Chapter 1
Summary and recommendations

1.1 Introduction

The sharing economy is the result of new business models which have been facilitated by the rapid development of digital technology. Activities in the sharing economy can potentially promote efficient resource use through increased competition and innovation. Innovation can occur through the development of new technologies, new products and services, new business models and, in some cases, through entirely new sources of market supply. Sometimes, markets are completely revolutionised by innovations that render existing business models outdated. This is often referred to as disruptive innovation.

In recent years, this type of disruptive innovation has occurred, not least, through digital sharing platforms. In the passenger transport and accommodation markets, platforms such as Uber, Haxi and Airbnb have introduced entirely new business models under which markets are supplied with unutilised transport and housing capacity owned by private individuals, rather than by means of dedicated capital investments by professional market participants. This development has been facilitated by high internet adoption, advanced mobile telephone technology and user-friendly applications, and has considerable potential to alter future market-supply patterns. Sharing platforms of this type have brought considerable benefits and opportunities for both consumers and suppliers, but are also challenging traditional business activity in many markets.

The same IT technology that has facilitated change in the product and service markets also has potential to alter the functioning and organisation of labour markets. Technology-driven reduction of transaction and information-gathering costs may lead firms to make less use of permanently employed labour and instead to recruit labour in the various markets supplied by sharing economy companies. This may create new employment opportunities for persons with poor labour market affiliation, but may also present challenges in terms of underemployment, low wages and weaker rights for persons performing such work.

1.2 Opportunities and challenges presented by the sharing economy

Various factors considered by the Committee

The Committee takes the view that the sharing economy offers positive opportunities for the Norwegian economy. Via their platforms, sharing economy companies can promote more efficient utilisation of existing resources and thereby release resources for other socially beneficial purposes. When greater use is made of objects and property, total production may be lower. This can potentially have positive environmental effects. Further, the sharing economy promotes efficient resource use through increased competition in markets and, potentially, lower prices, improved product and service choices, and innovation.

The sharing economy also presents a number of challenges. Digital solutions facilitate increased direct trading between private individuals on an unprecedented scale. Regulations in various areas do not reflect this development. The design of consumer protection rules, for example, reflects the traditional model under which professional businesses sell to consumers with little negotiating strength. Tax rules are generally based on the assumption that taxpayers engage in economic activity continuously and for a prolonged period of time, whereas in some sectors of the sharing economy market participants receive small incomes from different sources and enter into short-term engagements. This may necessitate amendment of the tax rules. Labour market regulations are generally designed for firms with employees, where the current business models of sharing economy companies assume that service providers who use their applications are independent contractors. As a result, in its current form the sharing economy facilitates growth in economic activity via non-traditional business models. Institutional labour market standards maintained by traditional businesses may therefore be altered if this aspect of the sharing economy grows in prominence.

When transactions between private individuals fall outside the existing regulatory framework, or when it is unclear how such sales should be dealt with under the applicable rules, difficult borderline cases may arise. The issue of competition with traditional market participants who have to comply with existing regulations in various areas thus becomes relevant. Accordingly, a key aspect of the Committee's work has been to assess the application of regulations, requirements and standards to private persons and businesses, respectively.

The interests that the Committee has been asked to assess may in some respects conflict with one another, and must therefore be balanced. This applies, among other things, to the objective of competition-neutral regulation and the objective of not imposing disproportionately heavy regulatory burdens on small market participants.

The provision of passenger transport and other sharing services via digital platforms is a relatively new phenomenon, and is not yet commonplace in Norway. Accordingly, the Committee considers it appropriate to examine how the sharing economy is developing before major measures are implemented to direct developments.

Technologies and business models are developing quickly, and more rapidly than changes can be responded to by policy and regulatory means. The Committee therefore considers that regulatory arrangements should be neutral with respect to technologies and company types.

Since the sharing economy is relatively new, considerable uncertainty attaches to the question of which regulatory provisions apply and how the rules should be interpreted. The Committee therefore sees a need to improve the information available on both rights and duties in the sharing economy. The report contains various proposals regarding guidance and information to be provided. In chapter 5, it is proposed that the competition authorities should publish guidance on the right of contractors under current competition rules to enter into collective agreements. In chapter 6, it is pointed out that guidance will strengthen knowledge of consumer rights in the sharing economy, and it is proposed that the consumer protection authorities should conduct a dialogue with sharing economy companies on industry standards and best practice in the area of consumer protection. It is so proposed that the consumer protection authorities, if such dialogue is unsuccessful, should publish their own guidance on the area. Chapters 8 points out that the Norwegian Tax Administration has published information on its website on how income from sharing services should be recorded in tax returns, and the Committee has urged the Norwegian Tax Administration to develop this guidance further in light of the experience gained thus far.

