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Online Platforms and New Challenges for Modern Law on E-Commerce

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Abstract
This article provides a legal analysis of the nature of online platforms. The subject of the article is widely discussed among modern legal scholars since the legal nature of online platforms is very controversial: it is hard to determine the very essence of services provided by platform operators as well as to ensure fair balance of interests between platform operators and their users. The aim of the article is to provide a comprehensive analysis of the relationships emerging between platforms and their users and to show the main challenges brought about by online platforms for the legal regulation and for legal practice. The author starts with analyzing the notion of online platforms and their role in the transformation of modern economy. A special attention is paid on the essence of sharing economy which is considered as a product of platforms' activity. Then the legal nature of relationships between platforms and their users is explored, i.e. operator-supplier and operator-customer relationships. In this regard, various cases concerning these relationships as well as the most recent European legal acts regulating platforms are analyzed. The main problems arising in practice of platforms' activities are discussed and the need to provide an appropriate regulation to address them is explained.

Keywords: online platforms; sharing economy; platform operator; contract law; online intermediary service; e-commerce.

Онлайн-платформи і нові виклики для сучасного законодавства про електронну комерцію

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Анотація

Статтю присвячено правовому аналізу природи онлайн-платформ. Ця тема є актуальною і широко обговорюваною серед учених-правників, оскільки правова природа онлайн-платформ є досить суперечливою. У практиці трапляються випадки, коли складно визначити саму суть послуг, що надаються операторами платформи, а також забезпечити справедливий баланс інтересів між операторами платформи та їх користувачами. Метою статті є комплексний аналіз взаємовідносин, що виникають між платформами та їх користувачами, а також показати основні виклики, які створюють онлайн-платформи для правового регулювання і правозастосовної практики. Розглянуто поняття онлайн-платформ та їх роль у трансформації сучасної економіки. Окрему увагу приділено сутності економіки спільного використання, що розглядається як продукт діяльності платформ. Досліджено правову природу відносин між платформами та їх користувачами, тобто відносини оператор-постачальник і оператор-клієнт. У зв'язку з цим проаналізовано різні судові спори, що виникали в цих відносинах, а також останні європейські правові акти, що регулюють діяльність платформ. Обговорено основні проблеми, що виникають у практиці діяльності платформ, та роз'яснено необхідність прийняття відповідного нормативного акта для їх вирішення.

Ключові слова: онлайн-платформи; економіка спільного використання; оператор платформи; договірне право; онлайн-посередницька послуга; електронна комерція.

Introduction

Modern information technologies undoubtedly have a great impact on the modern society. Not only do they help to automatize and speed up information exchange or fulfilment of certain tasks, but they are also a driving force of the modern economy changing and transforming it day by day.

Among modern communicative technologies online platforms turned out to be one of the most powerful instruments influencing the global economy. Platforms like Booking.com, Airbnb, Uber, Amazon.com and others have fundamentally changed the way people get access to various assets, perceive their basic economic necessities, and communicate with each other. All in all, the rapid development of platforms has dramatically changed modern economy in the whole world. The new type of economy is often called "sharing economy" or "collaborative economy" (as the European Commission calls it) [1]. What is typical for it is that end users of various goods and services as well as providers of these goods (services) basically get in touch with each other via professional intermediaries – online platforms – facilitating transactions between them. Since everyone can get access to online platforms all over the world, the main peculiarity of the sharing economy is its peer-to-peer nature: it gives an opportunity for non-professionals to offer goods and services, which leads to decentralization and de-professionalization of the distinction between the producer and the consumer [2, p. 12].

For the law it means that "off-on" categories (like "consumer-business" or "professional-non-professional trader") are no longer viable as organizing frameworks' [3, p. 144]. When analyzing the "triangle of relations" between suppliers of goods and services, online platforms and customers, the following problems may be pointed out.

First, it is doubtful whether the relationship between a supplier of goods or services and an online platform as an intermediary may be considered a peer-to-peer one. Usually, the online platform is a more powerful party to the contract, than the supplier, since it drafts the contract, has an opportunity to unilaterally alter it, and has a technical control over the contract performance [4].

Second, it is not less doubtful whether a supplier of goods or services not being a professional one (like an Airbnb host) may be considered a "business" in relationship with a customer. Consequently, it is doubtful whether provisions of consumer protection legislation may be applied [5].

