



HOTEL ASSOCIATION OF NEW YORK CITY, INC.

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Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

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

The Hotel Association of New York City (“HANYC”) respectfully requests that the Federal Trade Commission (“FTC”) refer to our June 2, 2015 comments (“June 2 Comments”) to put the following Supplemental Comments in context. HANYC submits these Supplemental Comments specifically to address three points made by David Hantman, speaking on behalf of Airbnb, Inc., during the FTC’s “Sharing Economy Workshop” (Panel 3, The Interplay between Competition, Consumer Protection, and Regulation: Business and Regulatory Views) on June 9, 2015, and which were not adequately explored during the Panel discussion given the limited time.

I. AIRBNB HAS NOT ADDRESSED THE SAFETY AND SECURITY ISSUES OF ITS GUESTS, ITS HOSTS, AND OF APARTMENT BUILDING RESIDENTS

During the workshop, Mr. Hantman attempted to make the point that Airbnb had adequate safety and security measures in place.

We and the hotel industry are both growing tourism. We care an enormous amount about safety, to your point. Obviously, companies can’t function if things are unsafe. No hotel could function if people were getting into trouble in that hotel, nor could the sharing economy work if these, sort of, mechanisms of trust weren’t engaged.

So we have a verified ID system, where hosts and guests can connect and verify who they are, based on their offline identity, which is, like, a driver’s license or a passport, and their online identity, like Facebook or LinkedIn, just to make sure you know you’re dealing with. We have a team of a few hundred fraud, and prevention, and safety experts who constantly monitor the site to make sure that people are cheating each other. We do hold the payment when a guest books. The guest gives us the money, we hold the payment until about a day into the stay to make sure that person actually showed up and turned over the key, that there wasn’t any funny business, and then we turn over the money. We obviously know who people are, and so there’s a big trust there.

But the most important thing is not something we do. It’s simply the tool we offer, like eBay, which is the rating system. Every guest and every host rates each other on a five star scale, not just on overall stay, but also on cleanliness, and accuracy, on location, price, to get us that communication just so that when I want

to stay with someone or I want to host someone, I can understand, sort of, who they are. There's also a period where you can ask questions of each other.

(See Workshop Transcript.)

These are not safety or security measures at all; they are perhaps basic measures to protect the host and the guest from fraud. However, Airbnb's stated "safety measures" do not protect anyone – guests, hosts, or other apartment building residents – from any other harms, such as serious crimes or health hazards or fire. The problem is that Airbnb's platform creates a high risk that anyone – from child molesters to sex traffickers to prostitutes and their customers and drug dealers and their customers – can and will freely roam the hallways of other people's homes, with a mere doorway stopping them from entering any one of those homes. There are no adequate safety mechanisms in residential buildings to make certain that those who are renting from Airbnb, and their guests or clientele, are not roaming the hallways. There are no safety mechanisms in such buildings to detect active prostitution or drug dealing or other crimes. There is no evacuation protocol or other fire safety standards that protect a guest staying in an Airbnb rental if there is a major fire in the residential building. Contrast this to a hotel, which has an active safety staff, not only in the lobby, but in the person of every employee, each of whom is trained to spot suspicious or dangerous characters and activity, and to report such signs to safety officers and fire safety directors who are on-duty 24-7 and who have close contacts with local police and fire departments.

Moreover, hotel guests are specifically warned not to open their doors unless they are certain that someone they know or a hotel employee is knocking. If they are unsure, they can call the front desk and find out. No such safe guards exist in a residential building. Airbnb has no basis to claim that the meager "safety" system that they have established even comes close to preventing crime or protecting guests, hosts, and residents. To the extent Mr. Hantman believes, as he said, "over time we will realize we are on the same side," the hotel industry will never be on the same side as any company that creates any unsafe condition for the residents or the transient guests of the City of New York.

II. THE STATE AND CITY OF NEW YORK WOULD GLADLY ACCEPT A \$65 MILLION TAX PAYMENT FROM AIRBNB AND THE HOTEL INDUSTRY COULD NOT STOP AIRBNB FROM SENDING IN SUCH A CHECK

During his remarks, Mr. Hantman repeatedly stated that Airbnb had tried to pay taxes but it was not being "allowed" to. For example, he stated:

And we keep trying, and we keep failing, and I get there's some competitive pressure here. Look, in New York, for three years, the hotel industry, the lobbyists said, it's not fair because they're not paying taxes, it's not fair because they're not paying taxes. So we said, fine, we'll pay taxes. And they said, don't let them pay taxes. . . . So we're in this weird world of a company that wants to collect and remit more tax. In New York, it would be about \$65 million a year right now. We

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can't figure out how to do it, but I think we'll get there. It's hard to see how governments will continue to say, we don't want this money.

