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ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

September 26, 2015

To: Subcommittee on Commerce, Manufacturing, and Trade Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on "The Disrupter Series: How the Sharing Economy Creates Jobs, Benefits Consumers, and Raises Policy Questions"

On Tuesday, September 29, 2015, at 10:15 a.m. in room 2322 of the Rayburn House Office Building, the Subcommittee on Commerce, Manufacturing, and Trade will hold a hearing titled "The Disrupter Series: How the Sharing Economy Creates Jobs, Benefits Consumers, and Raises Policy Questions."

I. BACKGROUND

The "sharing economy" typically describes online platforms (i.e., websites and mobile applications) that allow buyers and sellers to communicate and exchange goods and services directly.[1] The modern sharing economy encompasses markets as diverse as transportation, rental accommodations, pet sitting, chore and task completion, and grocery delivery.[2] Some argue that

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[1] Federal Trade Commission, *Sharing Thoughts About the Sharing Economy* (May 20, 2015) (online at www.ftc.gov/news-events/blogs/competition-matters/2015/05/sharing-thoughts-about-sharing-economy); *The Rise of the Sharing Economy*, The Economist (Mar. 9, 2013) (online at www.economist.com/news/leaders/21573104-internet-everything-hire-rise-sharing-economy).

[2] *In the Sharing Economy, Workers Find Both Freedom and Uncertainty*, New York Times (Aug. 16, 2014) (online at www.nytimes.com/2014/08/17/technology/in-the-sharing-economy-workers-find-both-freedom-and-uncertainty.html).

the term "peer-to-peer economy" or "on demand economy" more appropriately describes the market because goods and services are bought and sold, not shared or loaned.[3]

The growth of today's sharing economy has been attributed to a combination of the increase in Internet access and the growing ubiquity of smartphones and mobile applications.[4] Some also tie the growth of the sharing economy to the recent economic crisis, which led workers to seek new means of generating income outside of traditional employment.[5]

The nebulous definition of sharing economy makes it difficult to gauge its exact size.[6] One recent study estimates that the five largest industries in the sharing economy (transportation, housing, entertainment streaming, staffing, and finance) together generated global revenues of $15 billion in 2014 and could rise to $335 billion by 2025.[7] Another study estimates that the market for peer-to-peer rentals alone is worth $26 billion.[8]

II. ISSUES AFFECTING SHARING ECONOMY PARTICIPANTS

A. Competition

As the sharing economy develops, we are seeing increased competition in several industry sectors. Some have argued that this increased competition has helped spur incumbent

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[3] *Can We Stop Pretending the Sharing Economy Is All About Sharing?*, Time (June 30, 2014) (online at time.com/money/2933937/sharing-economy-airbnb-uber-monkeyparking); *There's an App for That*, The Economist (Jan. 3, 2015) (online at www.economist.com/news/briefing/21637355-freelance-workers-available-moments-notice-will-reshape-nature-companies-and).

[4] *All Eyes on the Sharing Economy*, The Economist (Mar. 7, 2013) (online at www.economist.com/news/technology-quarterly/21572914-collaborative-consumption-technology-makes-it-easier-people-rent-items); *The Sharing Economy: Friend or Foe?*, Bloomberg (June 15, 2015) (online at newsletters.briefs.bloomberg.com/document/4vz1acbgfrxz8uwan9/what-it-is).

[5] *What's Mine Is Yours (For a Price) In the Sharing Economy*, NPR (Nov. 13, 2013) (online at www.npr.org/sections/alltechconsidered/2013/11/13/244860511/whats-mine-is-yours-for-a-price-in-the-sharing-economy).

[6] *See The Sharing Economy by Any Other Name*, Bloomberg (June 15, 2015) (online at newsletters.briefs.bloomberg.com/document/4vz1acbgfrxz8uwan9/naming-conventions).

[7] Pricewaterhouse Coopers, *Five Key Sharing Economy Sectors Could Generate £9 Billion of UK Revenues By 2025* (Aug. 15, 2014) (online at pwc.blogs.com/press_room/2014/08/five-key-sharing-economy-sectors-could-generate-9-billion-of-uk-revenues-by-2025.html).

