

SCOTTISH EXPERT ADVISORY PANEL ON THE COLLABORATIVE ECONOMY

MEETING 31 AUGUST 2017: DISCUSSION PAPER ON COLLABORATIVE FINANCE INCLUDING FINTECH AND BALANCING COMPETITION AND REGULATION

Purpose of this paper

This paper has been drafted to *aid discussion* at the ‘Collaborative finance including Fintech and balancing competition and regulation’ evidence session for the Scottish Expert Advisory Panel on the Collaborative Economy. *Recommendations cited in this paper that were made by respondents do not constitute endorsement.*

While many issues of regulation and competition are perhaps pertinent to particular sectors, this short paper focuses on *general* issues of competition and regulation in the collaborative economy. A separate discussion paper looking at Collaborative Finance accompanies this report.

We are pleased to also invite the Competition & Markets Authority to our session where they will explore with us the broad principles to consider. If time, it may also be worth looking at the [European Agenda for the Collaborative Economy](#) (12 pages).

BALANCING COMPETITION AND REGULATION

Background

Competition is an important function of a healthy economy. So too is regulation: it provides the framework for healthy business, sets standards and ensures only fair advantages are gained in the market place. The regulatory environment should treat all business fairly and must be consistent and proportionate whilst providing protection and allowing the market to grow. Companies shouldn’t operate in a regulatory vacuum, neither should they risk degeneration at the hands of rules that are no longer fit for purpose.

A key characteristic of the collaborative economy is the speed platforms transform markets. This presents a challenge to governments and regulators when responding and taking account of the speed of legislation and changes to regulations. Any changes to regulation need to be agile so that they can be quickly adapted to the evolving collaborative economy.

Call for evidence

Closed questions

The call for evidence included two closed questions relating to regulation of the collaborative economy. This included a question seeking views specifically on the balance between regulation and competition/innovation (Figure 1 below), and another focused on protection of contributors (Figure 2 over the page).

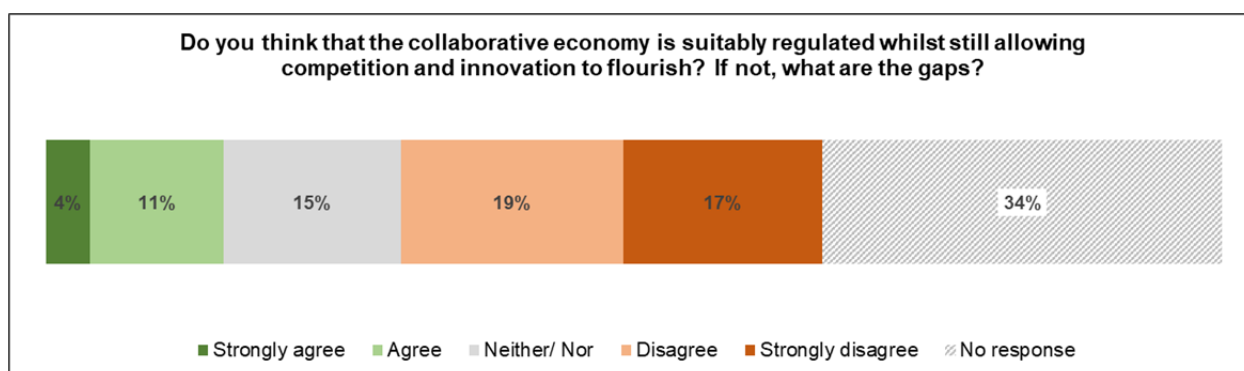
On balance, respondents felt that the collaborative economy is not suitably regulated; 36 per cent felt that existing regulation is not suitable, and 15 per cent that suitable regulation is in place. A further third of respondents did not provide an answer.

