



# **PEER-TO-PEER (P2P) TRANSACTIONS AND COMPETITION**

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## PRELIMINARY CONSIDERATIONS

This paper describes an approach to the **innovation process consisting of the emergence of marketplaces**, where this means websites or apps for mobile devices which are a meeting point for supply and demand, **making it easier for almost anyone to become a supplier of goods and services in exchange for money**. Thus **transactions** through these marketplaces are peer-to-peer (P2P), in other words the supplier may be someone similar to the consumer.

The innovation process briefly introduced in the previous paragraph has an **obvious impact on conditions of competition in the market**. To the extent that it facilitates entry into this market, making it easy for users to become suppliers, it will probably lead to an **increase in supply**. Markets or business sectors where this innovation has an impact are likely to experience a rise in the number of suppliers and hence there will be an **increase in competition** with the benefits traditionally associated with this: greater quantity and variety in supply, better prices and/or business conditions, innovation, etc.

This close **link between the innovation outlined above and competition** means that restrictions on the implementation of these innovations will mean restricting the possibility that there are more suppliers and thus ultimately that there will be more market competition.

This innovation is having an impact on more and more markets and areas, which means it is a **cross-cutting** phenomenon that it is **evolving rapidly** and **growing in importance**. In fact, we are precisely at a time when the emergence of this trend has become a **matter of evident topicality** in Catalonia<sup>1</sup> and the whole of the European Union and, as will be seen below, there are many institutions<sup>2</sup> and people that have referred to it recently.

The Catalan Competition Authority (hereinafter "ACCO") is an autonomous body of the Government of Catalonia that is regulated by the Catalan Competition Authority Act 1/2009, of 12 February. Section 2.1 of the Act states that "its purpose is to ensure, improve and promote conditions of free competition and transparency in markets with respect to economic activities carried out mainly in Catalonia" (emphasis added).

Among other factors, the fact that the above mentioned marketplaces have the **ability to impact on the structure of a market and alter the conditions of competition** in it together with the **innovation** inherent in them is what has led ACCO to explore this phenomenon.

This paper is part of its function of **promoting competition** and is intended to be informative. Consequently any references to specific operators are solely designed to illustrate the situation being mentioned and in no case entail any assessment of their actions in terms of competition policy. Likewise any references to statements by other institutions or individuals about the issue at hand have been considered necessary and appropriate, notwithstanding the fact that the paper reflects the position of the ACCO on this issue.

Finally, the study is structured into two parts. The first section sets out its purpose, essentially what has been noted above which is the phenomenon of the professionalisation of users

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<sup>1</sup> According to Ian Mount, "The Spanish city has become ground zero in a fight over how collaborative consumption should be regulated and taxed". Mount, Ian. 2014. "Airbnb, Uber under attack in Barcelona." *Fortune*, 28 May. <http://fortune.com/2014/05/28/airbnb-uber-barcelona/>.

<sup>2</sup> The Spanish National Commission on Financial Markets and Competition has posted an article on its blog entitled "Economía colaborativa y regulación", dated 16 July 2014. <http://cnmcblog.es/2014/07/16/economia-colaborativa-y-regulacion/>.



through the use of digital platforms (P2P). Following this the second section outlines the impact of this innovation on conditions of competition in the market, identifying both the benefits and challenges associated with it and, in respect of the latter, formulating a number of suggestions for addressing them.

## 1. NEW MARKETPLACES: FACILITATORS OF MARKET ENTRY

There are **reservations about whether** the activity enabled by marketplaces, where this means **apps for mobile devices and websites that facilitate for-profit transactions between private individuals (P2P)**,<sup>3</sup> can in all cases be included in the concept of **collaborative consumption or the collaborative economy**. The different reasons for the acquisition of the assets used in the provision of goods and services through these marketplaces, even though they may have implications for determining whether or not a transaction is collaborative consumption, are a factor that is not assessed by the ACCO to the extent that they have no impact on the market.

For example, the fact that a person **acquires a vehicle to provide transport services for people or a property to lease it** through a digital platform to earn income or alternatively **uses their own private vehicle or their property** for this purpose has no impact on the market and therefore this distinction is irrelevant to this study.

The important factor that does have an impact on a market is that marketplaces enable individuals to access it as suppliers, and this occurs irrespective of whether the assets that in the end are used to do so have or have not been acquired first and foremost for this purpose.

ACCO focuses on the study of this model since **it brings with it a significant transformation of the market structure** and at the same time is **much more contentious**.

Continuing with our previous examples, **if a person requires a passenger transport service or an accommodation service, this will hardly be debatable or open to criticism if it is supplied by an individual** (relative, friend, neighbour, etc.) **without receiving any payment in return**. However, **the situation is different if the above services are provided by another individual** (for example, someone who has been contacted via an app or website) **in exchange for money**.

### 1.1. New market structure

Today we are in a time of multiple **innovations**, most of them **technology-based**. It is indeed a technology-based innovation which enables **the phenomenon of peer-to-peer (P2P) supply and consumption**, since this **takes place and is made possible by marketplaces**.

Traditionally there were a number of operators in the market, which for the purposes of this paper we will call “qualified” or “incumbent”, that had to overcome and observe a number of barriers to entry of various kinds (drawing up a sufficiently broad product or service catalogue, meeting the obligations imposed by legislation, financial difficulties) in order to access it and offered their goods and services to consumers and users. This **relationship of production and supply of goods and services by qualified operators to consumers and users is,**

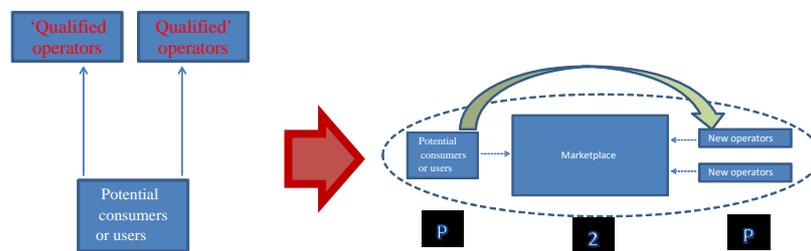
<sup>3</sup> All references made to the P2P concept throughout this paper, unless otherwise specified, will be to professional P2P services (for-profit on the part of the person who ultimately provides the service or sells the goods).

according to economic theory, a **vertical relationship** in which the qualified operators would be located at the top and consumers and users at the bottom.

