

# The Global Gig Economy: How Transport Platform Companies Adapt to Regulatory Challenges—A Comparative Analysis of Six Countries

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Acceptance Date April 3, 2024; Advanced Access publication on April 22, 2024.

## ABSTRACT

Non-standard employment practises in the gig economy have recently drawn critical attention from regulators and the courts in a number of jurisdictions across the globe. Transport platform companies have responded to these challenges in several distinct ways in an emerging global battle to preserve their business model. This article provides a typology of the different strategies employed by these companies in six countries, highlighting five key strategies of regulatory activism, strategic litigation in defence of a business model, tactical subcontracting, negotiations with labour unions and threatening to withdraw services. It then shows how the structural features of the gig economy may be diverging into four distinct models in the European Union, China, the United States and the rest of the world. The study contributes to our understanding of the global nature of the struggle for fair working conditions and how platform companies operate in different institutional and regulatory contexts.

## 1. INTRODUCTION

Non-standard forms of employment in the gig economy have recently drawn critical attention from regulators and the courts in a number of jurisdictions across the globe. One prominent target of these regulatory challenges has been the classification of riders and drivers of food delivery and ride hail

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companies as independent contractors rather than direct employees of the company. Platform companies in the transport and food delivery sectors have claimed this arrangement provides greater flexibility and freedom for workers by allowing them to log on and off when they desire.<sup>1</sup> Unlike a traditional employment relationship, workers can decide on a minute-by-minute basis whether they want to continue to work, providing them greater control over scheduling their activities.<sup>2</sup>

Many regulators, however, have questioned this practice and have pointed to the precarity and vulnerability of workers denied standard employment protections such as a minimum wage, sick pay and rights of collective bargaining.<sup>3</sup> They have contended that workers should either be considered employees or that a new system of classification should be introduced.<sup>4</sup> While this model has always been contested,<sup>5</sup> recently there have been a number of high-profile court cases and new legislation that suggests the possibility of a fundamental restructuring of the regulatory environment in which these companies operate.

For example, in 2019, state legislators in California passed Assembly Bill 5 that tightened rules for classifying workers as independent contractors, which was then challenged by platform companies through their support for Proposition 22.<sup>6</sup> In 2021, the UK Supreme Court decided that Uber drivers should be classified as workers rather than independent contractors due to

<sup>1</sup>Mujtaba Ahsan, 'Entrepreneurship and Ethics in the Sharing Economy: A Critical Perspective' (2020) 161 *Journal of Business Ethics* 19–33; Deliveroo, 'Submission to the Senate Select Committee on the Future of Work and Workers' (2017), Parliament of Australia 103. <https://www.aph.gov.au/DocumentStore.ashx?id=65accf93-55c5-44cd-860b-ad9f3875e2b3&subId=563974>.

<sup>2</sup>Alex Rosenblat and Luke Stark, 'Algorithmic Labor and Information Asymmetries: A Case Study of Uber's Drivers' (2016) 10 *International Journal of Communication* 3758–84; James Duggan, Ultan Sherman, Ronan Carbery and Anthony McDonnell, 'Algorithmic Management and App-Work in the Gig Economy: A Research Agenda for Employment Relations and HRM' (2020) 30(1) *Human Resources Management Journal* 114–32.

<sup>3</sup>Jill Rubery, Damian Grimshaw, Arjan Keizer and Mathew Johnson, 'Challenges and Contradictions in the "Normalising" of Precarious Work' (2018) 32(3) *Work, Employment and Society* 509–27; Aaron Shapiro, 'Between Autonomy and Control: Strategies of Arbitrage in the "On-Demand" Economy' (2018) 20(8) *New Media & Society* 2954–71; Alex Wood, Mark Graham and Vili Lehdonvirta, 'Good Gig, Bad Big: Autonomy and Algorithmic Control in the Global Gig Economy' (2018) 33(1) *Work, Employment and Society* 56–75.

<sup>4</sup>Andrew Stewart and Jim Stanford, 'Regulating Work in the Gig Economy: What Are the Options?' (2017) 28(3) *The Economic and Labour Relations Review* 420–37; Kathleen Thelen, 'Regulating Uber: The Politics of the Platform Economy in Europe and the United States' (2018) 16(4) *Perspectives on Politics* 938–53.

<sup>5</sup>Lora Kolodny, 'UberCab Ordered to Cease and Desist' *TechCrunch* 24 October 2010. <https://techcrunch.com/2010/10/24/ubercab-ordered-to-cease-and-desist/>.

<sup>6</sup>California Legislative Information, 'AB-5 Worker Status: Employees and Independent Contractors' 2019 [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB5](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB5).

the high level of control that the company exercised over them.<sup>7</sup> Following this decision, Uber drivers in South Africa launched a class action lawsuit against Uber BV and Uber SA in the Johannesburg Labour Court, contending that drivers should be entitled to rights as employees.<sup>8</sup> In Spain, the ‘riders law’ came into force in August 2021, which placed a presumption of employment on delivery and distribution riders in situations where a company exercised the powers of management and control over them.<sup>9</sup> In December 2021, the European Commission proposed a new directive to ensure that workers on digital labour platforms were granted the status of full employees if this was reflected in their actual work arrangements.<sup>10</sup> The Platform Work Directive, which classifies workers on gig-economy apps as employees in cases where platforms control factors such as pay, working hours and supervising performance, was endorsed in March 2024.

In China, after several viral media reports on food delivery riders, the Chinese government launched a campaign to curb the power of the big platform companies. Several regulatory policies and guiding opinions were launched, claiming to provide more protections for platform workers not classified as employees. Most prominently, the ‘Guiding Opinions on Labor Security Rights and Interests of Workers in Platform Employment’ stated that platform workers should have a minimum wage and occupational injury insurance.<sup>11</sup> It also required platforms and collaborating franchisees to have labour relations with full-time workers.

In light of these recent developments, this article analyses how platform companies in the on-demand food delivery and ride hail sectors have adapted to challenges to their employment practises. It traces the processes through which they have launched PR campaigns, lobbied regulators, defended their employment systems in the courts, mobilised community groups and initiated referenda to defend their business model. It adopts a

<sup>7</sup> *Uber BV and others-v-Aslam and others* [2021] UKSC 5.

<sup>8</sup> Leigh Day, ‘Prominent Human Rights Lawyers Launch Class Action for South African Uber drivers’ *Leigh Day* 22 February 2021. <https://www.leighday.co.uk/latest-updates/news/2021-news/prominent-human-rights-lawyers-launch-class-action-for-south-african-uber-drivers/>.

<sup>9</sup> Gorka R Pérez, ‘Spain Approves Landmark Law Recognizing Food-Delivery Riders as Employees’ *El País* 12 May 2021. [https://english.elpais.com/economy\\_and\\_business/2021-05-12/spain-approves-landmark-law-recognizing-food-delivery-riders-as-employees.html](https://english.elpais.com/economy_and_business/2021-05-12/spain-approves-landmark-law-recognizing-food-delivery-riders-as-employees.html).

