Keynote Remarks of FTC Chairwoman Edith Ramirez
42nd Annual Conference on International Antitrust Law and Policy
Fordham Law School
New York, NY
October 2, 2015

It is a pleasure to be back at the Fordham Conference on International Antitrust Law and Policy. I want to take this opportunity to express my gratitude to Barry Hawk for inviting me to participate and also for his leadership of both the Fordham Competition Law Institute and this conference since its founding more than 40 years ago. I am also delighted to join Commissioner Vestager this morning in a discussion of competition law and policy in the United States and the European Union.

Turning to my topic – the sharing economy – I cannot help but invoke Joseph Schumpeter. In his 1942 book *Capitalism, Socialism and Democracy*, Schumpeter wrote that the type of competition that truly counts is:

> the competition from the new commodity, the new technology, the new source of supply, the new type of organization … -- competition which commands a decisive cost or quality advantage and which strikes not at the margins of the profits and the outputs of the existing firms but at their foundations and their very lives.[1]

It is this innovation, Schumpeter argued, that propels capitalist economies with "gales of creative destruction."[2] He called this process of creative destruction "the essential fact about capitalism."[3]

More than seventy years later, we see this form of competition unfolding in the so-called "sharing economy." The proliferation of peer-to-peer Internet platforms is creating new sources

[1] JOSEPH SCHUMPETER, CAPITALISM, SOCIALISM, AND DEMOCRACY 84 (3d ed. 1950).

[2] *Id.*

[3] *Id.* at 83.

of supply for products and services ranging from ride-sharing to short-term rentals to micro-lending. We are also seeing new types of organization. Indeed, these peer-to-peer business models may defy conventional definitions. In California, for example, there is a dispute over whether Uber drivers are employees or independent contractors of Uber.[4] Some argue that there needs to be an entirely new classification that captures the hybrid nature of this type of work.[5]

The new forms of competition created by these peer-to-peer business models may well bring the competitive benefits of "creative destruction" to consumers. At the same time, they may also pose risks that consumers do not face with traditional suppliers, which are often subject to regulation.

The Federal Trade Commission's dual mission to promote competition and protect consumers makes the agency particularly well suited to consider the various issues raised by the sharing economy. This morning I would like to describe the FTC's work in this area – specifically, our efforts to study the sharing economy and our advocacy work commenting on the competitive impact of proposed regulations addressing some of these new business models.
I will also touch on how other competition agencies around the world are addressing these issues.

As I will discuss in more detail, it is clear that, in our approach to the sharing economy, enforcers and policymakers have to strike a balance. We must allow competition and innovation in the form of these new peer-to-peer business models to flourish. At the same time, where necessary, targeted regulatory measures may be needed to ensure that these new business models have appropriate consumer protections; but they should be no greater than necessary to address those concerns.

---

[4] Mike Isaac & Natasha Singer, *Uber Ruling Fuels Debate on Status of Workers*, N.Y. TIMES, June 17, 2015, at B1.

[5] *See, e.g.*, James Surowiecki, *Gigs with Benefits*, THE NEW YORKER, July 6, 2015, at 31.

I. Key Attributes of the Sharing Economy

Let me start with a bit of context for our work in this area. As most of you know, the FTC enforces laws, primarily Section 5 of the FTC Act, that prohibit unfair methods of competition and unfair and deceptive acts or practices. Pursuant to this authority, we seek to identify business practices and regulations that impede competition without offering countervailing benefits to consumers and advocate for policies that promote competition and consumer protection. In addition to enforcement and advocacy, we also engage in research to ensure that the Commission has the data and information it needs to make sound decisions, track market developments, and chart future priorities.

We use the term "sharing economy" to refer to digital platforms that serve as marketplace intermediaries that enable small buyers and sellers of products and services to identify trading partners. These platforms are in contrast to more traditional platforms through which a single supplier offers goods or services to potential buyers.

This past June, we convened a public workshop to explore economic, consumer protection, and competition issues associated with Internet-based peer-to-peer platforms and the economic activities that these platforms facilitate.[6] We also solicited and received close to 2,000 comments from stakeholders and members of the public.

