Sharing economy: a path to development?

Marcela Mattiuzzo

Antitrust Law[1] has gone through at least two big shifts in the understanding of its goals. As we well know, after the Sherman Act was enacted in 1890, different schools emerged, with different understandings about what antitrust was really meant to pursue. The ideals of the so-called School of Harvard were largely considered to be pro-intervention, inasmuch as its authors believed market structures to be the main problem leading to the concentration of economic power.[2] In the 1960s, a different approach to antitrust emerged through the eyes of the School of Chicago. Going on the opposite direction, the thinkers of this school heavily relied on the self-adjusting forces of the market and thus believed State intervention to be a very ineffective measure to ensure competition. Authors such as Robert Bork, probably the most prominent figure in Chicago literature, defended that antitrust should be worried about economic efficiency, not market structures.[3]

Post-Chicago, antitrust developed in a rather unusual manner. It adopted views from both schools, but started focusing on another problem, one particularly dear to the industrial process of the 1990s: innovation. The "third industrial revolution", which brought technologies to the center of the economic discussion, also affected antitrust and its authorities. The goal shifted from one of ensuring efficiency to one of ensuring innovative capability. The authors here drink from many different sources,

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[1] Antitrust and competition law will be treated as synonyms for the purposes of this article.

Marcela Mattiuzzo
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[2] Also known as the Structural School, Harvard economists argued that "an industry's structure that is, the number of firms in the market and their relative sizes, determines how effectively firms will perform in that market. (…) Harvard scholars opposed market concentration, even when it might lower costs and prices, thereby benefiting consumers". Piraino Jr., Thomas A. *Reconciling the Harvard and Chicago Schools: A New Antitrust Approach for the 21st Century*. Indiana Law Journal, vol. 82, 2007, pp. 348-349.

[3] "Consumer welfare is greatest when society's economic resources are allocated so that consumers are able to satisfy their wants as fully as technological constraints permit. Consumer welfare, in this sense, is merely another term for the wealth of the nation. Antitrust thus has a built in preference for material prosperity, but it has nothing to say about the ways prosperity is distributed or used. Those are matters for other laws. Consumer welfare, as the term is used in antitrust, has no sumptuary or ethical component, but permits consumers to define by their expression of wants in the marketplace what things they regard as wealth". Bork, Robert H. *The Antitrust Paradox: A Policy At War With Itself*, New York: Basic Books, 1978, p. 90. As it is clear to see, though Bork uses the term "consumer welfare", his concerns are entirely focused on economic efficiency.

but perhaps one of the great influences is Schumpeter.[4] His view on the future of economic development as entirely dependent on the ability to innovate drives the perception of many antitrust authorities and authors today.[5] On that light, agencies should allow and encourage commercial practices focused on innovative capabilities, not so much on traditional price concerns, since the competitive standard will be established on an entirely different basis. Price analysis, which is antitrust agencies' specialty, is paradoxically inapplicable in this case.

Despite this general tendency, there are some who opt for a different take on antitrust and its goals. A particularly prominent author who views antitrust as a tool not only for efficiency or innovation, but also for development, is Eleanor Fox.[6] Dina Waked is another author interested in the topic, who has dedicated her work to the investigation of mechanisms that developing countries may adopt in order to achieve effective competition policies which contribute to economic development.[7]

In line with the arguments put forward by Fox and Waked, the still unresolved, ever present question remains: how exactly can we reach or foster development within antitrust? One answer that recently emerged in that context, though not specifically related to competition but to methods of production in general, is the use of what has been called the "sharing economy" as a way to implement change and guarantee lower levels of concentration, which in turn enables greater distribution and economic development.

The usual argument goes as follows: platforms like Uber, Airbnb, and others, collectively known as the "sharing economy", provide powerful self-regulatory tools,

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[4] Schumpeter, Joseph A. *Capitalism, Socialism and Democracy.* New York: Harper & Row, 1942.

[5] A seminal example is that of the US v Microsoft case. Many of the conclusions draw there are clearly influenced by Schumpeter.

