get onto the road and meet the growing demand at a premium price. The driver rips the benefits from higher price for the same service and more consumers get served due to the expanded supply. The downside is that some consumers may remain unserved due to higher rates being unaffordable.

Decentralized Decision Making

Residual control rights in the hands of contributors/workers. Appropriate when the following are possible/available:

- Heterogeneous offerings spanning multiple categories as from the side of contributors/workers - price varies across, as well as within categories of services
- Infrastructure and interaction standardized and set by the platform (certainty in regards to communication channels, contractual agreements, conflict resolution etc.)
- Long tail demand for services:
  - Personalized offerings (offer can be tailor-made to each consumer's needs)
  - Demands unique by nature; require professional judgment and evaluation as per the specific way to address needs (and price accordingly)
- Price can't be codified; price varies by worker's quality (can be signaled by reputation or star ratings on a platform), worker's location, individual skills/performance
- Workers possess superior information due to tacit knowledge (compared to the platform) about demand-side needs as well as offerings they can provide (their quality, time it would take to complete a task)
- Workers also differ in terms of productivity and performance and can thus price seemingly similar services differently
- 'Borderless immigration' - work spans across national borders; wages vary from low to high
- Price mainly related to and defined by characteristics of the (more/less unique) labor/skills being provided to the (more/less) unique service, which can be hardly dimensionalized based on average, task-related value. Price thus related to individual-related value.

Example: Upwork – a marketplace for freelancers where one can contract a graphic designer, a virtual assistant or a programmer. Since freelancers are presumably better positioned than platforms to estimate the time it would take them to complete a task, as well as their own abilities, they set the prices as opposed to them being centrally set by the platform.

Table 1. Impact on Workers' and Consumers' Welfare

Decision making	**Workers**		**Consumers**	
Centralized	Benefits	Disadvantages	Benefits	Disadvantages
Standardized services	-Certainty about rules/level of service	-No entry by high-quality service providers	-Certainty of expectations	-More demanding consumers not served
Dynamic-price setting	-Opportunity for higher earnings for the same level of effort -Supply expansion	-Earnings uncertainty -Information asymmetry	-More consumers can be served (higher price incentivizes entry by workers) -Those consumers whom the service is of highest value can be served with certainty	-Higher price for the same service
Decentralized	Benefits	Disadvantages	Benefits	Disadvantages
Heterogeneous offerings, variety of prices	-Entrepreneurial decision making -More discretion over work-time planning	-Low-performers/those without established reputation have hard time to secure a job	-More choice -Ability to choose suitable price level according to WTP	-High variation in quality/ difficulty of making a choice -Higher search costs

Policy Implications

Based on this framework, we identify three risks of (unanticipated and unintended) value destruction of regulation if the proposed Platform Work Directive is passed in its current form, specifically related to the criteria on price-setting:

- Distorted, perverse incentives for platforms to use dynamic pricing to increase price and serve only high-end demand – long tail not being served
- Workers would not capture higher earnings in the times of high demand (workers on fixed pay…)
- Fixed supply – limited opportunities for individuals looking for 'gig'/occasional income

Instead of enforcing price-setting by workers, regulations should set guidelines and pass legislation that would protect workers and consumers while acknowledging opportunities that centralized prices can bring.

Given our framework for analyzing in which contexts gig workers and consumers stand to benefit from centralized vs. decentralized decision making, the regulatory focus should be on:

- Mandating algorithmic transparency, whereby workers are aware of the ways tasks are allocated and rewards distributed
- Mandating platforms to share aggregate-level data with workers, including real time supply/demand information, which can aid workers' entrepreneurial decision making, both in terms of prices and possible co-specialization (or task switching, meeting unmet demand)
- Ensuring that workers, as primary value creators on platforms, have a say in platform-governance matters (via formal collective bargaining agreements or alternative mediums)