<sup>10</sup> European Commission, ‘Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work’ 2021/0414. <https://ec.europa.eu/social/BlobServlet?docId=24992&langId=en>.

<sup>11</sup> Ministry of Human Resources and Social Securities of the PRC, ‘Guiding Opinions on Protecting the Labor Rights and Interests of Workers Employed in New Forms’ 16 July 2021. [http://www.gov.cn/zhengce/zhengceku/2021-07/23/content\\_5626761.htm](http://www.gov.cn/zhengce/zhengceku/2021-07/23/content_5626761.htm).

global perspective through an analysis of six different countries to demonstrate how many of these platform companies are repeat players operating in multiple jurisdictions (Uber—69; Just Eat—24; Didi—16; Deliveroo—13). For them, each new court case and piece of legislation is a threat to their global business model due to fears that effective regulations in one jurisdiction could become a model for others.

The article explores the following research questions: How are transport platform companies (predominantly ride hail and food delivery) responding to legal challenges to their employment model in different jurisdictions across the globe? Are there emerging patterns in how these disputes are playing out in different national contexts? Can we trace the emergence of new dominant frameworks for employment relations in the platform economy? Following these lines of inquiry, the article makes two main contributions. First, it builds on Jimena Valdez’s theoretical framework of platform companies’ ‘contentious compliance’ to new regulations by outlining the precise strategies by which these companies contest regulations and by extending this framework to a broader range of jurisdictions.<sup>12</sup> We highlight five key strategies employed by platform companies in responding to regulations: regulatory activism, strategic litigation in defence of a business model, tactical subcontracting, negotiations with labour unions and threatening to withdraw services. Companies will often pursue multiple strategies, moving quickly from one to the other as circumstances change or even pursuing several at the same time in different countries.

Second, it offers a global comparative analysis of six countries (across five continents) that contextualises what are often understood as national disputes within a broader framework of a global struggle by platform companies to preserve their business model. Studies of the gig economy have primarily focused on a single case study or concentrate on conditions in a few cities in the Global North.<sup>13</sup> There are important exceptions to this,<sup>14</sup> but a key contribution of this article is a comparative analysis which foregrounds the global nature of the platform businesses and the different strategies they employ in different regulatory contexts. By synthesising the latest research on employment relations in the food delivery and transport sectors of the platform economy across the globe, the article contributes

<sup>12</sup>Jimena Valdez, ‘The Politics of Uber: Infrastructural Power in the United States and Europe’ (2022) *Regulation and Governance*. <https://doi.org/10.1111/rego.12456>.

<sup>13</sup>Rosenblat and Stark n.2.

<sup>14</sup>Wood, Graham and Lehdonvirta n.3; Jamie Woodcock, *The Fight Against Platform Capitalism: An Inquiry into the Global Struggles of the Gig Economy*. London: University of Westminster Press, 2021.

to our understanding of the global nature of the struggle for fair working conditions and how platform companies operate in different institutional and regulatory contexts.

## 2. LITERATURE REVIEW AND METHODS

### A. Situating the Research Project

There is a growing body of scholarship which studies how platform companies take advantage of ‘regulatory indeterminacy’<sup>15</sup> and deploy a variety of strategies to achieve greater efficiency and market dominance.<sup>16</sup> Platform companies make use of legal affordances in different jurisdictions and seek to benefit from the ambiguity of being ‘simultaneously embedded and disembedded from the space-times they mediate.’<sup>17</sup> Some of these studies provide in-depth analysis of specific cities and tell a complex narrative of how the ‘politics of platform capitalism’ unfolds within one struggle through an array of coalitions, interests and PR strategies.<sup>18</sup> One limitation of these single-city studies is they do not explain how different institutional environments shape the way companies contest regulations and therefore risk universalising results from highly studied field sites such as New York City.

Vallas and Schor argue that there is a significant body of scholarship on digital platforms that emphasises the institutional contingencies which shape platforms according to different national regulatory systems.<sup>19</sup> Thelen also found that Uber has been treated differently in a variety of countries.<sup>20</sup> In the U.S. context, Uber could ‘hold regulators at bay while it cultivated an alliance with consumers,’ while in Germany, Uber was labelled as a threat

<sup>15</sup>John Stehlin, Michael Hodson and Andrew McMeekin, ‘Platform Mobilities and the Production of Urban Space: Toward a Typology of Platformization Trajectories’ (2020) 52(7) *Environment and Planning A: Economy and Space* 1250–68, 1256.

<sup>16</sup>Elizabeth Pollman and Jordan Barry, ‘Regulatory Entrepreneurship’ (2017) 90 *Southern California Law Review* 383–448; Bilgehan Uzunca, J P Coen Rigtering and Pinar Ozcan, ‘Sharing and Shaping: A Cross-Country Comparison of How Sharing Economy Firms Shape Their Institutional Environment to Gain Legitimacy’ (2018) 4(3) *Academy of Management Discoveries* 248–72; Thelen n.4.

<sup>17</sup>Mark Graham, ‘Regulate, Replicate, and Resist—The Conjunctural Geographies of Platform Urbanism’ (2020) 41(3) *Urban Geography* 453–7, 454.

<sup>18</sup>Timo Seidl, ‘The Politics of Platform Capitalism: A Case Study on the Regulation of Uber in New York’ (2022) 16(2) *Regulation and Governance* 357–74.

<sup>19</sup>Steven Vallas and Juliet Schor, ‘Understanding What Do Platforms Do? Understanding the Gig Economy’ (2020) 46 *Annual Review of Sociology*, 273–94.

<sup>20</sup>Thelen n.4, 949.

to public order and the rule of law. As labour relation and employment models become a key issue in the platform economy, it is equally important to explore how different platform companies adopt various strategies in defending their industrial relations models. It not only helps to track the regulatory trajectories and the platform-state-society relations around the globe, but it also sheds light on new possible configurations of the gig economy where emerging patterns of employment regimes are forming. We seek to build on this body of literature by highlighting the embeddedness of platform companies in different regulatory environments and how their behaviour and characteristics depend on national political conditions.

In so doing, we draw on the theoretical framework of Jimena Valdez and her theory of ‘contentious compliance’, which shows how platform companies respond to regulations in different locations through ‘a double movement of adapting to existing regulations, while continuing to challenge them.’<sup>21</sup> Valdez emphasises that in the beginning, platform companies took advantage of loose regulations in America, but as they expanded internationally, they faced setbacks and had to adapt to different regulatory settings. While platform firms can be critical of new regulations that are applied to them, they still want to remain in most jurisdictions to grow their service and build their infrastructural power. Companies adopt a variety of tactics from overtly breaking the law to ignoring it, or partially complying. But ultimately, many companies will change their practice if subjected to sufficient regulatory threats. These changes tend to be the minimal they can incur while maintaining the flexibility and profitability of their business model. At the same time, the companies often continue to push for these laws to be reversed so they can reinstate their preferred version of their service.

