June 19, 2015

SUBMITTED ELECTRONICALLY

CALinnovates' Comments Regarding The "Sharing" Economy: Issues Facing Platforms, Participants, and Regulators A Federal Trade Commission Workshop, Project No. P15-1200

CALinnovates appreciates the opportunity to provide comment following the Federal Trade Commission's ("FTC") workshop on the sharing economy. We are encouraged that the FTC recognizes the significant economic contribution that this rapidly growing sector is having and will continue to have as it expands opportunities and creates economic impact for people to engage in and receive benefit from the app-based economy consumers currently enjoy.

Given the Commission's expertise as a competition and consumer protection agency, along with its significant economic expertise, the FTC is uniquely equipped to examine this important topic by convening the right contributors from business, stakeholders, academia, and the general public. The FTC is the only entity that can review – case-by-case – and deter potential challenges to the flourishing of this market that may be anti-consumer or anti-competitive. Beginning with this workshop, the FTC can also recognize that the innovative companies comprising the sharing economy will advance consumers' welfare while simultaneously disrupting entrenched markets and mindsets.

CALinnovates represents companies across the Golden State that are improving industries and expanding economic opportunities for Californians through innovative technologies. Sharing economy companies are our partners, including Transportation Network Companies like Sidecar, Shuddle, and Uber. The evolution of the economic and entrepreneurial landscape is accelerating to the benefit of the economy and consumers. We find ourselves in a golden era of the new economy, or what we refer to as the personal enterprise economy.

The sharing economy is an economic and social reality, embraced by tens of millions of Americans including the electorate's largest generation, Millennials. According to a survey by Zogby Analytics commissioned by CALinnovates, more than half of Millennials, age 18-34, have used sharing services like Uber, Sidecar, Lyft and Airbnb. Fifty-four percent of Millennials say they expect ride and home sharing services to become even more popular in the coming years. Popularity isn't the only appeal of the sharing economy, either. This industry has turned itself into a powerhouse job creator, accounting for 466,000 jobs in 2012 when just four short years earlier there were none.

The sharing economy is one of the contributing factors driving 2015's **emergence from the recession.** CALinnovates encourages the FTC to embrace the sharing economy and encourage its development for the benefit of consumers throughout the U.S., not just in California. The FTC can advance the public interest and ensure the realization of this golden era of personal enterprise economy by taking at least four actions. The FTC should:

- Prevent the novel application of existing regulations or the creation of new rules that are *de facto* incumbency protection schemes by unmasking parochial or local or state interests that are anti-consumer;
- Block the institution or application of rules that are justified in the name of public safety or welfare but are applied unevenly and primarily as a protection of monopolists or entrenched market participants;
- Stand against local scams, tying arrangements or similar agreements between local businesses to limit market access, or similar market distortions by incumbent interests; and,
- Deter and prevent scams against tourists or business visitors to a locality

The FTC is a unique actor and it bears a great responsibility for ensuring the flourishing of the sharing economy, not just policing its leading companies. CALinnovates assumes that the success of these new companies is closely aligned with the public interest. Our sharing economy companies are driving down prices, advancing individual and community safety, fostering innovations that increase rather than erode privacy, and delivering additional value to consumers in the form of enhanced services and platforms. The FTC can act as a sort of super cop or appellate court to review anew actions in states or localities that are intended to forestall sharing economy companies' entrance into market and detract from the growth of this economic sector.

Local businesses everywhere often build strong relationships with state and local governments to advance their interests. This usually leads to mutual benefits; the companies have champions in government that review proposals in light of whether they will advance or harm those businesses while elected officials may be able to claim some credit for job growth and local or regional economic expansion.

The FTC should be on the lookout for *de facto* incumbency protection schemes that harm rather than advance the public interest by using these relationships to thwart competition. When businesses that have been successful over years face new competition, they may resort to relying on those political relationships to fend off challengers. One likely outcome is that the local businesses, which may be campaign supporters of elected officials, seek legislative or regulatory burdens that could slow or stop their new competitors. Every business wants to succeed and companies facing new challenges to their market positions are likely to request assistance from politicians that are tied into their communities. The result can be the imposition of laws, rules, fees and similar burdens that are designed to protect local businesses from competition rather than advance the public's interest, which is more properly measured by how much benefit is produced for each individual consumer and the public writ large.

The FTC should also be watchful for novel application of existing regulations or the establishment of new regulatory burdens that are justified in the name of protecting consumers but are intended to thwart new competitors in the market. For example, incumbents argue that regulators should not allow new competitors to enter the ridesharing marketplace until the government has completely reformed the incumbent industry by solving all the existing problems. In many municipalities, regulators have required sharing economy companies to comply with all the regulatory regimes in place for incumbents even when they don't make sense or they haven't been applied for a lengthy amount of time. For example, in California, the Department of Motor Vehicles threatened to apply an ancient, little-used law that would have required rideshare drivers to display commercial license plates on their personal vehicles at all times, even when the drivers were using the vehicles for personal use.

