

On Legal Supervision of Car-hailing Services

Wu Yue^{1,a,*}

¹Law Department, Zhejiang Gongshang University, Hangzhou, Zhejiang Province, 310000, China
605553177@qq.com

Wu Yue

Key word: Sharing economy Car-hailing Legal Supervision

Abstract: The car-hailing market has the characteristics of diversification of subjects and cross-regional transactions, and its derivative trading community presents a highly complex structure. However, there are also some problems in the car-hailing market, such as rampant black car phenomenon, frequent refusal of compensation and anomie of rights and interests protection. How to regulate these regulatory problems in the market needs to be discussed in depth. This paper tries to solve the ambiguity in legislation and promote the healthy development of the sharing economy by putting forward corresponding suggestions and countermeasures.

1. Introduction

Sharing economy refers to a new economic format that achieves the best use of goods by temporarily transferring the right to use idle resources among individuals through the Internet platform. It is a dislocation and supplement to the traditional economic model. From the perspective of economies of scale, sharing economy uses scale effect and declining marginal cost to achieve utility; from the perspective of social resources, sharing economy activates idle resources and reduces the loss of sunken capital; from the perspective of transaction cost, sharing economy reduces transaction cost and achieves Pareto optimum.

At present, Airbnb, eBay, Swap and so on are widely used in sharing economy enterprises abroad. As a specific application of the sharing economy in the field of public transport, the Internet car-booking service represented by Uber has achieved rapid development since its birth, and the legal regulations of many states in the United States have also begun to bear fruit. In China, the Ministry of Communications and other seven ministries and commissions promulgated the Interim Measures for the Management of Network Reservation Taxi Operations and Services, which not only confirmed the legitimacy of network reservations, but also caused new legal discussions. In short, the framework guidance at the legislative level is difficult to play an effective role in practice. Various problems caused by the blank of traditional departmental law and judicial interpretation follow. Completing legal regulation design of Internet vehicles has a long way to go.

2. The Dilemma of the Supervision of car-hailing Appointment

2.1 The phenomenon of black cars is rampant

According to the author's survey, more than 35% of the respondents said that they had traveled in Internet vehicles without licenses or with inconsistent license information. The hidden danger caused by asymmetric information between online and offline is worrying. The reason is that some drivers illegally enter the market because of the higher threshold of market access and the larger proportion of platform withdrawal. Generally speaking, local governments are more strict in restricting drivers' age, educational background and household registration, so drivers who do not qualify for market access can only enter the black car market.

2.2 Claim rejection occurs frequently

In practice, platforms often do not actively assume the legal liability of advance compensation, and insurance companies often refuse to settle claims. Through the analysis of relevant cases, we can see

that the car-hailing-appointment platform does not consider that it has labor relations with the driver and refuses to pay insurance. The reason for refusal of insurance company is that the insured does not fulfill the obligation of notification when changing the use of the insured vehicle, which increases the risk of the insured vehicle. Therefore, the insurance company will not pay compensation within the scope of the three-liability insurance. That is, the disputes on the allocation of liability for traffic accidents lie in the legal relationship between drivers and platforms and the liability for insurance compensation after changing the nature of vehicles. In addition, the actual infringers and platforms are not very active in responding to the lawsuit, and the proportion of absent trial is relatively large. As a result, the key facts such as whether the accident occurred during the operation of the car-hailing appointment can not be ascertained, and the subject of responsibility is difficult to determine.

2.3 Abnormal Protection of Rights and Interests

Last year, social events such as the rape of stewardess Li in a free ride caused people's concern about the safety of Internet vehicles. What these cases have in common is that drivers use favorable crime space, remote roads, male gender advantages and other conditions to indecent and rape passengers. According to the author's survey, about 57% of passengers believe that personal and property security risks are great when riding on Internet vehicles. The safety risks of Internet vehicles are mainly related to the inadequate pre-qualification examination of drivers and the non-standard installation of vehicle positioning devices and emergency alarm devices. In addition, according to the Provisional Provisions for Online Appointment Vehicles issued by the Ministry of Communications, Internet Appointment Vehicles should install vehicle satellite positioning device and emergency alarm device with driving record function, while survey data show that only part of the drivers have actually installed these devices. The defect of driver qualification examination and the defect of emergency refuge device management reflect the anomie of passenger rights and interests protection.

Generally speaking, there are still many unsatisfactory conditions in the market environment of the car-hailing industry. But its root lies in the inefficiency of the Internet vehicle control system caused by the immaturity of market regulation, safeguard measures and supervision process.

3. Suggestions and Countermeasures on legal supervision of car-hailing booking

3.1 Optimization of Driver's Market Access Standard

For driver's access qualification, we should focus on the driver's criminal background examination, and relax the restrictions on household registration, age, education and so on. Article 12 of the Interim Measures clearly stipulates that the restrictions for contract car drivers are only driver's license and driving experience, criminal record and violent crime record. It reserves the right of freedom for local governments to set specific rules according to local conditions. The author believes that the main purpose of the restrictions on household registration, age and education by local governments is not to guide surplus labor to enter the shared economic market in an orderly manner, but to design a system to restrict mobility, which is suspected of violating the provisions of Article 3 of the Labor Law on equal employment. Therefore, in order to promote citizens to actively exercise their labor rights and guide the development of the sharing economy, the government should relax the restrictions on household registration, age, etc., and increase the examination of criminal background.