Finally, the nature of relationship between a customer and a platform, on the one hand, and a customer and a supplier, on the other hand, is ambiguous as well. Although initially online platforms have been considered merely intermediaries who generally do not bear liability for the content and conduct of the suppliers, nowadays this rule is rather questionable since modern platforms differ a lot from their predecessors. All in all, it gave rise to a serious debate among scholars on whether platforms may be liable for the violations caused by suppliers of goods and services.

In this article the mentioned issues will be analyzed. In Part I the general overview of the modern online platforms will be provided. In Part II the relationship between suppliers of goods and services and platform operators will be analyzed. In Part III I will analyze the relationship between platform operators and their customers. Liability issues will be discussed as well. In Part IV the relationships between platform users will be analyzed. A special attention will be paid on whether these relationships may be considered of a "business-to-consumer" (B2C) or "consumer-to-consumer" (C2C) nature. In the conclusion I will sum up the results of the research.

Materials and Methods

There are three main methods which have been used to conduct the research.

The first one is an analytical method. This method helps to point out the main features and peculiarities of the modern online platforms and to structure the relationships emerging between platform operators and their users. By virtue of thorough analysis of the way modern platforms conduct their activities it has

become possible to outline the critical points which need special legal regulation or need to be treated carefully in the legal practice.

The second method is an empirical one. The article is based on the analysis of case law originating in various modern jurisdictions (France, Spain, Denmark, the USA etc.). Among these cases are American cases concerning Amazon.com (*Oberdorf v. Amazon.com Inc* [6], *Bolger v. Amazon.com, LLC* [7]), Danish cases concerning Booking.com and other platforms [8] and judgements delivered by European Court of Justice (CJEU) (*Uber Systems Spain SL* [9], *Airbnb Ireland* [10], *L'Oréal SA and Others v eBay International AG and Others* [11], *Google France SARL and Google Inc. v Louis Vuitton Malletier SA* [12]). These and other cases demonstrate that the nature of relationships between platforms and their users is very unusual, which explains why in case law new approaches need to be developed to resolve disputes arising between platforms and their users. The cases analyzed when preparing this article show that courts in various jurisdictions have already started applying special approaches when resolving these disputes. However, not always are these approaches balanced and justified.

Finally, the third method is a comparative one. The main feature of modern platform economy is that it is extremely globalized: the platforms usually conduct their activity worldwide or at least for several jurisdictions, which is why the main issues concerning platforms are actual to some extent for all modern countries. Some jurisdictions have already started developing special legislation concerning platforms and their activities. The most prominent example is the European Union, which has been among the first not only to start elaborating special secondary legislation on platforms, but also to adopt it. The most significant amendments may be found both in directives and in regulations, and the latter have an exterritorial effect allowing to apply them not only to platforms incorporated in the EU, but also to platforms domiciled in other jurisdictions. One of the most prominent examples of directives concerning platforms is the Directive (EU) 2019/2161 as regards the better enforcement and modernization of Union consumer protection rules, which laid down the so-called European "New deal for consumers" and tackled the relationships between platforms and their customers (consumers) [13]. What about regulations, the most prominent among them are Regulation 2019/1150 on promoting fairness and transparency for business users of online intermediation services [14] and Regulation (EU) 2022/2065 on a Single Market for Digital Services (Digital Services Act) [15]. While the former regulates relationships between platforms and their business users, the latter imposes the wide range of obligations for platforms with regard to their scale, functions and the number of active subscribers. Thus, the EU demonstrates the attempts to adopt a full-

fledged and comprehensive regulation on various types of relationships emerging with platforms (platforms-to-business, platforms-to-consumers, and user-to-user relationships). These legislative developments are worth analyzing since they are the most comprehensive among those existing in the world. Thus, they may be used as patterns when developing Ukrainian legislation in the same field.

Results and Discussion

Online platforms and relationships arising between platforms and their users

The term "online platform" is mainly a technical one. Currently there is no legal definition of the this term in Ukrainian legislation. However, the definition for this term has been recently introduced in the European legislation. In Article 3 of Regulation (EU) 2022/2065 on Digital Services Act online platform is defined as a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service [15]. As explained in recital 13 of the preamble to the Regulation, the main feature of platforms is that they not only store content placed by other users, but also share this content with other users of a platform. A special attention in this Regulation is paid on "online platforms that allow consumers to conclude distance contracts with traders" (so-called transaction platforms) which allow not only to share some content online, but also to offer and to order some goods, services etc.