What have we learned so far? For starters, the sharing economy as a whole has grown rapidly, led by peer-to-peer platforms for ride-sharing like Uber and short-term lodging rentals

[6] *See The "Sharing" Economy: Issues Facing Platforms, Participants, and Regulators*, FED. TRADE COMM'N (June 9, 2015), *available at* https://www.ftc.gov/news-events/events-calendar/2015/06/sharing-economy-issues-facing-platforms-participants-regulators.

like Airbnb. Globally, sharing economy transactions totaled an estimated $26 billion in 2013, and some predict that the annual total could grow to as much as $110 billion in the near future.[7]

Peer-to-peer platforms have existed for some time – dating back at least to the 1990s (e.g., Ebay). But in recent years they have proliferated into a wide variety of markets for products and services and increased significantly in size and scale. Among the reasons for these upward trends include continuing improvements in information and communications technologies used by these platforms, the explosive popularity of smartphones, and the increasing willingness of consumers to conduct online commercial transactions.

Although the business models themselves may differ greatly from one sharing economy market to another, successful peer-to-peer platforms typically have three core attributes. First, the platform must create opportunities for sellers and buyers to do business with one another. This means attracting potential sellers and buyers to become users of the platform.

To create transaction opportunities, peer-to-peer platforms also need the ability to connect potential sellers with potential buyers of a particular product or service. These platforms typically match sellers and buyers based on their revealed preferences and requirements or that allow users to find each other based on search criteria. For example, if I want to hire someone to help me landscape my backyard, I can turn to a task-outsourcing platform that enables me to browse through its list of landscaping experts in my geographic area to find one best suited to handle my task.

Second, peer-to-peer platforms need to be able to assist buyers and sellers in reaching an agreement. They need to have a way of determining or negotiating a price and other relevant terms of the transaction.

---

[7] Sarah Cannon & Lawrence H. Summers, *How Uber and the Sharing Economy Can Win Over Regulators*, HARVARD BUSINESS REVIEW (Oct. 13, 2014), *available at* https://hbr.org/2014/10/how-uber-and-the-sharing-economy-can-win-over-regulators/.

For instance, suppose a consumer needs a small loan on an emergency basis and decides to join a peer-to-peer lending platform instead of going to a bank. These lending platforms use proprietary algorithms to evaluate a consumer's credit risk and assign a credit grade. The fact that the platform can process an application and generate a loan quickly may make it more likely that a consumer will obtain the emergency loan when he or she needs it.

Third, peer-to-peer platforms need to ensure that buyers and sellers can conclude their transaction in a mutually satisfactory manner. In other words, there need to be mechanisms for creating trust between the parties and for addressing problems that may arise. So, if a consumer hires someone to move some heavy furniture through a peer-to-peer outsourcer of small tasks, how does she know that the person who shows up can be trusted to do the job? Some of these businesses address this issue not only by running identity and criminal background checks on each worker but also by insuring each job for any resulting bodily injury, property damage, or theft.

Another basic feature of peer-to-peer platforms is that their success often depends on network effects. The more users there are on a platform, both buyers and sellers, the more transaction opportunities there are. Of course, network effects may lead to increased concentration in sharing economy markets, as they do in other markets.

But, as we know, increased concentration does not always harm consumers; sometimes it benefits them, particularly where network externalities are substantial. A platform provider has strong incentives to make its platform as attractive as possible to maximize its value to participants. Real and potential competition among platform providers should also keep platform prices competitive where entry barriers are low. Of course, where entry barriers are high, there is a risk that platform monopolists will charge supracompetitive rates for access to their platforms. This is something competition enforcers need to keep an eye on.

In short, the sharing economy appears to be responsive to consumer demand, to increase competition, and to promote a more efficient allocation of resources – providing consumers with more options and, often, lower prices.

There are already some suggestions that the rise of the sharing economy may have disproportionately positive effects on less affluent consumers over the long term. The ability to rent rather than buy expensive goods, or to partially defray the cost of ownership through facilitated sharing may be most valued by consumers that cannot afford to buy those same items outright.[8]

But sharing economy platforms raise regulatory issues for policymakers not previously seen.

We are still digesting what we learned from the workshop and analyzing the comments we received. What I can say now is that our workshop has confirmed that the sharing economy raises very complex and challenging public policy questions.