We find this framework of ‘contentious compliance’ useful in our study because it demonstrates that regulatory outcomes often depend on different initial regulatory conditions that shape the path dependencies of platform companies. The theory also emphasises that rules and regulations in the platform economy are never entirely fixed and are constantly challenged and negotiated by the platform companies.<sup>22</sup> Valdez undertakes an empirical study of Uber in New York City, Madrid and Berlin. We seek to extend this study to other global cases through a comparative analysis of transport platform companies across different geographic regions.

<sup>21</sup> Valdez n.12.

<sup>22</sup> Poul Kjaer and Antje Vetterlein, ‘Regulatory Governance: Rules, Resistance and Responsibility’ (2018) 24(5) *Contemporary Politics* 497–506, 500.

## B. Research Methods

In order to identify emerging trends in the global gig economy, we have used theoretical sampling for data collection and analysis.<sup>23</sup> Theoretical sampling enables a process of data collection whereby the collection, coding and analysis of the data is developed as the theory emerges.<sup>24</sup> We employ this method due to the need to ‘collect more data to examine categories and their relationships and to assure that representativeness in the category exists.’<sup>25</sup> This technique addresses ‘what data sources could yield the richest and most relevant data, and what cases drawn from these sources are most likely to provide empirical indicators needed for category development.’<sup>26</sup> Our objective was to undertake a global analysis of transport platform companies with representation from diverse regions of the world. In addition to the need for representation from contexts outside of the traditional cases of New York City, London and Amsterdam—particularly those from the Global South—we also sought to include cases with a recent history of political contention and legal struggles over the regulation of transport platform companies.

We selected representative case countries on each continent to generate a preliminary understanding of the key strategies of transport platform companies and also reflect on the emergent trends of platform capitalism. Two standards were set during the sampling selection: first, selected countries needed to be economies which have sizeable delivery, ride hail or other platform-related industries. For example, the country needed to have a certain number of national-leading platform companies as well as a proportional percentage of labour participation compared to the traditional sectors. Second, countries selected should either have distinctive models, be high-profile jurisdictions or have contested social debates regarding the development of the gig economy. By merging similar cases and recognising regional characteristics, we selected six countries: Brazil, China, South Africa, Spain, the United Kingdom and the United States as shown in [Table 1](#). Our selection covers five continents and several of the most prominent countries

<sup>23</sup>Carole Chenitz and Janice Swanson (eds.), *From Practice to Grounded Theory: Qualitative Research in Nursing*. Menlo Park, CA: Addison-Wesley, 1986.

<sup>24</sup>Imelda Coyne, ‘Sampling in Qualitative Research. Purposeful and Theoretical Sampling; Merging or Clear Boundaries?’ (1997) 26(3) *Journal of Advanced Nursing* 623–30.

<sup>25</sup>Chenitz and Swanson n.23, 9.

<sup>26</sup>Claire B Draucker, Donna S Martsof, Ratchneewan Ross, Thomas B Rusk, ‘Theoretical Sampling and Category Development in Grounded theory’ (2007) 17(8) *Qualitative Health Research* 1137–48, 1138.

Table 1. Sampling Scheme

Countries	Leading Platform Companies	Reasons for Selection
Brazil	Uber (ride-hailing) iFood (food delivery)	17 million people participate in the platform economy; gig economy generated more than US\$250 million in 2019 (Pires and Pinto, 2020)
China	Didi Chuxing, Caocao Chuxing, Shenzhou Chuxing (ride-hailing) Meituan, Ele.me, Shansong (food delivery)	The number of workers in gig economy has reached 200 million; The Beijing government has recently adopted a new approach towards platform companies
South Africa	Uber (ride-hailing) SoFresh, Mr D Food (food delivery)	By 2020, there were 142 online platforms in operation in South Africa (Johnson et al, 2020); Uber drivers launched a class action lawsuit against Uber BV and Uber SA
Spain	Uber (ride-hailing) Glovo, Uber Eats, Just Eat (food delivery)	The European country with the highest number of workers in the gig economy; ‘Riders law’ passed in August 2021
United Kingdom	Uber (ride-hailing) Just Eat, Deliveroo (food delivery)	The Supreme Court passed Uber BV and others v Aslam and others
United States	Uber, Lyft (ride-hailing) DoorDash, Grubhub, Postmates and Uber Eats (food delivery)	46% of the platform companies valued above US\$1 billion USD are based in the US; Assembly Bill 5 in California State



with recent case law and legislation. As one of the first scoping studies to undertake a global analysis of the gig economy in food delivery, we could have selected other countries which fit the same profile. The purpose of this study was to simply offer an initial snapshot of six prominent countries that have been widely discussed within the literature and which provide a geographic diversity to the countries under analysis. We do not treat each case study with strictly equal weight within our analysis. Instead, we address more complex or important issues that arise in strategies adopted by gig economy companies in more detail. Due to the limitations of a single article, we are only able to briefly address certain aspects of specific cases.

The article draws its material from various secondary sources of data, including academic literature, court cases, media coverage, press releases and industry reports. We began by searching for all relevant academic literature on transport platform companies in each of the jurisdictions and compiling a database of studies that addressed our central research questions. Following an initial review and synthesis of this material, we then searched for press coverage of the activities of transport platform companies in each of our selected countries and accessed all relevant articles that referred to regulatory activity or a political dispute involving one of the major companies in this country. These news sources provided an overview of the timeline of newsworthy disputes involving platform companies and regulators. Once we established this timeline, we then engaged in a content analysis of platform company websites and the history of their press releases in each of the jurisdictions to examine how these companies presented their side of the dispute and to source evidence for companies' stated strategies in dealing with unwanted regulations. We also accessed press releases and policy documents of regulatory institutions to determine the attitudes and actions of regulators in these disputes. After these sources were collected, we then sourced court cases involving platform companies to analyse the judgments of regional, national and special regulatory bodies that have had issues involving transport platform companies come before them.

In interpreting the data, the authors have also been assisted by conducting fieldwork in China and the United Kingdom including interviews with ride hail drivers and food delivery workers, which provides them with useful background knowledge to understand the complexities of the issues. Based on the research data, the two authors coded some emerging strategies platform companies have employed in the selected countries. These were made along the line of jurisdiction cases, employment relations, media coverage and PR activities of the platform companies. By doing this, we

have endeavoured to maximise the possibilities for obtaining data and the chances of generalising the theoretical framework.<sup>27</sup> Our analysis focuses on the similarities and differences among countries rather than the analytical relations between different variables. Based on these six cases, we outline five main strategies employed by the transport platform companies.