This **traditional structure** has been **altered** by the **emergence** of these **marketplaces** which encourage individuals to become suppliers. This **greater ease of entry into the market expands options for individuals**, in other words it empowers them.

Hence the innovation referred to here has the potential to **change the market structure in the sense of making it more horizontal**<sup>4</sup> inasmuch as **consumers and users can purchase goods and services that are supplied by other individuals**<sup>5</sup> and not just from qualified or incumbent market operators.

**Figure 1. Change in the structure of the market**



The ease of entry into the market provided by marketplaces for private suppliers and the consequent impact on the market structure by enabling primarily horizontal or peer-to-peer (P2P) relationships **does not mean that the incumbent or qualified model based on vertical relationships disappears. Instead the two models exist side by side as long as there is demand for both of them.**

The driving force of this structural change is the fact that **the emergence of marketplaces facilitates people's access to the market** mainly in **two ways**:

- Leveraging economies of scale: it is cheaper to publicise yourself

**The companies that create marketplaces exploit economies of scale**, meaning that **the cost for them of promoting a platform or marketplace does not rise even when the number of users who go there to offer their goods or services increases**. In fact, the cost of publicising the platform may even fall with an increase in users due to word of mouth or going viral.

<sup>4</sup> Arthur de Grave has made some remarks along the same lines: "What these phenomena have in common is their reliance on horizontal networks and distributed power within communities, as opposed to competition between hierarchical organisations, which has dominated economic life since the second industrial revolution" [emphasis added]. de Grave, Arthur. 2014. "The Sharing Economy: Capitalism's Last Stand?" *Magazine*, 11 June. <http://magazine.ouishare.net/2014/03/the-sharing-economy-capitalisms-last-stand/>.

<sup>5</sup> Leading to the emergence of "nano enterprises" or in turn to what is known as "peer production". In the same vein, recently a presentation was entitled: "*Economía Colaborativa a debate en Barcelona: La hora del ciudadano creador*", 30 June 2014. <http://ouishare.net/en/events/ouishare-talk-barcelona-la-hora-del-ciudadano-creador>. Furthermore, a number of articles contain concepts such as the co-producer citizen: "*De cliente a ciudadano coproductor*" <http://www.telam.com.ar/notas/201407/71081-de-cliente-a-ciudadano-coproductor.html> or the citizen manufacturer: "*Democracia productiva: el ciudadano fabricante*" [www.yorokobu.es/fab10](http://www.yorokobu.es/fab10).



Marketplaces are a **platform available to potential suppliers where they can publicise themselves** and which provides them with a degree of **visibility they would find hard to achieve on their own**. Perhaps even more importantly they are also **nigh on free of charge** since **in most cases the only thing they have to do is sign up**.

Imagine that you have culinary skills and a kitchen where you can cook, or you like driving and have or have use of a vehicle, or know your city or town better than anyone, or have an underused apartment or room and would like to make some money by doing any of these activities. It is more than likely that it will not be worthwhile since the cost of publicising yourself (e.g. setting up a website, optimising it for search engines, advertising, etc.) would be more than your potential income. However, if there is a company that advertises jointly for all the people who are willing to offer their goods or services as a cook or driver who transports people or as a guide to their town or city or a landlord of rooms or apartments, this means the **advertising spending of each person who wants to do one of these activities is negligible**. Hence however little income you earn from doing it you will still make a profit.

- Online reputation as a generator of trust

The second key element which makes it easier for people to enter the market as suppliers is the fact that these marketplaces make it possible to **build a reputation or credibility online**<sup>6</sup>. This factor is also essential for the attraction associated with the P2P model through constructing a marketplace, as at the individual level it is not enough that there are no promotional costs; **the person thinking about becoming a supplier also needs to be convinced that they will have a certain level of demand which in turn means they will make money**. In this respect it is highly likely that many consumers and users would be reluctant to purchase products or services from the new individual operators instead of from what we have called qualified operators.

However, insofar as **the opinions of other users progressively reduce distrust in the “unknown operators”** it is probable that a growing number of potential customers will eventually opt for some of these new suppliers of services. As Ms Rachel Botsman puts it<sup>7</sup>: “Here you see a shift from institutional trust to peer trust, a dynamic that will make the development and meaning of brands in the 21<sup>st</sup> century fascinating”<sup>8</sup> (emphasis added). In short, “Without trust there is no service or users”<sup>9</sup>.

Imagine that as a consumer you can choose to go to a restaurant or to the home of a person who offers his or her services as a cook. If you do not have any references for the cook, a minimum degree of risk aversion will lead you to choose to go to a food services establishment. However, as we have seen, in these marketplaces you will almost certainly be able to find ratings and reviews by users and consumers who have previously gone to the house of this cook, so this **reputation at least reduces the uncertainty** associated with opting for the services of a non-professional chef.

<sup>6</sup> [http://www.ted.com/talks/rachel\\_botsman\\_the\\_currency\\_of\\_the\\_new\\_economy\\_is\\_trust/](http://www.ted.com/talks/rachel_botsman_the_currency_of_the_new_economy_is_trust/)

<sup>7</sup> Co-author together with Mr Roo Rogers of the book *What's Mine Is Yours: the Rise of Collaborative Consumption* (New York: HarperCollins. 2010), widely seen as the first book to address collaborative consumption.

<sup>8</sup> <http://magazine.ouishare.net/es/2014/04/entrevista-rachel-botsman-comunitats-ouishare-fest/>

<sup>9</sup> <http://es.scribd.com/doc/75366014/Que-es-el-Consumo-Colaborativo> (slide 25).



## 1.2. Scope and history of the marketplaces phenomenon

**The creation of marketplaces that facilitate P2P consumption and supply is not as new** as it might seem. In fact, eBay is a well-established marketplace which was launched in 1995<sup>10</sup> and provides a platform for users looking to sell items to offer them to potential buyers, thus enabling people to “turn into” individual online shops. However, **recently the phenomenon has become a lot more powerful for a variety of reasons**, some of which are mentioned below.

From the point of view of supply, these marketplaces have been able to count on a **large number of suppliers**. This situation is explained by the concurrence of at least two factors: firstly the **lack of financial resources as a result of the crisis**, and secondly the existence of a **large number of goods in the economy that are underused**. Precisely the fact that goods and services can be offered via these marketplaces using items that people already have makes it reasonable to think that the **cost structure of the individuals who operate through these platforms is lower than that of incumbent or qualified suppliers**.

