August 3, 2015

Mr. Donald S. Clark
Federal Trade Commission
Office of the Secretary
Room H-113 (Annex X), 600 Pennsylvania Ave, NW
Washington, DC 20580

RE: Sharing Economy Workshop, Project No. P15-1200

Dear Mr. Clark,

The Information Technology & Innovation Foundation (ITIF) is pleased to submit these comments in response to the Federal Trade Commission's (FTC) request for comment (RFC) on its workshop to explore issues relating to emerging Internet peer-to-peer platforms—often called the "sharing" economy—and the economic activity these platforms facilitate.[1] ITIF is a nonprofit, non-partisan public policy think tank committed to articulating and advancing a pro-productivity, pro-innovation, and pro-technology public policy agenda that spurs growth, prosperity, and progress.

ITIF applauds the FTC's decision to host a workshop exploring how regulators can accommodate new businesses in the sharing economy while protecting consumers and facilitating a competitive marketplace. Many entrepreneurs have built successful companies for the sharing economy—digital platforms that connect individuals directly to share or exchange underutilized assets. For example, each night this summer 800,000 people will use Airbnb—a popular sharing economy hospitality service that operates in 34,000 cities around the world.[2] This makes Airbnb the largest hospitality service in the world, dwarfing the world's largest hotel chain.[3] As the FTC has noted, the sharing economy reached "an estimated value of $26 billion globally in

[1] "The "Sharing" Economy: Issues Facing Platforms, Participants, and Regulators A Federal Trade Commission Workshop," *Federal Trade Commission*, May 26, 2015, https://www.ftc.gov/system/files/documents/public_events/636241/sharing_economy_workshop_announcement.pdf.

[2] Kurt Wagner, "Airbnb Is Approaching One Million Guests Per Night," *CNBC*, May 27, 2015, http://www.cnbc.com/2015/05/27/airbnb-is-approaching-one-million-guests-per-night.html.

[3] For comparison, InterContinental Hotels Group is the world's largest chain with 722,575 rooms in over 4,900 hotels worldwide. See "Overview," *InterContinental Hotels Group*, May 8, 2015, http://www.ihgplc.com/index.asp?pageid=16.

2013, and some estimates predict that the sharing economy will generate as much as $110 billion annually in the near future."[4]

As Commissioner Maureen Ohlhausen indicated in her opening remarks at the workshop, it is important that the FTC tread lightly in this emerging area of the economy so as not to impede innovations that are generating enormous value for consumers.[5] However, it is not enough for the FTC to simply "do no harm." In many cases, emerging sharing economy businesses are encroaching on existing business models and threatening entrenched companies. In the face of this competition, incumbents often retreat behind state and local laws and regulations that shelter them from changing market conditions and limit the availability of alternatives to consumers. For example, the hotel industry has persuaded local policymakers to create barriers to Airbnb.[6] Similarly, taxi companies have worked with local and state leaders to ban or limit ridesharing.[7]

Given its mission to protect consumers from unfair and anticompetitive business practices, the FTC should launch an initiative to identify anticompetitive policies that limit the sharing economy and recommend changes to ensure that competition in the sharing economy flourishes. This initiative should be part of a broader effort by the FTC to use its authority to provide continuous oversight of anticompetitive regulations that impede innovation in the market.

THE FTC SHOULD IDENTIFY STATE AND LOCAL BARRIERS TO THE SHARING ECONOMY

In its RFC, the FTC posed the following question: "How can state and local regulators meet legitimate regulatory goals (such as protecting consumers, public health and safety) while also promoting competition and innovation?"[8] To answer this question, the FTC should review the actions of state and local policymakers

---

[4] Federal Trade Commission, "FTC To Examine Competition, Consumer Protection, and Economic Issues Raised by the Sharing Economy at June Workshop," news release, April 17, 2015, https://www.ftc.gov/news-events/press-releases/2015/04/ftc-examine-competition-consumer-protection-economic-issues.

[5] Maureen Ohlhausen, "Sharing Some Thoughts on the "Sharing" Economy," *Federal Trade Commission*, June 9, 2015, https://www.ftc.gov/system/files/documents/public_statements/671141/150609sharingeconomy.pdf.

[6] See David Streitfeld, "Airbnb Takes to the Barricades," *New York Times*, April 29, 2014, http://www.nytimes.com/2014/04/23/technology/albany-judge-hears-case-against-airbnb.html.

[7] Nevada banned ridesharing services in 2015, forcing rideshare companies to stop servicing the state. This ban has since been lifted. See, Tracey Lien, "Uber gets big win in Nevada as Legislature OKs bill authorizing service," *Los Angeles Times*, May 27, 2015, http://www.latimes.com/business/la-fi-uber-nevada-20150528-story.html.

