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Federal Trade Commission
Office of the Secretary
Room H-113 (Annex X)
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: The 'Sharing' Economy - Issues Facing Platforms, Participants and Regulators

Dear Commissioners,

Thank you for the opportunity to take part in the Federal Trade Commission's Sharing Economy Workshop. I offer the following comments on behalf of the R Street Institute, a free-market think tank that has undertaken rigorous and well-regarded research in the realm of disruptive technologies and the sharing economy, including transportation network companies.

R Street also maintains the largest insurance-focused project of any non-industry think tank. The nexus that has arisen between insurance issues and the ridesharing and space-sharing markets makes us, we believe, uniquely suited to this work.

Our research includes: "RideScore," a comparative study of the regulatory approaches to transportation-for-hire taken by 50 of the nation's largest cities; "Blurred Lines," a paper examining the insurance challenges that confront the ride-sharing market; and "Five principles for regulating the peer production economy," which offers state and local legislators and regulators a guide to interact with novel peer-production services. Copies of the latter two papers have been attached to these comments for your review.

We will focus on two of the provided prompts:

1) How have sharing economy platforms affected competition, existing suppliers, innovation, and consumer choice in sectors in which they operate? How might they do so in the future?

2) How can state and local regulators meet legitimate regulatory goals (such as protecting consumers, public health and safety) while also promoting competition and innovation?

Impact on competition

TNCs have had a favorable impact on competition in the transportation-for-hire industry, but have hurt the market share and bottom line of existing suppliers, such as taxis and limousines. The entry of TNCs into the market has increased overall ridership of transportation-for-hire services, though it is difficult to discern whether the uptick is a function of an outright increase in demand, or a hitherto latent unserviceable demand. We suspect the latter.

Existing suppliers within the transportation-for-hire industry have not enjoyed increased ridership, as TNCs have eaten into the market share of taxis and limousines. By some conservative estimates, depending on the measurement used, taxi traffic has fallen by 20 to 30 percent in large markets like San Francisco. Taxi medallions in New York City, once valued at nearly $1 million each, have dropped in value precipitously. Similar markets in Chicago and Philadelphia have also plummeted. Overall, while the figures change from location to location, the trend is unambiguous. With the rise of TNCs, taxis have seen their ridership and associated value decline across the nation.

There are three advantages TNCs hold over taxis that we see driving current market dynamics: 1) novelty 2) reputational advantage; and 3) efficiency gains derived from a model for which taxis are ill-suited. Each of these points also apply, to greater or lesser extent, to other segments of the sharing economy.

The novelty of TNCs and the reputational advantage they enjoy both are functions of the marketing success of TNC firms in a market not accustomed to competing for ridership. Though there is little hard data on the impact of these two phenomenon, ridership figures suggest that something beyond price motivates people to get into TNCs.

While TNC marketing evokes images of fun, youth and high-end vehicles, taxis and limousine services have been caught flat-footed. They offered no publicly visible response to TNC services and were thus defined as old, purely transactional and less comfortable. Not even prominent warnings from regulators – largely focused on questions surrounding adequate insurance and driver reliability – managed to dissuade consumers from exploring this fast-growing service.

The third advantage TNCs presently maintain over taxis and limousines is that TNCs provide a meaningfully different service. They rely on low-cost prearranged rides, as opposed to street hails or rides prearranged at a higher cost. As a result, TNCs are better-suited to some fares than are taxis. For instance, in situations in which an immediate hail is required, a taxi will continue to make the most sense. But when a ride is needed in an area not otherwise frequented by transportation-for-hire, connecting with a TNC is an attractive option. Specialization of this kind enhances consumer choice, because the inefficiencies of a model ill-suited to a particular activity are not borne by the consumer.

Consumers are just beginning to tailor their behavior to accommodate the new model and, in some cases, likely are using TNCs in situations in which they are not as efficient as taxis. In the future, it seems likely that the profound advantages currently enjoyed by TNCs will abate. As a result, though incumbent players in the transportation-for-hire field proclaim that their continued existence is in danger, their fears are overstated.

The need for a taxi-like model will not disappear completely. Rather, as the market continues to change and as consumers become accustomed to new choices, a leaner and more consumer-friendly taxi industry will emerge. Innovation that springs from the sharing economy is not confined to the new market participants. To the extent that they must change to persist, existing industries like taxis will be made to innovate.

How to regulate the sharing economy

When it comes to regulating the sharing economy, consumer protection and safety are legitimate objectives. Most advocates for free-market public policies will concede that point. Unfortunately, self-interest cloaked in the rhetoric of consumer protection remains a problem in this market, as it is in many others. For rent-seekers, seizing the mantle of consumer protection can provide cover for great mischief.

As a threshold matter, we believe consumer-protection mechanisms must be narrowly tailored, both as to their depth and breadth. For example, a real or theoretical consumer must be identified as a subject of harm, not a competing market participant. To regulate the sharing economy effectively, it's necessary for legislators and regulators to overcome in-built preferences for the status quo.

Startup firms within the sharing economy are at once dynamic and naïve, by their very nature. As such, in scenarios in which they have grappled with established interests for specific regulatory outcomes, they have, at times, struggled. Consider the experience of the firm Zenefits in Utah.

Though it does conform to the sharing economy notion of connecting users online for access to an asset and carries the mantel of market "disruption," Zenefits can only loosely be characterized a sharing economy firm. Its business model is that of an online brokerage service, whereby firms in the market for benefits or various human resources-related products can be connected with retailers of those products and services.

In late 2014, the Utah Department of Insurance turned its back on the prevailing national understanding of an old and largely superfluous anti-rebating law in favor of a novel understanding. Crucially, the department did so under the auspices of protecting consumers. The true aim likely was not so high-minded. Instead, it was to protect in-state brokers whose business would suffer as a result of increased competition. It was aimed specifically at inhibiting the growth of Zenefits within the state.

Ultimately, the state Legislature in Salt Lake City was inclined to agree that the department had misinterpreted the statute and passed a bill to clarify the legality of Zenefits' operation. Yet the affair highlights that ensuring that regulators effectively oversee the activity of firms within the sharing economy should not be a matter of circumscribing the creative behavior of those firms. Rather, it is incumbent upon government to demonstrate the flexibly necessary to adopt interpretive postures that accommodate market developments. In other words, when an old statute that was transparently conceived without particular behavior in mind inadvertently proscribes a benign market development, regulators should seek to reconcile the novel market activity with consumer protection before seeking to halt the activity.

The Zenefits example also points to another common problem of regulating the sharing economy, which is that regulators' jurisdiction over sharing economy firms is not always conterminous with the scope and extent of the enterprise over which they seek to assert control. For instance, why was an insurance department regulating noninsurance activities?

When considering the behavior of firms within the sharing economy, it also may be necessary to account for the time horizon that dictates their business development. For example, while transportation network companies are aggressively expanding market share and accruing capital, other regulated firms, like insurance companies, may hold as a higher priority preserving their relationships with regulators.

Sincerely,

Ian Adams
R Street Institute