II. Competition Advocacy with Respect to the Sharing Economy

I will now turn to the FTC's advocacy work in this area. Where our experience suggests that regulatory efforts are likely to hinder competition and are either not necessary or broader than necessary to achieve legitimate consumer protection or other public policy goals, we are often asked to provide our views to policymakers. I will briefly describe the comments we have submitted over the last two years to various state and local regulatory boards regarding the

[8] *See* Samuel P. Fraiberger & Arun Sundarajan, *Peer-to-Peer Rental Markets in the Sharing Economy*, NYU Stern School of Business Research Paper (Mar. 6, 2015), *available at* http://ssrn.com/abstract=2574337.

impact on competition of proposed regulations in the market for car transportation services, which includes ride-sharing services provided through peer-to-peer platforms.

We have generally cautioned state and local governments not to impose legacy regulations on new business models simply because they happen to fall outside of existing regulatory schemes. The threshold question for policymakers examining new peer-to-peer businesses should be whether there is a public policy justification for regulating the service at all, either through an expansion of existing regulatory schemes or entirely new ones. If there is no public policy rationale justifying regulation, policymakers should allow competition to proceed unfettered. Our experience tells us that consumers generally benefit from the competition that arises between traditional and new business models.

One of our main concerns is that existing regulatory schemes tend to mirror, and perhaps even entrench, traditional business models and thereby chill pro-consumer innovation. Indeed, we have seen Uber and Airbnb face lawsuits and other challenges from New York to Barcelona to Bangkok for allegedly engaging in "unfair competition" through their respective offerings of ride-sharing service and short-term rentals.

A related concern is that existing regulatory bodies may be controlled or influenced by the very interests they regulate, and that incumbents will use the existing regulatory structure to deter new, potentially disruptive entry.

In our comments, we have noted that transportation platforms can spur competition by providing consumers with new ways to more easily locate, arrange, and pay for rides, as compared to traditional taxicabs. The technology also enables new methods of fare calculation and fare transparency without the use of traditional taxicab meters. They also appear to be responsive to consumer demand and may promote a more economically efficient use of personal vehicles.

Of course, regulatory boards and other policymakers may have legitimate consumer protection and other public interest objectives for regulation, among them public safety. But policymakers must carefully consider the potential competitive effects of such regulations as well as the justifications being urged to support them.

Regulatory frameworks, to the extent they are needed, should be flexible enough to allow new forms of competition. Often, the existing regulations governing the traditional industry (here, taxicabs) have been in place for decades without much change. It is advisable that they be reviewed and revised periodically to facilitate and encourage the emergence of new forms of competition that would benefit consumers.

In addition, any regulatory response should be narrowly tailored to the specific public policy goals that have been identified. We recommend that regulations directed at ride-sharing services should focus primarily on ensuring qualified drivers, safe and clean vehicles, sufficient liability insurance, transparency of fare information, protecting privacy and consumer data, and compliance with other applicable laws.

Let me use a comment we submitted to the District of Columbia Taxicab Commission in June 2013 as a concrete example.[9] At that time, the Taxicab Commission sought to issue new rules governing "digital dispatch services," a term that would encompass ridesharing services like Uber and Lyft. We applauded the Taxicab Commission's efforts to update its rules to account for a changing marketplace. But we also expressed concerns that certain requirements,

[9] *See* FTC Staff Comments Before the District of Columbia Taxicab Commission Regarding Second Proposed Rulemakings Regarding Chs. 12, 14, and 16 of Title 31 (June 7, 2013), *available at* http://www.ftc.gov/policy/policy-actions/advocacy-filings/2013/06/ftc-staff-comments-district-columbia-taxicab.

including one requiring that digital dispatch services provide the Taxicab Commission with a daily data feed containing detailed trip information, could serve as technical barriers to entry without any countervailing benefits.[10]

We also cautioned that a proposed prohibition on digital dispatch services from associating with branded taxicab operators appeared to lack any pro-consumer benefits and could, in fact, harm competition by deterring such operators from experimenting with software applications in their businesses.[11]

Needless to say, we are not alone in addressing these issues, which are making front page news internationally. Like us, a number of other competition agencies around the world are also advocating in favor of competitive markets and giving voice to consumer welfare concerns within their own regulatory environments.