Thus, generally a term "online platform" covers all services which allow their users to share content with each other. However, this term may have a narrower meaning, when it is used only for platforms facilitating bargains between their users. In this narrower meaning platforms are usually called "online marketplaces" or "transaction platforms". In this article the term ‘online platform’ is used in this narrow meaning.

The European Commission in its Agenda on Collaborative Economy stressed that platforms activities "create an open marketplace for the temporary usage of goods or services" [1]. Consequently, online platforms have been considered as networks or marketplaces – virtual places for peers to meet each other [2, p. 13].

Scholars have underlined other characteristics of online platforms. Sometimes online platforms are defined as "multi-sided markets that disrupt traditional offline interactions by reshaping the ways individuals transact" [3, p. 94]. It is often stressed that "platforms are in essence contract-based architectures" [16, p. 150]. Indeed, online platforms may be considered as nets of contracts between various participants.

Nowadays there is a plenty of platforms which differ in their technical characteristics. Earlier platforms like eBay and Amazon provided for their users merely an opportunity to buy and sell goods and enter retail contracts. They represented a so-called Web 2.0. However, modern platforms (Airbnb, Glovo, Uber etc.) represent the new generation of the Internet, Web 3.0, and provide larger opportunities to their users. While some of them allow to get a needed service wholly online, others, like car-sharing platforms, allow their users to get even an offline service or asset wholly online, and in this regard connect two worlds (online and offline) by virtue of smart devices and programs. In fact, these platforms made a kind of a revolution in a way people use various assets, perceive their necessities, and communicate in order to get what they need [3, p. 96]. The newest platforms allow users to enter a wide range of contracts (not only retail contracts, but also rent, service, labor contracts etc.) and continue revolutionizing economic and social life.

However, despite the difference in functional peculiarities, all the online platforms have a common structure. Generally, they have several groups of participants. First, there is an operator of online platform who runs the platform, i.e. creates, manages, regulates, and supervises a digital environment for users [16; 157]. In particular, the operator develops (or manages the development) the website or the app enabling users to get in contact and negotiate, drafts contractual framework for users, enters various contracts with users, which all in all helps to regulate the relationships between users and defend their rights and interests [17; 4].

Second, there are various platform users being counterpart of the platform operator in the membership agreement [16, p. 157]. Users in their turn may be divided into two groups: customers (consumers) and suppliers (business users). While customers connect to a platform to use its main opportunities (buy, rent, get access to the assets offered on a platform), suppliers are natural or legal persons who offer some assets or services on the platform to customers.

Thus, the typical structure of modern online platforms resembles a triangle, where all the 'corners' are bound by a contract (see Figure 1).

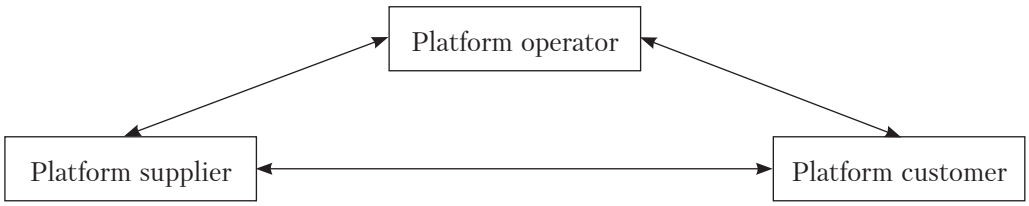

Figure 1

Although from the first site it may seem that the relationships arising on platforms are rather typical (they are contractual by their nature and they emerge between typical participants – legal and natural persons), these relationships have a lot of peculiarities. In the further parts of the article these peculiarities will be analyzed separately for each type of the relationships. Since these relationships constitute some "side" of the "platform triangle" for the sake of clarity they will be called "dimensions".

Dimension 1: platform operator-platform supplier relationship

Both in legal doctrine and in the recent documents prepared by the European Commission the relationships between platform operators and platform suppliers have been called "platform-to-business" or P2B ones. Although usually they are merely a type of traditional business-to-business (B2B) relationships, they have a lot of peculiarities which attest their special nature.