(See Workshop Transcript) (emphasis added.) It is a virtual certainty that if Airbnb cared to send \$65 million in tax payments to the coffers of the City or State of New York, those jurisdictions would happily accept those donations.

But, Airbnb is not trying to pay taxes; rather, it is trying to get the legislature to legalize its extensive illegal operations in New York in exchange for its payment of some of the taxes that hotels are subject to. See <http://www.cnet.com/news/airbnb-let-us-pay-hotel-taxes-in-new-york/>; http://www.slate.com/articles/business/moneybox/2015/02/airbnb_hotel_taxes_why_does_the_sharing_economy_startup_want_to_pay_them.html; <http://www.nydailynews.com/new-york/airbnb-bids-pay-taxes-faces-opposition-article-1.1763073>. As Al Capone found out, tax evasion makes no distinction between illegal operations and legal companies.

As we pointed out in our June 2 Comments, there is no question that Airbnb's operations are illegal in New York City and there is no question that Airbnb knows that its operations are illegal in New York City. There is also no question that Airbnb is not paying taxes for occupancy of transient guests, thus making Airbnb a tax evader as well. To try to broker a deal where Airbnb says it will cease to be a tax evader if the State and City of New York makes its operations legal is not "trying and trying and trying" to pay taxes. To characterize it as such is simply misleading.

Moreover, from what we can tell, Airbnb is only "trying to pay" occupancy taxes. While Airbnb admits this figure would be roughly \$65 million, given the large scale of Airbnb's illegal operations in New York City, that figure is neither the only nor even the major part of the taxes Airbnb owes. Rather, the major part of taxes Airbnb owes is real estate taxes. Hotels and other commercial businesses in New York City pay real estate taxes at significantly higher rates than do residential buildings. Yet, only Airbnb knows how many apartments are in which buildings and how much the proportionate additional real estate tax would be for use of those apartments for transient occupancy.

III. AIRBNB STILL STONEWALLS BY FAILING TO PROVIDE DATA TO SUPPORT ITS STATEMENTS THAT THE MAJORITY OF NEW YORK CITY HOSTS ARE "SHARING" THEIR HOMES TO MAKE "ENDS MEET"

Mr. Hantman said that he believed that Airbnb had correct data as to the make-up of its constituency in New York City (and other cities) and repeatedly stated that such data proved that the majority of hosts were simply "sharing" their homes to help them make "ends meet." For example, Mr. Hantman stated that:

I do agree that we should be sharing more anonymized data. We should be proud of the data we have, and we should share it, because numbers that are thrown around like this, the 6%, the 40%, the 72% illegal, they're all wrong. But we can't

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prove it unless we share our data. . . . There is a balance to be struck here to differentiate between businesses and individuals. People doing something once in while with their own property to make ends meet is something very different than someone doing it full-time as a business

(See Workshop Transcript) (emphasis added).

Based on such statements, Mr. Hantman asked the hotel industry and the FTC to sympathize with those citizens enduring the high cost of living in New York City and allow them to earn a little extra money when they are not at home or even when they are at home. He then intimated that Airbnb would release the data so that the world could see what was really going on.

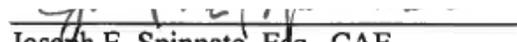
We would think Airbnb would be anxious to release that data. Indeed, if such data exists, it would affirmatively disprove the findings of the New York State Attorney General, who found that more than 72% of Airbnb listings are illegal and that commercial users dominated the Airbnb platform, generating 36% of all rental transactions and collecting 37% of total revenue – or \$168 million.

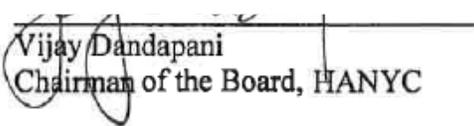
The fact is that Airbnb has not released any of its data. In the meantime, there are continued and repeated reports of owners of multiple apartments using those apartments solely for transient use through Airbnb and other such services. Only Airbnb can track who those people are and only Airbnb can cease doing business with them. If Airbnb was following its dream of the sharing economy – instead of its real dream of more billions – it would be releasing reports on a daily basis of how it was shutting down its conspiracy with those who are obviously violating the laws of New York State by creating businesses that house transient guests in residential buildings.

CONCLUSION

As we stated in our June 2 Comments, Airbnb is merely a vast illegal virtual hotel, without any of the safeguards provided by real hotels, a profiteering wolf trying to cloak itself in a sheep's hide by its pretense of being part of a "sharing" economy.

Respectfully submitted,


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