



September 25, 2015

TO: Members, Subcommittee on Commerce, Manufacturing, and Trade

FROM: Committee Majority Staff

RE: Hearing entitled “The Disrupter Series: How Sharing is Faring: Growth and Adjustment in the Sharing Economy”

I. INTRODUCTION

On September 29, 2015, at 10:15 a.m. in 2322 Rayburn House Office Building, the Subcommittee on Commerce, Manufacturing, and Trade will hold a hearing entitled “The Disrupter Series: How Sharing is Faring: Growth and Adjustment in the Sharing Economy.”

II. WITNESSES

The Subcommittee will hear from the following witnesses:

- Alex Chriss, Vice President and General Manager, Intuit, Inc.;
- Bob Passmore, Assistant Vice President – Personal Lines Policy, Property Casualty Insurers Association of America;
- Lucele Smith, Driver-Partner, Uber Technologies, Inc.;
- Jon Lieber, Chief Economist, Thumbtack;
- Michael Beckerman, President and Chief Executive Officer, The Internet Association;
and
- Dean Baker, Co-Director, Center for Economic and Policy Research.

III. BACKGROUND

Propelled by the growing adoption of mobile broadband, the sharing economy has impacted multiple facets of the global marketplace. The platforms that comprise the sharing economy put vast networks of people and services at our fingertips, introducing the modern daily life to new conveniences. According to a recent PriceWaterhouseCoopers study, the sharing economy generated about \$15 billion in revenues in 2013, and is projected to generate \$335

billion in ten years.¹ With over 80 million Americans participating in the sharing economy,² the policy issues it raises are now national in scope.

The sharing economy typically is described as the facilitation of peer-to-peer transactions, many of which would be impossible or too costly without sharing platforms. Most sharing platforms work by providing systems that allow a user to rate a seller, so that the user knows whether or not the seller can be trusted. In turn, the rapid rating responses drive supplier and consumer behavior, providing additional incentive to be “good” on sharing economy platforms.

Researchers have analyzed some of the potential flaws with these reputation mechanisms,³ but market actors have developed methods of dealing with these possible shortcomings.⁴ For example, allowing users to provide ratings presents the possibility that there will be fake or unfair ratings. Sharing platforms have responded by displaying rater profiles and histories; allowing the community to “rate the rater”; rewarding the “top” raters; and providing a mechanism for parties to appeal ratings they believe are unfair.⁵

The rise in peer-to-peer transactions is not a new and, in fact, was anticipated by many economists. Ronald Coase, in particular, put forth a now widely-accepted theory that housing a function inside a firm is efficient only to the extent that it overcomes the transaction costs of obtaining services by independent contract.⁶ The extent to which economies benefit from this phenomenon depends in part on whether policymakers allow it to be realized in a way that is safe for consumers and competitively neutral.

A. Observed Benefits

Several macroeconomic benefits of the sharing economy have been identified. First, the rise in peer-to-peer transactions has expanded existing markets.⁷ In other words, they are taking several local “thin” markets and making them “thick and global.”⁸ Third, sharing platforms have in some cases created entirely new markets.⁹ For example, Taskrabbit provides a mechanism

¹ See PriceWaterhouseCoopers, “Five key sharing economy sectors could generate £9 billion of UK revenues by 2025” (Aug. 15, 2014), available at http://pwc.blogs.com/press_room/2014/08/five-key-sharing-economy-sectors-could-generate-9-billion-of-uk-revenues-by-2025.html.

² Jeremiah Owyang, “Sharing is the New Buying: How to Win in the Collaborative Economy,” slide 6 (Mar. 2, 2014), available at http://www.slideshare.net/jeremiah_owyang/sharingnewbuying.

³ Panel 2: Mechanisms for Trust in the Sharing Economy, PowerPoint Presentation, The “Sharing” Economy, Fed. Trade Comm’n (June 9, 2015), at 13, available at https://www.ftc.gov/system/files/documents/public_events/636241/panel2.pdf.

⁴ *Id.*

⁵ *Id.*

⁶ Ronald Coase, “The Nature of the Firm,” *ECONOMICA*, Vol. 4, No. 16, at 386 (Nov. 1937), available at <http://www.colorado.edu/ibs/eb/alston/econ4504/readings/The%20Nature%20of%20the%20Firm%20by%20Coase.pdf>.