These regulations among many others wielded at the behest of entrenched market participants could be a sword against competition rather than a shield to protect the public. These provisions may take many forms and be advanced in the name of increasing public welfare, safety, health, privacy or consumer protection. The FTC should be watchful for the indicia of regulations being misused. Where an old, un-utilized or rarely utilized regulation is dusted off and applied to a sharing economy company the FTC ought to examine not just the regulation itself but also the context in which it is suddenly being applied. Similarly, the enactment of a new law or regulation by a state or locality that deters competition rather than creating equal responsibilities for market participants should be scrutinized closely and with skepticism.

We all agree that advancing consumer protection and public safety are important policy goals. Sharing economy companies invest a great deal of their capital ensuring that members of their communities are safe. In many respects, the technological innovations brought to bear provide consumers with advanced safety that is greater than is offered by incumbents in the market who, heretofore, lacked any impetus to compete on safety and consumer protection. Sharing economy companies know that in order to succeed commercially, they must positively impact the customers and communities they serve, conducting their business in ways that exceed public expectations that were established by market incumbents' behavior, services and offerings. CALinnovates expects that the FTC will be able to identify the pro-safety and pro-consumer protection advances achieved by the rise of sharing economy companies and calculate their value when evaluating the sharing economy phenomenon as a whole. As a matter of routine practice, the FTC should measure and include in its analysis for the unusual advances made in these important public policy matters produced by each sharing economy sector or company it scrutinizes.

Local businesses may resort to other anti-competitive actions to delay, deter or thwart competition from new sharing economy companies that want to enter a local or state market. Due to their entrenched nature, local businesses may be willing to team up with other local competitors to block market access to a new market entrant. They may partner with key customers or offer anti-competitive pricing or offerings to diminish the attractiveness of new market entrants. Some of these actions may benefit consumers in the short run, but taken to extremes, market collusion, tying arrangements and similar anti-competitive behaviors will ultimately harm the public interest. CALinnovates urges the FTC to be on the lookout for these market distortions that may have little national economic effect but may do great injury to local consumers in the long run.

Finally, CALinnovates believes the FTC can identify and take action against scams and other fraud perpetrated against tourists and business visitors to particular locations. The FTC is uniquely situated to overcome unfair or predatory pricing for tourists and other visitors, such as those traveling for business to a distant city. For decades visitors to American cities were sure to be left to the whims of businesses charging them a "tourist tax" and the FTC can help the sharing economy overcome either false or deceptive advertising, unfair pricing, or outright fraud. These examples were routine and consumers everywhere suffered due to local businesses not being challenged by true competition or required to provide actual transparency about pricing and services. Examples include:

a. a meterless taxi fare or one without a credit card machine,
b. driving through multiple zones in a city or taking a longer route to substantially increase a fare;
c. listing a hotel as near a major tourist site even though there was no easy route from the hotel to the site or the hotel was in a dangerous neighborhood or next to a freeway; or,
d. adding on unexpected, one-time hotel costs to bills while pricing.

Just as the FBI must occasionally police the police or the DOJ must occasionally police a local government agency when endemic discrimination is feared, so too must the FTC evaluate the appropriate value that should be produced for consumers and business customers in a truly free and fair local market. The FTC must divine what a market would look like absent local or state rules designed to lock in local monopolies, duopolies or collusive practices. Whether it be the imposition of additional fees on lodging, hidden taxes not stated for advertised rates, special surcharges or fees for transportation or the like, the FTC must be prepared to stand in the shoes of consumers and eliminate scams that harm consumers. Nearly every business traveler or tourist has experienced some of these upcharges. Information asymmetry is to blame; the local businesses have all the information and travelers have far less. The sharing economy, with its advanced transparency relative to that provided by incumbent local businesses regarding prices, services and offerings can help, but the FTC should actively police meritless surcharges, false advertising or hidden costs imposed by local businesses that harm consumers.

These technologies are adapting and adjusting to the market quicker than regulation can keep up, and it is the Commission's responsibility to ensure that regulations are responsive to the business models, technologies and consumer behaviors emerging from these innovations. CALinnovates' members want to work with regulators to create and adhere to contemporary and adaptable rules of the marketplace.

In order to do so, however, there must be clear and fair rules for both businesses and consumers, rules that apply equally to both legacy and upstart companies. Unfortunately, the legislative process isn't designed to keep up with quick and disruptive innovation.

We feel there is a middle ground between technology and policy, and we hope that the FTC can craft innovative and thoughtful policies – if, any are needed – that protect Americans while encouraging innovation. Applying legacy regulations developed in a different time for different technologies would be akin to attempting to access one's email with a rotary phone. It just doesn't work.

In closing, CALinnovates believes the FTC is uniquely situated to attack parochial or hide bound interests. Local commissions may impose peculiar or Byzantine rules in the name of 'fairness', or add extra fees and permissions to prevent free and fair competition but the FTC can see the matter from a distance and identify unfair barriers to competition that are limiting competition. CALinnovates appreciates this comment period, and wishes to keep the conversation going. We feel this this workshop was an excellent way to continue discussion between the industry, the Commission and the public. A healthier sharing economy marketplace is a healthier American economy, and we look forward to providing any assistance and feedback on this matter.