

Understanding legal position of digital logistics platforms



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Digital platforms which connect logistics service providers with their customers have become commonplace. A relevant question from a legal perspective is whether such a platform acts as a carrier or freight forwarder. The answer to this question will affect a platform's civil and public law exposure. As such, platforms should consider their legal position carefully.

Background

For some years, internet platforms such as Teleroute and TimoCom have connected road hauliers with shippers. Today, a wide range of digital logistics platforms are used (eg, Quicargo, Synple, Twill and Cogoport). Some of these also offer platforms via a mobile app. For example, Uber recently reported that it will launch the digital platform Uber Freight in the Netherlands, having first launched it in the United States in 2017.

Digital platforms connect suppliers of logistics services (eg, carriers, freight forwarders, shipbrokers and non-vessel-operating common carriers) with business customers (eg, sellers or buyers of goods) and other carriers and freight forwarders. Via such platforms, customers can book transportation and related services such as:

- customs clearance;
- packing or repacking; and
- warehousing.

It is relevant to consider the legal position of such platforms and establish whether they act as freight forwarders or carriers. This may have consequences from both a civil and public law perspective.

Civil law perspective

Many mandatory provisions of international conventions and national laws apply to the carriage of goods. For example, carriers generally cannot exclude their contractual liability for damage to goods sustained during carriage. Platforms do not usually present themselves as carriers and the likelihood of them being regarded as such from a legal perspective is slim. Platforms will not normally accept an obligation to carry goods from A to B. Most frequently, they will simply enable carriers and customers to conclude contracts of carriage with each other, without the platform itself being a party to such contracts.

However, platforms often act as freight forwarders. Pursuant to Dutch law, a freight forwarder concludes a contract of carriage with a carrier on behalf of its principal. Whether the platform is a freight forwarder will depend on its business model. If the platform serves both the customer and the logistics service provider, and only connects them,

its activities will more closely align with the concept of 'intermediary services' within the meaning of Article 7:425 of the Civil Code. The platform then serves two clients (ie, the customer and the logistics service provider). Dutch law permits this if there are no conflicting interests.

Platforms which contract as freight forwarders or intermediaries may not be mandatorily liable for damages incurred during carriage. However, they may be liable if they fail to perform their obligations under a freight forwarding or intermediary contract – for example, if they connect a customer with a non-existent, fraudulent haulier. This civil law exposure can be minimised contractually.

Public law perspective

Platforms should also consider their position from a public law perspective. In some European countries, companies acting as carriers or freight forwarders need a licence or permit to perform their services. However, this is generally not the case in the Netherlands.

Notably, the European Court of Justice recently held that Uber is not only a digital platform which offers intermediation services, but also a platform which offers 'services in the field of transport', as set out in the EU Internal Market Services Directive (2006/123/EC). In making its decision, the court took into account the fact that, without the Uber app, non-professional drivers would not have provided transport services and users would not have used the services provided by those drivers. It remains to be seen how the Dutch courts will give effect to this decision from time to time.

Comment

Digital logistics platforms should carefully consider their legal position and, consequently, their civil and public law exposure. A relevant question in this regard is whether the platform itself acts as a carrier or freight forwarder.

Platforms should communicate their legal position clearly in their terms of use. If the legal picture is clear, platforms will be able to determine their exposure and minimise it contractually. Seeking advice on bespoke insurance cover is also essential.

From a public law perspective, it is possible that platforms may be deemed to provide services in the field of transport. In that event, a licence or permit may be required. Platforms that operate in the Netherlands should seek legal advice from a local lawyer in order to minimise the legal risks.

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