⁷ Liran Einav, “The Economics of Peer-to-Peer Internet Markets,” The “Sharing” Economy, Fed. Trade Comm’n, at 4 (June 9, 2015), available at https://www.ftc.gov/system/files/documents/public_events/636241/einav.pdf

⁸ *Id.*

⁹ *Id.*

through which an individual can seek compensation for performing mundane tasks, such as assembling furniture. The likely result is an increase in productivity.¹⁰

Consumers also have experienced more immediate benefits from competition resulting from the advent of sharing platforms. One study found that Uber's entrance into the New York City marketplace caused taxicab services to improve, as evidenced by a reduction in taxicab complaints per trip.¹¹ Thus, even consumers that use taxi service rather than a transportation network company (TNC) such as Uber may have benefitted from better taxi experiences. Proponents of sharing platforms also point to evidence that the availability of peer-to-peer transactions makes services available to previously underserved areas and populations. For example, one study found that wait times and costs for UberX were significantly lower in low-income Los Angeles neighborhoods than they were for taxis.¹²

Sharing platforms also have created new income opportunities for people with underutilized assets, and enabled small business professionals to reach larger numbers of potential clients. For example, Thumbtack allows local professionals to access potential clients who are a good match for their services, expanding and targeting their outreach in ways that previously were unaffordable.¹³ The reasons for seeking freelance work or renters vary widely, and individual success stories come in myriad forms, but it is clear that a significant number of Americans are taking advantage: one survey finds that about 34 percent are freelancing,¹⁴ and another report projects 40 percent will be "contingent" workers by 2020.¹⁵

B. Liability Insurance

Sharing platforms raise questions as to which party bears liability when accidents occur. Because TNC drivers generally are considered independent contractors, historically, there has been a lack of clarity as to which of the drivers' activities a TNC should insure. Frustration also

¹⁰ See BLACK ROCK, INTERPRETING INNOVATION: IMPACT ON PRODUCTIVITY, INFLATION & INVESTING 10 insert (Sept. 2014), available at <http://www.blackrock.com/corporate/en-us/literature/whitepaper/bii-interpreting-innovation-us-version.pdf> ("The "sharing economy" increases use of existing assets such as cars and apartments. This makes economies more efficient . . .").

¹¹ Scott Wallsten, THE COMPETITIVE EFFECTS OF THE SHARING ECONOMY: HOW IS UBER CHANGING TAXIS? TECHNOLOGY POLICY INSTITUTE (June 2015), available at http://techpolicyinstitute.org/files/wallsten_the%20competitive%20effects%20of%20uber.pdf.

¹² BOTEC ANALYSIS CORP., FASTER AND CHEAPER: HOW RIDE-SOURCING FILLS A GAP IN LOW-INCOME LOS ANGELES NEIGHBORHOODS (Jul. 2015), available at <http://botecanalysis.com/wp-content/uploads/2015/07/LATS-Final-Report.pdf>.

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¹⁴ FREELANCERS UNION & ELANCE-ODESK, FREELANCING IN AMERICA: A NATIONAL SURVEY OF THE NEW WORKFORCE 3 (Sept. 2014), available at https://fu-web-storage-prod.s3.amazonaws.com/content/filer_public/7c/45/7c457488-0740-4bc4-ae45-0aa60daac531/freelancinginamerica_report.pdf.

¹⁵ INTUIT 2020 REPORT, TWENTY TRENDS THAT WILL SHAPE THE NEXT DECADE, INTUIT 21 (Oct. 2010), available at http://http-download.intuit.com/http.intuit/CMO/intuit/futureofsmallbusiness/intuit_2020_report.pdf.

resulted when drivers' personal insurance providers would cancel their policies upon discovering they were driving for TNCs.¹⁶