What is crucial for P2B relations is the imbalance of power between a platform and its suppliers: the platform operator turns out to be a more powerful party to the contract since it unilaterally determines the content of the contract, takes control over the data provided by both suppliers and their customers, and usually is represented by a large business structure, whereas suppliers are usually small and medium enterprises (SMEs) [18, p. 1-2].

The imbalance of power between platform operators and suppliers naturally causes various risks for the latter, which was revealed by the fact-finding research on P2B relations undertaken by the European Commission in 2016-2017. The research has shown that there is a high percent of business users (suppliers), 46 %, who had experienced problems and disagreements with the platforms in the course of their business relationships. This percentage was even higher among business users with more than half turnover generated via online platforms [19].

All in all, this research acknowledged the need to provide a special regulation for P2B relationships. As a response, in the EU in 2018 the Proposal for a Regulation on promoting fairness and transparency for business users of online intermediation services was introduced [20]. The Commission pointed out the following aim of the Regulation: to ensure a fair, predictable, sustainable and trusted legal environment for business users, corporate website users, providers of online intermediation services and online search engines alike, which will limit the occurrence and the impact of harmful platform-to-business trading practices occurring in certain online activities, thereby safeguarding trust in the online platform economy and preventing further legal fragmentation of the Digital Single Market.

The Proposal was approved by the Council of the European Union, and on 20th of June 2019 the Regulation 2019/1150 on promoting fairness and transparency for business users of online intermediation services was finally adopted [14].

What is essential about the Regulation is its contract-based approach: it seeks to address the concerns through the contents of the contract between a platform and its suppliers [18, p. 6]. Thus, it focuses on the content of so-called "terms and conditions" to ensure their transparency, fairness, and sustainability. Noticeably, the approach used to tackle these issues is rather unusual from the contract law perspective.

First, the Regulation apparently brings some tunes of B2C legislation into P2B sphere. Just like the law regulating B2C relationships, the Regulation requires platform operators to ensure that their terms and conditions are drafted in plain and intelligible language and are easily available to the counterpart at all stages of their commercial relationship (article 3 paragraph 1). Moreover, the Regulation provides a specific formal requirement for various notifications addressed to a supplier by the platform operator: just like directives of the EU focusing on B2C issues (Directive 2011/83/EU, Directive 2008/48/EC), the Regulation requires all the notifications addressed to platform suppliers to be on a durable medium (article 3, paragraph 2, article 4, paragraph 1, 2). All in all, it attests that the European Parliament and the Council consider the business user (the supplier) as a weaker party to a contract, which justifies the B2C-like provisions regulating these relationships.

Second, the Regulation encourages creation of organizations and public bodies entitled to defend the rights of business users in courts instead of creating a special administrative body to resolve disputes and sanction platform operators for violations. In its article 14 the Regulation introduces an interesting model of class actions allowing organizations and associations that have a legitimate interest in representing business users as well as public bodies set up in Member States to take action before competent national courts in the Union to stop or prohibit any non-compliance by platform operators [14]. This feature demonstrates that the Regulation focuses on private law mechanisms of defense and stands for civil liability of violators instead of administrative sanctioning.

Third, the Regulation obviously gives preference to internal complaint-handling systems and mediation. Not only does it encourage the use of these mechanisms of dispute resolution, but it also obliges platform operators to provide easily accessible internal systems (article 11) as well as identify in their terms and conditions two or more mediators (article 12) [14]. These provisions demonstrate

the shift from judicial dispute resolution to alternative one, attesting the effectiveness of the latter.

Therefore, the Regulation is rather comprehensive in its scope. Since in Ukraine there are a lot of local and global online platforms offering their services to Ukrainian business users, provisions of the Regulation could be used as a pattern to regulate the same issues in Ukrainian practice. The need to implement these provisions is actual also because the provisions of the Regulation have an exterritorial scope and can be applied to Ukrainian platforms offering their services to European business users (article 1(2) [14]. Thus, it would be natural to impose the same obligations for European platforms offering their services in Ukraine.

However, some provisions of the Regulation still need further development.

The first and the most essential issue is a scope of the Regulation, which is still determined rather ambiguously. Article 1(2) of the Regulation says that it shall be applied to online intermediation services provided to business users. Thus, the Regulation applies only when one of the parties to a contract is a platform operator providing information society services and the other party is *a business user*, i.e. any private individual acting in a *commercial* or *professional* capacity who, or any legal person which, through online intermediation services offers goods or services to *consumers* for purposes relating to its trade, business, craft or profession (article 2, paragraph 1(1)).

