Faculty of Economics and Tourism
"Dr. Mijo Mirković"

excelia BUSINESS SCHOOL

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Scientific Conference
"New Frontiers in Economics and Tourism - FET 2024"
10th -11th October 2024
Pula, Istria, Croatia, EU

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Pula, Zagreb, 2025

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IN SEARCH OF A STRATEGY FOR REGULATING DIGITAL TOURISM PLATFORMS: WHAT IS THE ROLE OF PRIVATE ENFORCEMENT MECHANISMS IN FACING CRITICAL ISSUES IN THE SHORT-TERM RENTAL MARKET?

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ABSTRACT

It is almost unanimously acknowledged that in the last decade, alongside the emergence of the so-called 'app economy,' digital tourism platforms have disrupted the traditional tourism industry. The present paper deals with the activities performed by this kind of intermediary, investigating, in particular, the short-term accommodation services offered through electronic platforms intended to connect, for remuneration, potential guests with professional or non-professional hosts. With the spread of this service, critical issues have been identified in terms of residents' quality of life, working conditions, housing market, and urban structure. Due to the above-mentioned concerns, and also due to the need to preserve the competitiveness of the markets in which these platforms operate, the idea of introducing new regulations specific to them has emerged. In the light of the EU legislative framework, there is not much room for manoeuvre for national authorities if they aspire to regulate the phenomenon relying entirely on tools designed for services of the pre-digital era. Indeed, the CJEU held that the intermediation service for short-term accommodation must be classified as an 'information society service', since neither that intermediation service, nor the ancillary services offered by the provider, make it possible to establish the existence of a decisive influence exercised by that company over the accommodation services to which its activity relates, with regard both to determining the rental price and selecting the hosts or accommodation for rent. Notwithstanding the limits set forth in the relevant provisions of EU law, the major tourism European cities have adopted regulations aimed at mitigating the negative effects produced by the platform-mediated 'overtourism.' But these efforts would be ineffective in the absence of adequate private enforcement mechanisms which should not be regarded as simple add-ons to the public regulatory regime system. A special emphasis must be put on collective redress actions, which are likely to have strong deterrence effects.

Keywords: Platforms, Regulation, Short-term rental

1. INTRODUCTION

Many voices in the political debate at the global level seem to be in favour of a more rigorous regulation of the platform economy. The excessive power of the largest online platform has raised serious concerns, not only amongst policymakers, but also in the legal scholarly literature. In this scenario, even some fundamental rights are deemed to be at peril. For instance, the people's ability to freely self-determine is seen as capable of being violated by the algorithmic control strategies implemented by digital platforms (Pisani, 2024).

The changes in social and economic dynamics are exemplified by the digital tourism platforms, particularly those which specialise in the sector of short-term rentals, a type of tourist service that produces a significant impact on the everyday life of the community where the properties are rented, affecting its development prospects. Such specialised platforms have grown amazingly fast and in a remarkable way. The tumultuous growth has also led to significant opposition (Koster et al., 2021). Decision-makers all over the world are called to respond to these challenges, but it is not an easy task, due to various motivations. The market for short-term rentals is evolving and progressing. Regulatory efforts could crystalise the situation. Furthermore, although a position of strength can be observed, it has been said that the leader in the provision of short-time rentals plays a significant role in the competitiveness of the overall accommodation sector (Zekan & Gunter, 2022).

It is remarkably interesting to take a look at the European Union, and its peculiar approach towards the phenomenon under scrutiny. Indeed, at the EU level, as well at the national level (and sometimes at the infranational level), contradictions become manifest. The intent is to regulate clashes with opposing interests, which are also taken into account by EU primary and derivative legislation.

2. THE GENERAL FRAMEWORK

In the digital age we are living in, platform-mediated tourism has expanded and developed quickly. Indeed, some commentators speak of 'platformisation of tourism' (Capineri & Romano, 2021; Tuomi & Ascenção, 2023); and this kind of phenomenon is incentivised by the increase in the appeal of urban destinations, "given their demographic and social characteristics and their agglomeration economies"» (Garay Tamajón et al., 2022). Indeed, platformisation is a broad concept, which plays a central

role in the digital economy as a whole, and in its various sectors (Nieborg et al., 2023). In the field of tourist services it has been recently referred to as "the proliferation of digital platforms in tourism operations, starting with distribution but later extending also to other areas of business operations" (Turnšek & Radivojević, 2025).