Insurers, TNCs, and regulators are working to solve these gaps in coverage: stakeholders developed a compromise model bill for States.¹⁷ The legislation requires either TNC drivers or the TNCs themselves to provide minimum liability insurance coverage when the TNC driver is logged into the TNC app, but presently is not engaged in a prearranged ride.¹⁸ The draft requires liability insurance, which covers damage or injury to others, but not the driver or the driver's car. Under the draft bill, TNC coverage must be primary — in other words, coverage may not be dependent on personal auto policies denying a claim before TNC insurance is triggered.¹⁹ In addition, the legislation requires TNCs to make disclosures to drivers, including a clear indication that the driver's personal insurance might not provide any coverage while the driver is logged on to the TNC's app.²⁰

The compromise model legislation has been adopted in 20 States,²¹ and similar legislation has been adopted in at least seven other States. Both Uber and Lyft have endorsed the model language. The model legislation breaks coverage requirements down by various driver activities, denoted by "periods" as follows:

Driver Activity	Primary auto liability insurance minimum
Logged into the TNC app, but not driving a passenger (Period 1)	\$50,000 for death or bodily injury per person
	\$100,000 for death and bodily injury per incident
	\$25,000 for property damage
Accepted a ride and going to pick up a passenger or driving a passenger (Periods 2 and 3)	\$1,000,000 for death, bodily injury and property damage, as well as any other coverage mandated for limos under state law

¹⁶ See Jon Brooks, "How Many Ride-Share Drivers are Hiding Status from Insurers?" KQED (Jan. 21, 2014), available at <http://ww2.kqed.org/news/2014/01/20/ride-sharing-insurance-lyft-uberx-sidecar/>.

¹⁷ See Nat'l Assoc. of Insurance Comm'rs, Sharing Economy Working Group, Insurance Compromise Bill Package, available at http://www.naic.org/documents/committees_c_sharing_econ_wg_related_tnc_insurance_compromise_bill_package.pdf.

¹⁸ Nat'l Assoc. of Insurance Comm'rs, Sharing Economy Working Group, TNC Insurance Compromise Bill (Mar. 26, 2015), available at http://www.naic.org/documents/committees_c_sharing_econ_wg_related_tnc_insurance_compromise_bill_package.pdf.

¹⁹ *Id.* at § B.4.

²⁰ *Id.* at § C.1.ii.

²¹ See Michael Vasquez and Glenn Garvin, "Uber, Lyft Appear to be in South Florida to Stay," MIAMI HERALD (Aug. 23, 2015), available at <http://www.miamiherald.com/news/local/community/miami-dade/article31965108.html>.

TNC insurance products are cropping up throughout the United States and are spreading quickly. For example, Geico offers TNC insurance in the form of a commercial auto policy in Virginia, Maryland, and Texas.²² Progressive also offers a TNC commercial insurance product in Pennsylvania, which it says is comparable in price to a personal auto policy.²³ Because the State laws only require a minimum level of coverage, insurance companies have some leeway in those States to develop other aspects of their products.

Insurers also are encouraging those renting out their homes over the web to reach out to their insurance agents to modify their homeowner's policy if necessary.²⁴ AirBnB also insures property damage up to \$1 million, and on January 15, 2015, rolled out additional coverage for hosts for up to \$1 million in case a guest is injured accidentally anywhere on the premises.²⁵

C. Labor Issues

Because the aim of sharing platforms is to connect peers to transact directly, one of their defining characteristics is that "suppliers" of services using the platforms are not employees of the app companies themselves. However, in some cases where participants have used sharing platforms as their primary source of income, they have asserted an expectation that they be treated as full-time employees of the app companies.

For example, an Uber driver brought a case before the California Labor Commission arguing, among other things, that Uber should pay for her employment-related expenses because she was a full-time employee of the company instead of an independent contractor.²⁶ The California Labor Commission agreed, ruling that she was a full-time employee of Uber.²⁷ The decision concluded that although the contractual relationship defined the plaintiff as an independent contractor, she was nevertheless an employee of Uber based on a balancing test in California law.²⁸ The decision is on appeal with the Superior Court of California in San Francisco.²⁹ TNC companies have emphasized that it only applies to the plaintiff in that case and that six other States and the California Labor Commission previously ruled in Uber's favor in other employment cases.³⁰ However, a Federal judge recently ruled that Uber drivers seeking

²² See Adam Cecil, "Uber, Lyft, and other rideshare drivers now have insurance options," available at <https://www.policygenius.com/blog/uber-lyft-and-other-rideshare-drivers-now-have-insurance-options/>.