In Mexico, for example, following efforts by Mexico City's Mobility Ministry to require that Uber register with them, COFECE urged that Uber and other ridesharing services be recognized as a new form of transportation not subject to many taxi regulations beyond those

---

[10] *Id.* at 1, 6-7.

[11] *Id.* at 5-6. For other examples, *see* FTC Staff Comment to the Honorable Brendan Reilly Concerning Proposed Ordinance O2014-1367 Regarding the A Regulatory Framework Providing for the Licensing and Operation of Transportation Network Providers in Chicago, Illinois (Apr. 15, 2014), *available at* https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-honorable-brendan-reilly-concerning-chicago-proposed-ordinance-o2014-1367/140421chicagoridesharing.pdf; FTC Staff Comment to the Honorable Debbie Ossiander Concerning AO NO. 2013-36 Regarding the Regulatory Framework for the Licensing and Permitting of Taxicabs, Limousines, and Other Vehicles for Hire in Anchorage, Alaska (Apr. 19, 2013), *available at* http://www.ftc.gov/policy/policy-actions/advocacy-filings/2013/04/ftc-staff-comment-anchorage-assembly-member-debbie; FTC Staff Comments Before the Colorado Public Utilities Commission *In The Matter of The Proposed Rules Regulating Transportation By Motor Vehicle,* 4 Code of Colorado Regulations 723-6 (Mar. 6, 2013), *available at* http://www.ftc.gov/policy/policy-actions/advocacy-filings/2013/03/ftc-staff-comment-colorado-public-utilities.

necessary to protect consumer safety.[12] Similarly, in Brazil, CADE has stated it will file amicus briefs in court proceedings in which services such as Uber are being challenged.[13] And the French competition authority has also issued opinions reflecting a pro-competitive view of Uber and related services.[14]

III. Conclusion

Let me close by emphasizing once more that the public policy questions raised by the sharing economy are complex and challenging. For instance, assuming these new business models may benefit consumers, how can regulators provide a regulatory framework flexible enough to allow them to realize their full potential? Do existing regulatory frameworks have to be reworked or even abandoned due to these developments?

How do we also ensure that these same new business models do not inadvertently erode beneficial, existing consumer protections in such diverse areas as health and safety, privacy, and data security? Can the trust mechanisms built into some of these new business models replace regulation?

How do we best avoid creating two distinct regulatory tracks – with one set of rules for the older, incumbents businesses and a different set of rules for the new entrants they now increasingly compete against? I would suggest that picking winners by creating a regulatory

---

[12] Press Release, COFECE, COFECE Issues Opinion Passenger Transportation Services Provided Through Mobile Platforms (June 10, 2015), *available at* https://www.cofece.mx/cofece/ingles/index.php/prensa/historico-de-noticias/cofece-issues-opinion-passenger-transportation-services-provided-through-mobile-platforms.

[13] Leonardo Goy & Cesar Bianconi, *Brazil Agency to Offer Procompetitive View on Any Uber Lawsuits*, July 15, 2015, REUTERS, *available at* http://www.reuters.com/article/2015/07/15/us-uber-brazil-regulator-idUSKCN0PP2RE20150715.

[14] Press Release, Autorité de la Concurrence, The Autorité de la Concurrence Has Published the Opinion it Provided to the Government on the Decree, Adopted Last December 30, Regulating the Activity of CDC and Taxis (Jan. 7, 2015), *available at* http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=607&id_article=2483.

differential in favor of new entrants should be just as undesirable as retaining regulations that deter meaningful entry.

And how should regulators appropriately respond to a highly dynamic market in which the business models of today may be completely transformed tomorrow?

These are hard questions with no simple answers and competition enforcers around the world are grappling with them. We are working together with our international colleagues to exchange views and benefit from one another's work.[15] Meanwhile, at the FTC, we will continue to examine how sharing economy platforms disrupt traditional businesses in their respective sectors, and how policy responses can both promote innovation and competition while protecting consumers and legitimate public policy goals.

Thank you.

[15] As examples, in June 2015, the Competition Committee of the Organisation for Economic Cooperation and Development held the first in a series of discussions on competition policy responses to disruptive technologies and business models, and the International Competition Network is developing a special project, to be presented at its next annual conference, on government advocacy and disruptive innovation.