The cost structure is not only lower due to the economies of scale previously mentioned. In fact probably the biggest factor in reducing costs stems from the reuse of physical goods that people who want to become a supplier already have. For example, if you want to become a cook and already have a house with a kitchen and a dining room where you can serve your customers, the prices you charge will not have to include the cost of the necessary infrastructure inherent in a food services establishment. Equally if you want to transport people and you already have your own vehicle for personal use, you will not need to get hold of a vehicle specifically for this purpose and therefore will not need to include all its cost in any service you provide.

From the point of view of demand, the reduction in the cost structure makes it possible to offer goods or services with a similar quality to those of incumbent operators at **lower prices**, a fact that may well attract demand. In addition, **the reputational element built online** means that consumers and users are increasingly inclined to trust the new suppliers (they attach increasing importance to the opinion of other customers when choosing a possible provider) inasmuch as it helps to do away with information asymmetry. In fact, this trend can also be observed in the traditional market where **reputation is also** a very important factor, even to the extent that is equally or more significant than institutional guarantees.

When choosing where to stay or which eatery to go to, it is likely that as users we will look at **not only the number of stars the hotel has or Michelin stars the restaurant has earned, but also the reputation they have**, which is increasingly being built online (this is what would explain the success of websites such as tripadvisor.com).

In addition, demand is also stimulated by the defining feature shared by a number of marketplaces, consisting of making **unique consumer experiences** available to potential customers which incumbent or qualified suppliers would find it hard to provide. This unique trait is made possible mainly because the supply of the marketplaces is made up of micro-suppliers.

Furthermore, other factors have made a crucial contribution to this phenomenon: (i) **increasingly widespread use of the Internet and new technologies by people** and (ii) **the straightforwardness of use and operation of websites or apps for mobile devices** thus making it easier for demand and supply to find what they want by using them.

<sup>10</sup> [http://www.ebayinc.com/who\\_we\\_are/one\\_company](http://www.ebayinc.com/who_we_are/one_company)



Likewise, (iii) the new platforms or marketplaces are characterised by providing access to **goods and services and not so much the sale or transfer of ownership**. This situation is in line with a socio-cultural shift taking place in consumer habits, which is based on the fact that increasingly more value is attached to accessing goods and services on several occasions rather than owning them (**consumption based on access experiences**).

All these and other factors are conducive to the existence of growing demand for peer-to-peer (P2P) consumption using digital platforms. As a result today there are marketplaces in a large number of business sectors<sup>11</sup> which means it is a worldwide and cross-cutting phenomenon.

Below are some business sectors and operators that have created these marketplaces as well as a brief description of how they work:

- **Retail sector.** On websites such as <http://www.ebay.com/> users can sell products and thus become a vendor. In addition, purchasing a product via the digital platform instead of going to a bricks and mortar store may be a viable alternative for buyers. If this option is chosen, the end supplier of the product would be an individual and not an incumbent or qualified market operator. 
- **Accommodation sector.** A user can let rooms or homes via websites such as <https://www.airbnb.es/>. This means they can earn additional income by becoming a direct supplier of places to stay overnight. Once again if a person wants to book accommodation and does so via airbnb, this accommodation is provided by a private individual and not an incumbent or qualified market operator. 
- **Transport sector:** A user who mainly has a vehicle and driving licence can offer to transport people using platforms like <https://www.uber.com/>. Again, if a user has a need for passenger transport by road and they opt to hire the service via Uber, the service would ultimately be provided by a person who is not necessarily an industry professional. 
- **Food service sector.** A person who has cooking skills along with a place to cook and somewhere to receive diners can offer their food services by using websites such as <http://www.eatwith.com/>. From the point of view of demand, this need can be met by someone registered at eatwith, so that the service would be provided by an individual (usually in their home although the possibility of them hiring a venue specifically to provide the service cannot be ruled out) and would therefore be an additional alternative to going to a restaurant. 
- **Tourism sector.** A person who is familiar with a city or town can guide and direct a tourist in exchange for a fee. They can offer their services through websites such as <http://www.trip4real.com/>. From the point of view of people who are interested in being guided around a city for example, if they choose to hire this service via trip4real the person who will be their guide may not be a tour guide in the traditional sense. 

These marketplaces all **work in a similar way: a user who wants to offer their goods or services has to sign up** (in some cases they have to meet some specific access requirements before they can become a supplier). Once registered, **anyone who visits the digital platform can buy or ask for the goods or services of the user who has signed up and has been validated as a supplier by the manager of the platform**. Usually **people who ask for a service through these platforms have to pay a fee for it, as the platform**

<sup>11</sup> Although no specific examples have been included in this document, it is expected that the financial sector will also be affected by this innovation. See Vidal, Marc. 2014. "La banca deberá conjugar el verbo 'compartir'." 24 June. <http://marcvidal.net/2014/06/la-banca-debera-conjugar-el-verbo-compartir.html> and Pick, Francesca. 2014. "Communities, the institutions of the 21<sup>st</sup> century? Interview with Rachel Botsman", 9 April. <http://magazine.ouishare.net/es/2014/04/entrevista-rachel-botsman-comunities-ouishare-fest/>



normally **retains** a percentage of the financial transaction as a charge for the services it has rendered to the supplier (maintenance of the website or app for mobile devices, payment gateway, marketing) and **transfers the remaining** amount to the end supplier (who has actually provided the service). **The straightforward operation of these marketplaces is one of the key factors in explaining how easy it is for them to penetrate the market and their ability to turn registered users into real competitors for incumbent or qualified operators.**

It is more than likely that these platforms will continue to experience strong growth since they combine a number of features that dovetail with Javier Creus's concept of *Pentagrowth*, which is the outcome of a study carried out for *Ideas for Change* based on analysis of 50 digital organisations that grew by over 50% per year during 2008-2012 (including Wikipedia, Spotify and Airbnb). This study identifies 5 factors that explain the growth of the companies analysed and which also are present in marketplaces.