However, it is unclear whether the Regulation is applicable when it is not a business user, but a natural person who offers goods (services) on a platform. Most of the modern online platforms provide an opportunity to offer goods (services) not only for professional business-users, but also for ordinary natural persons having some spare sources. For example, in Ukraine Olx platform allows both business and non-business users to offer their goods and services to other users. Literally in this case the Regulation may not be applied, but the laws on B2C relationships seem to be applicable since a platform operator is a business and a non-professional user offering goods (services) is a consumer. However, the main problem here is that the relationships between the platform operator and the user still stuck between B2B and B2C since essentially the user is neither the business, nor the consumer in the classical meaning of these terms.

Second, it is doubtful whether the Regulation may apply when a business user offers goods (services) via a platform not only to consumers, but to businesses as well. This problem has already been discussed by scholars: literally the Regulation would not apply where the customers are businesses themselves, because the definition of a "business user" does not extend to instances where

goods or services are supplied to non-consumers (i.e., businesses) [18, p. 9]. However, this may create problems in practice since it might be rather hard to ensure a comprehensive application of the Regulation to the relationships between a platform operator and a business user if a platform provides an opportunity to offer goods (services) both to consumes and to businesses.

All in all, the analysis above proves that although the EU have put many efforts trying to address issues arising in P2B relationships, still there are a lot of challenges, which need to be solved.

Dimension 2: platform operator-customer relationships

Customers ordering goods or services via an online platform are bound by a contract with its operator. Usually, the contract merely outlines the main rules of how a platform should be used and which responsibilities are carried out by the platform operator and the customer in this regard.

However generally the contractual relationships between the platform operator and a customer end up once the customer orders a good (a service) offered by a supplier: here the direct contractual relationship between the customer and the supplier arise. In practice this peculiarity has given rise to many disputes on the liability of the platform operators for the violations of the customers' rights by the suppliers.

Of course, according to the general rule platform operators are not considered liable for the suppliers' violations. This rule stems from the presumption that online platforms usually are merely providers of intermediation services and thus enjoy a "safe harbor" regime. This regime was introduced by the Directive 2000/31/EC on electronic commerce back in 2000 [21]. According to articles 12 through 15 of the Directive providers of caching, hosting and "mere conduit" services generally are not liable for the content which is placed by their users. Since platforms are the type of hosting providers and thus an intermediation service, these rules are applicable to them.

However, the modern practice shows that not always may online platforms be regarded as mere intermediaries. Moreover, not always can platforms be considered even as providers of information society service within the meaning of Directive (EU) 2015/1535 on Information Society services [22]. On the contrary, some of them are considered as providers of the main service together with platform suppliers, i.e. as sellers, drivers, hosters etc., but not as those who merely facilitate the provision of the goods or services.

In this context the CJEU judgement on *Uber Spain* is of particular interest [9]. The proceeding in this case was initiated by Asociaciyn Profesional Elite Taxi ("Elite Taxi"), a professional taxi drivers' association in Barcelona (Spain).

CJEU was asked for a preliminary ruling on whether the activity carried out by Uber Systems Spain was merely a transport service or an electronic intermediary service or an information society service. The Court came to the general conclusion that intermediation service such as that at issue in the main proceedings, the purpose of which was to connect, by means of a smartphone application and for remuneration, non-professional drivers using their own vehicle with persons who wished to make urban journeys, was inherently linked to a transport service and, accordingly, was classified as "a service in the field of transport" within the meaning of Article 58(1) TFEU [9]. Among other, the Court pointed out that Uber exercised *decisive influence* over the conditions under which transport service was provided by drivers. In particular, Uber determined at least the maximum fare by means of the eponymous application, that the company received that amount from the client before paying part of it to the non-professional driver of the vehicle, and that it exercised a certain control over the quality of the vehicles, the drivers and their conduct, which could, in some circumstances, result in their exclusion.

Much the same approach has been taken by the United States Court of Appeals for the Third Circuit in case *Oberdorf v. Amazon*. In this case the plaintiff, Ms. Oberdorf, sued Amazon for the damages she suffered because of the defects of the dog collar and a retractable leash she had bought on the Amazon (the collar broke during her walk with the dog, and, as a result, her eye was hit and she was left blind). Although Amazon argued that they were not liable for damages since they were not sellers of the collar, the Court supported the plaintiff's position and considered Amazon a "seller" being subject to the Pennsylvania strict products liability law [6].