3.2 Establishment of Tort Liability Sharing Mechanism

Introducing the special compulsory insurance access mechanism of car-hailing appointment is of great significance to improve the legal mechanism of car-hailing appointment supervision. The special insurance of network car appointment is of great significance to fill the vacancy of network car appointment insurance in the market and to rationally disperse the liability of tort subjects. In terms of insurance coverage, drivers can insure different amounts of insurance according to different driving stages. As the existing insurance for operating vehicles can not cover the coverage of network reserved vehicles, the insurance company should design a special insurance for network reserved vehicles at different stages, such as waiting for receipt of network reserved vehicles, before receiving

passengers and receiving passengers. During the waiting period, the reception period and the loading period of the vehicle, the driver's duty of safety and care is gradually increasing, and the corresponding insurance coverage is also increasing. In addition, the insurance access mechanism of car-hailing booking should gradually realize mileage accounting of insurance premium rate. Under the background of the reform of insurance premium rate in China, the design of special insurance for network car appointment should be based on the consideration of public interests. Platform should also provide necessary vehicle travel records for insurance companies, and establish platform insurance access mechanism and vehicle insurance access mechanism. The platform has the obligation to ensure that the compulsory insurance has been completed before the vehicle enters the market, otherwise it will not be qualified for operation.

Platform can assume the substitution responsibility for the infringement of the legitimate rights and interests of passengers by the drivers or the main responsibility of the owners in traffic accidents. For the infringement of the third party, the third party shall bear the liability for compensation, and the platform shall bear the supplementary liability within the scope of its fault. Under the mode of sharing economy, idle resource providers are the direct providers of offline real goods or services, and they are the real transaction contract relationship with idle resource demanders. Therefore, idle resource providers should bear the main responsibility and direct responsibility for their faults for contract problems or infringement disputes such as quality defects and breaches of contract in the actual transaction process.

3.3 Division of Reasonable Legal Liability

Internet platforms should actively assume responsibility for security review, security care and assistance obligations. Because the platform deeply intervenes in consumers' service experience activities by setting service content and service price and on this basis establishes the trust relationship with the platform as the core rather than the traditional trust relationship with the owner as the core and obtains economic benefits. According to the legal principle that the beneficiaries bear their responsibilities, the Internet platform should bear the corresponding responsibility of information disclosure, security, information disclosure and insurance.

Information disclosure responsibility specifically refers to that the platform should assist the regulatory authorities to monitor the market development after the driver and vehicle have obtained legal certificates, and actively provide necessary management information for the driver and vehicle. Internet platform should rationally design the content, scope, approach and scale of information disclosure of car-hailing appointment, maintain the balance between necessary information disclosure and personal privacy protection of passengers, while disclosing different levels of security information, transaction information and driving information according to different standards and requirements, increase the legal responsibility for information disclosure. In addition to properly disclosing the necessary information of both suppliers and consumers of idle vehicles, the platform should also disclose the price algorithm of passenger freight and avoid invisible price calculation algorithm to breed grey benefits. The failure of price adjustment mechanism caused by information asymmetry is actually the deprivation of passengers' personal rights and interests. The responsibility of safety care refers to the duty of reasonable care or routine supervision that should be performed in the provision of services. As the organizer of trading activities, network platform creates market transaction risks, so it needs to rely on Internet technology to disperse systemic risks. That is to say, the platform should be responsible for the passenger or third party damage caused by its business operation mode design, security risks and other faults. The duty of care in advance includes the aforementioned examination of driver and vehicle qualification and information security. For the guarantee of insurance liability, he means that in order to establish the platform insurance access mechanism, the regulatory authorities should clearly assign the responsibility of ensuring insurance to the platform, urge the platform to perform management responsibilities when the owner of a contract car applies for insurance or changes the special insurance of a contract car, and urge the platform to fulfill its guarantee insurance obligations according to law and restrict the platform to enter the market.

References

- [1] Zhu Baoli, The Rise and Legal Challenge of Cooperative Supervision, *Political and Legal Theories Series*, vol.4, pp.137-145, 2015.
- [2] Sun Lin, An Analysis of Local Legislative Path of Online Car Arrangement from the Perspective of Limited Government Theory, *Journal of Wuhan Vocational College of Communications*, vol.7, pp.1-13, 2017.
- [3] Wang Jing. Supervision Dilemma and Solution of Online Car Appointment in China, *Administrative Law*, vol.2, pp.49-59, 2016.
- [4] Pan Jing. The path of insurance regulation for the sharing economy of networked vehicles, *Financial Innovation*, vol.7, pp.65-69, 2017.