Internet Association

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

August 3, 20015

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

Dear Mr. Clark:

The Internet Association appreciates the opportunity to respond to the FTC request for comments regarding the competition and consumer protection issues relating to the sharing economy. We also thank the Commission and its staff for hosting its June 9, 2015 sharing economy workshop. With its dual competition and consumer protection missions the FTC is well qualified to analyze the sharing economy in a balanced way, with a focus not on vested interests but rather on overall consumer welfare. After all, as several current and former FTC Commissioners have explained, the overarching aim of the agency's dual mission is promoting and improving consumer welfare using the tools available to it. [1]

The Internet Association is the unified voice of the Internet economy, representing the interests of leading Internet companies and their global community of users.[2] We are dedicated to advancing public policy solutions to strengthen and protect Internet freedom, foster innovation and economic growth, and empower users. Included in our mission is advocacy, at the local and federal level, in support of our sharing economy member companies.[3] As an advocate for these companies, the Internet Association has witnessed first hand the often heavy-handed regulatory responses to sharing economy platform entry in

[1] *See* Commissioner Maureen Ohlhausen, One Agency, Two Missions, Many Benefits: the Case for Housing Competition and Consumer Protection in the Same Agency, European Competition Law Annual 2014: Institutional Change and Competition Authorities (forthcoming); Commissioner Thomas B. Leary, Competition Law and Consumer Protection Law: Two Wings of the Same House, 72 Antitrust L.J. 1147 (2005); Chairman Timothy J. Muris, The Interface of Competition and Consumer Protection, Remarks before the Fordham Corporate Law Institute's Twenty-Ninth Annual Conference on International Antitrust Law and Policy, (Oct. 31, 2002).

[2] The Internet Association's members include Airbnb, Amazon, auction.com, Coinbase, eBay, Etsy, Expedia, Facebook, FanDuel, Gilt, Google, Groupon, IAC, Intuit, LinkedIn, Lyft, Monster Worldwide, Netflix, Pandora, PayPal, Pinterest, Practice Fusion, Rackspace, reddit, salesforce.com, Sidecar, Snapchat, SurveyMonkey, TripAdvisor, Twitter, Uber Technologies, Inc., Yahoo, Yelp, Zenefits and Zynga.

[3] In its request for comments, the FTC seeks feedback on how best to define the sharing economy. Although line drawing in this space cane be imprecise, the Internet Association tends to agree with the definition suggested by Fraiberger and Sundararajan under which sharing economy platforms are distinguished from other Internet platforms "because they focus on facilitating short-term rental or service provision rather than occasional resale under which asset ownership is transferred." (Fraiberger and Sundararajan, Peer-to-Peer Rental Markets in the Sharing Economy," at 2 (March 6, 2015). http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2574337

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local markets throughout the United States. These markets include home sharing from San Francisco[4] to New York[5] and ridesharing from Sacramento[6] to Virginia.[7]

In these comments, our goal is to inform the debate about how to strike a balance between competition and consumer protection in the sharing economy so that overall consumer welfare is optimized. We first highlight the evidence demonstrating the welfare benefits associated with participation in the sharing economy. This evidence comes from both the demand and supply sides of sharing economy platforms. We next describe how recent regulatory and incumbent player responses to sharing economy entry in local markets can be viewed as part of a long and predictable tradition in which competition spurred by innovation invariably wins out. Finally, we discuss how the benefits of the sharing economy - increased competition as well as technology enabled enhanced consumer protections - should not be overlooked as regulatory approaches to it evolve.

Although our comment does not purport to provide a comprehensive regulatory framework, we suggest the following parameters be factored into its overall design:

- First, that in crafting regulatory responses to the sharing economy, evidence demonstrating the benefits to consumers of participation in it be taken into account.
- Second, that in weighing these benefits against any perceived harms, regulators first pause to consider whether sharing economy services may, in fact, be *safer* alternatives for consumers when compared to their incumbent counterparts.
- Third, that in listening to complaints against sharing economy entry into local markets, decision makers assess whether these complaints capture genuine consumer protection concerns or whether they are, in fact, part of a long tradition in which incumbents seek to protect their bottom lines from the price-lowering impact of increased competition.
- Fourth, that in assessing the effectiveness of self-regulation in the sharing economy, weight be given to the extent to which sharing economy platforms *already* self-regulate through various mechanisms that are hardwired into the technology, such as customer ratings, payment systems, and GPS tracking.