Focusing on the short-term rental sector in the EU, official statistics have shown that, only in the first half of 2022, guests spent around 199 million nights in such accommodations booked via the most important private 'collaborative' economy platforms. This 'explosion' created – especially in some locations – critical issues, in terms of residents' quality of life, working conditions, housing market, and urban structure, yet new forms of social injustice have emerged, and others threaten to materialise in the near future. In this regard, in an article devoted to platform-mediated tourism, it has been observed that "tourism platforms are therefore discussed as drivers of commodification, consumption, and financial speculation over social goods that feed the industry: private homes, public spaces and neighbourhoods" (Minoia & Jokela, 2021).

However, not everything is bad. For instance, some authors have argued that some positive effects are likely to be obtained, for the benefits of hotel managers, and indirectly of consumers; according to this view, "as the offer of short-term rental accommodation increases, so does the technical efficiency of hotels. These hotels seem to make better use of their productive resources to maximise the number of overnight stays by customers. Although many hotels might see short-term rentals as a potential threat to their business model, the results of this study actually reveal the potential complementary effect of short-term rentals"; furthermore, the attraction of international tourists, characterised by "greater purchasing power and higher daily expenditure [...] could positively influence the profitability of local hotels" (Casado-Díaz & Sellers-Rubio, 2021). Moreover, it has to be taken into account that one of the leaders in the provision of these services has also conceived an expansion strategy towards related services based on immersive activities offered by local hosts. This could also favour the rise of new entrepreneurs.

A recent study, carried out in Italy, has focused on the way in which overtourism in some Italian cities is influenced by accommodation platforms which facilitate short-term rentals (Celata & Romano, 2022). The essay has shown that those platforms may be a crucial factor for explaining the excessive growth of tourist in city centres. Overtourism generated by platform has an impact that goes beyond the fact that the streets, and other public spaces, have become incredibly crowded. Probably the main problems

are the following: on the one hand, one can see that a significant number of residential units are being converted into apartments or houses managed only (or for the most part) for touristic purposes; and, on the other hand, cities (mainly historical areas and those with a high density of food and drink facilities) are being 'deprived of their soul'. The figures dramatically show this trend. For instance, in Rome this is happening in several neighbourhoods, such as the iconic Trastevere.

There is a shared feeling that regulation is needed in this field. However a question arises: how, and to what extent, to enforce binding legal rules, avoiding the risk to neutralise the perceived benefits? Moreover, when we come to consider European legal systems, the analysis cannot ignore keeping in mind the European Union basic principles, which include the freedom to provide services, currently set out by Article 56 of the Treaty for the Functioning of European Union (Chalmers et al., 2024).

3. THE EU APPROACH

In the framework of their efforts to promote e-commerce, EU institutions enacted in 2000 a provision – namely Article 3(2) of Directive 2000/31/EC (so-called E-commerce Directive) – that prevented national legislatures from restricting the freedom to provide information society services from another Member State as long as such restrictions are dictated by "reasons falling within the coordinated field".

In 2018, the Court of Justice of the European Union (CJEU) was requested by a French Regional Court, in a criminal case brought against Airbnb Ireland, to answer the following questions: 1) Do the services provided in France by the said provider, via an electronic platform managed from Ireland, benefit from the freedom to provide services established in Article 3 of Directive 2000/31/EC? 2) Are the restrictive rules relating to the exercise of the profession of a real estate agent in France enforceable against the aforementioned company?

The CJEU, in its judgment delivered on 19 December 2019, held that an intermediation service which, by means of an electronic platform, is intended to connect, for remuneration, potential guests with professional or non-professional hosts offering short-term accommodation services, while also providing a certain number of services ancillary to that intermediation service, must be classified as an 'information society service' under Directive 2000/31/EC. The ruling has received a great deal of attention. Many comments have been published in European law journals (Huet, 2020; Tenenbaum, 2020; Grozdanovski, 2020; Douville & Gaudin, 2020; Van Cleynenbreugel,

2020a; Van Cleynenbreugel, 2020b; Van Acker, 2020; Anderl, 2020; Blockx, 2020; Brunessen, 2021; Colombo & Goanta, 2021).

In particular, the Kirchberg judges excluded any similarity with the online platform providing services in the context of urban passenger transport, which in previous decisions (judgments of 20 December 2017, *Asociación Profesional Elite Taxi*, and of 10 April 2018, *Uber France*) they regarded as an integral part of an overall service whose main component is a service coming under another legal classification. Indeed, in respect of that service, it was ascertained that the company which manages the platform exercised decisive influence over the conditions under which transport services were provided by the non-professional drivers using the application made available to them by the said company. On the contrary, according to CJEU, it cannot be said that Airbnb Ireland exercises such a decisive influence over the conditions for the provision of the accommodation services to which its intermediation service relates, particularly since Airbnb Ireland does not determine, directly or indirectly, the rental price charged, and it does not select the hosts, or the accommodation put up for rent on its platform. The judgment we are dealing with observed that it would not be sufficient to prefer a different interpretation; the mere existence of an optional tool capable of being used by the hosts to estimate their rental price having regard to the market averages taken from the same platform, because the final responsibility for setting the rent is left to the host alone.