The Committee considers it appropriate for information from various public agencies to be included in a joint information portal containing information on tax rules, consumer protection rules and relevant sectoral regulations. The portal could be based on existing public websites. The portal should provide consumers, service providers and platforms with relevant information and guidance.

Limitations on and guidelines for the Committee's work

Digital platforms can be used to enable or facilitate services between businesses to exploit unutilised capacity in respect of various input factors, primarily real capital. Such enabling and facilitation probably have the potential to generate substantial efficiency gains, since businesses may possess significant unutilised capital. However, this aspect of the sharing economy does not raise the same regulatory challenges as sharing activity between private individuals, where it may be unclear whether they are engaging in business activity and what relationship service providers have with the platform under employment law. Transactions between businesses do not raise consumer law issues, nor specific questions regarding the taxation of corporate income. In the Committee's view, challenges related to sharing between businesses primarily arise in the area of competition policy, and the current regulatory framework appears able to deal with these. The Committee has therefore chosen to concentrate on situations where private individuals rent objects or private homes from, or provide services to, one another. In addition, some sharing platforms – typically platforms for the provision of labour – enable or facilitate service provision from persons to businesses. This topic is discussed in the context of labour market regulation; see chapter 5.

Many sharing economy companies are active in multiple countries, and the largest operate globally. This has given rise to a need for inter-country coordination to prevent companies from exploiting regulatory differences in different countries, including in the area of taxation. A fragmented regulatory framework will also complicate the establishment and growth of the sharing economy. The Committee has noted ongoing regulatory developments in the EU, which will have an impact in Norway and whose outcomes should be awaited. This applies, for example, to potential legislation regulating the obligations of platforms more generally. Moreover, there is little freedom of action to amend regulations in areas in which Norway is already bound by fully harmonised EU/EEA rules, as in the case of many consumer protection rules.

A summary of the Committee's main findings, assessments and recommendations follows below.

1.3 The sharing economy

The sharing economy has a number of defining characteristics. One such characteristic is that the sharing economy involves *services enabled or facilitated via digital platforms*. Emphasis is given to the fact that the platform facilitates the activity, rather than being the supplier of the actual service. The Committee has concentrated on commercial sharing initiatives rather than non-commercial schemes, since commercial sharing services raise more regulatory challenges than non-commercial ones. Another key characteristic is that *ownership is not transferred*. Traditional internet sales and, for example, media services delivered via electronic platforms are therefore excluded from the definition. A third characteristic is that economic activity primarily occurs *between private individuals* – referred to as peer-to-peer sharing – or between businesses and private individuals, i.e. business-to-per sharing. This distinction is made partly because new sharing initiatives are founded on the concept of selling unutilised household resources in a market and partly because this area presents the main regulatory challenges. Service providers and lessors will therefore either be private individuals or be defined as businesses (if the activity is sufficiently large in scale), whereas demand will primarily come from private individuals.

The Committee has applied the following definition:

> "Sharing economy" means economic activity enabled or facilitated via digital platforms that coordinate the provision of a service or the exchange of services, skills, assets, property, resources or capital without transferring ownership and primarily between private individuals.

Digital platforms reduce transaction costs by making it easier for suppliers and customers to find one another. Such platforms also reduce costs that arise when suppliers and customers do not have the same information. When users can evaluate one another and this information is made known to other users, trust increases on both sides. This allows growth in both the number of transactions and trade that was previously unprofitable or too risky. Platforms typically also offer secure, automated payment solutions.

The primary concept of the sharing economy is to sell unutilised economic resources. The business concept of platforms is to facilitate such sales and charge a proportion of the transaction payment. Since the most significant items of household capital that can be shared are means of transport, housing capital and skills (human capital), the sharing economy is expected to become largest in these areas.

The emergence of the sharing economy is an element of broader change occasioned by rapid progress in the area of digitisation. Digital technology can be used for many different purposes, and is giving birth to numerous services that cannot be produced by other means. Digital services can be replicated at a low marginal cost, and the opportunity to expand into new markets and to new customer groups is therefore sizable.

At present, the sharing economy is not large in Norway, but appears to have significant growth potential. Thus far, the greatest growth in the Norwegian sharing economy has been observed in the accommodation market and in passenger automobile transport (taxi-like services), as well as car sharing/car rental services. Factors such as the regulatory environment, population preferences and attitudes, and technological progress will shape the future development of the sharing economy.

1.4 Driving forces, competition and innovation

The growth of the sharing economy can largely be attributed to falling transaction costs and reduced uncertainty. Competition with established market participants has increased, potentially leading to lower market prices. The sharing economy is also expanding the number of products and services on offer, giving consumers access to a greater and more differentiated range of choices.