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4 Protecting the Privacy of the Airbnb Community, April 21, 2015, http://publicpolicy.airbnb.com/protecting-privacy-airbnb-community/

5 The Internet Association Files Amicus Brief to Quash the NYAG Subpoena Against Airbnb, November 8, 2013, http://internetassociation.org/11082013airbnbamicusbrief/

6 Statement on Ridesharing in California, December 10, 2014, http://internetassociation.org/120914ca-ridesharing/

7 The Internet Association Urges Virginia Governor Terry McAuliffe to Lift the Cease and Desist Order Against Lyft and Uber, June 9, 2014, http://internetassociation.org/060914virginia/; *see also*,
Internet Industry Calls for Rejection of New York City Council Anti-Innovation Legislation, July 15, 2015, http://internetassociation.org/071415nycletter/

1. The Sharing Economy: Welfare Benefits

Price Waterhouse Coopers has calculated that, on a global basis, the sharing economy generated $15 billion in global revenues in 2013. According to PwC, this figure is estimated to rise to $335 billion by 2025.[8] These revenues benefit not only Internet Association member companies such as Airbnb, Uber, Lyft, and Sidecar; they also benefit the suppliers and consumers on either side of these two-sided platforms.

On the supply side, evidence is mounting that participation in the sharing economy is a net positive for the 'microenterpreneurs' who participate in it.[9] In a survey done earlier this year, Airbnb commissioned the Land Econ Group to study Airbnb's economic impact throughout San Francisco. The survey found:

- The Airbnb community contributed nearly $469 million to the San Francisco economy in 2014;
- The average Airbnb host earns $13,000 per year hosting – money that is spent in the local economy; and
- The Airbnb community supports 3,600 jobs in the local economy.

The Land Econ Group study also found that over the last three years, Airbnb's economic impact in San Francisco has grown from $56 million to $469 million annually (a more than 8-fold increase).[10] And it seems that the positive economic impact from participating in home sharing is not bounded by national borders. A recent report[11] commissioned by the UK Government cites to an Airbnb survey of British hosts, in which 63% of hosts reported that Airbnb income helped them to pay bills they would otherwise struggle to pay, and that a typical Airbnb host in London earns around $3,000 by renting out for 33 nights per year.[12]

On the demand side, evidence of the benefits to consumers of increased participation in the sharing economy is also mounting. A recent industry survey of consumers in the United States, Canada and the United Kingdom suggested about one in four respondents had used one or more 'collaborative economy'

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[8] PwC blog, "The Sharing Economy: Sizing the Revenue Opportunity," http://www.pwc.co.uk/issues/megatrends/collisions/sharingeconomy/the-sharing-economy-sizing-the-revenue-opportunity.jhtml

[9] Debbie Wosskow, "Unlocking the Sharing Economy: An Independent Review," https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/378291/bis-14-1227-unlocking-the-sharing-economy-an-independent-review.pdf at 14 (2014).

[10] Airbnb public policy blog, http://publicpolicy.airbnb.com/author/davidowen/ (April 19, 2015).

[11] Debbie Wosskow, "Unlocking the Sharing Economy: An Independent Review" at p. 7 (2014).

[12] Airbnb, Economic Impact blog, http://blog.airbnb.com/economic-impact-airbnb/ (this study also surveyed the economic impact of Airbnb in other major cities throughout the world. The results are reassuringly consistent).

marketplaces in the past year.[13] This rapid growth rate suggests that consumers have themselves concluded that the sharing economy is beneficial to them, and academic research tends to validate their choice.

