

Dissenting Statement of Commissioner Maureen K. Ohlhausen
In the Matter of Uber, Inc.
Matter No. 1523082
January 19, 2017

I dissent from the complaint against Uber and the settlement resolving that complaint because the monetary settlement of \$20 million is not tied to an estimate of consumer harm.

Consumer protection enforcers ought to ask and answer two basic questions: How, and by how much, were consumers harmed by the alleged violations? Answering these questions helps ensure consumer protection enforcement is calibrated to the consumer injury and therefore protects consumers without deterring beneficial commercial activity.

Instead, the settlement sought partial disgorgement of Uber's profits, even though that remedy is inappropriate for a non-fraudulent enterprise that significantly benefits consumers, including drivers.¹ The result: a settlement uncalibrated to the consumer injury that may deter beneficial commercial activity.

Using consumer harm as a measure, my best estimate is that the complaint's alleged violations regarding median annual earnings claims,² hourly earnings claims,³ and certain financing claims may have at most caused consumer injury that is a small fraction of today's settlement. And Uber's "best financing available" claims about its Vehicle Solutions Program likely *benefited* consumers and should not be part of the complaint.

While I understand that companies have many considerations when they reach a settlement, I feel it is my duty to oppose settlements detached from the consumer harm alleged. The \$20 million settlement entered today far exceeds the best estimate of actual consumer harm and I cannot support it.

¹ In just the last quarter of 2014, drivers on the Uber platform earned more than \$650 million. <https://newsroom.uber.com/in-the-drivers-seat-understanding-the-uber-partner-experience/>. In 2015, drivers earned more than \$3.5 billion. <https://newsroom.uber.com/driver-partner-survey/>. And riders also have benefited from the platform.

² The complaint suggests that the sole acceptable description of earnings potential is the median earnings of all participants. Complaint para. 22. Yet "median earnings" is one of many ways to summarize a range of possible earnings. Indeed, for opportunities where earnings vary based on the effort of the participant, a simple median could disguise the true range of possibilities. This could hinder consumers searching for opportunities that match their ambition and limit companies' ability to recruit and retain participants. I support further inquiry into this earnings claim issue and the related issue of "up to" advertising claims.

³ The complaint's estimate of hourly earnings unjustifiably excludes incentives and promotional payments. These dynamic pricing mechanisms help Uber manage supply and demand on the platform and are a significant part of driver earnings. Including these payments substantiates many of Uber's allegedly unsubstantiated hourly earnings claims.