The sharing economy can potentially provide consumers in a market with better price and quality information. Good information promotes competition, not least by making it easier for consumers to compare different offers. In addition, reliable price and quality information hedges against the possibility that suppliers may exploit an informational advantage over customers for their own benefit.

The sharing economy allows private individuals to profit from renting out resources they own or by delivering services. On the supply side, stronger competition facilitates greater production at a lower cost. Improved capacity utilisation generates resource savings for society which can then be invested elsewhere, and facilitates environmental gains.

The sharing economy represents disruptive innovation, perhaps primarily through the addition of new sources of market supply, but also through new and innovative business models and new products and services. The sharing economy also encourages innovation among established businesses by increasing market competition. To survive over time, established businesses will have to use new technology and develop new business models.

Some sharing markets are characterised by strong network effects, meaning that a sharing platform becomes more attractive to customers the more suppliers use the same platform. In some instances, this may give platforms a dominant market position. When this happens, there is a risk that a platform may exploit its market power to the disbenefit of customers and suppliers using the platform. The links in this context are not obvious, and the final effect on consumers and individual platforms depends on factors including the direction and strength of the network effects. Not all parts of the sharing economy will feature network effects with monopolistic tendencies. Accordingly, different platforms may exist side-by-side in the same market segment.

The Competition Act is designed to facilitate effective competition. The act contains a prohibition against co-operation that limits competition, a prohibition against the misuse of dominant position and rules on merger control. Broadly speaking, the Competition Act also applies to the sharing economy. However, the sharing economy may present new challenges to competition policy. Perhaps the foremost concerns relate to the business-to-business sector of the sharing economy. In the case of the sharing platforms and market participants on which the Committee has focused, questions may arise about opportunities for collaboration on prices offered via platforms.

Facilitating effective competition also entails facilitating good opportunities to establish new businesses. Adapted, technology-neutral, updated regulations are crucial in this regard.

1.5 The labour market

Numerous sharing economy services involve labour input from persons offering services via the particular platform. Other platforms are dedicated to enabling or facilitating work assignments, either odd jobs typically carried out by unskilled workers and persons running small businesses serving households or services that demand specialist skills, often serving businesses.

The performance of work by one private individual for another is nothing new, but the scale of such activity may increase if such services can be enabled or facilitated more efficiently than before. The development of specialised platforms for the supply of labour is facilitating increased outsourcing of tasks by traditional businesses, and to some extent the replacement of employees. If this way of organising economic activity becomes widespread, it may potentially alter the labour market and, ultimately, also other social conditions. Expansion of the sharing economy may weaken the role of firms as centres of production, and thus also their function as employers. Key issues in this context are workplace cooperation and participation, protection of health, the working environment and safety, wage negotiation and, to some extent, income responsibility. Income responsibility is expressed by the fact that it is the firm which in the short term bears the risk of a lack of work. Employment protection gives employees time to reorient and find new work in the event of downsizing, as well as protection against unfair dismissal. In part, these protections reflect the fact that an employer has a right of instruction and that employees therefore require protection. This need will not be the same if there is no right of instruction.

The Norwegian labour market is well organised, and characterised by low unemployment compared to most other European countries. Coordinated wage negotiations and tripartite cooperation are key principles. Productivity is high in an international context, despite somewhat lower productivity growth in recent years. The Norwegian labour market offers good training and development opportunities, and job satisfaction is generally high. The proportion of self-employed persons is stable and low compared to many other countries. Nine out of 10 working persons have permanent positions. There is broad agreement that the Norwegian labour market model has contributed to strong economic performance.

Most sharing economy companies define service providers using their platforms as independent contractors, rather than as employees. Employees and contractors have different rights as regards protection against work hazardous to health, employment protection, national insurance and pension rights, etc. Any increase in the proportion of independent contractors in the economy may necessitate a review of the rights of self-employed persons and freelancers, and an assessment of whether these should be amended. From a wider perspective, change in institutional framework conditions in the labour market may give rise to challenges that need to be addressed, including in relation to income and income distribution.

The labour market opportunities offered by the sharing economy must also be considered. People who cannot, or do not wish to, take ordinary employment can expand their job opportunities through the sharing economy. The work is flexible, and may thus be attractive to students and other persons with varying capacity to engage in income-generating work. Thus far, technological developments have been of most benefit to highly educated workers. The sharing economy, on the other hand, may also create employment opportunities for workers without advanced qualifications.