²³ *Id.*

²⁴ INSURANCE INFORMATION INSTITUTE, PEER-TO-PEER HOME RENTAL: THE SHARING ECONOMY AND HOMEOWNERS INSURANCE, ("If you are considering renting out your home, your guest room or even your couch your first step should be to contact your insurance professional."), available at <http://www.iii.org/article/peer-peer-home-rental>.

²⁵ AIRBNB, INTRODUCING AIRBNB HOST PROTECTION INSURANCE, available at <http://blog.airbnb.com/airbnb-host-protection-insurance/>.

²⁶ See *Uber v. Berwick*, Case No. CGC-15-546378, filed Jun. 16, 2015 (Cal. Sup. Ct. S.F. Cty.), available at <http://www.scribd.com/doc/268911290/Uber-vs-Berwick>.

²⁷ See *id.*, Ex. A.

²⁸ See *id.*, Ex. A, at 10.

²⁹ *Id.*

³⁰ See UBER, STATEMENT ON CALIFORNIA LABOR COMMISSION RULING (Jun. 17, 2015), available at <http://newsroom.uber.com/2015/06/clcstatement/>.

to be considered full-time employees could sue Uber as a class.³¹ The opinion held, in part, that “common questions will substantially predominate over individual inquiries with respect to class members’ proper employment classification.”³² The case is not likely to go to trial until sometime next year.

Proponents of sharing platforms have argued that the California Labor Commission’s determination is legally incorrect.³³ They also worry that if UberX drivers are categorically considered employees — thus forcing all TNC drivers to be provided with worker’s compensation, health, and other benefits — flexible employment options with TNCs might no longer be available.³⁴ Such a determination could also impact platforms such as Homejoy, which connects house cleaners with homeowners, and InstaCart, which allows people to grocery shop on behalf of others for a fee. To the extent courts find that these platforms have a similar level of control over a user’s work, their users may be classified as direct employees of the platforms themselves. Few would dispute that this would cause a major readjustment of their business models.

D. Local Regulation and Competition

Sharing platforms’ entrance into local markets with dominant incumbents has resulted in cheers from consumers, incumbent backlash,³⁵ and sometimes violent conflict.³⁶ At the local level, most of the worries associated with sharing economy entrants stem from concerns over whether they are regulated adequately for health and safety.³⁷ As discussed above, the reputation

³¹ *O’Connor v. Uber Tech., Inc.*, Case No. C13-3826 EMC (N. D. CA. Sept. 2015), available at <http://www.cand.uscourts.gov/filelibrary/1632/Order-Granting-in-Part-and-Denying.pdf>.

³² *Id.* at 56.

³³ Michael Rosen, “How the Uber ruling could undermine the sharing economy,” *TECHPOLICYDAILY* (Jun. 22, 2015), available at <http://www.techpolicydaily.com/technology/uber-ruling-sharing-economy/> (“Uber does *not* obtain clients for its drivers. On the contrary, its carefully constructed business model empowers its *riders* to obtain their *own* services via the Uber app.”).

³⁴ *Id.* (“The volume and flexibility of new employment opportunities generated by Uber and its ilk are nothing short of astounding and will never be matched by hidebound, unionized, heavily regulated taxicab operators.”); *see also* Olivia Becker, “Uber Lawsuit May Signal Big Changes in the ‘Gig Economy,’” *VICE NEWS* (Sept. 3, 2015), available at <https://news.vice.com/article/uber-lawsuit-may-signal-big-changes-in-the-gig-economy> (“If Uber is forced to hire drivers as full-time employees rather than independent contractors, “all of the things like scheduling and the HR headaches that they’ve been able to avoid so far will come to the fore,” Roberto Cruz, a lawyer who deals with employment compliance issues, told *VICE News*. “Uber will start to look like any other transportation company.””).

³⁵ *See* Comments of Taxicab, Limousine & Paratransit Association, TLPA Supplemental Comments – The “Sharing” Economy: Issues Facing Platforms, Participants, and Regulators: A Federal Trade Commission Workshop, at 2 (submitted Aug. 4, 2015) (“... thanks to Uber’s lobbying power, new entrants are able to operate with less stringent driver background checks, offer dynamic pricing, and maintain insurance coverage with gaps. This differential regulatory scheme not only favors new entrants, but it fails consumers by putting passengers at a greater safety risk.”), available at https://www.ftc.gov/system/files/documents/public_comments/2015/08/02054-96740.pdf.

