

Digital platforms and Dutch labour market regulations

Stibbe

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The employment contract is defined as follows in Article 7:610 of the DCC:

‘A contract of employment is a contract whereby one party, the employee, undertakes to perform work in the service of the other party, the employer, for remuneration during a given period.’

- Mandatory provision. If the relationship between the parties satisfies the elements of this definition – remuneration, work, and an authority relationship – then an employment agreement exists between the parties.

The employer in Dutch labour law

The employer is the owner or operator of the business in which the employee performs the work. This is the party at whose risk and expense it is whether the wage paid to the employee is in proportion to the proceeds of the work he or she has performed and, for that reason, exercises authority over the work performed by the employee.

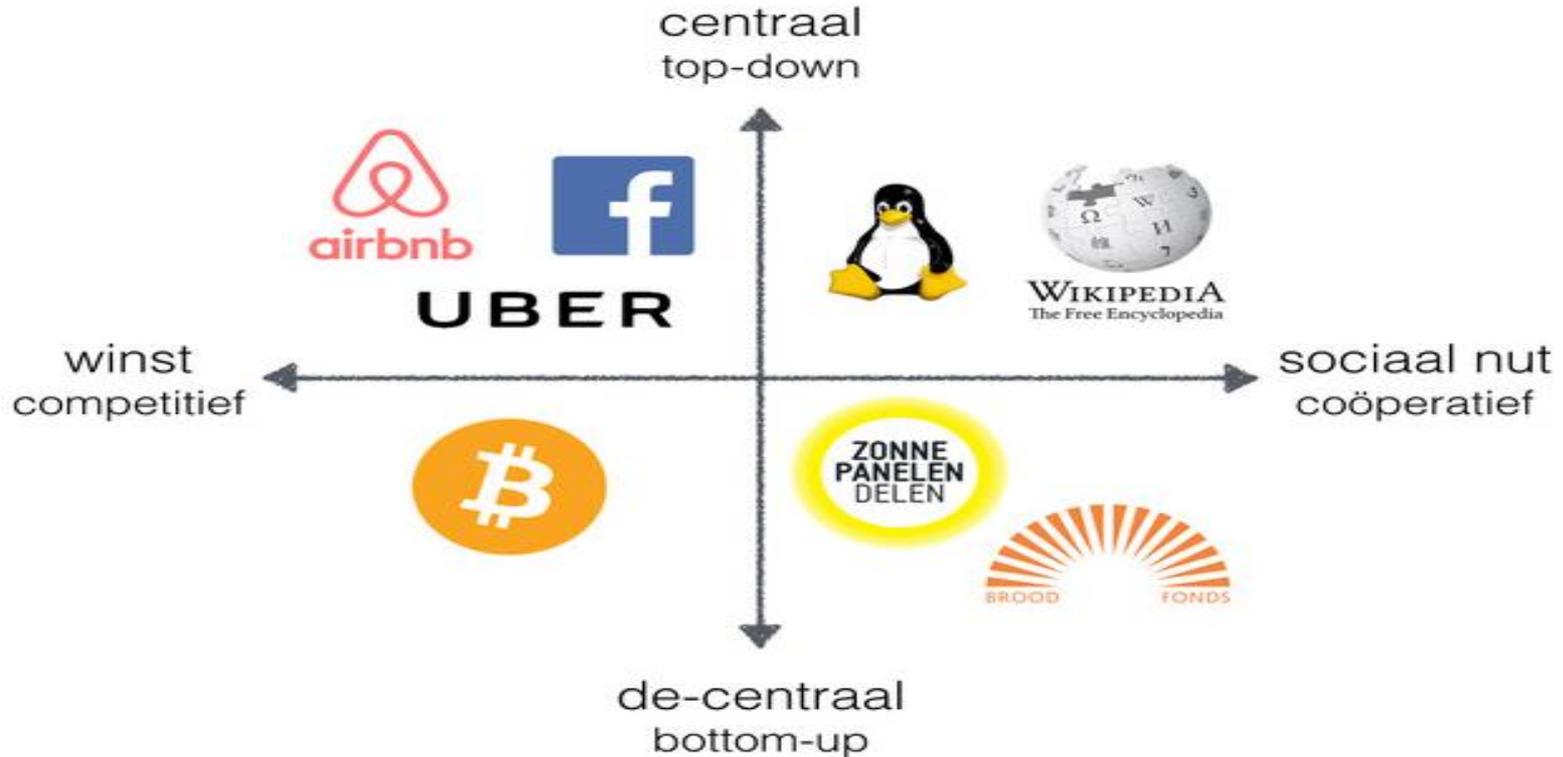
- Nuance: over the past two decades the contractual arrangements made between the parties have started to play a more important role in the legal qualification of the employment agreement and the legal employer

Digital platforms

‘A new business model that uses technology to connect people, organizations and resources in an interactive ecosystem in which amazing amounts of value can be created and exchanged.’

(Parker, Van Alstyne en Choudary 2016).

Digital platforms differ from one another...



Case Aslam & Farrar v Uber BV & others

89 Third, it is, in our opinion, unreal to deny that Uber is in business as a supplier of transportation services. Simple common sense argues to the contrary. The observations under our first point above are repeated. Moreover, the Respondents' case here is, we think, incompatible with the agreed fact that Uber markets a 'product range.'⁴¹ One might ask: Whose product range is it if not Uber's? The 'products' speak for themselves: they are a variety of driving services. Mr Aslam does not offer such a range. Nor does Mr Farrar, or any other solo driver. The marketing self-evidently is not done for the benefit of any individual driver. Equally self-evidently, it is done to promote Uber's name and 'sell' its transportation services. In recent proceedings under the title of *Douglas O'Connor-v-Uber Technologies Inc*⁴² the North California District Court resoundingly rejected the company's assertion that it was a technology company and not in the business of providing transportation services. The judgment included this:⁴³

Uber does not simply sell software; it sells rides. Uber is no more a "technology company" than Yellow Cab is a "technology company" because it uses CB radios to dispatch taxi cabs.

We respectfully agree.

When does a digital platform qualify as an employer in the Netherlands and when not?

- In my opinion this will depend on the extent to which the digital platform is steering through an algorithm and/or in imposing and protecting 'its' product.

so:

- to what extent does the digital platform determine the price and does it give the worker some freedom to deviate from this
- low rating by customer / user does not lead to 'deactivation' of the worker, but only to a lower probability of work / gigs.

Platformization and employment law protection = problem?

- Will a lot of ‘permanent work’ of employees evaporate in the future as a result of the rise of digital platforms in all economic sectors?
- Can these developments be stopped with (national) legislation?
- Is the current assessment framework in Dutch labour law (legal qualification of the employment agreement and employer) still suitable?
- Is it acceptable that an increasing number of people doing (low-paid) commodity work no longer fall under the scope of employment law protection?



Thank
you

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