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Uber is the litmus test of support for a market economy

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An hour after arriving, I remained stranded at a train station in the Cotswolds, working through the long list of advertised taxi numbers. The first operator asked, with all seriousness, “what day do you want this for?” Another informed me that he was on a Heathrow run and could pick me up in 2 hours. A third call dialled through to someone who seemed to have no idea his phone was even listed for taxi services.

Attending that rural wedding last year brought home the value of the convenient ride-sharing platforms I’d taken for granted in cities. Out in the sticks, businesses such as Uber or Lyft will probably always be unviable. But their absence made me pine for the readily available, safe, door-to-door services that operate in otherwise badly transport-served corners of major cities.

Such services now risk being undermined or even destroyed. Not, sadly, by forces of competition, but by lawyers, lawmakers and regulators.

In London, Uber faces the verdict of an appeal against a ruling by Transport for London that it is not a “fit and proper” operator. Across the world, ride-sharing platforms appear to be losing a bigger fight to continue running in their current form.

Most recently in California, but in an ongoing UK Supreme Court case too, their business model is being threatened by legal claims that drivers should be treated as employees rather than independent contractors. Urged on by trade unions and competitor transport interests, the cases represent an attempt to shoehorn driver-platform relationships into traditional employee-employer forms, making drivers eligible for “rights,” such as sick pay, holiday pay and the minimum wage.

Who doesn’t want more rights? Well, most of the companies’ drivers, it seems. Yes, a pandemic that has hollowed out inner cities has seen many reassess their preferences for security and flexibility. Some drivers do want more of the former. But survey after survey, both before and during the pandemic, show the vast majority of ride-share drivers prefer independent contractor status than the legal status of employment.

A recent poll in the US, for example, found that 66pc of “full-time” Uber drivers favour their existing status over becoming employees. A 2017 survey here in the UK found 80pc support for that status among all drivers.

The reason is clear: most drivers value flexibility. They have no set hours – with complete freedom to decide how and when they drive. In fact, 86pc of US drivers say they opted for app-based work precisely because of the flexible schedule. Faced with the choice between guaranteed income and rights or flexibility and higher pay when they do work, they favour the latter, by margins of at least three to one.

These drivers that oppose formal employee status know that such a move would mean rigid hours and greater employer control over locations they serve. This would negate their ability to fit in earning income with other pursuits, whether studies, parenting or their primary jobs.

If moving to employee status would be bad news for drivers, it would also clearly harm customers. Bearing higher fixed costs of employment would see Uber and Lyft operating in fewer cities and restricting locations served within them. Basic rides would cost more and be less readily available, meaning higher prices for day-to-day consumers and a smaller network.

Consumers would find themselves then facing worse services that are less affordable. Less flexible driver numbers would worsen the responsiveness of car availability to supply and demand through the dynamic pricing Uber and Lyft are famous for, and that economists find increases consumer welfare.

Much ink has been spilt on the legal arguments over whether drivers really fit the bill of contractors or employees under existing law. There will be long debates that centre over how much control drivers currently have or should have over things such as pricing, to meet the contractor definition. Already, to try to squeeze into California's strictures, Uber had begun to allow drivers to see destinations of journeys and be able to reject them without penalty, for example.

Yet these debates obscure the more important economic one. By arguing over how drivers fit into current worker definitions, we risk ignoring whether laws that risk making popular services unviable are themselves the greater problem.

These platforms facilitate mutually beneficial trades between drivers and riders. Regulatory or legislative enforcement that, in effect, bans some of these voluntary trades is economically destructive. If willing adults want to transact their labour in this way, then who benefits from going to such lengths to make the activity conform with existing employee definitions?

Rather than try to place square pegs in round holes, legislators should work with the opportunities new technologies afford. That's not just my view, but that of former prime minister Tony Blair. In a piece published last week he argued for overhauls of benefit systems to allow more people to work flexibly, by reimagining social insurance programmes to compensate for downside risks.

In competitive markets, companies such as Uber are already finessing their own packages as drivers' preferences evolve. The company's own survey suggests drivers overwhelmingly

support their most recent proposals to develop driver benefit funds in the US rather than turn them into employees.

And that's the point: why shouldn't workers be able to contract their labour on the terms that they wish through free negotiation like this? How policymakers react to these cases, especially if Uber loses, will provide a litmus test of their attitudes to innovation.

Platform technologies come along that provide popular services for users and providers. Will policymakers protect such innovation by altering laws, or sacrifice our economic welfare on the altar of traditional employment relationships?

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