[6] Fox, Eleanor. *Economic Development, Poverty, and Antitrust: The Other Path.* Southwestern Journal of Law and Trade in the Americas, vol. 13, 2007, pp. 101-125.

[7] Waked, Dina. *Competition Law in the Developing World: The why and How of Adoption and Its Implications for International Competition Law*. Global Antitrust Review, 2013, pp. 69-96. In the article, Waked concludes: "(…) these [developing] countries face unique circumstances when confronted with adopting these laws. They are in many ways no longer free to choose whether to adhere to a competition law regime or not. They end up adopting laws that are not always tailored to address their local conditions. However, they still have ample space to enforce these laws in a way that 'fits' their unique environments and markets." Her intention, therefore, is to discuss how competition may be used in a way that helps developing countries reach their specific goals.

thereby eliminating much of the need for state regulation and, as such, opening markets to new players. Additionally, sharing increases efficiency in market relations, because it solves much of the issues related to information asymmetries by use of network effects.[8]

The goal of this article is, first, to briefly describe what the concept of "sharing" is all about, since there seems to be some confusion on that regard. Furthermore, given that background, it will try to question whether applications commonly referred to as part of this sharing economy are truly well-suited to the model. More importantly, however, the intention is to address how and to what extent those mechanisms, however they are classified, may contribute to the goal of development through antitrust.

The Sharing Economy – A (controversial) Concept

Yochai Benkler, in his seminal essay Sharing Nicely, provides a definition of what should be considered 'shareable goods'. According to him, "[s]hareable goods are goods that are (1) technically 'lumpy' and (2) of 'mid-grained' granularity. By 'lumpy' I mean that they provision functionality in discrete packages rather than in a smooth flow. (…) [By mid-grained] I mean that there will be relatively widespread private ownership of these goods and that these privately owned goods will systematically exhibit slack capacity relative to the demand of their owners". He emphasizes that the definition differentiates between goods that are shareable from common pool resources – known in the literature by the hands of Elinor Ostrom and Carol Rose.

Benkler goes even further. After providing a definition of what shareable could mean, he highlights that the innovation put forward by the sharing economy is the way by which it treats excess capacity. The usual answer economists have offered in order to deal with excess capacity has consistently been the creation of a secondary market. An alternative to the market solution could be social sharing, a system where

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[8] That argument had been made by the COFECE – Comisión Federal de Competencia Económica, in Mexico, in regard to transportation markets: "Como se ha expuesto de con antelación, el desarrollo de aplicaciones móviles para el transporte de pasajeros resuelve problemas de asimetrías de información y problemas de coordinación entre conductors y pasageros, contribuye a la movilidad urbana, fomenta la innovación y, en general, ofrece opciones eficientes de consumo que generan bienestar social". Opinión OPN-008/2015.

transaction costs and quality of information are very different. The author develops the concepts and implications of his definitions, but my idea is to ask a different question. If we accept Benkler's analytical framework – which is by no means a necessity, since, as pointed out by authors such as Rachel Botsman, the definition of what shared in fact means is controversial[9] – should we understand two of the most prominent "sharing companies", Uber and Airbnb, as such?

Professor Koen Frenken and PhD candidate Toon Meelen from Utrecht University are emphatic in saying Uber has no business in the "sharing" world.[10] According to them, that service would only be a form of sharing if the driver who takes the passenger from A to B would have made the car trip anyway. That is not what usually happens, however. Uber has been used as a substitute for taxis and private drivers, not so much as a ride-sharing mechanism.

The case is different for Airbnb, or at least for some of the uses Airbnb entails. If one has an apartment in city X, lives in city Y and travels to X on a regular basis, but only effectively uses the apartment during one or two nights a week, deciding to host Airbnb guests for the rest of the time, there would be a lumpy and mid-grained good, whose excess capacity is being disposed of through a sharing mechanism.

Sharing – The Good, The Bad, or The Ugly?