Platform markets for the provision of labour may connect contractors and clients more effectively, thus helping to improve labour utilisation. On the other hand, the tendency for assignments to accumulate with the most in-demand contractors, and problems with designing platform rating systems to provide correct information, undermine the effectiveness of digital labour markets. Increased use of digital platforms to provide labour may result in greater specialisation and work sharing, which in turn may improve productivity. The sharing economy also leads some persons to perform work other than their actual profession, i.e. allows more work to be performed by individual persons without special skills in the area in which the work is being performed. Some employees in the sharing economy may continue to take sporadic assignments without entering the ordinary labour market. Contractors and temporary employees participate less in corporate training programmes than permanent employees. In a labour market in which a higher proportion of working persons are independent contractors, training and skillbuilding measures will increasingly have to be financed by the contractors themselves. Employee protections under the Working Environment Act, for example against working conditions which are hazardous to health, excessive working hours and unfair dismissal, do not apply to contractors in the digital economy. Such protections will therefore benefit fewer and fewer persons as the number of those working in the sharing economy increases. Thus far, the extent of such work activity in Norway has been limited, but the growth potential may be significant. The need to protect against, for example, working conditions hazardous to health stems from a skewed balance of power between employers and employees.

It is known from certain other countries that contractors have challenged sharing platforms legally and demanded employee status. Normal practice in many countries, including Norway, is for the courts to have the final say on this issue based on an overall assessment of a number of factors. In other words, whether or not someone is an employee is determined on a case-by-case basis. Key factors in the assessment are whether the person performing the work has a personal and ongoing duty to work and whether the person has a duty to submit to another person's management, instructions and control. The sharing economy may increase the number of disputes as to whether a service provider should be regarded as an employee or as an independent contractor. Thus far, no cases have reached the Norwegian courts that have examined the term "employee" in the context of the sharing economy.

The Committee has considered whether there are aspects of the sharing economy that indicate a need to amend the term "employee" in the Working Environment Act, either because it entails a gap in protection that the Working Environment Act does not address, or because the sharing economy creates more instances where parties disagree on status. A Committee majority – members *Gabrielsen, Andreassen, Flesland, Korme, Moen, Schjerva* and *Teigum* – has been unable to identify obvious aspects of the sharing economy that result in service providers with a real need for protection not being defined as employees. This majority also considers that the possibility of an increased number of cases in which the status of a service provider is disputed does not in itself mean that the act is insufficient in terms of determining the status of a service provider for employment law purposes. The majority considers the current Working Environment Act sufficiently flexible to deal with possible conflicts that may arise in the sharing economy in relation to this question, and has therefore concluded that there is no need to propose changes to the definition of employee in the Working Environment Act. Further, the majority considers that there are no grounds for proposing a new category of employees with limited protection. The same majority also sees no need to appoint a law committee to examine the terms used in the Working Environment Act. Nonetheless, the majority recommends close monitoring of developments. Although the majority sees no need for changes based on today's sharing platforms, that possibility cannot be excluded that other business models and sharing platforms may emerge in future that challenge the regulatory framework for this area. Further, the same majority sees no need to propose new regulation of HSE matters or the working hours of contractors in the sharing economy, since the primary rationale for these regulations is the need to protect employees.

A minority – member *Tinnlund* – considers that the sharing economy has the potential to grow rapidly and to encompass many more employees than at present. It is therefore important to stay ahead of developments by clarifying framework conditions for market participants. Protective rules under employment law must apply if an agreement anticipates or imposes a duty to work. The definition of the term "employee" must promote legal clarity and clearer delineation, be technology-neutral and cover all forms of agreement under which a need for protection arises. The minority therefore proposes the appointment of a law committee to assess the terms used in the Working Environment Act.

The minority has pointed out that little factual knowledge is available on HSE challenges in the sharing economy. Since many aspects of the sharing economy are new, it is particularly important to monitor developments. The minority proposes a study into the HSE consequences of the sharing economy to evaluate whether there is a need for amendment or clarification of the regulatory framework, for example whether HSE must also be safeguarded in the case of contractors engaged digitally.

A further minority – member *Mjåset* – proposes assessment of a new category of employee, and an evaluation of the terms used in the Working Environment Act.

Employees and self-employed persons have fairly similar entitlements to public services and benefits. Entitlement to a retirement pension from the national insurance scheme and public health services is universal and independent of employment status. However, self-employed persons do not have full national insurance rights, including in relation to sick pay and occupational injury insurance, and generally do not receive unemployment benefit when they have no work assignments. In addition, self-employed persons must make their own financial provision for living costs during holidays and any pension over and above the national insurance retirement pension. Reduced sick pay rights and the lack of entitlement to occupational injury insurance are linked with lower total contributions to the national insurance scheme by self-employed persons. Accordingly, full entitlement under the schemes requires the taking out of additional insurance. The lack of entitlement to unemployment benefit is linked to the fact that self-employed persons have greater influence over both their working hours and income than employees, the fact that they do not necessarily lose all income when out-of-work, and the fact that it can be difficult to determine