Their high growth potential lies in the fact that marketplaces are able to (i) link up people, things or situations (**connect**), (ii) easily bring together a very extensive inventory of goods and services (**collect**), (iii) maximise the capabilities of their users (**empower**), (iv) be seen by suppliers as a useful tool for developing their own business propositions (**enable**), and (v) provide the community with the resources and expertise that are available to the platform (**share**).<sup>12</sup>

One of the most significant growth factors is the ability to build a large supply inventory. For example, if you want to expand the range of overnight beds in a particular city or country, up to now it has been necessary to build or fit out new hotel establishments with the physical and time costs that this entails. Now, however, with the innovation analysed in this paper, **the increase in supply comes** from the fact that people who have empty homes and empty rooms in their homes can offer these empty places on the market, so that there is an increase in supply through the use of **resources that are already available but underused**.<sup>13</sup>

## 2. BENEFITS AND CHALLENGES OF MARKETPLACES

### 2.1. Positive effects for consumers and users

Marketplaces which enable peer-to-peer transactions have an **impact on the structure of a market** which in turn **affects the conditions of competition** in it. Perhaps the most immediate and tangible effect to be expected in the markets where this innovation operates is an **increase in the number of suppliers** since, as we have seen, **this technology-based innovation is conceived as a tool that facilitates or enables the entry into the market of individuals.**

An increase in the number of suppliers entails an extension of the range of options from which the consumer or user can choose, as in any of the areas listed above (retail, accommodation, transport, food services, tourism) the individuals (micro-suppliers) who have

<sup>12</sup> The definition of the various concepts is based on Creus, Javier. "Las palancas del crecimiento acelerado." *Cat.Econòmica* (2014): 14-16. [http://ideasforchange.com/wp-content/uploads/2014/07/JavierCreus\\_CatEcon%C3%B3mica522-2.pdf](http://ideasforchange.com/wp-content/uploads/2014/07/JavierCreus_CatEcon%C3%B3mica522-2.pdf)

<sup>13</sup> As a result the fact that increasing the available supply does not entail creating or manufacturing new tangible goods means a significant reduction in environmental impact. In this respect "*privately owned vehicles in the U.S. sit idle more than 90% of the day, on average.*" Page 7 of Orsi, Janelle et al. 2013. "Policies for Shareable Cities. A sharing economy policy primer for urban leaders." Shareable and the Sustainable Economies Law Center. <https://dl.dropboxusercontent.com/u/39811237/Policies%20for%20Shareable%20Cities.pdf>



accessed the market through the aforementioned marketplaces will be added to or form part of the supply in that market.

The entry of new suppliers will necessarily affect supply in the market; on the one hand, the supply provided by marketplaces may reasonably match the incumbent or qualified supply (and therefore in these cases there will be an increase in the **quantity of the supply**), but at the same time this innovation will lead to supply that, since it comes from micro-producers or micro-suppliers, is characterised by a high degree of singularity which it would seem incumbent or qualified operators would be unable to provide. This is the reason why there is also an improvement in supply from the standpoint of **variety and diversity**. Hence it is quite likely that the emergence of marketplaces will provide an **improvement in terms of the variety and diversity as well as the quantity of supply**.

The increase in the number of suppliers brings with it increased competitive pressures in the market, in other words to the extent that there are more suppliers competing there will be an **increase in competition** between them. In general, a higher degree of competition leads to greater effort on the part of operators in order to gain competitive advantage based on business merits that enable them to stand out from their competitors. This effort often translates into strategies that can affect both the **price** variable (discounts and promotions) and also issues relating to the conditions of **quality** of goods or services (improvements in quality) and ultimately into **enhancing innovation**.

Additionally, it cannot be ruled out,<sup>14</sup> at least theoretically, that the entry of new suppliers into the market involves **creating new demand**, whether due to the features of the new service or owing to delivering the same service at a lower price. This potential impact on prices may result in a lower cost structure for new suppliers compared to their incumbent counterparts or, for example, competitive pressures felt by incumbent or qualified suppliers.

We might consider, for instance, **people who are not attracted by traditional restaurants and where the experience of going to someone's home does encourage them** to ask for this food service (it has always been said that to learn about a country properly you need to go into the homes of its people), or similarly a potential consumer who is not willing to hire a person to guide them around a city or a taxi or any other service because of their price but by contrast **if they are able to hire a similar service at a lower price would do so**. These are two examples of people who would not have purchased a service had there not been any new suppliers, and hence they are consumers who are gained by these new operators without strictly speaking taking them away from incumbents.

In the event that the new suppliers manage to **induce demand**, the problems raised by their appearance could **no longer** be considered to be a “**zero sum game**” in which what one side gains (in this case, P2P model suppliers) is necessarily lost by the other (professional or qualified suppliers). In other words, if demand is induced **all could stand to gain** – at least from a theoretical point of view.

Sometimes some of the operators who are creators of marketplaces claim that – citing the possibility that they induce demand – they are not competing with incumbents operating in the same sector. The ACCO does not share this view because it believes that **the services provided by the “new suppliers”**, in addition to meeting the demand they themselves have induced, **also compete for demand previously existing in the market since the services**

<sup>14</sup> According to Sandro Pozzi: “*In fact, what you're seeing in New York and other cities is that it is attracting customers who previously had not used taxis or limousines as often.*” Pozzi, Sandro. 2014. “Uber avanza como alternativa al taxi convencional.” *El País*, 11 June. [http://economia.elpais.com/economia/2014/06/11/actualidad/1402515927\\_967094.html](http://economia.elpais.com/economia/2014/06/11/actualidad/1402515927_967094.html)



or goods they offer are replaceable – at least to some extent – by those available from incumbents.

In short, from the standpoint of consumer welfare, which as has been pointed out at the beginning is the ultimate objective of competition policy and the rationale for the actions of the ACCO, there is an extension of the range of options from which to choose (both in quantity and diversity) which will surely have a positive impact in terms of innovation, quality, pricing and/or business conditions, customer service, etc. Therefore there is an **increase in consumer welfare**.

In fact, it can hardly be argued that, from a consumer point of view, consumers are harmed by the emergence of new marketplaces because they can always choose to continue to meet their needs for goods and services by buying from qualified or incumbent operators but with the impact that increased competition for the latter may have had on them. Hence it cannot be ruled out that given the competitive pressures they face, incumbent operators will react by investing in improving and standing out from their rivals.

## 2.2. The challenges of the marketplaces and suggestions

While ACCO's specific function is to work, from the perspective of the policy on competition, for the welfare of consumers and, in the earlier part of this document, it has been concluded that *marketplaces* which allow for exchanges of value between individuals present the ability to increase competition in the market and, therefore, can contribute to improving the welfare of consumers; **it cannot be overlooked that at the same time they negatively affect the incumbent operators**.

■ The increase in competitive pressures associated with the sudden arrival of the marketplaces causes ill feeling among the incumbent operators. Normally the operators who appear **most bothered** by the increase in competition are those whose activity is developed in **strongly regulated sectors** and **where the demands on suppliers** are the most **intense**, in view of the fact that to be able to get into the market they have had to overcome barriers to entry which at the same time people trading in goods and services through digital platforms do not have to overcome.