Of course, Uber and Amazon are very special services having significant influence on their suppliers (taxi drivers and sellers). Most of the platforms do not have that much influence and thus fall within the notion of providers of information society services (ISS). However, even being a provider of ISS not all platforms may be regarded as intermediation service, in particular, as hosting providers, which is attested in practice.

One of the most prominent examples in this context is the decision of Danish Eastern High Court on GoLeif.dk platform. The platform is a search service which allows to look for airline tickets, compare prices, and buy tickets online. One of its customers bought a ticket, but the airline company failed to properly serve him since it went bankrupt. So, the customer decided to sue the platform. The Court supported the plaintiff and stated that the platform was directly liable since it could not be clear for an average customer that he or she was dealing with

an airline company, not with the platform. The court stressed that the GoLeif.dk website did not make it sufficiently clear that customers were not trading with GoLeif.dk, but instead with the airline delivering the flight [23, p. 28].

The mentioned cases demonstrate that classical provisions on ISS and intermediation service providers do not fit well regarding online platforms. Thus, there is a need for a more detailed regulation of their status in the relationships with their customers, and more exceptions should be provided to the general 'safe harbor' regime, which was established long before Web 2.0 and Web 3.0 platforms have emerged.

Ukrainian legislation and case law in this regard continue following classical rule treating online platforms as mere type of hosting service providers and thus as intermediaries enjoying exemptions from liability in the relationships with their customers. These rules are laid down in article 9 (4) of the Law on electronic commerce [24]. However, the rapid growth of famous Ukrainian platforms (like Rozetka, Olx, Ontaxi, Prom.ua etc.) and cases emerging in their practice prove that this approach needs more nuances and details.

Meanwhile, the European Union has already made a lot of efforts to bring its legislation in conformity with the modern realms in the area of platforms activities. These efforts have resulted in the Regulation (EU) 2022/2065 on Digital Services Act [15], which has been recently adopted. Provisions on liability of hosting service providers are introduced in article 6 of this Regulation. Although paragraph 1 of this article duplicates the wording of the traditional 'safe harbor' provision contained in the Directive on e-commerce in its article 14, the next paragraphs introduce new details. In particular, paragraph 2 rules that the safe harbor regime is not applicable where the recipient of the service is acting under the authority or the control of the provider [15]. This means that an online platform is liable towards its customers if the supplier of goods or services is in fact under the authority of the platform. As explained in recital 23 of the Regulation this may be the case where the provider of an online platform that allows consumers to conclude distance contracts with traders determines the price of the goods or services offered by the trader (like Uber, for example, does).

The other exemption is contained in paragraph 3 of article 6. It sets that the safe harbor regime shall not apply with respect to the liability under consumer protection law of online platforms that allow consumers to conclude distance contracts with traders, where such an online platform presents the specific item of information or otherwise enables the specific transaction at issue in a way that would lead an average consumer to believe that the information, or the

product or service that is the object of the transaction, is provided either by the online platform itself or by a recipient of the service who is acting under its authority or control [15]. As explained in recital 24 of the Regulation examples of such behavior could be where an online platform fails to display clearly the identity of the trader, as required by this Regulation, where an online platform withholds the identity or contact details of the trader until after the conclusion of the contract concluded between the trader and the consumer, or where an online platform markets the product or service in its own name rather than in the name of the trader who will supply that product or service. In that regard, it should be determined objectively, based on all relevant circumstances, whether the presentation could lead an average consumer to believe that the information in question was provided by the online platform itself or by traders acting under its authority or control [15].

The new rules introduced in the European Digital Services Act are balanced and justified by modern realms and may serve as the criteria and instructions in cases concerning liability of platforms towards their customers. Considering the Ukrainian course towards the European integration these rules are worth implementing in the national legislation.

Dimension 3: supplier-customer relationships

The bottom line of the "triangle" is represented by the relationships between suppliers and customers. Although these relationships are regulated by the contracts drafted by the platform operators, they are more or less independent from the operator (depending on the platform structure and on the powers of the operator) and resemble ordinary relationships between buyers and sellers, service providers and their customers etc.

However, these relationships also have significant peculiarities challenging their legal regulation.