### 3. REGULATORY ACTIVISM

The first strategy is based on the fact that companies have adopted a *political attitude* towards laws and lawmakers and an *activist mentality* in campaigning against laws that restrict their business activities. Rather than viewing these regulations as the given and static environment within which their business must operate, many of these companies have seen themselves as agents of change in campaigning for new laws, fighting old ones and operating in legal grey areas as a core aspect of their business model. Regulatory activism can involve companies employing tactics from political campaigning including mobilising their user base, holding visible public events and hiring political figures to be part of their campaigning team.<sup>28</sup>

In the US, this activism has often taken the form of what legal scholars Elizabeth Pollman and Jordan Barry have called ‘regulatory entrepreneurship’ – ‘pursuing a line of business in which changing the law is a significant part of the business plan.’<sup>29</sup> This involves companies knowingly defying laws or operating in a legal grey area. This is facilitated by many of these companies presenting themselves as technology companies whose way of doing business was not anticipated by regulators. This strategy was first pioneered in the United States. When Uber first opened in San Francisco they received a cease and desist demand from regulators, which they ignored and wrote a public letter offering to ‘educate’ regulators about how the regulations could be changed to fit their business model.<sup>30</sup>

When US transport platform companies opened up business overseas they typically pursued a strategy of acting first and asking for forgiveness later.<sup>31</sup> They entered markets aware that their business model could be reasonably

<sup>27</sup> Coyne n.24, 625.

<sup>28</sup> Pollman and Barry n.16.

<sup>29</sup> Ibid.

<sup>30</sup> Marcus Wohlsen, ‘Uber’s Brilliant Strategy to Make Itself Too Big to Ban’ *Wired* 8 July 2014. <http://www.wired.com/2014/07/ubers-brilliant-strategy-to-make-itself-too-big-to-ban>.

<sup>31</sup> Wingjun Wu, Hao Zhang, Zhen Li and Kai Liu, ‘Labor Control in the Gig Economy: Evidence From Uber in China’ (2019) 61(4) *Journal of Industrial Relations* 574–96.

interpreted as in contravention of the law. Once they began offering services to the public, it was hoped that they could rally their supporters against regulators and become a popular service that people relied on. This form of activism is less about actively engaging with regulators to establish for certainty whether a particular business is viable and more about creating ‘facts on the ground’ so that when the confrontation with regulators occurs, the company is in a much more advantageous negotiating position.

In this article, we show that the form this activism takes is context dependent and has differed significantly in different national contexts. While platform companies in Europe have also employed regulatory activism in attempting to change laws in most European jurisdictions (including at the level of the EU), in this article we focus on a comparison between the US and China. When US transport platform companies entered China, for example, they faced a very different environment and a set of local competitors who were favoured by the government.<sup>32</sup> The US approach of regulatory activism did not work for the platform companies in the Chinese market, prompting them to eventually leave. In August 2016, Uber bowed out of the Chinese market after spending \$2 billion battling Didi.<sup>33</sup>

Forms of regulatory activism developed in the United States can be contrasted to the Chinese approach of establishing special Government Relations (GR) departments to tackle issues related to state governance.<sup>34</sup> In China, more conciliatory and collaborative approaches predominate due in part to the central government’s power to clamp down on companies’ activities. Rather than see regulators as adversaries the companies need to mobilise against, Chinese platform companies have been more likely to adopt a strategy of partnering with and placating governments in the hope of furthering their own business interests. Most of the platform companies’ staff in GR come either from media institutions or government departments with specific media skills and experience with how the government operates. They are responsible for building good relations with the central and local governments so as to remove administrative hurdles and influence government policy making.

How do Chinese platform companies leverage their financial and discursive strategies to respond to regulatory challenges? The first method is

<sup>32</sup>Ibid.

<sup>33</sup>Elles Houweling, ‘Uber Rides Away From Didi, says China Market has “Little Transparency”’ *Verdict* 16 December 2021. <https://www.verdict.co.uk/uber-rides-away-from-didi-says-china-market-has-little-transparency/>.

<sup>34</sup>Wu et al. n.31.

to promote themselves as job creators who provide opportunities for economic growth. During the last three decades, jobs have been a top priority in the Chinese government's Five Year Plans.<sup>35</sup> Transport platform companies have attempted to support government job creation policies and have collaborated with local governments, research institutions and think-tanks to highlight their contribution to the job market. For example, Meituan Academy issued a report on employment and labour in 2021, claiming that Meituan had become an important channel for migrant workers to obtain employment. It stated that by 2020, there were 4.72 million riders earning income on the Meituan platform, of which 77% of riders came from rural areas.<sup>36</sup> In 2018, the ride hail platform, Didi announced they created 30.66 million flexible job opportunities in China. In August 2020, under great pressure from the government's anti-monopoly movement, Didi announced it would invest 200 million yuan to build a special fund to help more people get flexible jobs through the Didi platform.<sup>37</sup>

The second method is to partner with governments in producing new digital infrastructure in China.<sup>38</sup> These projects include smart city innovations, traffic congestion relief, digitalisation and convenience services. For example, in September 2021, Meituan worked with the Beijing Municipal Bureau of Commerce to release the first AI map of Beijing's life service industry.<sup>39</sup> As a data company, Didi Chuxing collaborated with multiple government institutions and local states, such as the ministry of public security in Beijing, Shenyang and Shenzhen to promote its digital utility.<sup>40</sup>

<sup>35</sup>Bloomberg, 'China Jobs Market Remains "Top Priority" as Record Number of Graduates Increase Unemployment Pressure' *Bloomberg* 17 August 2021. <https://www.scmp.com/economy/china-economy/article/3145275/china-jobs-market-remains-top-priority-record-number>.

<sup>36</sup>Di Kong, 'People's Daily, Not-Bad Income, Flexible Work: Riders to Expand' 7 July 2021. [http://guoqing.china.com.cn/2021-07/07/content\\_77610583.htm](http://guoqing.china.com.cn/2021-07/07/content_77610583.htm).

<sup>37</sup>Xinhua News Agency, 'Didi Invests 200 Million Yuan to Launch Cheng Yi; Employment Promotion Plan' *Xinhua News Agency* 13 August 2020. [http://www.xinhuanet.com/tech/2020-08/13/c\\_1126364427.htm](http://www.xinhuanet.com/tech/2020-08/13/c_1126364427.htm).

<sup>38</sup>Jean-Christophe Plantin, Carl Lagoze, Paul Edwards, Christian Sandvig, 'Infrastructure Studies Meet Platform Studies in the Age of Google and Facebook' (2018) 20(1) *New Media & Society* 293–310.

<sup>39</sup>Beijing Daily, 'Meituan Assists the Construction of Beijing's International Consumption City' *Beijing Daily* 8 December 2021. <https://finance.sina.com.cn/jjxw/2021-12-08/doc-ikyamrmy7507997.shtml>.

<sup>40</sup>Julie Chen, 'Thrown Under the Bus and Outrunning It! The Logic of Didi and Taxi Drivers' Labour and Activism in the On-Demand Economy' (2018) 20(8) *New Media & Society* 2691–711.