In recent research conducted at NYU, Fraiberger and Sundararajan modeled the benefits to consumers from participation in the sharing economy using transaction level-data from the car rental platform Getaround and U.S. automobile industry data.[14] The NYU study suggests that the sharing economy benefits below-median income users in particular, who also provide a majority of rental supply.[15] The study further concludes that these consumers "will enjoy a disproportionate fraction of eventual welfare gains from [the] sharing economy through broader, inclusion, higher quality rental-based consumption, and new ownership facilitated by rental supply revenues." [16]

In addition, it seems that even consumers who have chosen *not* to participate in the sharing economy benefit from its spillover effects, as increased competition benefits all consumers in the relevant market. In a paper submitted to the FTC prior to the June 9, 2015 workshop, the Technology Policy Institute used data from the New York City Taxi and Limousine Commission, taxi complaints from New York and Chicago, and information from Google trends to gauge the extent to which competition from Uber had resulted in increased competition across non-price dimensions such as customer service.[17] Subject to appropriate caveats, the paper concludes that there is a positive relationship that Uber entry in both New York and Chicago and enhanced taxi customer service in those markets in the form of fewer complaints.[18] Differently stated, ridesharing entry and competition can benefit all consumers – even those consumers who don't rideshare.

2. The Role of Consumer Protection: Testing Assumptions

The FTC's recent competition advocacies in the ridesharing space provide good guidance on how best to maximize consumer welfare when regulating the sharing economy. In the FTC's words, "A forward-looking regulatory framework should allow new and innovative forms of competition to enter the

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[13] Jeremiah Owyang and Alexandra Samuel, "Sharing is the New Buying," *http://www.web-strategist.com/blog/2014/03/03/report-sharing-is-the-new-buying-winning-in-the-collaborative-economy/* (2014).

[14] Fraiberger and Sundararajan, "Peer-to-Peer Rental Markets in the Sharing Economy," NYU Stern School of Business Research Paper, at p. 1 (March 6, 2015).

[15] *Id.*

[16] *Id.*

[17] Technology Policy Institute, The Competition Effects of the Sharing Economy: How is Uber Changing Taxis? Scott Wallsten (June 2015).

[18] *Id* at p. 3.

marketplace unless regulation is necessary to achieve some countervailing pro-competitive or other benefit, such as protecting the public from significant harm." [19]

Although evidence supporting the welfare benefits of participation in the sharing economy is persuasive and growing, the Internet Association agrees with the Commission that 'protecting the public from significant harm' is an important goal in this context. This comment does not pretend to provide a comprehensive framework in which to craft consumer protections regulating the sharing economy. However, the Internet Association does submit that before crafting these consumer protections, regulators take a step back and test their assumptions. For example, although opponents of ridesharing platforms often cite to safety concerns as a ground for regulation, there are several reasons why ridesharing can be considered *safer* than taking a taxi. These reasons were captured by the National League of Cities in a recent report on the sharing economy and cities. According to the report, "advocates for sharing economy services [] argue that ridesharing services can *increase* safety by providing easily-accessible transportation alternatives."[20] Ridesharing may provide an alternative to DUI for intoxicated drivers. Similarly, since ridesharing services are non-cash businesses, they may increase safety for riders and drivers alike. And systems tracking every ride using GPS technology could also help ensure both driver and rider safety. [21]

Pro-ridesharing safety arguments find empirical support in a recent survey conducted by Zendrive, a leading driving analytics firm, in San Francisco.[22] The study looked at data from passengers' cellphones, Zendrive measured over 1,3000 miles' worth of rides in San Francisco, including taxi and rideshare rides and – for comparison – the average driver. According to the Zendrive study, taxis were found to be speeding over 50% more than taxis, and this figure increased during peak hours.[23]

3. Responses to the Sharing Economy: New Wine in Old Bottles

In many respects, today's sharing economy experience mirrors that of the early commercial Internet. Since its early years, the Internet has played its part in the ongoing process known as creative destruction. Of course, the Internet did not invent creative destruction. As Schumpeter first explained in 1942:

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[19] Letter to the District of Columbia Taxicab Commission from the FTC Office of Policy Planning, Bureau of Competition, Bureau of Consumer Protection and Bureau of Economics at p. 3 (June 7, 2013).

[20] National League of Cities, "Cities, the Sharing Economy and What's Next," at p. 25 (2015). (emphasis added).