What is the main outcome of this decision? The first and most important consequence is that, all over the EU, national decision-makers have a limited scope of intervention in regulating the above said service.

What has been said so far does not mean that EU institutions are not interested in the phenomenon. They approached the issue from the transparency perspective, in a rather pragmatic way, since they believe that the significant increase of short-term accommodation rental services, across the Union, pushed by platform operators, is capable of creating many opportunities for guests, hosts and the entire tourism ecosystem.

Bearing in mind the objective of ensuring "the fair, unambiguous and transparent provision of short-term accommodation rental services within the internal market, as part of a balanced tourism ecosystem that provides opportunities for platforms while respecting public policies objectives", the European Parliament and the Council of the European Union, on 11 April 2024, enacted the Regulation (EU) 2024/1028, on data collection and sharing relating to short-term accommodation rental services. This piece of legislation, published in the Official Journal of the European Union on 29 April 2024, will be applicable from 20 May 2026. Members States are called on

to identify some areas within their territory where a registration procedure shall apply (according to Article 3, point 8, this consists of a "procedure by which hosts must provide specific information and documentation to the competent authorities in order to obtain a registration number enabling them to offer short-term accommodation rental services through online short-term rental platforms"). With respect to such platforms, we find several provisions imposing specific duties. Among others, these firms will be obliged to: (A) design and organise their online interface in a way that requires hosts to self-declare whether the unit offered for short-term accommodation rental services is located in an area where a registration procedure has been established or applies; (B) design and organise their online interface in a way that, when hosts declare that a unit offered for short-term accommodation rental services is located in an area where a registration procedure has been established or applies, users are able to identify the unit through a registration number, and ensure that hosts have provided a registration number prior to allowing the offering of the short-term accommodation rental services in respect of that unit, and that hosts display that registration number clearly as part of their reference published on the platform's website; (C) make reasonable efforts to randomly check on a regular basis declarations of the hosts concerning the existence or not of a registration procedure; (D) inform, without undue delay, the competent authorities and the hosts of the results of the said random checks, concerning incorrect declarations of hosts, the misuse of a registration number, or invalid registration numbers; (E) inform hosts adequately of the applicability in a given area of registration procedures; (F) when the reference published on the platform's website concerns a unit located in a 'sensitive' area, collect and, on a monthly basis, transmit to the single digital entry point of the Member State where the unit is located, activity data per unit, together with the corresponding registration number as provided by the host, the specific address of the unit and the URL of the reference.

More recently, in four judgments delivered on 30 May 2024 (joined cases C-662/22 and C-667/22, *Airbnb Ireland and Amazon Services Europe*; case C-663/22, *Expedia*; joined cases C-664/22 and C-666/22, *Google Ireland and Eg Vacation Rentals Ireland*; C-665/22, Amazon Services Europe), the CJEU reaffirmed the limited scope of Member States' margins of manoeuvre when confronting the providers of online intermediation services. In these decisions distinct types of platforms were involved, including those which allow travellers to interact with owners and managers with a view to leasing their property. Summarising, the CJEU held that: (a) Article 3 of Directive 2000/31/EC must be interpreted as precluding measures adopted by a

Member State, with the stated aim of ensuring the adequate and effective enforcement of Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services under which, on pain of penalties, providers of online intermediation services established in another Member State are subject, with a view to providing their services in the first Member State, to the obligations: (a1) to be entered in a register maintained by an authority of that Member State; (a2) to communicate to that authority certain detailed information about their organisation; (a3) to send periodically to an authority of that Member State a document relating to their economic situation, in which it is necessary to set out a large amount of information relating, in particular, to the revenues of the service provider; (a4) to pay a financial contribution to that authority; (b) Regulation (EU) 2019/1150 must be interpreted as meaning that it does not justify, with a view to the adequate and effective implementation of that regulation, the adoption of measures by a Member State under which, on pain of penalties, providers of online intermediation services are subject, with a view to providing their services in that Member State, to the obligation to send periodically to an authority of that Member State the aforementioned document.