## A. Corporate-Initiated Referenda

When platform transport companies face unfavourable regulations in the US they are able to follow some states' legislative processes in sponsoring a referendum or ballot measure to change the law. To our knowledge, this strategy has not been used by platform companies outside the United States. The most prominent example of this type of regulatory activism was when a group of platform companies supported Proposition 22, a ballot measure that was designed to exempt them from classifying their workers as employees under the Californian law AB5.<sup>41</sup> During the campaign, platform companies spent over US\$200 million in comparison to their opponents who spent under US\$20 million.<sup>42</sup> Californians voted 57% in favour of the proposition, which was passed and provided the platform companies with a new strategy for achieving regulations they needed to support their business model. In exchange for retaining their independent contractor status, the platform companies promised several benefits to workers such as guaranteed minimum earnings, a stipend for health insurance and reimbursement for some vehicle expenses. Many of these benefits were much less than what workers would have received if they were classified as employees.<sup>43</sup>

Following the success of the platform companies campaign in California with Proposition 22, this has become a new strategy to roll out in other states. Platform companies have considered similar strategies in Colorado, Illinois and New Jersey, with a particularly high-profile fight in Massachusetts.<sup>44</sup> This strategy could be replicated in almost half of US states where similar measures could be introduced if action is not taken at the federal level.

## B. Mobilising Consumers and Community Groups

One particularly innovative strategy within the regulatory activist arsenal has been the ability of platform companies to mobilise their stakeholders

<sup>41</sup>Ross Barkan, 'Big Tech Threw \$200m at a Ballot Measure to Hurt Gig Economy Workers. And They Won' *The Guardian* 13 November 2020. <https://www.theguardian.com/commentisfree/2020/nov/13/big-tech-california-gig-workers-labor-rights>.

<sup>42</sup>Ibid.

<sup>43</sup>Kari Paul, 'Prop 22: Why Uber's Victory in California Could Harm Gig Workers Nationwide' *The Guardian* 11 November 2020. <https://www.theguardian.com/us-news/2020/nov/11/california-proposition-22-uber-lyft-doordash-labor-laws>.

<sup>44</sup>Tina Bellon, 'Gig Companies' Push for State-Level Worker Laws Faces Divided Labor Movement' *Reuters* 10 June 2021. <https://www.reuters.com/business/gig-companies-push-state-level-worker-laws-faces-divided-labor-movement-2021-06-09/>.

to come out and fight for them in public campaigns against unfavourable regulations. This has included customers of the company, workers and other community members. The role of consumers has so far attracted less scholarly attention than other stakeholder groups in studies of the gig economy.<sup>45</sup> Culpepper and colleagues have noted that one of the key strategies of platforms has been to build a new form of power through cultivating support from consumers.<sup>46</sup> Mobilising their consumers provides platforms with significant leverage in their political and legal disputes against regulators. Platforms can evoke the rights of their consumers—who are also citizens and taxpayers—as a relevant stakeholder that regulators might be penalising if restrictive regulations are placed on the platform.

Uber, for example, has included campaign messages on the interface of their app and has encouraged users to send messages to public officials during key political disputes.<sup>47</sup> When the Illinois General Assembly passed a new regulation that would have negatively affected Uber's operations, it requested its users to sign a digital petition asking the state governor to veto the bill, mounting pressure that would eventually lead the governor to do just this.<sup>48</sup> When Uber entered New York City it faced strong resistance from Mayor Bill de Blasio and a new proposal to regulate the company. Uber added a notable feature on its app: a 'de Blasio' button that showed users what would be the effects of his proposed policy on workers and customers.<sup>49</sup>

In California, during the struggle over Proposition 22, an investigative report revealed Uber and Lyft spent millions donating to small groups and community organisations in an effort to mobilise different communities against the Californian AB5 law.<sup>50</sup> Over 30 organisations from communities of colour accepted donations from the transport platform companies PAC and came out to support Proposition 22.

<sup>45</sup> Joshua Healy, Andrea Pekarek and Ariadne Vromen, 'Sceptics or Supporters? Consumers' Views of Work in the Gig Economy' (2020) 35(1) *New Technology, Work and Employment* 1–19.

<sup>46</sup> Pepper D. Culpepper and Kathleen Thelen 'Are We All Amazon Primed? Consumers and the Politics of Platform Power' (2020) 53(2) *Comparative Political Studies* 288–318.

<sup>47</sup> Pollman and Barry n.16.

<sup>48</sup> Ibid.

<sup>49</sup> Karen Weise, 'This Is How Uber Takes Over a City' *Bloomberg Business* 23 June 2015. <http://www.bloomberg.com/news/features/2015-06-23/this-is-how-uber-takes-over-a-city>.

<sup>50</sup> Dara Kerr and Maddy Varner, 'Uber and Lyft Donated to Community Groups Who Then Pushed the Companies' Agenda' *The Markup* 17 June 2020. <https://themarkup.org/news/2021/06/17/uber-and-lyft-donated-to-community-groups-who-then-pushed-the-companies-agenda>.

In Spain, pro-platform associations of riders have been formed and supported by the platform companies such as Glovo and Uber Eats. The constitution of one organisation, AsoRiders, was signed in the same office of the lawyers which represent Deliveroo in court.<sup>51</sup> Platforms have promised members of these associations free helmets and uniforms and other special preferences for being members. When the national legislature introduced the ‘riders law’ which would have introduced a presumption of employment for riders these associations began to campaign against it.

Spain and the United States have been the two most prominent examples of platform companies mobilising workers and consumers. While in other jurisdictions companies have attempted to gain support from sections of their workforce and convince them to fight on their behalf, they have never played as prominent a role as in these two cases. In countries such as the United States, transport platform companies have been more successful in mobilising consumers, which has provided them with a strategic weapon against regulator. While we found platform companies making frequent references to the benefits consumers received from their service, it was predominantly in the United States where companies were successful in actually mobilising their users to pursue a political goal. In these cases, the organised power of consumers as political activists played a vital role in allowing platforms to pursue an aggressive strategy of regulatory activism.

#### 4. STRATEGIC LITIGATION IN DEFENCE OF A BUSINESS MODEL

Another important strategy for the transport platform companies has been to operate in a legal grey zone with unresolved legal questions about the business model and only address these when faced with litigation from workers and officials in the courts. Acting first and dealing with the legal issues when they arise enables the companies to build profitable businesses and to drag out legal cases into years long affairs so that decisions when they do finally come are a long time after the most intense period of political pressure on the company.