[8] *The Rise of the Sharing Economy*, The Economist (Mar. 9, 2013) (online at www.economist.com/news/leaders/21573104-internet-everything-hire-rise-sharing-economy).

companies to improve their products, services, and practices.[9] Taxi services in Chicago and New York have seen a decrease in consumer complaints as Uber has become more popular in those cities.[10]

B. <u>Regulation Disparity</u>

The emergence of sharing economy companies presents significant regulatory challenges. Sharing economy companies and their supporters argue that these companies have built-in controls, such as customer ratings and reviews and identity verification, that protect consumers by building trust, which reduces the need for the same level of government oversight required in typical customer-to-business transactions.[11] Indeed, it has been asserted that government intervention will stifle innovation.[12] But others point out that user-generated reviews and ratings do not always reliably represent the quality of a transaction or service, and therefore, are insufficient to protect consumers.[13]

Incumbent industries that compete with sharing economy businesses, such as taxis and hotels, contend that sharing economy platforms should be required to comply with existing legal obligations imposed on the incumbent industries, including local licensing, tax, and zoning requirements.[14] Some who oppose broad government intervention in the sharing economy have begun calling for a federal role in setting national standards and attempting to even the playing field between sharing platforms and incumbents.[15]

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[9] Scott Wallsten, *The Competitive Effects of the Sharing Economy: How is Uber Changing Taxis?*, Technology Policy Institute (June 2015) (online at techpolicyinstitute.org/ |files/wallsten_the%20competitive%20effects%20of%20uber.pdf).

[10] *Id*.

[11] *Trusting the 'Sharing Economy' to Regulate Itself,* New York Times (Mar. 3, 2014) (online at economix.blogs.nytimes.com/2014/03/03/trusting-the-sharing-economy-to-regulate-itself/); *How Airbnb and Lyft Finally Got Americans to Trust Each Other,* Wired (Apr. 23, 2014) (online at www.wired.com/2014/04/trust-in-the-share-economy).

[12] *Washington Scrutinizes the Sharing Economy*, New York Times (June 9, 2015) (online at bits.blogs.nytimes.com/2015/06/09/washington-scrutinizes-the-sharing-economy/).

[13] *The Big Hidden Problem with Uber? Insincere 5-Star Ratings*, Wired (Mar. 19, 2015) (online at www.wired.com/2015/03/bogus-uber-reviews); *Ratings Now Cut Both Ways, So Don't Sass Your Uber Driver*, New York Times (Jan. 30, 2015) (online at www.nytimes.com/2015/01/31/technology/companies-are-rating-customers.html).

[14] *How Will the Sharing Economy Change the Way Cities Function?,* Governing (Oct. 2013) (online at www.governing.com/topics/urban/gov-how-sharing-economy-will-change-cities.html).

[15] S*ee e.g.*, Internet Association, *Comments to the Federal Trade Commission Regarding the Sharing Economy Workshop, Project No. P15-1200* (Aug. 3, 2015).

Regulations at the state and local levels for sharing economy industries vary widely in both type and degree.[16] Many state and local governments are struggling to resolve issues of jurisdiction, including which regulatory bodies should enforce safety, liability, and insurance requirements for sharing platforms.[17]

Insurance requirements can be particularly difficult to resolve within the context of the sharing economy. Because participants in the sharing economy are often required to use their own property, rather than company-supplied property, some traditional insurance models may no longer be sufficient.[18] Questions still remain regarding which sharing economy services should require insurance and whether the company or the individual supplier is responsible for maintaining that insurance.[19]

C. Labor and Employment

As the sharing economy expands, there is growing debate over the classification of workers as independent contractors rather than employees.[20] Employees are legally entitled to certain rights and workplace protections, including a minimum wage, compensation for work-related expenses, and overtime pay.[21] Many businesses in the sharing economy argue that they are technology platforms that allow transactions between individuals to occur, and therefore, the workers are users or independent contractors, not employees.[22] Sharing economy workers have

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[16] National League of Cities, *An Analysis of Current Sentiment Surrounding Homesharing and Ridesharing* (June 2015) (online at www.nlc.org/Documents/Find%20City%20Solutions/ City-Solutions-and-Applied-Research/Sharing%20Economy%20Brief.pdf).

[17] *Who's Liable in the Share Economy?,* GigaOM (May 8, 2012) (online at gigaom.com/2012/05/08/whos-liable-in-the-share-economy-2/).

[18] *Share a Car, Risk Your Insurance*, New York Times (Mar. 16, 2012) (online at www.nytimes.com/2012/03/17/your-money/auto-insurance/enthusiastic-about-car-sharing-your-insurer-isnt.html).

[19] *See* note 4; *California Forces Uber and Its Rivals to Bolster Insurance*, Wired (July 1, 2015) (online at www.wired.com/2015/07/california-forces-uber-rivals-bolster-insurance/).

[20] *Uber's Business Model Under Fire*, The Hill (June 3, 2015) (online at thehill.com/policy/transportation/243840-ubers-model-under-fire-from-washington).

[21] *A California Regulator Says an Uber Driver Is an Employee. Here's Why That's a Big Deal*, Vox (June 17, 2015) (online at www.vox.com/2015/6/17/8799951/uber-california-ruling-explained).