³⁶ Catherine Clifford, *ENTREPRENEUR* (June 25, 2015), <http://www.entrepreneur.com/article/247772>.

³⁷ *See* Comments of NYC Taxi & Limousine Commission, Federal Trade Commission “Sharing” Economy Workshop, at 3 (submitted Aug. 3, 2015) (“Public Safety: One of our greatest public safety concerns regarding these platforms is that there is no way to remove a bad actor from the industry – only from the platform – if drivers are not licensed by a public regulator.”).

mechanisms and platform policing can obviate some of the motivations for safety and health regulation.

E. Federal Activity

The Federal Trade Commission (FTC) submitted staff comments to the District of Columbia Taxicab Commission (DCTC) on June 7, 2013, expressing concern that proposed DCTC regulations could foreclose competition by barring TNC entrance into the market.³⁸ The comments also suggest regulatory approaches that would provide transparency and consumer protections without unduly burdening market entry.³⁹

The FTC also held a workshop on June 9, 2015, highlighting the issues confronting platforms, regulators, and participants in the sharing economy.⁴⁰ Participants discussed the economic properties of sharing platforms, regulatory approaches, and obstacles facing participants. The FTC has the authority to sue localities in limited circumstances under its Unfair Methods of Competition jurisdiction.⁴¹ However, the FTC has not taken legal action against localities for barring market entry since 1984, when it sued New Orleans and Minneapolis for effectively barring entry into the taxi-for-hire market.⁴² The complaint against Minneapolis was withdrawn after the city revised its ordinance to permit more competition and the complaint against New Orleans also was withdrawn after the State authorized the conduct in question by a new law.⁴³

IV. ISSUES

The following issues may be examined at the hearing:

- What do built-in reputation mechanisms mean for consumers and public policy?

³⁸ Comments of Fed. Trade Comm'n, Re: Second Proposed Rulemakings Regarding Chapters 12, 14, and 16 of Title 31 (filed Jun. 7, 2013), available at https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comments-district-columbia-taxicab-commission-concerning-proposed-rulemakings-passenger/130612dctaxicab.pdf.

³⁹ See, e.g., *Id.* at 6 (“If substantial software updates warrant regulatory review, DCTC should adopt a flexible, streamlined framework to avoid unnecessarily inhibiting the prompt deployment of innovative features that consumers might benefit from or demand.”).

⁴⁰ “The “Sharing” Economy: Issues Facing Platforms, Participants, and Regulators,” Workshop, Fed. Trade Comm'n (Jun. 9, 2015), available at <https://www.ftc.gov/news-events/events-calendar/2015/06/sharing-economy-issues-facing-platforms-participants-regulators>.

⁴¹ See *The City of New Orleans*, Order in regard to Alleged Violation of Sec. 5 of the Federal Trade Commission Act, at 3 (Order entered Jan. 3, 1985), available at https://www.ftc.gov/sites/default/files/documents/commission_decision_volumes/volume-105/ftc_volume_decision_105_january-june_1985pages_1-103.pdf.

⁴² See generally FED. TRADE COMM'N, ANNUAL REPORT 1985 71 (Sept. 1985), available at https://www.ftc.gov/sites/default/files/documents/reports_annual/annual-report-1985/ar1985_0.pdf.

⁴³ *The City of New Orleans*, Order in regard to Alleged Violation of Sec. 5 of the Federal Trade Commission Act (Order entered Jan. 3, 1985), available at https://www.ftc.gov/sites/default/files/documents/commission_decision_volumes/volume-105/ftc_volume_decision_105_january-june_1985pages_1-103.pdf.

- What local consumer protection regulations should remain and apply to sharing platforms?
- What should the Federal role be in this debate? Can the Federal government help level regulatory treatment of incumbents and sharing platforms?
- Are there barriers to the sharing economy putting more people to work that need to be addressed by Congress?

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Paul Nagle or Graham Dufault of the Committee staff at (202) 225-2927.