Commentary: Are food delivery and ride-hailing the new sweatshops?

Coined by the New Yorker editor Tina Brown in 2009, the gig economy describes workers who pursue "a bunch of free-floating projects, consultancies and part-time bits and pieces while transacting in a digital marketplace".

This view of the gig economy focuses on part time work for various companies. Some in the upper part of the gig work spectrum, like YouTube influencers and interior designers, enjoy freedom, command high fees and can choose which projects to pursue.

For these gig workers, the freedom to work whenever they want, from wherever they want and on their subjects of choice, the rise of the gig economy has opened doors to international clients and skill development.

But the fate of workers on ride-hailing and delivery platforms around the world appears vastly different. Most work "full-time" and are in a subordinate relationship.

A WATCHFUL GIGONOMY
Platforms like Grab, Didi, Gojek, FoodPanda and Deliveroo have undoubtedly kept a close eye on recent international rulings setting a precedent regarding their workers' legal status.

The UK supreme court ruled unanimously in February that Uber drivers are "in a position of subordination and dependency", making them like employees, not contractors.

As Uber sets fares, determines the contracts and imposes penalties on drivers who cancel too many requests, the judges concluded drivers have no realistic way of improving their economic position through sheer entrepreneurial skill.

These characteristics go against the very idea of being a self-employed independent contractor. Yet, not much later a British Court of Appeal ruled unanimously that Deliveroo drivers were self-employed.

In California, a judge ruled in September that a proposed law known as Prop 22, which allowed platforms firms to continue classifying their gig workers as contractors in exchange for limited benefits, was unconstitutional, opening the door for gig economy workers to be recognised as employees.

Finally, the Spanish government went a step further and told platforms in May that couriers of food delivery companies must become employees, thus taking a diametrically opposite position to the British court.
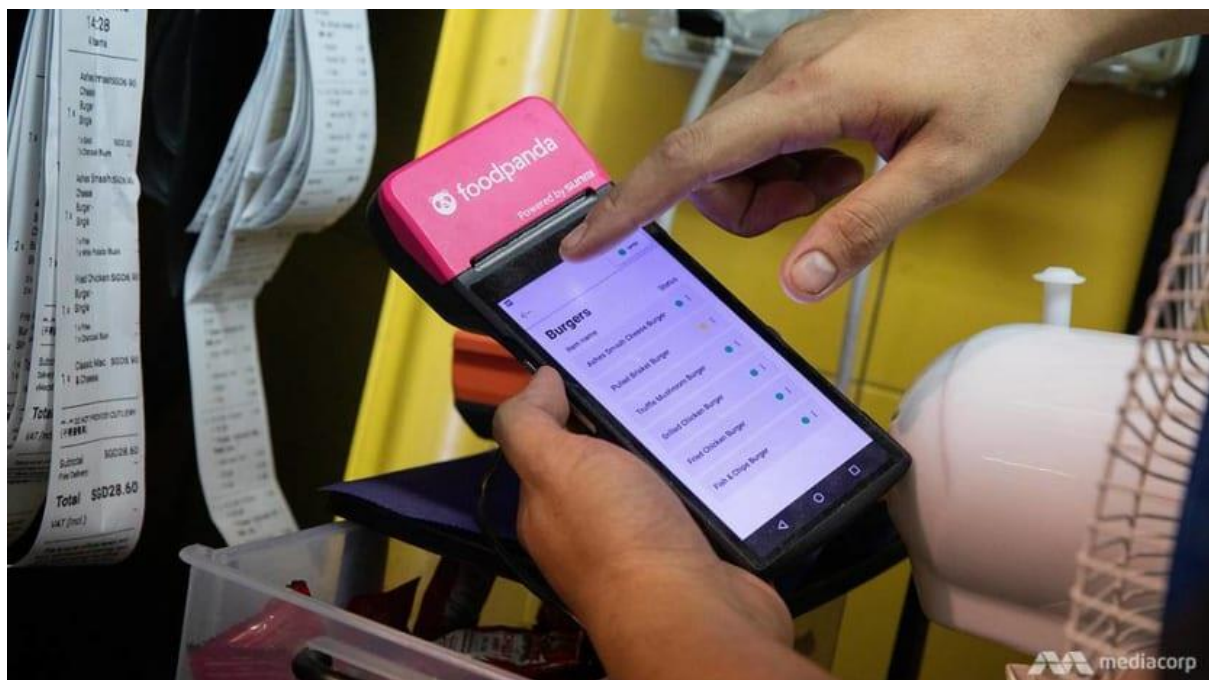
Closer to home, a South Korean driver for the Tada app sued for unfair dismissal after being de-platformed. After initially losing his case, the National Labour Relations Commission agreed with the plaintiff and found the driver was in fact "an employee". Similar litigation is ongoing in Australia, Canada and about more than 10 other countries.

THE "ABC" LITMUS TEST

In the US, longstanding "ABC" employment laws stipulate that workers are full-time employees unless companies can demonstrate they are independent contractors providing a service fulfilling three criteria.