[21] *Id.*

[22] Are Rideshares Really Safe? A Study of Rideshares v. Taxi in San Francisco (December, 2014), http://blog.zendrive.com/post/104915142448/taxi-vs-rideshare-in-sf; *see also*, http://www.marketresearchworld.net/content/view/5934/76/

[23] *Id.*

"The opening up of new markets, foreign or domestic, and the organizational development from the craft shop to such concerns as U.S. Steel illustrate the same process of industrial mutation—if I may use that biological term—that incessantly revolutionizes the economic structure from within, incessantly destroying the old one, incessantly creating a new one. This process of Creative Destruction is the essential fact about capitalism."[24]

It is a truism that the Internet has "incessantly revolutionized" many markets in recent decades. The Internet has since its inception lowered entry barriers for new entrants, search and transaction costs for consumers, and generally corrected information asymmetries in many markets, from contact lenses to wine. The FTC is, of course, familiar with these dynamics, having explored them in-depth in its 2003[25] and 2004[26] staff reports on the impact of ecommerce in the contact lens and wine distribution markets.

To date, the sharing economy has disrupted competition in two sectors in particular, namely transportation and accommodation. As the TPI comment cited above correctly acknowledges, these sectors have existed "for ages", but the "genius of the sharing economy [] was to harness new technologies – smart phones, GPS, payment systems, identification, feedback mechanisms – to allow almost *anyone* with the right assets to make those services available outside the formal hotel and taxi industry. In other words, new technologies significantly reduce the transaction costs of matching under-used assets to those willing to pay to employ those assets."[27] These new technologies also lowered entry barriers for apps such as Uber, Lyft and Sidecar to match supply and demand in either side of their two-sided platforms in ways considered to be impossible less than a decade ago.

Creative destruction and increased competition creates anxiety on the part of market incumbents. As Schumpeter correctly concluded, "The resistance which comes from interests threatened by an innovation in the productive process is not likely to die out as long as the capitalist order persists."[28] The early days of the commercial Internet are instructive here also. In a thoughtful 2001 paper, the Progressive Policy Institute brought attention to the challenges faced by early Internet

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[24] Schumpeter, Capitalism, Socialism, and Democracy, at p.83 (1942).

[25] *See, e.g.*, Report from the Staff of the Federal Trade Commission, "Possible Anticompetitive Barriers to E-Commerce: Contact Lenses", at p. 1 (March 2004). ("While eye care providers still control the prescription process, consumers now not only purchase more lenses with greater frequency but they also have a greater choice of lens suppliers and modes of delivery. These changes have caused tension among eye care practitioners, bricks-and-mortar lens sellers, contact lens manufacturers, Internet lens sellers, and state officials over issues such as licensing contact lens sellers, contact lens prescription release requirements, and methods of verifying prescriptions.")

[26] Report from the Staff of the Federal Trade Commission, "Possible Anticompetitive Barriers to E-Commerce: Wine" (July 2003).

[27] Technology Policy Institute, The Competition Effects of the Sharing Economy: How is Uber Changing Taxis? Scott Wallsten (June 2015).

[28] Schumpeter, Capitalism, Socialism, and Democracy, at p.132-3 (1942).

ventures as they disrupted markets in several sectors.[29] It's hard to believe that in the early 2000s, wine wholesalers argued that laws banning Internet wine sales were needed to limit underage drinking and to ensure that "wine [remains] visible and available in hundreds of thousands" of retailers throughout the U.S.[30] But they were. And they did so in the name of consumer protection. In 2015, market incumbents' resistance to the sharing economy mirrors the early Internet's experience in the 1990s and early 2000s and this is an important history lesson for regulators to learn from. Consistent with previous experience, incumbents are unlikely ever to admit that they oppose competition from new entrants and so, as in the Internet's early days, they will dress their concerns up as pre-textual consumer protection[31] concerns.[32] This is predictable behavior, but it ought not to dictate regulatory outcomes today any more so than it has done in the past.

4. The Role of Self-Regulation in the Sharing Economy

The Internet Association agrees that consumer protection has a role to play in the sharing economy. However, this conclusion raises some important and timely questions: for example, what form should these consumer protections take? How should they be enforced? Does government have a role to play through ex-ante regulation or ex-post enforcement? Or is self-regulation more appropriate in this context?

