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South Africa's battle to regulate e-hailing platforms

Abstract

This study submits that e-hailing platforms are an innovation which operate in an environment replete with disruption and obscurities that cannot be deciphered by existing regulations. It asserts that the absence of a legal framework predisposed to innovation is a source of tension between the South African transport legislation and e-hailing platforms. It further avers that the architecture of conventional regulations centred on the two-way relationship between the seller and buyer is inadequate to govern e-hailing business models because they insert the platform operator as a third party in the relationship. The study deploys a qualitative research methodology to acquire data from interview participants through a semi-structured interview process. Single case study research approach is utilised to produce a comprehensive understanding of this subject in its factual settings. Collated data is contextualised to the Uber e-hailing platform.

Keywords: E-hailing platforms, Regulation, Innovation, Uber

1. Introduction

E-hailing has emerged as a new paradigm for the sharing mobility economy in South Africa yet it suffers from obscure regulation (Chinguno, 2019). E-hailing is an innovation which involves the use of technology mediated applications to book transport (Omarjee, 2020). The South African government adopted the National Land Transport Act 5 of 2009 (NLTA) as the principal legislation to regulate the e-hailing sector (Ndlovu, 2017). The law was introduced in 2009 before the emergence of e-hailing in South Africa (Ndlovu, 2017). The South African Parliament elected to amend the NTLA in 2016 by inserting Section 66A to specifically deal with e-hailing platforms (Parliament, South Africa, 2022). To date, these changes have not been passed into law and therefore, remain unoperational. Consequently, South Africa's e-hailing sector is plagued by many regulatory problems with corollaries flowing into other branches of law such as tax law, labour law, privacy, competition law and urban planning and safety laws (Motala, 2016; Henama & Sifolo, 2017; Kute, 2017; Chinguno, 2019). Inequality, racial disharmony and poor job security, all symbols of the South African economy, have aggravated the situation (Kute, 2017). The absence of an effective legislative schemata to regulate the ride sharing platforms has left the sector in disharmony due to a cocktail of fragmented municipal and provincial government regulations with overlapping requirements (Chinguno, 2019).

1.2 E-hailing platforms and sustainability

Kalamar (2013) argues that sharing economy platforms militate against the quest for decent work by eroding labour welfare, driving its labour into precarious situations with limited job security. Palladino (2017) and Kassan & Orsi (2012) submit that sharing economy platforms present an opportunity for effective consumption of resources which lead to enhanced well-

being and responsible consumption. Smith (2016) argues that sharing economy platforms promote innovation by exiling conventional business practices which are moored on accretion and possession. Dredge & Gyimóthy (2015) aver that platform operators seize control of sharing ecosystem and end up beneficially dictating its key features at the expense of drivers. This view is amplified by Chinguno (2019) who submits that most Uber drivers in South Africa work for a coterie of business people who purchase cars and employ drivers resulting in only twenty percent of Uber drivers owning the cars they drive.

1.3 Case study- Uber e-hailing platform

Uber is a smartphone based digital innovation that connects drivers with passengers, enabling concurrent request of transport by customers on the platform (Posen, 2016). Uber classifies itself as an information technology company (MacKay, et al., 2020). It operates in all the major cities of South Africa supported by a driver base of twenty-thousand drivers (Douglas, 2022). When Uber trail-blazed into the South Africa in 2013, the market was dominated by metered taxis and communer omnibuses (Marcano, 2018). These incumbent players responded negatively to Uber's arrival and accused it of breaching licencing regulations and deploying anticompetitive practices (Makelane & Mathekga, 2017). This acrimony has led to violent attacks on Uber drivers (Douglas, 2022).

2. Objective

Ride sharing platforms are highly disruptive systems with large scale impact on South African urban transport regulation and others divisions of law. On this basis, the main objective of this study is to investigate how an inclusive framework can help to address challenges affecting the ride sharing platforms in South Africa.

3. Method

This study adopts a qualitative methodological approach with the aim of collating and contextualising data to actual context. A case study approach focussing on Uber is deployed to ensure collection of verifiable information within actual settings. An interview guide comprising of open-ended questions is used for gathering data through semi-structured interviews with participants using application-based platforms. Existing reports and other published documents are examined to obtain understanding into how South African regulations and policies are impacting the operations of the e-hailing sector. Thematic data analysis is employed leading to the presentation of findings in word format.

4. Rationale

There is abundant research on the tension that exists between South African transport policies and the e-hailing sector. However, there is limited pedagogical contribution with interdisciplinary underpinnings to law, digital transformation and development studies aimed at building an inter-connected and coherent inquiry to advance theory and knowledge towards a progressive and inclusive framework to regulate ride sharing platforms in South Africa.

5. Conclusion and future work

It is adduced in this paper that the e-hailing sector is a new phenomenon that requires fit-for-purpose regulations. The sector is proposing new models in transportation which challenge legacy regulations. Stretching the sphere of the existing legal order to embrace it does not provide a solution to the regulatory challenges in the sector. The common law foundation on

which legacy regulations are underpinned must be restructured towards a contemporary regulatory framework that is sensitive to e-hailing platforms. An inclusive regulatory framework that ensures compliance to labour protection, taxation, privacy, competition, urban planning, environmental management, transport and safety must be developed to cure the current regulatory inadequacies in the e-hailing sector. Future research is proposed for studies on how law-makers can respond to the growing influence of the e-hailing platforms.

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