For example, Eduard Rami, Manager of the Institut Metropolità del Taxi said recently that the **cost of the licence could be between €120,000 and €180,000**<sup>15</sup>. The costs of access are not, however, limited to paying for the licence, but other different homologated elements have to be provided<sup>16</sup>:

*"[...] a taximeter, which is still a relatively complex electronic device, although its function can be carried out perfectly by a current smartphone, has a price after the corresponding homologation which in many cases is over three thousand euro.*

*Not to mention the so-called "topper" fixed on the roof of the car, and the printer for invoices, a simple device which could cost less than a hundred euro, but which for the taxi driver, after the essential homologation, means an outlay of over six hundred.*

On the personal front there are also a series of obligations and requirements to be met:

<sup>15</sup> In the secondary market, understood as the market where transmissions of previously administration granted licences take place, such administration does not take part. So incumbent operators are those that obtain monopolistic profits due to the fact that the number of licences granted is limited (*numerus clausus*). [http://www.ara.cat/arabassas/el\\_focus/Institut\\_metropolita\\_taxi-uber-innovacio-tecnologia\\_3\\_1154914512.html](http://www.ara.cat/arabassas/el_focus/Institut_metropolita_taxi-uber-innovacio-tecnologia_3_1154914512.html)

<sup>16</sup> <http://www.enriquedans.com/2012/11/uber-el-taximetro-y-la-complejidad-de-la-regulation-de-la-tecnologia.html>

*"[...]a taxi driver must get a special driving licence, must have no criminal record, must apply for a municipal card, pass an examination, purchase a homologated vehicle, equip it properly with a series of apparatus, also homologated, and comply with a series of requirements and codes of conduct [...]"*

The most frequent complaints by the incumbent operators are on the subject of **unfair competition by the new operators in the market**, since these last offer the same goods and services as theirs but without complying with certain obligations.

■ It is undeniable that the design and preparation of **current regulations did not take this innovation into account**, so that, in general terms, it seems difficult for them to give a satisfactory answer. In other words, current regulations, in the best of cases, do not allow for these initiatives, so that they are situated in an environment of “**outlawry**” and, in the rest of the cases, can be directly seen as **illegal**<sup>17</sup>.

In any case, the current legal framework may have been **overwhelmed** in many cases and, in the end, become **obsolete**<sup>18</sup>, so that, in summary, it can be said that it **does not give an adequate answer to innovations**. Very probably, the demands for entry into the market and for the exercise of activities as envisaged in current regulations are unnecessary and/or disproportionate in relation with the new initiatives, since when the legislator chose to establish these requirements or obligations he did so in reference to a different reality (what was there at that time). Specifically, the current regulations were not designed to take into account that individual people (micro-operators) could become suppliers<sup>19</sup>.

■ Having identified both the benefits and the main criticisms, such as the fact that current regulations do not fit in with the innovation described in this document, **two options are seen for the public powers, that is (i) to work so that innovation flourishes and becomes another reality in the market, with the consequent rights and obligations, or (ii) to work to make it difficult and, in the last extreme, prevent it.**

**If the choice made is to prevent** participation in the market for these marketplaces which simplify transactions for value between private individuals, this option means, also, a **brake on empowering**, strictly in terms of competition, **high losses and, in consequence, negative repercussions on the welfare of the consumer.**

*To prevent this type of innovation means establishing market policies which are to some degree centred more on reducing the possible offer instead of promoting an increase of demand. So that, probably, it may be arguable the weighting of the various interests in play.*

In addition, it should be noted that it is a **delicate matter to preserve** a model with high **barriers on entry** since in the end what it is doing is **limiting self-employment**.

<sup>17</sup> In a tweet by Genís Roca, he says that “[@oferretti When the UOC was created it was illegal \(the law specified that distance teaching could only be from the UNED\). Advances are often questioned.](https://twitter.com/genisroca/status/481903646482120704)”

<sup>18</sup> “The traditional a regulation established monopolies for historically founded reasons. When the technology changes, monopolies lose their sense [...]” Salvador Coderch, Pablo. 2014. “After the scarcity.” *El País*, 21 May. [http://elpais.com/elpais/2014/05/16/opinion/1400248675\\_442367.html](http://elpais.com/elpais/2014/05/16/opinion/1400248675_442367.html)

<sup>19</sup> In a similar sense Albert Cañigüeral spoke on the Via Lliure program on RAC 1 (Section “In depth”). Broadcast on 18 May 2014. Minute 25:25. <http://rac1.org/vialliure/categories/en-profunditat/> where he said that: “*We have ceased to be people who can micro-produce value in the system and the system is not ready for that. The system is prepared for large producers, the regulation is prepared for these large producers and now there are these tensions. We used to speak of defending the consumers when they had problems during the exchange. Here what we are talking about is the defence of the capacity to produce (...)*”

Limiting self-employment would be equivalent, for example, to prevent a person who is able to cook and has a place to do it or who has a car and a driving licence from offering the corresponding services through the *marketplaces* and from obtaining incomes in exchange.

Further to the opportunity to prohibit these initiatives or not, it cannot be ignored that it seems, at least, **doubtful that there is an effective possibility of actually halting**, in the various markets, **the activities of operators emerging from the innovation** described in this document<sup>20</sup>. Thus, for example, it cannot be discounted that there are people who, in spite of any prohibition, will continue using the platforms to become professional – it must be taken into account how difficult the control can be when dealing with individual micro-suppliers – and, in that case, their **activity could be without the most minimal guarantees** and also, being illegal, **they pay no tax (hidden economy)**.

There are estimates<sup>21</sup> which indicate that in a year the State could be losing a total of €2,900 M from occasional holiday rentals to the degree that these are maintained as an activity outside the law.

On the other hand, if **the choice were to be for working on the line that these activities, the fruit of this innovation, could become a reality**, this would **allow the consumers and users to experience an improvement in their welfare** (as has been said earlier these types of platforms contribute to a reduction in the costs of access to the markets as suppliers, a circumstance which favours an increase of the offer and also means an increase in the competition), thus **it would not put brakes on innovation**<sup>22</sup> - which in this case would mean **the empowering of the citizens** -.

Further, the new digital platforms respond to a **social reality which it seems cannot be avoided**. In this sense, for example, 53% of Spanish people would be prepared to share or rent out personal goods in exchange for financial income<sup>23</sup>. In the last instance, **if it is prohibited, the doubt immediately arises as to whether the general interest is being adequately defended, particularly in the better welfare of consumers and users, as against private interests**.