While not attempting to answer all these questions, the Internet Association believes that self-regulation can - and does already - have a role to play in the sharing economy. As a threshold matter, however, it is important for regulators to acknowledge the unprecedented ways in which technology *already* has enabled the sharing economy to self-regulate, such that "platforms can be viewed as part of the solution, rather than part of the problem, and [] should be included in key actors in a self-regulatory regime."[33]

At the June 9 FTC workshop, panelists described how consumer protections can be said to be hardwired into sharing economy platforms - through branding, trust and payment mechanisms. Some have argued

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[29] Atkinson, The Revenge of the Disintermediated: How the Middleman is Fighting E-Commerce and Hurting Consumers (2001). http://www.academia.edu/3146048/The_Revenge_of_the_Disintermediated_How_the_Middleman_is_Fighting_E-Commerce_and_Hurting_Consumers

[30] *Id.* at p. 4.

[31] *Id.* at p. 21.

[32] As the FTC is aware from its competition advocacy, naked anticompetitive intent can sometimes be the stated goal of regulations impacting the sharing economy. A striking example here is the recent attempt by the D.C. City Council to require ridesharing firms to charge no less than five times what taxis charge since "these requirements would ensure that sedan service is a premium class of service with a substantially higher cost that does not directly compete with or undercut taxicab service." Matthew Mitchell, Uber Deal Not Uber-Awesome, *Washington Examiner*, December 15, 2012, http://www.washingtonexaminer.com/op-ed-uber-deal-not-uber-awesome/article/2515896

[33] Molly Cohen and Arun Sundararajan, Self-Regulation and Innovation in the Peer-to-Peer Sharing Economy, The University of Chicago Law Review Dialogue, at p. 119 (2015).

that these mechanisms diminish the need for government regulation.[34] From an economic standpoint, this argument withstands scrutiny.[35] If the core purpose of regulation is to correct market failures due to information asymmetries between buyers and sellers,[36] and those asymmetries are corrected by technology, then the need for government regulation arguably *is* diminished.

5. Conclusion

The FTC has taken a leadership role in starting a national conversation about the relationship between the sharing economy and government and is to be commended for doing so. Although the Internet Association urges agencies such as the FTC to show restraint and to place weight on the attributes of the sharing economy that benefit and empower consumers, we also recognize that the federal government can play a role in its development. In the past, states and cities have started out regulating new industries as they emerged at the local level. The sharing economy is no exception to this dynamic. However, subjecting national Internet platforms to state laws raises the cost of doing business for the sharing economy in myriad ways. In the past, the federal government has stepped in – citing the Interstate Commerce Clause of the Constitution[37] – to craft national policies more focused on overall consumer welfare than local, parochial interests. As PPI argued in 2001, so can the argument be made today that "there is no way to build a robust digital economy if ecommerce is governed by 50 different sets of state laws, many of them erected as a result of protectionist pressure from powerful local entrenched interests and mercantilist impulses."[38] If the past is prologue, the same argument holds true for today's emerging sharing economy.

Respectfully submitted,

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[34] The Consumerist, Nobody Really Knows What to Do About Regulating the Sharing Economy, Kate Cox, http://consumerist.com/2015/06/10/nobody-really-knows-what-to-do-about-regulating-the-sharing-economy/ (June 10, 2015).

[35] Anne Hobson, Christopher Koopman, Matthew Mitchell, and Adam Thierer, "How the Internet, the Sharing Economy, and Reputational Feedback Mechanisms Solve the 'Lemons Problem'" (Mercatus Working Paper, May 2015) http://mercatus.org/sites/default/files/Thierer-Lemons-Problem.pdf

[36] George A. Akerlof, "The Market for 'Lemons': Quality, Uncertainty and the Market Mechanism," Quarterly Journal of Economics 84, no. 3 (August 1970).

[37] U.S. Constitution, Article 1, Section 8.

[38] Atkinson, The Revenge of the Disintermediated: How the Middleman is Fighting E-Commerce and Hurting Consumers at p. 19 (2001).