SCOTTISH EXPERT ADVISORY PANEL ON THE COLLABORATIVE ECONOMY MEETING 31 AUGUST 2017: DISCUSSION PAPER ON COLLABORATIVE FINANCE INCLUDING FINTECH AND BALANCING COMPETITION AND REGULATION

Responses suggest some difference in views across respondent types:

- The respondents showing the most positive balance of views in relation to existing regulation were public bodies, although there remains an even balance between positive and negative views across this group – and nearly a third of local authority respondents felt that suitable regulations are not in place.
- The respondents showing the most negative balance of views on existing regulations were businesses, business representative bodies, and individual respondents. The majority of individuals and nearly half of businesses felt that existing regulations are not suitable.

Figure 1: Do you think that the collaborative economy is suitably regulated whilst still allowing competition and innovation to flourish?



Views were somewhat mixed in relation to protection of contributors to the collaborative economy. On balance, respondents felt that consumers and providers are not suitably protected by existing legislation, although responses do not indicate a majority view;

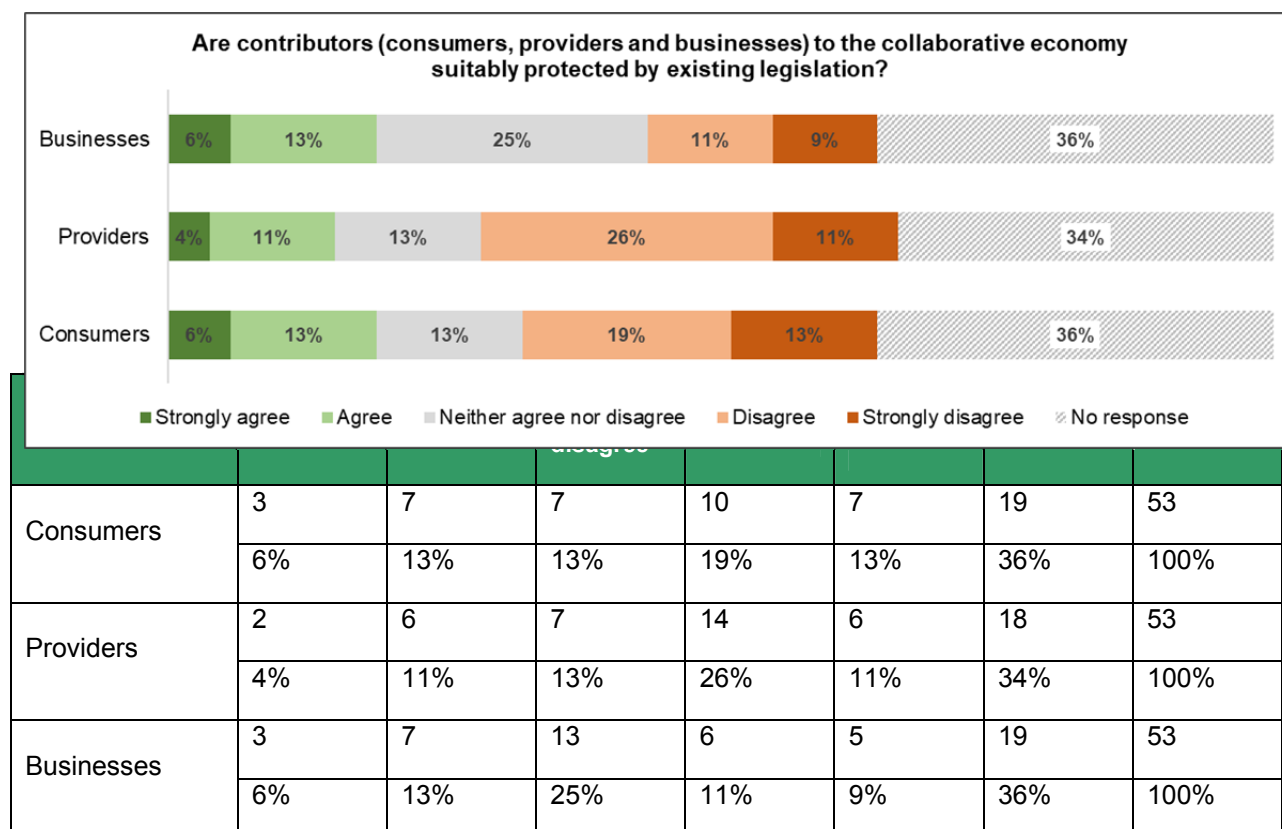
- 32 per cent felt that consumers are not suitably protected;
- 19 per cent suggested that consumers are suitably protected;
- 38 per cent that providers are not suitably protected; and
- 15 per cent felt that suitable protections are in place.