Be that as it may, the more relevant question is of a different nature. However these companies decide to call themselves, do they provide some positive outcome for consumers and for the economy? Professors Frank Pasquale and Siva Vaidhyanathan are clear in stating that companies self-proclaiming to be part of the sharing economy are doing nothing but trying to nullify federal regulations. In their words: "Consider what it would mean for such a universalising approach to prevail. The business model of Uber would become that of law-flouting bosses generally. Reincorporate as a "platform", intermediate customer requests and work demands with an app, and *voila!*, far fewer laws to comply with. Worse, this rebel attitude signals to the larger

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[9] Available at: http://www.fastcoexist.com/3022028/the-sharing-economy-lacks-a-shared-definition (access on September 2, 2015)

[10] Available at: http://www.fastcoexist.com/3040863/stop-saying-uber-is-part-of-the-sharing-economy (access on September 1, 2015)

culture that laws and regulations are quaint and archaic, and therefore hindrances to progress. That could undermine faith in republican government itself."[11]

In my view, sharing, in and of itself, is neutral. [12] Does it present the potential to be pivotal in the global economy? Perhaps, but only if accompanied by public policy intended to make that happen. The Brazilian Council for Economic Defense (CADE), recently published a study by its Chief-Economist analyzing the private transportation market. [13] His conclusions are adamant: any company entering the market represents a new player. The larger the number of players, the tougher the competition. Thus, in a simple-minded, straightforward analysis, Uber is entirely positive for consumers and for Competition Law. As the study points out, however, there is more to be considered in deciding if this application and others of its kind are truly beneficial. For one, in dealing with private transportation, one must consider urban economy and the many issues running from it.

More than that, even in the narrower competitive perspective, I see the need to verify how the change implemented by these sharing companies affects aggregated welfare. It may well be that the overall wealth of a society increases with the introduction of this type of competition, but where will the new balance be struck? Overall wealth may increase but be unequally distributed. In that case, if a much larger share is allocated to big business, sharing may in fact promote inequality rather than equality. That, I believe, is how antitrust may incorporate the goal of development in its portfolio. It can present this question to the public, to the government and bring awareness. It can also help bring down the myth of technology and innovation always positively impacting the economy. Though Schumpeter betted on innovation as the new driver of competition, he believed in the superposition of temporary monopolies, which would be overcome by new technology. Reality does

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[11] Available at: http://www.theguardian.com/technology/2015/jul/28/uber-lawlessness-sharing-economy-corporates-airbnb-google (access August 28, 2015)

[12] For the purpose of Antitrust Law, the description of a given market as "sharing" seems entirely irrelevant, for it is not how the market is theoretically conceptualized that matter, but how it operates in practice. It ceases to be so, however, if (i) we assume development and distribution of wealth as goals that may be fostered through competition and (ii) we acknowledge that some companies fit the sharing description, whereas others do not.

[13] The full document is available in Portuguese at: http://cade.gov.br/Default.aspx?1023f3051cf1060d1926390858fc

not seem to agree with his analysis. What we constantly see is a prolonged dominance of some tech companies, capable of hindering innovation from other players and promoting advance only in their own terms, within their own structure. That is clearly not what antitrust should incentivize. The challenge is then learning how to work with innovation in order to make it truly transformative.

Final remarks

There certainly is a need for clarification of what sharing actually means. The concept has been broadly advertised, but there seems to be a lack of coherence in its application. Such lack of consensus makes it difficult to classify services as part of the "sharing economy" or not. Some of what is self-proclaimed to be sharing may in fact not fit the best description of shareable goods.

However the definition is established, the main question should be whether these new applications and business models can be beneficial for consumers, for competition, and for the economy. It is very likely sharing is positive for competition, inasmuch as it creates more players and helps deal with regulatory problems such as information asymmetry. But does that suffice? Will those apps truly help in any way to foster economic development? Sharing, just as about any other mechanism, will not provide development by itself. It needs to be complemented with other policies, otherwise the risk is a mere substitution of economic power will take place, and development will be constrained to the companies at the forefront of the battle. In this scenario, effective redistribution will be nothing more than an illusion.