South Africa is an important case in point. Labour rights in South Africa are limited to workers classified as employees, which do not cover workers

<sup>51</sup>Unión General de Trabajadores, ‘Analysis of the Political and Social Pressure of the Distribution Platforms’ 2021. [https://www.ugt.es/sites/default/files/analisis\\_presion\\_politica\\_social\\_plataformas\\_reparto-informe.pdf](https://www.ugt.es/sites/default/files/analisis_presion_politica_social_plataformas_reparto-informe.pdf).

on transport platforms classified, without exception, as independent contractors.<sup>52</sup> In 2017, after the Commission for Conciliation, Mediation and Arbitration (CCMA) found that seven Uber drivers were employees of Uber South Africa under section 213 of the Labour Relations Act of 1995, Uber appealed this decision to the Labour Court, which held that the drivers had not proved they had an employment relationship with Uber South Africa. One of the issues of the case was whether the respondent had been correctly cited since the Labour Court stated that it was not answering whether the drivers were employees of Uber BV, Uber's parent company in the Netherlands. When the seven drivers brought claims against Uber BV, the South African Labour Relations Act was found not to apply, which meant the CCMA had no jurisdiction to hear the case.

Uber's lawyers have confirmed that securing positive decisions in these cases was 'critical to Uber's continued operation in South Africa.'<sup>53</sup> Not only has Uber fought to ensure its drivers in South Africa receive no employment protections, it has also been found (along with Uber Eats and Bolt) to have no evidence that workers' gross pay is above the minimum average or that it has provided clear and transparent terms and conditions in its contracts with drivers.<sup>54</sup> The platform companies did not recognise South African law as the appropriate legal system for addressing worker-related disputes and continued to use litigation and the courts system to evade labour rights and maintain their business model.

In Brazil, drivers have faced similar issues with a lack of recognition as employees in case law. There has been a long-standing condition of legal uncertainty about the status of gig economy workers with contradictory legal decisions in Brazil's twenty-four different appealing labour courts. While some regional labour courts have held that gig economy workers are employees because of their subordination to the platform companies, two decisions in the high courts in 2019 and 2020 held that Uber drivers were not employees of Uber because of their flexibility which was incompatible with an employment relationship.<sup>55</sup> There is a clear trend in the Brazilian

<sup>52</sup>Fairwork, 'Fairwork South Africa Ratings 2021: Labour Standards in the Gig Economy' <https://fair.work/wp-content/uploads/sites/131/2021/07/Fairwork-South-Africa-2021-report.pdf>.

<sup>53</sup>Cliffe Dekker Hoffmeyer, 'Our Employment Have Advised and Continue to Advise Uber B.V': 2019. <https://www.cliffedekkerhofmeyr.com/en/news/ground-breaking-matters/2019/Cliffe-Dekker-Hofmeyr-have-advised-and-continue-to-advise-Uber-B.V.html>.

<sup>54</sup>Fairwork n.51.

<sup>55</sup>Paulo de Araujo, Wanderley Fernandes, Maria Lucia Padua Lima and Paulo Goldschmidt, 'Uber in Brazil: Glory and Consequence' in Zeynep Ayata and Isik Öney (eds), *Global Perspectives on Legal Challenges Posed by Ridesharing Companies: A Case Study of Uber*. Berlin: Springer, 2021, 88.



judiciary to find in favour of platform companies. As repeat players with deep pockets, platform companies have been able to bring cases to the higher courts while delaying taking action in relation to cases found against them in the lower ones.

When unfavourable court cases are made against the companies in other jurisdictions, another tactic of the transport platform companies is to simply ignore the decisions. In Spain, for example, the platform companies had roughly 50 court cases decided against them before the passing of the ‘riders law’.<sup>56</sup> Similar court cases have been decided against platform companies in a number of other EU jurisdictions including the Netherlands, Italy, France and Belgium.<sup>57</sup>

In other jurisdictions, platform companies have chosen to act in partial compliance of court orders, instituting some of the findings, but also notably leaving out important parts of the court case. In the UK Supreme Court, it was found that drivers should be paid for the entire time logged into the app, whereas Uber’s response to the decision was to institute a minimum wage but only for time in which the drivers had accepted a trip, leaving the drivers short changed by up to 40–50% of their wages.<sup>58</sup>

The strategy of acting and waiting for challenges to come places the burden on other parties to question the actions of the company and also to shoulder the costs of taking them to a court or tribunal. For riders and drivers, this can be difficult because the amount of time they spend in the job is often less than a year and because they do not have the capital to fund expensive litigation processes. It is therefore up to unions and public interest law clearing houses to take on the cases and see them through. Platform companies have the advantage of fighting similar battles across multiple jurisdictions and over a number of years. Drivers face the steepest battle in countries with weak regulatory environments where a lack of protections in labour law and the inability of courts to hold international companies to account leave many workers vulnerable.<sup>59</sup>

<sup>56</sup>Natasha Lomas, ‘Spain’s Top Court Rejects Glovo’s Classification of Couriers as Self-Employed’ *TechCrunch* 23 September 2020. <https://techcrunch.com/2020/09/23/spains-top-court-rejects-glovo-classification-of-couriers-as-self-employed/>.

<sup>57</sup>PwC Legal, ‘Gig Economy Report: Employment Status’ May 2019. <https://www.eurofound.europa.eu/data/platform-economy/records/gig-economy-report-employment-status>.

<sup>58</sup>App Drivers and Couriers Union, ‘Statement on Uber response to Supreme Court ruling and new pay offer’ <https://www.adcu.org.uk/news-posts/statement-on-uber-response>.

<sup>59</sup>Fairwork n.51.

In China, platform companies have adopted a related tactic of outsourcing employment relations to third-party labour agencies to shield themselves from lawsuits from workers. This has been occurring on a widespread scale since 2017 and some of the labour agencies are big enough that they can maintain labour dispatching business across different provinces. When there are labour related lawsuits from riders, the labour agencies are able to take advantage of the fact that different cities maintain different policies in relation to employment relations. For example, in June 2021, a rider called Shao got seriously injured when he was delivering food. After winning the arbitration, however, Shao lost his lawsuit because the headquarters of the labour agency were in Chongqing rather than Beijing and he was not considered an employee of the firm in the Beijing jurisdiction.<sup>60</sup>

### A. Tactical Subcontracting

The preferred strategy of transport platform companies has been to contract directly with workers to maintain them as a flexible workforce of independent contractors that can be called on to meet fluctuating consumer demand. Subcontracting to third-party agencies has been one response to the imposition of tougher laws or of unfavourable court cases that have threatened the business model of the companies. It is interesting to consider this move within the broader framework of Valdez's 'contentious compliance' because it is not a strategy explicitly explored in the original theory.<sup>61</sup> Under subcontracting arrangements, the platform company makes an agreement with another labour agency to engage workers on their behalf, placing a legal barrier between the workers and the platform company. Subcontracting services have rarely been a first option for platform companies and are not employed in countries in which workers have failed to pose a significant challenge to the independent contractor model.