Views were more evenly balanced in relation to protection of businesses, with 21 per cent suggesting that there are not suitable protections in place, and 19 per cent that there are suitable protections. The lack of a clear majority view on this topic is also reflected in more than a third of respondents not answering this question.

Views were broadly consistent across respondent types. The overall balance of views was similar for group and individual respondents, and across the main types of group respondent. For example, the overall balance of views was similar for businesses/ business representatives, public sector and other group respondents. However, as the summary of written responses over the following pages indicates, there is some difference of opinion between collaborative economy providers and more traditional businesses.

SCOTTISH EXPERT ADVISORY PANEL ON THE COLLABORATIVE ECONOMY
MEETING 31 AUGUST 2017: DISCUSSION PAPER ON COLLABORATIVE
FINANCE INCLUDING FINTECH AND BALANCING COMPETITION AND
REGULATION

Figure 2: Are contributors (consumers, providers and businesses) to the collaborative economy suitably protected by existing legislation?



The key points raised in the call for evidence on consumer protection included:

- Reference was made to existing consumer protection law as providing a basis for protection of consumers of collaborative economy services. It was also noted that the European Commission has produced guidance on the application of EU consumer protection law to collaborative business models.
- Several respondents referred to a lack of clarity for consumers around the status and liabilities of collaborative providers and platforms, and the potential for this to lead to a lack of understanding of the protections that apply. This included reference to a recent European Commission study which identified the extent to which consumers of collaborative services are unaware of rights and processes if something goes wrong.¹ The potential for a lack of clarity or understanding to undermine consumer confidence in collaborative platforms was also highlighted.
- A public sector respondent highlighted the importance of trust for the collaborative economy. It was noted that many providers using collaborative platforms cannot rely on traditional sources of trust such as recognised

¹ *Exploratory study of consumer issues in online peer-to-peer platform markets* (2017), European Commission.

SCOTTISH EXPERT ADVISORY PANEL ON THE COLLABORATIVE ECONOMY

MEETING 31 AUGUST 2017: DISCUSSION PAPER ON COLLABORATIVE FINANCE INCLUDING FINTECH AND BALANCING COMPETITION AND REGULATION

branding or face to face contact. In this context, rating and review mechanisms are widely used across the collaborative economy, and have the potential to provide an incentive for businesses to perform well and encourage investment. However, this respondent also referred to concerns around the potential for consumers to be misled by reviews, and noted the importance of guidance for businesses to ensure open and honest use of online reviews and endorsements.

Opportunities

The **importance of ensuring fair competition** was highlighted by some respondents. This included specific reference to the potential for competition to deliver better quality and convenience of services, to provide greater choice, and to lower prices. Several respondents highlighted the potential for collaborative platforms to provide more accessible routes to market for new and smaller businesses, including for providers who may otherwise have been unable to sustain the cost and risk associated with starting a business. A public sector respondent noted that this could include providers using new and innovative approaches, with the potential to stimulate further innovation within the collaborative economy, and existing providers to adjust.

However, several business representative respondents expressed **concerns around a perceived lack of regulation and enforcement of collaborative businesses**, with some of the view that this had resulted in unfair competition with existing businesses. Some suggested that collaborative platforms had taken advantage of this to grow at the expense of existing businesses. A business representative also suggested that enforcement of existing regulations for the collaborative economy was being restricted by a lack of information on operators. This included specific concerns that collaborative platforms are not currently providing sufficient information to enable regulation of service providers using these platforms.