The main peculiarity is the vagueness of the status of their parties. Traditionally, the legislation regulates contractual relationships depending on the status of the contracting parties. From this perspective there are B2B, B2C and C2C relationships. While B2B and C2C relationships are typically presumed to be the ones where the contracting parties have equal position, in B2C relationships there is a weaker party (the consumer) which needs a support to balance their interests. For this reason, modern contract law contains additional guaranties for consumers in B2C contractual relationships.

However, the status of parties in the relationships arising between platform users is usually unclear. As mentioned above, a lot of modern platforms allow not

only business users, but also ordinary natural persons to offer their goods and services on the platform. Often it may lead to a conundrum of legal statuses of platform users: users who do not have a status of an entrepreneur may offer their goods and services just like professional entrepreneurs do, while business users offering their goods and services on the platform may in some moment decide to order some goods and services in the status of platform customer. This issue challenges modern law, which is used to the strict distinction of B2B, C2C and B2C relationships.

In some jurisdictions certain attempts to respond to this challenge have already been made. An interesting approach is applied in Denmark. According to the Danish Consumer Contract Act of 1977 a consumer contract is not only a contract between a consumer and a person acting within his trade or business, but also a contract on goods and services from non-traders, if the contract is concluded or mediated through or with the help from a business [25, p. 79]. If applied to platforms, this rule means that relationships between platform users regardless of their legal status are classified as B2C ones since they are intermediated by a business (by the platform).

Although being preferable for consumers, the approach introduced in Danish legislation is rather strict for non-business suppliers. That is why in the European secondary legislation a softer approach is currently chosen, which comes down to imposition of additional information duties on platforms and platform suppliers. In particular, Directive (EU) 2019/2161 as regards the better enforcement and modernisation of Union consumer protection imposes on platform an obligation to ask platform suppliers for the information on whether they are traders or non-traders. Further this information shall be provided to consumers in a clear and comprehensible manner, and if a supplier is not a trader, the platform shall support their offers with a disclaimer that the consumer rights stemming from Union consumer protection law do not apply to the contract [13].

In Ukraine certain provisions purporting to address the issue of vagueness of legal status of platform users have been also introduced. Recently a new Law on consumer protection has been adopted, which sets new terms and rules concerning e-commerce. The law has not entered into force yet, but its provisions are worth analysis since soon after the cancelation of the military regime in Ukraine it will become applicable. In particular, the law introduces the notion of "marketplace" and "classified", where the former means services allowing the consumers to get information on the goods and to conclude distance contracts with subjects of e-commerce, and the latter means services allowing natural and legal persons to

place their offers on goods, which can be ordered both via the classified service system and outside this system. The law obliges classifieds to inform their customers if the goods or services are offered by a natural person having no entrepreneur status and acting as an ordinary non-business subject [26].

However, this provision is not comprehensive. First, it does not oblige platforms to place a disclaimer that in case the offer comes from an ordinary natural person the guarantees laid down by consumer protection legislation do not apply. Meanwhile, this disclaimer is very important since not all the consumers know that bargaining with natural persons deprives them from these important guarantees. Second, the mentioned provisions impose the mentioned obligation only on classifieds, but not on marketplaces. Meanwhile, it is not clear enough why marketplaces do not carry out this obligation, although their suppliers can also be ordinary natural persons. All in all, both issues show that Ukrainian legislation does not fully comply with the European one and needs to dwell on the harmonization with the latter.

Conclusions

Sharing economy and various issues concerning online platforms nowadays are one of the most debatable topics among legal scholars. Although the structure of online platforms and their main features seem to be clear enough, the practice has shown that the essence of services provided by platform operators as well as the legal nature of relationships surrounding platforms remain puzzling. Thus, there is a need to set new rules and provisions helping to resolve disputes which may arise between platform operators and their users.

Since 2016 European Commission as well as other bodies of the EU have put a lot of efforts to develop an appropriate legislative framework for platform economy. After years of work special legal acts regulating various relationships between users and platform operators have been developed and some of them adopted. Ukraine attempts to follow the same pass since full harmonization of national legislation with the European one is one of the main priorities of Ukrainian policy strengthened after the beginning of the full-scale invasion. However, the efforts made during the last years are not enough, which evidences the need for Ukrainian policy makers and scholars to start a thorough analysis of the recent developments of European Commission and European Parliament and to dwell on the accurate and comprehensive harmonization of Ukrainian legislation with the European one concerning online platforms.

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