In fact, **if we do not adapt and incorporate these new models we will be the losers in the competition which exists between the various countries to attract innovation** and, in short, progress. In the words of Pablo Salvador Coderch “In the world, technological development will not stop. Societies which know how to absorb it will win and those which do not, will lose. [...] We Europeans must not commit a historic error. We need to help those people who lose due to the change, but we have to commit ourselves to managing the change itself. In a democracy, this is the task of politicians. In law, of lawyers. If we people of the law apply ourselves to managing the change instead of stubbornly defending or blindly attacking the old legal monopolies, we shall all be winners. But if we do nothing, we shall disappear off the map.”<sup>24</sup>

<sup>20</sup> Botsman, Rachel. 2014. “Why the law won’t stop Uber.” *Financial Review*, 11 July.

[http://m.afr.com/p/boss/why\\_the\\_law\\_won\\_stop\\_uber\\_bQzVtcCASGPKkE12qDItN](http://m.afr.com/p/boss/why_the_law_won_stop_uber_bQzVtcCASGPKkE12qDItN)

<sup>21</sup> [http://www.hosteltur.com/157600\\_alquileres-vacacionales-alegales-generan-economia-sumergida-2900-m.html](http://www.hosteltur.com/157600_alquileres-vacacionales-alegales-generan-economia-sumergida-2900-m.html)

<sup>22</sup> Some people is already alerting over the consequences that such innovations may imply for the labour market. See (i) the programme “*Retrats*”, for statements by Fernando Trias de Bes on this question. <http://www.tv3.cat/videos/5128351/Fernando-Trias-de-Bes-tecnologia-i-ocupacio> or the (ii) *Capital in the Twenty-First Century*, by French economist Thomas Piketty, on the relatively high return on capital with respect to work.

<sup>23</sup> According to a study by Nielsen reported in *La Vanguardia* on Sunday 15 June 2014: “The collaborative economy is rooted in large consumption”.

<sup>24</sup> Salvador Coderch, Pablo. 2014. “After the scarcity.” *El País*, 21 May.

[http://elpais.com/elpais/2014/05/16/opinion/1400248675\\_442367.html](http://elpais.com/elpais/2014/05/16/opinion/1400248675_442367.html)

■ In view of all the above, in the opinion of ACCO it seems reasonable to think that work should be done to make it possible for initiatives resulting from innovation, in the form of marketplaces, to operate in the market, so that professional P2P can work and, therefore, consumers and users can benefit from it.

To achieve that these initiatives can operate in the market requires the public powers to adopt a receptive attitude to them<sup>25</sup>. In other words, a neutral or inactive response to them by the public powers will only serve to maintain the *status quo* of the incumbent operators. As has been said before, if it is taken into account that current regulations do not give a satisfactory answer to these initiatives, because they have been overwhelmed and have become obsolete<sup>26</sup>, any option other than a positive reaction would be equivalent to condemning these new activities to a situation of “outlawry” or downright illegality.

Thus, a positive reaction by the public powers would consist of encouraging a market environment which would accept these activities, the result of this innovation, so that this new phenomenon could coexist with the incumbent or qualified offer, always to the degree that demand requires.

■ To be able to construct this market environment which would allow the presence of the marketplaces and, therefore, would be more propitious to the development of competition, it would probably be necessary to adjust the current legal ordinance, so that:

- ✓ The standards which set the “rules of the game” should be the result of techniques of regulation and viewpoints broader and more flexible than the traditional, so as to give an answer to the new realities the fruit of innovation, such as that studied in this document or those which could be produced in the future. As has been said above, the regulatory challenge raised by this innovation is produced to a large degree by the fact that the regulations currently in force were not designed with sufficient flexibility, so that they have been overwhelmed and in the end will become obsolete.
- ✓ The restrictions on competition that would be contained in the regulatory framework would be needed to achieve a “lawful” objective and to be proportioned in such a way that if the same objective could be achieved with a lesser restriction on competition, this last option should be chosen, in accordance with the “Methodology to evaluate the competitive impact of standards” (AIC) prepared by ACCO<sup>27</sup>.
- ✓ There is belief in an environment propitious to the creation of trading activity and competition; however, the creation of this environment is not

<sup>25</sup> In line with the Vice-President of the European Commission Ms. Neelie Kroes, who strongly criticised the Brussels decision to prohibit Uber (Kroes, Neelie. 2014. “Crazy court decision to ban Uber in Brussels.” 15 April.

[http://ec.europa.eu/commission\\_2010-2014/kroes/en/content/crazy-court-decision-ban-uber-brussels-show-your-anger/](http://ec.europa.eu/commission_2010-2014/kroes/en/content/crazy-court-decision-ban-uber-brussels-show-your-anger/));

according to Pablo Salvador Coderch: “In Barcelona, there is controversy and administrative files have been opened. Uber is allowed in San Francisco and banned in Brussels. The outcome is foreseeable, as Barcelona is closer to Belgium than to California.” Salvador Coderch, Pablo. 2014. “After the scarcity.” *El País*, 21 May.

[http://elpais.com/elpais/2014/05/16/opinion/1400248675\\_442367.html](http://elpais.com/elpais/2014/05/16/opinion/1400248675_442367.html). In the words of Pablo Salvador Coderch, ACCO chooses to go closer to California.

<sup>26</sup> Genís Roca said that “Laws are not always in relation with what the people demand”. “Via Lliure” program on RAC 1. Edition of Saturday 14 June 2014 “Internet”. [http://www.racalacarta.com/download.php?file=0614%2011h%20\(Dissabte%2014-06-14\)%20Internet%20\(%20\).mp3](http://www.racalacarta.com/download.php?file=0614%2011h%20(Dissabte%2014-06-14)%20Internet%20(%20).mp3)

<sup>27</sup> [http://acco.gencat.cat/web/.content/80\\_acco/documents/arxiu/guia\\_aic\\_v8\\_03\\_10\\_final.pdf](http://acco.gencat.cat/web/.content/80_acco/documents/arxiu/guia_aic_v8_03_10_final.pdf)



equivalent to deregulation but to **regulation** which does not make the **appearance of a new trading model impossible**<sup>28</sup>.

In Spain this recommendation takes on special weight if it is taken into account, for example, that it appears as number 52 of the World Bank rating<sup>29</sup> on the ease of doing business and at number 142 with respect to the difficulty of starting a business.