In terms of the regulatory approach, a small number of business representative respondents noted the **importance of regulation being proportionate**. This included suggestions that care is required to ensure regulation of the collaborative economy does not lead to unintended negative consequences for collaborative providers operating fairly, for other business sectors, or for the wider public (for example by limiting choice). This included specific reference to the potential for regulation of peer-to-peer accommodation to have a negative impact on short-term rentals more widely, described as 'an important part of Scotland's vital tourist industry'.

Challenges

Respondents identified several potential challenges for the collaborative economy in relation to balancing regulation and competition:

- Several respondents expressed a view that **new providers using the collaborative economy are not subject to the same enforcement of**

SCOTTISH EXPERT ADVISORY PANEL ON THE COLLABORATIVE ECONOMY
MEETING 31 AUGUST 2017: DISCUSSION PAPER ON COLLABORATIVE
FINANCE INCLUDING FINTECH AND BALANCING COMPETITION AND
REGULATION

regulation as is the case for traditional businesses. These respondents felt that this had led to what they deem unfair competition, for example where new market entrants are not subject to the same regulatory and taxation costs. This included reference to businesses and platforms operating within the collaborative economy, and to individuals using collaborative platforms to provide goods and services.

- A business respondent **questioned claims that the collaborative economy has led to unfair competition** with existing businesses. This was with specific reference to competition between peer-to-peer accommodation (and the short-term rentals sector more widely) and hotels. This respondent noted examples of hotels successfully diversifying their accommodation offer, and cited evidence suggesting that short-term rentals have not had a significant impact on the hotel sector.²
- A small number of public sector respondents with a specific focus on the transport sector noted the **potential for peer-to-peer and other innovative transport services to compete with public transport**. These respondents saw a need for regulation to enable new business models to be developed through the collaborative economy, while protecting essential public transport services.
- An individual respondent suggested that **competition from individuals providing services through collaborative platforms could stifle innovation amongst small businesses** who do not have access to the resources required to achieve scale quickly.
- Several respondents suggested that **regulatory change is required to ensure equality of protection and fair competition** for all businesses. This view was primarily expressed by respondents who see new collaborative providers as having an unfair advantage, although a business representative respondent also noted that new business models may also be disadvantaged by regulations designed for traditional providers.
- A small number of business respondents noted the **importance of regulation respecting the needs of all stakeholders**, and for example balancing the preferences of what were described as 'powerful incumbents' with smaller providers seeking access to markets. It was also suggested that care will be required to ensure that regulation of financially motivated collaborative businesses will not negatively impact on pure sharing elements of the collaborative economy. These concerns were reflected in a suggestion that development of regulation must be based on an accurate understanding of the collaborative economy, and should draw on the views and experiences of all stakeholders.

² This included reference to specific hotel chains, and to Impact of the short-term rental industry in Europe, (September 2016) Niki Nutsch, nutschassociates.com.

SCOTTISH EXPERT ADVISORY PANEL ON THE COLLABORATIVE ECONOMY
MEETING 31 AUGUST 2017: DISCUSSION PAPER ON COLLABORATIVE
FINANCE INCLUDING FINTECH AND BALANCING COMPETITION AND
REGULATION

Balancing regulation with competition and innovation

Key points raised in relation to balancing competition and regulation included:

- A number of respondents referred to questions around the **extent to which regulation should apply across the collaborative economy**. This included a suggestion from a public sector respondent that regulation may vary dependent on the nature of collaborative transactions, for example across consumer-to-consumer, consumer-to-business, or business-to-business transactions. It was noted that decisions will be required on how regulations should apply to these transactions, and that these decisions must take account of a range of factors. This included specific reference to the potential risk of distorting competition, the degree of risk related to different types of service providers and products, and potential benefits of avoiding burdensome regulation for small or micro businesses. This respondent also noted the risk that over-regulation can limit choice and competition, if for example it rules-out lower quality but cheaper options. The important role of competition law was highlighted here; it was noted that competition law operating after the fact minimises risks of inadvertently stifling innovation and competition.
- Several respondents suggested that there has been **disproportionate enforcement of regulations between collaborative economy businesses and traditional businesses** and that this has distorted competition. Concerns were also raised around what was seen as collaborative platforms using investor funds to enable under-pricing to undermine competition, and the extent to which more effective regulation is required to address this. A business respondent and an individual also suggested that the global scale of some collaborative platforms does not allow local providers to compete effectively, and wished to see additional regulation. However, a business representative also suggested that competition will suffer if regulation is designed with the aim of protecting incumbent businesses and models.
- A small number of respondents saw potential benefits in a **lighter regulatory approach**. This included a suggestion from a public sector respondent that the success of new technologies and business models could indicate scope for reducing existing regulatory burdens, if a reduction can improve competition while ensuring sufficient consumer protections. However, this respondent also noted that public authorities have been unsure in how to strike this balance in relation to the collaborative economy. Other respondents referred to challenges in meeting international competition, and the extent to which Scotland is perceived as a relatively high cost option in some sectors.
- A public sector respondent highlighted the value of **identifying and evidencing the harm to consumers that regulation is intended to tackle**, to inform decisions on whether potential harm can be handled through other means. This included reference to Competition Impact Assessment

SCOTTISH EXPERT ADVISORY PANEL ON THE COLLABORATIVE ECONOMY MEETING 31 AUGUST 2017: DISCUSSION PAPER ON COLLABORATIVE FINANCE INCLUDING FINTECH AND BALANCING COMPETITION AND REGULATION

Guidelines produced by the Competition & Markets Authority as providing a framework for these decisions.

- A business respondent recommended the **development of a national licensing regime** for transport services, to ensure equality of access to new technologies across the sector – including for collaborative economy and traditional providers.
- A business representative respondent referred to the potential impact on competition associated with the **tax disparity between property-based businesses and online-only businesses**. This included reference to the forthcoming findings of the Barclay review³ as potentially relevant to the Panel.

Barriers to growth

Relatively few respondents referred to barriers to growth in the context of balancing competition and regulation. Several respondents saw **regulation as a potential barrier to growth** – indeed some appeared to see ‘barrier’ and ‘regulation’ as synonymous to some extent. This included a small number of respondents highlighting the need for careful enforcement of regulations to avoid undermining growth. However, **some respondents felt that the current regulatory framework is insufficient**, or is no longer suited to new business models developed through the collaborative economy.

Several respondents referred to the **domination of large multinational platforms as a barrier to growth and competition**. A public sector respondent also noted that new routes to market offered by collaborative platforms were now being used by traditional operators, and suggested that this could blur boundaries for regulators.

The role of government

Several respondents saw a **role for government in clarifying regulations, and ensuring compliance while allowing competition**. Most of these respondents appeared to favour a relatively light regulatory approach, although some saw existing regulation as largely fit for purpose. A business representative respondent also saw a role for regulation in ensuring a genuinely collaborative economy, and suggested that regulation should differentiate in favour of genuinely collaborative and sharing activity.

Respondents made **specific suggestions for the regulatory approach**:

- Regulation and competition were seen as closely linked, and requiring careful balance. A business respondent proposed a ‘regulatory sandbox’ as a framework for innovation and development, and a drive by government to improve the quality of, and access to, information on the collaborative