4. THE MEASURES TAKEN BY LOCAL REGULATORS

There are at least two factors that provide incentives for local authorities (municipal or sometimes regional) to introduce some obligations and limits to the intermediation activities for short-term rental offered in the area subject to their jurisdiction. The first one is the aforesaid poor activism of national regulators, whose possible initiatives are under the magnifying glass of the EU institutions and so tend to remain inert. The second reason is that, by definition, local authorities are closer to the situation in their domain, and in theory are in the best position to set priorities; at the same time, they are subject to pressure from citizens or specific groups of individuals, and from firms which operate in the tourism sector in the relevant area. This last factor is not limited to the EU context; one cannot ignore that many cities in the United States have made their moves, worried by the so-called financialisaton of housing (Hoffman & Schmitter Heisler, 2021). There is no doubt that the financialisaton of housing – described as "the growing dominance of financial actors in the housing sector which is transforming the primary function of housing from a place to live into a financial asset and tool for investor profits" (August, 2022) – is a global matter, although its

effects are more prominent in the areas affected by the great financial crisis that took place between 2007 and 2009 (Rolnik et al., 2024).

Focusing on Europe, there is no need to say that local authorities also have to abide with the EU rules in place. They are not immune from the provisions of the Treaties and from secondary legislation; they must comply with CJEU rulings (Kramer & Schaub, 2022). Yet, they are not meaningless in the framework of EU policy; in this regard, it has been said that "local government adds input and output legitimacy to European governance, and some local authorities have become proactive international players driving innovative policy agendas" (Guderjan & Verhelst, 2021). The same authors, in a subsequent short entry, attributed considerable importance to the fact that these authorities "are responsible for a wide range of social and economic tasks that are regulated by the EU, including environmental change, energy transition, the integration of refugees, healthcare and other essential public services" (Guderjan & Verhelst, 2023). A disparity of opinion may exist also among local and central authorities. When such a divergence exists, in many national jurisdictions the last word is up to the Constitutional Courts. For instance, in Italy quite recently a dispute involving the Autonomous Region of Valle d'Aosta – created after the Second World War, when the special linguistic and cultural orientation of that part of the country was acknowledged, and its newly enacted rules, has been adjudicated by the Constitutional Court. The judgment in this case (no. 94 of 24 May 2024) declared compatible with the Italian Fundamental Charter the provision of a Regional Act according to which the rental periods shall not exceed 180 days, but only in the case of "home-sharing arrangements". However, the scope of this provision is not broad; if a host in that region rents a room in the place where he lives for more than 180 days, the contract with the guest is deemed to be valid and enforceable. The statutory provision passed the constitutionality test precisely because it does not affect contract law, since the infringement is relevant only for the purpose of urban planning legislation (Palmieri, 2024).

It is a matter of fact that local regulators are usually compliant, but sometimes they go beyond the limits set for them. State authorities, due to budget constraints, are not able to properly perform the surveillance activity. One of the risks is caused by the mass of local rule makers. It has been pointed out that "differences between cities might lead local authorities to make radically different regulatory choices as regards the short-term rental market" (Kramer & Schaub, 2022). The problem is exacerbated by the fact that, concentrating on Europe, instead of fragmentation, it could be useful to boost "regulatory coordination at the interregional and pan-European

levels" (Mendieta-Aragón et al., 2025). Some municipalities are also inclined to boost the aforesaid market. Another weakness of this approach is that, among the immense variety of local ordinances, only a negligible percentage is binding on online accommodation platforms; on the contrary, the usual targets are the hosts.

5. THE ROLE OF PRIVATE ENFORCEMENT

Even in the absence of the said limitations to the possibility that public enforcement mechanisms are fully deployed, there are several factors – as shown in other contexts – that would not allow adequate correction through such mechanisms of the possible market failures. In the field at stake, public enforcement needs to be complemented by private enforcement, especially when damages are thought to occur for the different players of the market, including those who can be labelled as consumers for the purposes of EU specific protective rules.

A successful class action is the one commenced in 2017, before the Canadian judges, against some companies of the Airbnb group, with the aim of obtaining a remedy for the guests (with exception of the ones reserving an accommodation primarily for business purposes) who booked accommodations that matched the parameters of a previous search they ran on the search results page of the platform, consisting of monetary compensation for the loss suffered due to the fact that they paid a price higher than another price expressed by the said entities (the so-called 'double ticketing'). This was the notion of the class, as amended by the order of the Federal Court when it certified the action as a class proceeding (order of 5 December 2019). A settlement was reached on 27 August 2021, according to which the class members are eligible to obtain a single redeemable credit of a value of up to CAD $45 each. The settlement was approved by the Federal Court of Canada with a judgment dated November 19, 2021. Consumers residing inside Quebec had to go through a separate settlement process in order to aspire to the same benefits.