The service must be (a) provided free from the company's control, (b) outside the company's core business and (c) with the contractor an independent professional who provides their services to multiple companies.

Though US laws don't dictate how firms in other countries run their business, they provide broad benchmarks for other authorities grappling with whether platform workers are contractors.

If Asian governments would apply a similar ABC test, how would Asian ride-hailing and delivery platforms fare?

Like everywhere in the world, Asian location-based platforms set prices, structure working time, unilaterally set contracts that guide the relationship with drivers. Moreover, they tend to be the only source of income for workers, such that ride platforms exercise a significant level of control.

Drivers are also central to these platforms' core business activities, unless we buy the argument these gig economy companies are tech companies for which drivers and passengers are incidental.

Because these workers work for multiple platforms like Grab, Gojek, and Tada, platforms can also reasonably argue they cannot be considered employees. Very few employees would be allowed to work concurrently for their employer's biggest competitors.

Often ignored, however, is that this same reality means delivery and ride-hailing workers cannot collectively bargain, lack social security coverage, experience discrimination or harassment with little recourse or protection from platform companies, while facing higher risks of COVID-19 exposure.

While some have started providing COVID-19 protections and injury and death benefits to workers in Singapore, Malaysia and Indonesia, workers generally lack benefits associated with employment like paid sick leave while remaining in an employment-like relationship.

If drivers want to be considered employees, incentivising them to work for one platform only would arguably be better.

However, this may reduce their income and lead to the paradoxical situation that platforms would encourage their drivers to work for the competition as well, just to avoid the additional costs of hiring employees rather than contractors.

On the other hand, if driver concentration leads to platform exit, the reduction of competition, like experienced in Singapore after the Uber and Grab merger, increases platform power which could lead to reduced basic pay for workers and higher consumer prices.

Industry competition is becoming a bane for such gig workers. While fuelling high incentives for such workers in the past, competition is also what allows platform firms to classify such workers as "partners" or "contractors".

ARE PLATFORM WORKERS THE NEW SWEATSHOP LABOURERS?
Digital platforms embed workers in non-committal digital contracting structures that provide none of the benefits associated with entrepreneurship like autonomy and upside potential and most of the downside risks such as volatile income, no benefits and importantly in Asia, lower social status.

The gigs ride-hailing drivers and deliverers do, are similar to piece work, which is notoriously linked to sweatshop labour in the clothing industry where labourers are paid per item and work in often inhumane conditions.

Yet when good social control mechanisms are in place, piece workers typically earn more than those paid by the hour for the same job, either because they work harder or because they are more efficient, as would be the case with a very crafty weaver or a fast vineyard pruner.

This is why economists argue that providing powerful financial incentives for monotonous and simple tasks is highly effective and a fair exchange.

However, drivers working for location-based platforms have no realistic way of improving their hourly income through their creativity or efforts to stand out from the crowd, simply because the apps tell workers where to go and how to get there as efficiently as possible, so the only way to increase their income is by increasing the hours they work.

While sweatshop labour in the apparel industry still exists, its prevalence is declining. Was this the consequence of regulatory enforcement and changes in policy? Not really.

By and large, it was driven by civil society organisations using digital technologies to make consumers of large clothing brands aware of the reprehensible conditions in which their tops and shirts were made, after which brands started to clean up their supply chains and impose more stringent monitoring of factories in which fast (and slow) fashion items are made.

FUTURE OF PLATFORM GIGS IN ASIA
Since 2010, the number of location-based platforms has grown 1,000 per cent, suggesting they have become an intractable part of most countries' transportation and food infrastructure now.

They offer clear benefits. Some drivers do use the digital platforms as a way of sourcing extra income on top of their day job, though for the overwhelming majority of location-based platform gig workers around the world, the platforms are their main source of income, says the International Labour Organisation in a 2021 report.

That same report also finds that worker earnings on the platforms tend to be higher than in the traditional sectors, although the workload is also close to 60 hours a week.

Given the amount of income these platforms generate all over Asia, banishing them would unlikely improve the quality of life of many workers.

Moreover, imposing tight regulations can backfire. Since the legislative change in Spain, Deliveroo is considering to leave the country, leaving its contractors in limbo.

While some delivery apps have backed legislative change and are negotiating collective bargaining agreements, others use private intermediary logistics firms to hire couriers, which to a certain degree replaces the problem from the public markets to the private sphere.

Some workers say that the law evasion tactics taken by the affected platforms have had a significantly negative effect on their earnings.

Some deliverers in Spain had to sign fixed-hour contracts and lost their flexibility. Glovo, a Spanish competitor to Deliveroo, signed 2,000 drivers up as employees and started favouring them in their algorithms, thus reducing the work for those who wanted to remain independent contractors.

Others have complained the new Spanish law has increased accounting, insurance, and costs around value-added such that they need work much longer to make ends meet.

It will be interesting to see how different governments and location-based platforms square this circle to decide the future of gig work in Asia, because I don't think the revolution will come from consumers this time.

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