[8] "The "Sharing" Economy: Issues Facing Platforms, Participants, and Regulators A Federal Trade Commission Workshop," *Federal Trade Commission.*

to regulate the sharing economy and identify practices that create anticompetitive barriers. In some cases, it may even be able to take legal action to halt the most egregious anti-competitive practices.[9] Indeed, as Commissioner Joshua Wright has argued, "The FTC is in a good position to use its full arsenal of tools to ensure that state and local regulators do not thwart new entrants from using technology to disrupt existing marketplaces."[10]

Incumbent business often try to influence lawmakers and regulators to create policies that affect competition in the marketplace—a concept that Commissioner Wright has dubbed "public competition."[11] These barriers are a surreptitious threat to competition, cloaked in the "public interest," that use public restraints to raise rivals' costs while insulating incumbents from market forces that would otherwise benefit consumers.[12]

Sometimes anti-competitive policies are the result of well-meaning restrictions that have the unintended consequence of creating anticompetitive barriers. For example, some incumbent taxicab companies have convinced local taxi commissions to create rules benefiting them at the expense of new entrants to the market. Regulations on the incumbent taxi industry usually include fare controls (e.g., setting rates), requirements on specific types of services (e.g., banning ridesharing), restrictions on entry (e.g., limiting available taxi medallions), and quality regulations (e.g., requiring background checks). State and local officials may be reluctant to remove anticompetitive policies in the face of resistance from incumbents, even if they result in worse outcomes for consumers. So it is incumbent upon the FTC to push back and, when it has the authority, take steps to ensure there is a level playing field.

A recent decision by the Supreme Court in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* reiterated that federal antitrust laws that safeguard against anticompetitive practices apply to state and local actions.[13] Indeed, the FTC has used its advocacy and enforcement tools to target both proposed and enacted legislation that could harm competition. For example, the FTC chose to bring enforcement action against the cities of New Orleans and Minneapolis in 1984 due to local regulations that unduly limited the

---

[9] North Carolina State Board of Dental Examiners v. Federal Trade Commission, 135 S. Ct. 1101 (2015).
[10] Joshua Wright, "Regulation in High-Tech Markets: Public Choice, Regulatory Capture, and the FTC," *Federal Trade Commission*, April 2, 2015, https://www.ftc.gov/system/files/documents/public_statements/634631/150402clemson.pdf.
[11] Ibid.
[12] One set of comments explains regulatory capture particularly well. Please see, Christopher Koopman, Matthew Mitchell, and Adam Thierer, "The Sharing Economy: Issues Facing Platforms, Participants, and Regulators," *Mercatus Center*, May 26, 2015, 4-7, https://www.ftc.gov/system/files/documents/public_comments/2015/05/01635-96127.pdf.
[13] *North Carolina State Board of Dental Examiners v. Federal Trade Commission,* 135 S. Ct. 1101 (2015).

number of taxicab licenses and increased fare rates, eliminating competition among taxi operators in the process.[14] Similarly, the FTC in 2013 filed advocacy comments with the District of Columbia Taxicab Commission, the city of Anchorage, Alaska, and the Colorado Public Utilities Commission, stating that each of them had proposed rules that would impede competition between incumbent taxicabs and nascent services.[15]

CONCLUSION

Companies in the sharing economy have begun to disrupt many industries on a global scale.[16] Their platforms can dramatically increase consumer welfare, improve the utilization of existing resources, and provide income to millions of people who otherwise would not have jobs. The FTC has an important opportunity to support this transformation and protect consumers, not by engaging in heavy-handed regulation of the sharing economy, but by aggressively leading the fight against anticompetitive laws that stymie innovation and hurt consumers. By ensuring incumbents do not unfairly keep out new competitors and business models, the FTC can lead the federal government in promoting innovation and protecting consumers.

Sincerely,

Daniel Castro
Vice President, Information Technology and Innovation Foundation

Alan McQuinn
Research Assistant, Information Technology and Innovation Foundation

---

[14] "Annual Report 1985," *Federal Trade Commission*, September 1985, https://www.ftc.gov/reports/annual-report-1985.

[15] "FTC Staff Comment to Anchorage Assembly Member Debbie Ossiander," *Federal Trade Commission*, April 2013, https://www.ftc.gov/policy/policy-actions/advocacy-filings/2013/04/ftc-staff-comment-anchorage-assembly-member-debbie; "FTC Staff Comment Before the Colorado Public Utilities Commission Concerning Proposed Rulemaking on Passenger Vehicle Transportation Services," *Federal Trade Commission*, March 2013, https://www.ftc.gov/policy/policy-actions/advocacy-filings/2013/03/ftc-staff-comment-colorado-public-utilities; "FTC Staff Comments before the District of Columbia Taxi Commission," *Federal Trade Commission*, June 2013, https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comments-district-columbia-taxicab-commission-concerning-proposed-rulemakings-passenger/130612dctaxicab.pdf.

[16] Tom Goodwin, "The Battle is For the Customer Interface," *Tech Crunch*, March 3, 2015, http://techcrunch.com/2015/03/03/in-the-age-of-disintermediation-the-battle-is-all-for-the-customer-interface/.