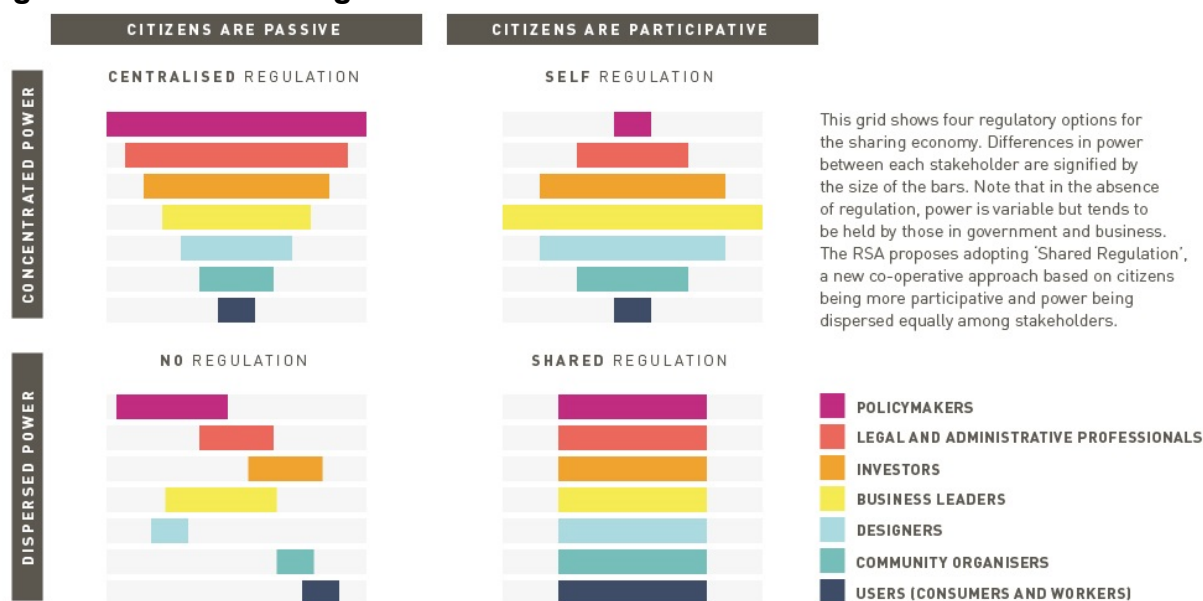
³ <https://beta.gov.scot/publications/barclay-review-business-rates-scotland-call-submissions/pages/1/>

SCOTTISH EXPERT ADVISORY PANEL ON THE COLLABORATIVE ECONOMY MEETING 31 AUGUST 2017: DISCUSSION PAPER ON COLLABORATIVE FINANCE INCLUDING FINTECH AND BALANCING COMPETITION AND REGULATION

economy. This included a focus on ensuring transparency in how collaborative platforms and providers operate.

- Several respondents highlighted the need for a balanced approach to regulation – including a suggestion for this approach to be tailored at a local level. Local authorities were seen as having a significant role in implementation and enforcement of regulations.
- Several respondents suggested that regulation should be expanded beyond government and the public sector, to involve the private sector in the development and implementation of regulation.
- A respondent **proposed a more collaborative approach to regulation**, described as shared regulation. This proposal was based on collaborative platforms being seen as one of a range of actors within the regulatory framework, alongside government. Other stakeholders would include consumers, workers and other providers, community organisers, legal and other professionals, investors and designers. The regulatory approach would be structured around a shared goal, with the full range of stakeholders having a role to play alongside government. The concept is illustrated in Figure 3 below.

Figure 3 – Models of regulation



SCOTTISH EXPERT ADVISORY PANEL ON THE COLLABORATIVE ECONOMY
MEETING 31 AUGUST 2017: DISCUSSION PAPER ON COLLABORATIVE
FINANCE INCLUDING FINTECH AND BALANCING COMPETITION AND
REGULATION

Key considerations for discussion during evidence session

A number of stakeholders have been invited to provide additional evidence at the fourth meeting of the Expert Advisory Panel on the Collaborative Economy. The CMA are attending the session with a focus on balancing competition and regulation and have been asked to consider the following questions:

1. What role does self-regulation via ratings systems or accreditation systems such as TrustSeal play within the collaborative economy and how should it complement or replace existing regulations?
2. Are there any examples of regulatory approaches or models that have been adopted globally that should be considered for the collaborative economy in Scotland? Any new regulation must be future proofed to ensure that it is fair, proportionate and agile to adapt to the evolving collaborative economy.
3. How can we encourage innovation and competition within the collaborative economy whilst ensuring regulatory neutrality with traditional business models so all participants receive a suitable level of protection and security?
4. Are there any markets or sectors within the collaborative economy that require intervention or trends showing they may require in the future?