Another non-individual claim, pursued in California against the same entrepreneur, is worth mentioning. Due to its potential repercussions for the San Francisco local community, an even greater impact could have been achieved with it, if successful. In that dispute, which took place from 2014 until 2017 – when the Court of Appeal of the State of California (First Appellate District, Division Five) finally resolved the case in favour of the defendants (*Gamache v. Airbnb, Inc.*, 2017 WL 3431651 (Cal. Ct. App. Aug. 10, 2017)) – the complaint had been filed by the plaintiffs on behalf of apartment tenants

who lived in residential buildings with units rented through Airbnb. The goal of the action was to obtain compensation for the loss suffered in respect of real property interests (diminution of value; deprivation, or limitation, of the use and enjoyment of property). However, in the background, there was also the belief that – as noted by the Court of Appeal – "increased short-term rentals in apartment buildings also "create security problems, increased foot traffic, and far more noise than would otherwise exist"; the short-term guests are "inconsiderate, destructive, violent, smoke in prohibited areas, [and] have more guests than allowed". Therefore, the legal suit was partly intended to solve a social problem, highly felt in the area of San Francisco.

Many causes of action were alleged against the platform manager. The most relevant of them were 'public nuisance' and 'private nuisance' They are two traditional common law torts, which are described in the California Civil code as follows: "Anything which is injurious to health [...] or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property [...] . is a nuisance" (§ 3479); "A public nuisance is one which affects at the same time an entire community or neighbourhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal" (§ 3480); "Every nuisance not included in the definition of the last section is private" (§ 3481). However, the Court of Appeals came to the conclusion that the mere "facilitation of some number of short-term rentals in the plaintiffs' building (which may or may not have involved renters who smoked more or made more noise than long-term tenants, does not render Airbnb a proximate cause of the alleged harms"; and the plaintiffs were not able to demonstrate that "Airbnb operated its online platform in a manner that encouraged the nuisance activity in any way". Commenting on this decision, as well as others concerning the same geographical area, some authors have pointed out that not only short-term rental platforms generate negative externalities, but since they are not forced to "expend capital on precautions against these negative externalities, nor face the penalties of imposing them", this results in the possibility of charging "far less for their services than the brick-and mortar companies in the lodging industry" (Carder et al., 2017).

Putting aside the negative outcome of the case just described, actions of this kind are susceptible to interacting with local initiatives, in order to induce the platform managers (fearing large compensation which would be added to heavy fines) to adopt corrective measures. The hope is that this will also be achieved in Europe, despite the cultural resistance to group actions,

in the light of the Directive (EU) 2020/1828, on representative actions for the protection of the collective interests of consumers.

6. CONCLUSION

The exponential growth of the market for the online intermediation services which facilitate short-term rentals of residential places, especially (but not exclusively) for touristic purposes, alongside uncharted opportunities for some of the market players, has generated a lot of problems and, consequently, a great bulk of literature. The attitude of national legislatures towards this phenomenon has been quite flat. The same can be said for supranational legislative bodies. This is true, in particular, for EU institutions, with an 'aggravating circumstance.' Yet, EU policies, since the first stages of the Digital Age and until today, reserve preferential treatment for any type of platform, including the ones involved in the business of short-term rentals. The situation is rendered even worse by the fact that regulation is not able to keep pace with technology. The recent EU legislation on data collection and sharing relating to short-term accommodation rental services, although it is an indicator of a possible reversal, is expected to have a quite limited impact.

The regulation gap left by legislatures can be filled only partly by local authorities. Nevertheless, the efforts of municipalities or regions may contribute to mitigate some critical issues. Private enforcement in this sector is still underdeveloped; a change of pace might help, primarily for the benefit of individuals who live in areas where the number of residential units rented for a brief period of time is substantial. Probably a combination of these measures would create a reaction that is not only symbolic. The role of private enforcement collective mechanisms seems very promising, due to the deterrence effect related to them. Such mechanisms should be promoted also in legal systems where they have been refused until the recent past. However, what is really needed is the preparation of new legal devices (or at least the adaptation of traditional devices as long as it is not superficial) to face the new challenges. In the light of the tremendous complexity of current scenarios, dominated by technological advancements, this task requires the establishment of a synergy between experts in multiple areas. It would be desirable for law scholars to begin this dialogue.

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