The essence of this approach is attempting to continue to exercise surveillance and labour control regimes through algorithmic management and incentive structures without taking on the additional costs of employment. The tactic has been employed only after other strategies have proved

<sup>60</sup>Zhicheng Labour, 'Mystery for Couriers: How Can Laws Crack Open the Labour Management Situation in the Food-delivery Sector?' *Zhicheng Law Consultancy* 2021. <https://m.huxiu.com/article/455967.html/>.

<sup>61</sup>Valdez n.12.

unviable and has appeared most recently in Spain following the introduction of new legislation.

In Spain, when negotiations were ongoing for the new riders law, platform companies asked the Minister of Labour for the explicit ability to use subcontracting services under the new law, which they were granted.<sup>62</sup> One month after the law was announced in Spain, union officials were providing evidence of platform companies beginning to use intermediary companies for hiring.<sup>63</sup> This situation was not unique to Spain, with other European countries such as Uber Eats in Germany and umbrella companies in Portugal also adopting a similar model.

In California, during the controversy around the AB5 law and before the company won Proposition 22, Uber was considering a subcontracting agreement as one of its possible responses to the new law.<sup>64</sup> According to this plan, companies would licence their names and software to a fleet of taxis who would employ the drivers so that Uber could still avoid employment contracts. This plan looks more similar to typical franchise agreements and was considered one of the options if the companies could not overturn the law in California.

As we have seen, subcontracting employment relations to third-party staffing agencies has been common practice in China as a means of holding workers at arms' length and avoiding taking on additional costs of employment. In order to manage the large population of workers, platform companies work with multilayered temporary staffing agencies. These intermediaries include labour dispatching companies and individual brokers. The former refers to subcontracting companies and the latter is also called *huangniu* (黄牛) in Chinese, referring to informal labour brokers working with subcontracting companies. Based on labour law, riders should be employees of subcontracting companies. However, it has been found that about 60% of the food delivery workers do not sign labour relation contracts with those agencies.<sup>65</sup> In practice, those workers are regarded as

<sup>62</sup>Christina Alonso 'Pacto entre bambalinas CEOE-Díaz para atrasar la ley rider y dar margen a Glovo' *La Información* 11 May 2021. <https://www.lainformacion.com/economia-negocios-y-finanzas/pacto-ceoe-diaz-atrasar-ley-riders-margen-glovo/2832228/>.

<sup>63</sup>Ben Wray (2021) 'Gig Economy Project—Is Sub-Contracting Becoming the New Normal in the Platform Economy?' *Brave New Europe* 22 April 2021. <https://braveneweuropa.com/gig-economy-project-is-sub-contracting-becoming-the-new-normal-in-the-platform-economy>.

<sup>64</sup>Kate Conger, 'Uber and Lyft Consider Franchise-Like Model in California' *New York Times* 18 August 2020. <https://www.nytimes.com/2020/08/18/technology/uber-lyft-franchise-california.html>.

<sup>65</sup>Xinhua News Agency, 'Over 60% of the Riders Have No Social Insurance' *Xinhua News Agency* 21 January 2021. [https://k.sina.com.cn/article\\_1279746217\\_4c4760a900100t4wa.html](https://k.sina.com.cn/article_1279746217_4c4760a900100t4wa.html).

either gig workers without affiliated organisations or independent contractors. Some labour agencies also make deals with riders to declare they are individual and commercial households, which is currently regarded as an efficient tax-shelter for both riders and platform companies. In this sense, platform companies make agencies and riders complicit in legitimising their business model.

## B. Negotiations With Labour Unions

Transport platform companies have also entered into negotiations with trade unions to come to compromise positions to achieve some of their strategic goals. These deals have been less common since the gig economy has typically been considered a sector that is difficult to organise and unionise. There have also been different experiences in Europe and the United States with such initiatives. In Denmark, 3F Transport reached a nationwide collective agreement with Just Eat for food delivery couriers which applied to 600 of its workers and guaranteed them minimum wage, guaranteed hours and other benefits.<sup>66</sup> The deal was supported by the Danish Chamber of Commerce and was celebrated as securing important rights for workers including an hourly wage of DKK124.20 (~US\$19) and a minimum of eight and up to 37 working hours per week.

The experience of negotiations with unions in the United States has created more controversy with critics accusing several unions of joining with the transport platform companies to support deals that would create quick pathways to unionisation at the expense of giving up other employment rights.<sup>67</sup> In California and New York, platform companies worked with unions to develop legislation that would continue classifying workers as independent contractors and hence deny them protections such as a minimum wage and anti-discrimination laws. As Veena Dubal has noted, historically these kinds of sectoral bargaining have been a means for a powerful labour movement to raise labour standards, whereas the proposed legislation sought to lower standards and carve out lesser forms of protections

<sup>66</sup>Fagbladet3F, 'Groundbreaking Agreement: Danes Can Now Order Takeaways With a Clean Conscience' *Fagbladet3F* 27 January 2021. <https://fagbladet3f.dk/artikel/danes-can-now-order-takeaways-clean-conscience>.

<sup>67</sup>Taryn Luna, 'After Winning Prop. 22, Lyft President Says He Still Wants a Deal with Unions' *Los Angeles Times* 5 November 2020. <https://www.latimes.com/california/story/2020-11-05/prop-22-win-lyft-founder-union-deal-california>.

for some of the most vulnerable workers, which ‘risked turning collective representation into an instrument of management control’.<sup>68</sup>

One of the first major negotiations occurred between labour unions and the ride hail platform companies in California during the debate over Assembly Bill 5. Before the law came into force, the platform companies proposed sectoral bargaining for unions over a narrow set of topics. However, the deal also involved workers accepting independent contractor status and giving up protections given to other workers under labour law. A similar proposal was brought forward in New York, one developed by the platform companies through the Independent Drivers Guild and carried by Diane Savino in the State Senate with the support of John Samuelson, the International President of the Transport Workers Union.<sup>69</sup> But when the draft bill leaked, app-based workers protested and joined with workers’ advocacy groups to oppose the bill which led Samuelson to withdraw his support. Neither initiative by the platform companies ultimately proved successful because they were opposed by a large enough coalition to stop the legalisation at the level of state law of piece wages and a lack of protections for workers in the transport and food delivery industries.

In China, the All-China Federation of Trade Unions (ACFTU) is the state-sanctioned and only legal labour union in the country. In July 2021, it issued a call for the better protection of China’s gig economy workers.<sup>70</sup> This was in line with Beijing’s recent turn against the big Chinese technology platforms. The Communist Party has long been concerned about the instability and protests that could be caused by the gig economy. However, as representatives of the Chinese government, union officials must balance maintaining social stability and protecting the rights of workers.<sup>71</sup> To moderate conflicts between workers and platforms, the ACFTU tried to guide platforms to establish trade unions, but most platforms adopted tactics of avoidance and delay. That situation changed dramatically when the government began to move against platform companies in 2021. Three leading

<sup>68</sup>Venna Dubal, ‘Sectoral Bargaining Reforms: Proceed with Caution’ (2022) 31(1) *New Labor Forum* 11–14.