Recognition of this reality means that **both consumers and suppliers can choose which model of supply of goods and services they take up**, whether an **incumbent or qualified model (therefore, more regulated)** with a certain prior guarantee of a more institutional nature **or**, on the other hand, a **less regulated** model, where the prior guarantee is found principally in the opinions of users who have already used this same service with a certain supplier. Therefore, the **consumer does not lose**, since in every case **he can go on choosing the model existing up till now**.

This environment, more favourable to competition, would, for example, allow taxi drivers and UBER to compete on a plane of equality, as recommended by the Minister of Economy and Competition, Mr. Luis de Guindos<sup>30</sup>.

Further, it is **possible** that the **incumbent suppliers** would also end up **going for a less regulated model**, with fewer barriers to entry, and possibly the suppliers themselves would consider that their guarantee is constituted by the opinions of their users in the long term<sup>31</sup>.

In fact, news items are appearing which indicate the possibility that, where UBER is deployed, some taxi drivers are actually choosing this road into the market: "In New York, as in other cities, there are clearly some taxi drivers who are unhappy with this type of alternative, which raises the competition. Some, however, are abandoning the traditional model to join into UberX"<sup>32</sup>

**This market environment which permits the presence of marketplaces and, therefore, is more propitious to the development of competition, requires a framework of quality standards, founded on flexible regulatory techniques which do not contain unnecessary or disproportionate restrictions on competition (understood as barriers to entry or conditions for the exercise of the activity).**

■ Additionally, **recognition** of transactions between private people instrumented by means of digital platforms as a market alternative allows a **weakening of the criticisms of unfair**

<sup>28</sup> In an article by the manager of the "Smart Cities" Committee of the World Economic Forum, Carlo Ratti and a researcher from the MIT Sensitive City laboratory, Matthew Claudel (Ratti, Carlo and Claudel, Matthew. 2014. "Uber and the intelligent city." *Ara*, 25 June. [http://www.ara.cat/premium/opinio/Uber-ciutat-intelligent\\_0\\_1163283693.html](http://www.ara.cat/premium/opinio/Uber-ciutat-intelligent_0_1163283693.html)) it is stated that:

"But what is most important is that governments invest in the development of an ecosystem of innovation looking upwards, orientated to the creation of intelligent cities, and similar to those being created in the United States. The politicians in charge cannot be limited to giving support to the traditional incubators, but must create and maintain regulating frameworks which encourage innovations and help them to prosper. In view of the legal obstacles which continually attack applications such as Uber or Airbnb, this type of support is badly needed. [...]"

• According to Enric Llarch: "Collaborative consumption, again, generally has a lesser environmental impact than conventional consumption or exclusive possession. Therefore, it is necessary to find a proper balance in order to regulate without strangulation." [the underlining is not in the original]. *La Vanguardia*, Monday 23 June 2014. "Tribune".

• According to Jesús Fernández-Villaverde in the sense that "The taxi drivers will argue, when they have no other remedy, that all they are doing is protest against competitors who do not pay taxes (this is true and the tax burden will have to be properly regulated for systems like Uber) and the possible safety problems of the new service (which again will have to be regulated. [...] We hope that our politicians will not be intimidated by the taxi drivers and that Uber, suitably regulated, can go on working without problems." [the underlining is not in the original]. <http://www.fedeablogs.net/economia/?p=38107>

<sup>29</sup> <http://www.doingbusiness.org/rankings>

<sup>30</sup> <http://www.eleconomista.es/interstitial/volver/carmpec/empresas-finanzas/noticias/5869100/06/14/De-Guindos-sostiene-que-Uber-debe-competir-en-igualdad-de-condiciones-y-pide-a-los-taxi-drivers-que-se-adapten.html#Kku8196hlyKjXB>

<sup>31</sup> Marc Vidal is of the opinion that "The taxi drivers will use Uber" <http://frameworkvidal.net/2014/06/taxi-driver-que-utilizan-uber.html>

<sup>32</sup> [http://economia.elpais.com/economia/2014/06/11/actualidad/1402515927\\_967094.html](http://economia.elpais.com/economia/2014/06/11/actualidad/1402515927_967094.html)



**competition** which, sometimes, have surrounded the phenomenon. In other words, their recognition **involves the attribution of rights** – principally, access to the market and, thus, being able to take part in the offer – and, at the same time, the **imposition of obligations and responsibilities**. Thus, becoming an operator in the market carries implicitly the attribution of charges; at the same time, these must respect the principles referred to of proportionality, necessity and flexibility, so that they do not become a limit or brake on this type of initiative appearing and developing.

In this task of defining the obligations and requirements to be met by the new market operators, there is one circumstance which cannot be ignored: the activity which the marketplaces encourage is developed by private people who become suppliers. This fact characterises the new operators, so that on the one hand, their small scale and, on the other, the occasional way in which they generally take part in the market, mean that the returns they obtain can, in a large proportion of cases, be classified as micro-income. The conjunction of these variables **is decisive** when establishing the obligations and requirements that they must meet to become operators in the market and develop their activity.

For example, having to register as self-employed with the fixed quota which that means could become a significant barrier to entry for suppliers who sporadically obtain micro-income from their activity in the marketplaces.

That said, there is surely a consensus that, for example, the activity helped by the marketplaces has to be seen as subject to **obligations of a general tax and local tax nature and compliance with guarantees in terms of security** for those who use, as suppliers or customers, the various digital platforms which facilitate deals between equals<sup>33</sup>.

- ✓ At taxation level, it is clear that the **income obtained** both by the suppliers in goods and services and by the platform itself must be **taxed in accordance with the corresponding regulations**<sup>34</sup>. In this sense, the new model takes form from the basis of the existence of a marketplace **which allows easy identification and traceability of the payments earned**, so that in the end, their own existence can be useful in combating tax fraud.
- ✓ It would seem justified to establish **minimal guarantees for those who operate through these marketplaces** both in quality of consumers and of suppliers<sup>35</sup>, but the obligations imposed would in every case have to be necessary and proportional in order not to reduce the options of consumers and users to an unjustified degree.