[22] *In the Sharing Economy, No One's an Employee*, The Atlantic (June 8, 2015) (online at www.theatlantic.com/business/archive/2015/06/in-the-sharing-economy-no-ones-an-employee/395027).

begun to challenge their legal classification as independent contractors through courts and various state administrative agencies.[23]

Concerns have also been raised regarding some sharing economy firms' recruitment tactics. Sharing economy businesses often emphasize the income and flexibility their services can offer, which attracts workers.[24] However, a worker's income in the sharing economy can vary substantially based on consumer demand and other factors outside of the worker's control, such as pricing and discounts set by the platforms.[25] Some workers claim they cannot realistically earn as much as the companies' advertisements suggest.[26]

D. Consumer Privacy and Data Security

Sharing economy businesses may store consumers' personal information for a number of reasons, including to verify the identity of buyers and sellers, to process credit card transactions, or to analyze the data to improve services.[27] In addition, because sharing economy applications depend on knowing an individual's location, sharing economy firms may have access to users' location and travel routines.[28] In May 2015, Uber, a mobile application for ride-hailing, introduced a new privacy policy that allows the company to access users' contacts, requests permission to track a rider's location, even when the application is not open, and gives Uber the right to provide user data to third parties.[29]

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[23] *California Says Uber Driver Is Employee, Not a Contractor*, New York Times (June 17, 2015) (online at www.nytimes.com/2015/06/18/business/uber-contests-california-labor-ruling-that-says-drivers-should-be-employees.html).

[24] *See* note 2.

[25] *The Downside of the Gig Economy*, Newsweek (Aug. 25, 2015) (online at www.newsweek.com/downside-gig-economy-365422).

[26] *At the Uber for Home Cleaning, Workers Pay a Price for Convenience*, Washington Post (Sept. 10, 2014) (online at www.washingtonpost.com/news/storyline/wp/2014/09/10/at-the-uber-for-home-cleaning-workers-pay-a-price-for-convenience); *Uber Drivers Speak Out: We're Making a Lot Less Money Than Uber Is Telling People*, Business Insider (Oct. 29, 2014) (online at www.businessinsider.com/uber-drivers-say-theyre-making-less-than-minimum-wage-2014-10).

[27] *How Airbnb and Lyft Finally Got Americans to Trust Each Other*, Wired (Apr. 23, 2014) (online at www.wired.com/2014/04/trust-in-the-share-economy/); *Uber Rules*, Slate (Jan. 9, 2014) (online at www.slate.com/articles/news_and_politics/jurisprudence/2014/01/regulating_uber_data_collection_is_the_key.html).

[28] *Data Is Uber's Business. But Protecting It May Be Its Biggest Weakness*, Washington Post (Nov. 18, 2014) (online at www.washingtonpost.com/news/the-switch/wp/2014/11/18/data-is-ubers-business-but-protecting-it-may-be-its-largest-weakness).

[29] *Uber Broadens Rider Privacy Policy, Asks for New Permissions*, Bloomberg (May 28, 2015) (online at www.bloomberg.com/news/articles/2015-05-28/uber-broadens-rider-privacy-policy-asks-for-new-permissions).

As with other technology companies, the value of personal data collected by sharing economy platforms raises questions about the ownership of data in the event of a bankruptcy or merger, and whether companies may share personal information with third parties, or use the data for other commercial purposes.[30] The vast amount of personal information collected also makes sharing economy businesses targets for hacking.[31]

IV. WITNESSES

Alex Chriss
Vice President and General Manager
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Luceele Smith
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Uber Technologies, Inc.

Jon Lieber
Chief Economist
Thumbtack

Michael Beckerman
President and Chief Executive Officer
The Internet Association

Dean Baker
Co-Director
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[30] *Comments of University of Tennessee College of Law Associate Professor Maurice Stucke at the Federal Trade Commission Workshop on the "Sharing" Economy: Issues Facing Platforms, Participants, and Regulators* (June 9, 2015) (online at www.ftc.gov/system/files/documents/public_events/636241/sharing_economy_workshop_transcript.pdf).

[31] *Is Uber's Rider Database a Sitting Duck for Hackers?,* Washington Post (Dec. 1, 2014) (online at www.washingtonpost.com/news/the-switch/wp/2014/12/01/is-ubers-rider-database-a-sitting-duck-for-hackers); *50,000 Uber Driver Names, License Numbers Exposed in a Data Breach*, ArsTechnica (Feb. 28, 2015) (online at arstechnica.com/business/2015/02/50000-uber-driver-names-license-plate-numbers-exposed-in-a-data-breach).