<sup>69</sup>Annie McDonough, ‘How a Deal for Gig Workers Fell Apart’ *City & State New York* 25 June 2021. <https://www.cityandstateny.com/policy/2021/06/how-a-deal-for-gig-workers-fell-apart/182731/>.

<sup>70</sup>Masha Borak, ‘Gig workers of All Trades, Unite!’ *China’s State Trade Union Calls for Branches for Gig Economy Workers* *South China Morning Post* 21 July 2021. <https://www.scmp.com/tech/big-tech/article/3141846/gig-workers-all-trades-unite-chinas-state-trade-union-calls-branches>.

<sup>71</sup>Elles Houweling, ‘Gig Economy Workers of China, Unite! Didi and JD to Allow Labour Unions’ *Verdict* 2 September 2021. <https://www.verdict.co.uk/uber-rides-away-from-didi-says-china-market-has-little-transparency/>.

platforms, Didi, Ele.me and JD.com have established company-wide unions, which the government believes could play a greater role in managing the concerns of workers.<sup>72</sup>

## 5. WITHDRAWAL OF SERVICES (THREATENED AND ACTUAL)

If other strategies fail, platform companies always reserve the right to withdraw their services from a particular city, state or country. This is a threat that is often used as leverage during negotiations with regulators about what will be the likely effect of new regulations on the business and community. On this point, it is important to note that the threat of a withdrawal of services can often suffice; this tactic need not actually result in companies pulling out of a particular jurisdiction. In other words, the threat of an action can sometimes work just as effectively as the action itself. Platforms lobby regulators and attempt to water down or strike out particularly onerous regulations using the threat of ceasing their business operations if the regulations come into effect. The companies can frame this not as a direct threat, but in deterministic terms as ‘economic necessities’ that would be forced upon the company if certain laws were passed. In Minnesota, Uber threatened that if minimum wage laws for its drivers were passed, it would ‘likely have no choice but to reduce service throughout the state and possibly shut down services entirely.’<sup>73</sup> This posturing is part of a broader repertoire of strategies for achieving its regulatory aims; business considerations of economic viability are a separate consideration that are not strictly determined by new laws alone. Indeed, there are not many examples of platform companies completely ceasing business operations because of a new law. In this instance, the threat was enough to convince Minnesota Governor Tim Waltz to veto the law.<sup>74</sup>

One of the most prominent examples of this strategy being actually used rather than just threatened was in Austin when legislators introduced new rules that would have required Uber and Lyft drivers to be fingerprinted for safety reasons.<sup>75</sup> The companies spent \$8 million in a campaign against the

<sup>72</sup>Ibid.

<sup>73</sup>Roshan Abraham, ‘Minnesota Governor Vetoes Minimum Pay for Ridehail Drivers After Uber Threatens to Leave’ *Vice* 26 May 2023. <https://www.vice.com/en/article/epvz74/minnesota-governor-vetoes-minimum-pay-for-ridehail-drivers-after-uber-threatens-to-leave>.

<sup>74</sup>Ibid.

<sup>75</sup>Matthew Zeitlin, ‘How Austin’s Failed Attempt to Regulate Uber and Lyft Foreshadowed Today’s Ride-Hailing Controversies.’ *Vox* 13 September 2019. [www.vox.com/the-highlight/2019/9/6/20851575/uber-lyft-drivers-austin-regulation-rideshare](http://www.vox.com/the-highlight/2019/9/6/20851575/uber-lyft-drivers-austin-regulation-rideshare).

introduction of these background checks, but were unsuccessful in preventing the laws from being introduced. Only days after the laws came into force the two companies left the cities leaving drivers without work. The transport platform companies lobbied the state government to overturn Austin's regulations, which would allow them to come back into the market the following year. Companies only leave markets as a last resort, if they feel their business would not be profitable under new regulations.

## 6. CONCLUSION: A SEQUENTIAL APPROACH TO PLATFORM STRATEGIES?

Of the five strategies employed by transport platform companies theorised in this article—regulatory activism, strategic litigation in defence of a business model, tactical subcontracting, negotiations with labour unions and threatening to withdraw services—the question remains as to whether platform companies have a tendency to pursue these in a particular order. As was explained above, when platform companies enter new markets they often explicitly operate in a legal grey zone in which the legality of their business and employment model is an open question. As a result, the strategies they pursue are highly dependent on which type of political actor challenges them first. In situations where unions are the first to organise strike activities against the platforms and try to force the companies to the negotiation table, the response can often be partnering with the unions and striking a compromise such as what occurred in Denmark with 3F Transport.<sup>76</sup> However, these situations have been comparatively rare as unions have not posed as big a threat to platform companies as city and state regulators that have attempted to protect workers by enforcing a particular form of employment regime onto platform companies.

Due to the differences in how platform companies are challenged in each jurisdiction, the sequence in which they employ various strategies is context dependent. Regulatory activism is the most consistent, and often first strategy employed by companies because it is one of their key considerations upon entering new markets. Often platform companies will inform regulators when they open their business operations that their company provides a range of benefits to consumers and that laws should be interpreted in ways that are permissive to the company. As Pollman and Barry note, there are instances in which pursuing an alternative interpretation (or amendment)

<sup>76</sup>Fagbladet3F n.66.

of a law is a key part of their business plan.<sup>77</sup> Strategic litigation is another defensive manoeuvre that is an anticipated cost for platform companies which involves defending their model from challenges by drivers and regulators in the courts. The primary strategy of companies is usually to defend the integrity of their business model without making any concessions to regulators. It is only when these strategies begin to fail that platform companies then turn to compromises and deals with different parties. Either by partnering with trade unions or turning to subcontractors to provide workers with limited employment rights but to still maintain a degree of distance between the company and its workforce. The threat of a withdrawal of services is a strategy that can be employed all the way through negotiations with regulators, while the actual withdrawal is of course a last resort due to the significant loss in revenue for the company.

The contentious compliance framework of this paper suggests that when left unregulated companies will adopt the most flexible and profitable model they are able to implement. This would be one that maximises profit-making for the company and externalises risk and responsibility onto workers. To this analysis, we have added the insight that platform companies have adopted an aggressive approach because they see themselves as engaged in a global struggle to protect their business model and that a threat in one jurisdiction could prove harmful to operations elsewhere if it begins to serve as a model for other countries. As Valdez has suggested, when facing regulation in different jurisdictions, it has been rare for these companies to stop their operations.<sup>78</sup> They would prefer to stay and adapt their businesses, while working to have the regulations changed. This means that regulations can pose real alternatives to the status quo these companies attempt to impose. At the same time, excessive delays and carve outs in the most advanced jurisdictions in terms of regulation may serve as a warning to lawmakers—as with California—as to how far platform companies will go to evade regulations and retain their independent contractor model.

<sup>77</sup> Pollman and Barry n.16.

<sup>78</sup> Valdez n.12.