The simple **existence of risks does not** constitute evidence of **failures in the market** which justify a **restrictive or limiting intervention by the public powers**<sup>36</sup>. Specifically, there will be a failure in the market when the individuals are not well

<sup>33</sup> "The Government only has to fix and oversee safety standards, and submit to general taxation each fact in which there is profit" *Cinco días* EDITORIAL of 12 June 2014

<sup>34</sup> People in the sharing economy like drivers, accommodation hosts, equipment owners and artisans – **these people all need to pay their taxes and play by the rules**. And it's the job of national and local authorities to make sure that happens. [http://ec.europa.eu/commission\\_2010-2014/kroes/en/blog/my-view-todays-taxi-protests-and-what-it-means-sharing-economy](http://ec.europa.eu/commission_2010-2014/kroes/en/blog/my-view-todays-taxi-protests-and-what-it-means-sharing-economy)

<sup>35</sup> It must be specially taken into account that the individuals who act as suppliers on the basis of these models can probably be considered as trading operators, so that they are also subject to the corresponding obligations, among which are the regulations on the defence of competition. In this sense, it must be remembered that competition only occurs if the trading operators are competing among themselves.

<sup>36</sup> "To demand the lowest acceptable level of quality (to increase the consumer's possibilities of choice). In every case, the lower is the asymmetry of information for the consumer, the lower is the need to demand minimum quality". Methodology to evaluate the competitive impact of the rules (AIC), March 2010. P. 44 and 45 on the establishment of technical or quality standards. [http://acco.gencat.cat/web/contenit/80\\_acco/documents/arxiu/guia\\_aic\\_v8\\_03\\_10\\_final.pdf](http://acco.gencat.cat/web/contenit/80_acco/documents/arxiu/guia_aic_v8_03_10_final.pdf)

informed of the risks they are taking - although this is a circumstance which is less and less likely to occur in the era of Internet and information. It must be said that if the public powers are more reserved about the risk than the citizens themselves, **this would be leaving the consumers and users** – supposedly to protect them – **without a part of the offer to which they ought to have had access.**

In California specific obligations were imposed on the passenger transport platforms (*Transportation Network Company*) – which had to obtain a permit to operate, among which were measures to guarantee safety such as, obliging them to review the criminal records of the drivers (previous 7 years), that the vehicle has passed the relevant technical inspection, establishing a training programme for drivers, zero tolerance for drugs and alcohol, that the application shows a picture of the driver and the car, etc. Measures were also established to simplify the *ex post* reaction by users of the service, such as that of recording all the trips made and that of signing an insurance policy of over 1 million dollars in case the private insurance does not cover this professionalized use of the car.

Similarly, a series of obligation is set for the drivers, among these, having a minimum of points on the licence, minimum experience of one year driving, and the prohibition on picking people up in the street without using the application, among others.

- Finally, it would be good if the creation of this market environment more favourable to the new initiatives should be the result of a **regulatory, transparent and open process** which enjoyed the participation of all the parties involved - incumbent operators and new entrants – as well as representatives of the users and independent experts in the matter<sup>37</sup>. It is considered that a process of these characteristics would guarantee, perhaps to a greater degree, a respect for the principles of good regulation.

This was exactly the option chosen by California. Although initially the Safety Commission and Execution issued orders for ceasing and warnings of up to \$20,000, later it initiated proceedings to achieve agreements which would allow public safety to be guaranteed both for drivers and for passengers, while at the same time allowing the new companies to operate in the transport network "Transportation Network Company".<sup>38</sup>

- The fact that it is not considered adequate to prohibit initiatives arising from the professionalized activities of the users and that, therefore, it is necessary to encourage market environments which make them possible and compatible with the qualified or incumbent offer, does not prevent recognition of the possible existence of transitional costs linked to this change. In other words, it must not be forgotten that the processes of introducing competition, above all in strongly regulated sectors, **can cause damage to those who are already suppliers**<sup>39</sup>. **At the same time, this alteration of the conditions of competition in the market generates a benefit for the purchasers of goods and services which must not be undervalued.**

Therefore, the losses of the incumbent operators **must not be translated into obstacles for the exercise of the activity taking place in the aforementioned marketplaces**, since otherwise particular interests would be being protected instead of the general interest, specifically in seeking the welfare of consumers and users<sup>40</sup>. Recognition of the existence of **costs of transition to a model more favourable to competition**, especially for operators acting in the sectors referred to, **could lead the public powers to value the opportunity to**

<sup>37</sup> In Barcelona, there is an initiative called "Taula de l'Economia Col·laborativa a Barcelona" promoted by *Ouishare* and *Ideas for change* which proposes a debate on a similar line <http://www.slideshare.net/acanyi/taula-ciutat-collaborativa-a-barcelona>.

<sup>38</sup> "Decision adopting rules and regulations to protect public safety while allowing new entrants to the transportation industry" [the bold type is not in the original]. P. 4, footnote 4.

<sup>39</sup> "The Supreme Court has repeated in case-law that all competition is uncomfortable, but is not thereby contrary to law" [http://economia.elpais.com/economia/2014/06/13/actualidad/1402693181\\_486197.html](http://economia.elpais.com/economia/2014/06/13/actualidad/1402693181_486197.html)

<sup>40</sup> "The justice legislator attacks again". Gerard Llobet. 13 July 2014. Nothing is free. <http://www.fedeablogs.net/economia/?p=38703>



establish, in certain cases and under certain conditions, some kind of compensatory mechanism to mitigate them.<sup>41</sup>

In summary, the professionalized activity (suppliers of goods and services) of those who until now were only users, due to technological innovation in the form of marketplaces – understood as applications for mobiles and websites – which connect offer and demand, present **benefits in terms of competition**, specifically, improvements in quantity and diversity of offer and in price and commercial policies and **at the same time poses substantial challenges**.

This situation raises a **dichotomy for the public powers**, that is, to **work to make it possible** for the **initiatives the fruit of this innovation to operate** in the market, **or to hinder it**. **ACCO advocates the first option**, since only if these initiatives become reality will consumers and users be able to benefit, thus increasing their welfare. Nevertheless, the difficulties in being able effectively to halt this innovation must not be forgotten, since in the event of attempting to do so, and not succeeding, it cannot be discounted that the activity will move over to the hidden economy.

The action of the public powers needs to be directed to **promoting a flexible market environment that makes it possible for these marketplaces to develop their activity**, so that the **restrictions on competition** (understood as barriers to entry or requirements for the exercise and development of the activity by new suppliers) would be uniquely those **necessary and proportional**.

This document has been mainly translated from the Catalan version into the English one through a third Company.

<sup>41</sup> In fact, Pablo Salvador Coderch also indicates that “We need to help those people who lose due to the change, but we have to commit ourselves to managing the change itself”. See above.