



August 15, 2018

Proposal for Vehicle Data Hearing for “Hearings on Competition and Consumer Protection in the 21st Century” -- Project Number P181201

The Global Alliance for Vehicle Data Access (GAVDA) respectfully submits this proposal for a vehicle data access hearing in response to the Federal Trade Commission’s (FTC) June 20, 2018 notice regarding its plans to hold a series of “Hearings on Competition and Consumer Protection in the 21st Century” – Project Number P181201.

GAVDA is a diverse group of global stakeholders and thought leaders united by the common goal of ensuring the right of private and commercial motor vehicle owners to maintain control over their personal and vehicle-generated data. This is to be achieved by preserving and enhancing the current vehicle data environment of open, secure, technology-neutral, and direct access by vehicle owners to real-time data. GAVDA promotes a data access model that: provides for vehicle owner control, including access for parties authorized by the vehicle owner; ensures full and fair competition; protects personal privacy; and, advances data security.

When the Pitofsky Hearings were held in 1995, it is unlikely that the issues of connected and autonomous vehicles, or vehicle-data access, were within the realm of the possible to the minds of anyone at the FTC or any of the participants in those hearings. Now, the twin issues of ensuring robust competition and consumer choice in a connected and autonomous mobility market, and ensuring consumer protections for vehicle-data privacy should, in GAVDA’s opinion, be the subject of a separate hearing for the 2018 FTC competition and privacy hearings.

With respect to competition, rarely does a day go by that there are not media stories reporting on the plans of motor vehicle manufacturers to vertically integrate their

operations. While specific corporate plans vary widely, vehicle manufacturers have announced ventures to:

- directly lease and sell vehicles to the public (bypassing traditional dealers);
- offer “subscription” vehicle services as “mobility providers” to compete with traditional taxi services, transportation network companies, fleet leasing companies, and vehicle rental companies (competing directly with these existing industries who are also their customers);
- insure and service those vehicles directly (bypassing insurers, independent garages and dealers); and,
- harvest, license and commercialize the data – including personally identifiable data -- generated and stored by those vehicles (ignoring the rights of individuals who own vehicles and commercial enterprises that own and operate fleets of vehicles).

In a vacuum, such strategic planning represents basic capitalism – if someone can invent a better mousetrap, then he or she may come to succeed in a competitive mousetrap market. However, these vertical integration plans are not taking place in a vacuum. They are taking place against the backdrop of the manufacturers initiating measures to close down access to vehicle-generated data that all their competitor transportation service related industries have access to today, and will be ever more dependent upon in the future connected and autonomous mobility market.

Competition regulators in the European Union have directed their attention to such matters recently with respect to vehicle data access for the aftermarket parts and service industries (Attachment #1); and recently spoke about the potential infringements they are watching for with respect to manufacturers limiting access to vehicle-data and the impacts on each of the above industries (Attachment #2).

GAVDA urges the Commission to take a similarly active approach to preserving robust competition with respect to vehicle-data access and to prevent the vertical monopoly that would result if vehicle manufacturers locked out competitors from the access they have built their services around, and would continue to in the future. Such a future would be to the detriment of consumers and to the competitive detriment of many of GAVDA’s members.

Millions of individuals who own vehicles use the data generated and stored by their vehicles many different times each day. Continued full, secure, and real-time access to this data serves consumers in a multitude of different ways:

- to run errands;
- to find addresses of stores, homes and sporting events;

- to make phone calls;
- to determine when and where to service their vehicles;
- to learn that a hazardous road condition exists or that their vehicle has an operational or safety issue;
- to service their own personal vehicles as “do-it-yourselfers”;
- to be able to take their vehicles to their choice of repair shops, including those affiliated with vehicle manufacturers or independent locations;
- to monitor the location and driving habits of family members;
- to assist law enforcement and insurance companies in reconstructing accident or other incidents on the roadway;
- to demonstrate safe driving habits to insurance companies, which may lead to lower insurance premiums; and,
- to perform scores if not hundreds of other tasks using this data – tasks that are unique to each individual and that will expand further in the future.

In addition, scores of industries – car rental companies, insurance companies, transportation network providers, vehicle service providers, independent garages, independent truckers and integrated trucking companies, aftermarket vehicle parts manufacturers, motor coach operators, vehicle fleet owners and managers, new and used car dealers, and technology companies such as telematics providers – rely on controlling and accessing the data generated and stored by the vehicles they own or to which they gain access through the permission of the vehicle owner.

If vehicle manufacturers that have announced plans to compete directly in the marketplace with a wide variety of existing vehicle-related industries are permitted to control access to the data generated and stored by vehicles and to dictate the price charged to individuals or commercial vehicles owners for access to that data, then those manufacturers will in effect be controlling a key price term for an important product (data) of their direct competitors for vehicle mobility services. GAVDA urges the Commission to examine the anti-competitive impacts of such vertical integration and restrictions on data access by motor vehicle manufacturers.

With respect to consumer protection, connected and autonomous vehicle stakeholders, including but not limited to heavy- and light-duty motor vehicle original equipment manufacturers, have started, at least in part in the name of “cybersecurity,” to restrict access by vehicle owners to data generated and stored by their vehicles – including personally identifiable data. In the European Union, the trade association representing vehicle manufacturers has advanced the “extended vehicle” construct, through which vehicle owners may be forced to license and pay fees for access to vehicle data – even personally identifiable data (Attachment #3).

GAVDA and its members are concerned that these stakeholders will seek to harvest and commercialize this vehicle data from these vehicles without the express advance consent of the vehicle’s owner. Fundamental principles of consumer protection must be imposed

on access to vehicle data – including advance, informed consent by the owner of the vehicle, whether that owner is an individual consumer or a commercial entity that owns a fleet of trucks, busses or cars.

GAVDA's members are united by their collective consumer protection perspective that data generated and stored by vehicles is controlled by the owner of the vehicle, and that only the vehicle's owner can give permission for third parties, including vehicle manufacturers, to access that data, let alone commercialize it. GAVDA posits that this position is consistent with the consumer protections provided to individuals and consumers through FTC regulation for decades and that the FTC should adopt this position with respect to consumer protection for data generated and stored by motor vehicles, including connected and autonomous vehicles.

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In sum, GAVDA asserts that there are few areas of our nation's economy that are more ripe for consumer protection intrusions and non-competitive developments warranting FTC attention than connected and autonomous vehicles and the key policy question of access to, and control of, vehicle-data by vehicle owners. We urge the FTC to hold a dedicated hearing, as part of the agency's planned series of hearings on competition and consumer protection, on vehicle data access, privacy, big data, and competition.

The members of GAVDA, who are listed in an attachment to these comments (Attachment #4), would be pleased to work with the FTC Commissioners and their staff on developing such a hearing and suggesting options for witnesses or panelists.

In advance, thank you for your attention to these comments. If this proposal has raised questions or if GAVDA can be of assistance to the Commission in planning these hearings, please contact Greg Scott, GAVDA Executive Director, at 202-2297-5123 or at gscott@gavda.org.