



Office of Policy Planning
Bureau of Competition
Bureau of Consumer Protection
Bureau of Economics

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Mr. Jacques P. Lerner
General Counsel Policy Planning, Bureau
of Competition, Bureau of Consumer Protection, and Bureau of Economics

identify business practices and regulations that impede competition without offering countervailing benefits to consumers, and advocates for policies that promote competition and consumer protection.³

Competition and consumer protection naturally complement and mutually reinforce each other, to the benefit of consumers. Consumers benefit from market competition, which creates incentives for producers to be innovative and responsive to consumer preferences with respect to price, quality, and other product and service characteristics. As the U.S. Supreme Court has recognized, the benefits of competition go beyond lower prices: “The assumption that competition is the best method of allocating resources in a free market recognizes that all elements of a bargain - quality, service, safety, and durability - and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.”⁴ At the same time, consumer protections promote informed consumer decision-making by prohibiting firms from engaging in unfair and deceptive acts or practices, by requiring sellers to make truthful and non-deceptive representations about their offerings, and by protecting consumers’ privacy.

In carrying out its mission, the Commission has developed considerable expertise in analyzing issues relating to passenger vehicle transportation services. FTC staff previously has submitted a number of advocacy filings related to taxicabs with various local and state authorities, including recent comments regarding the regulation of new applications for obtaining passenger vehicle transportation services in Anchorage, Alaska and Colorado.⁵ In addition, the FTC has brought enforcement actions against two cities relating to taxicab regulation,⁶ and has issued two significant reports on taxi regulation.⁷

The Commission also has expertise in various aspects of competition and consumer protection that are relevant to new passenger motor vehicle transportation applications. The Commission has developed considerable expertise relating to the emergence of new technologies and innovation as a form of competition.⁸ The FTC also has extensive consumer protection expertise in the advertising and marketing of products and services, including deception and disclosure issues.⁹ Staff has recently updated guidance on how to make effective disclosures in the online context.¹⁰ The Commission has also developed consumer protection expertise in data security, privacy, and identity theft issues that applications may raise.¹¹

II. The Passenger Vehicle Transportation Marketplace

Until recently, the marketplace for commercial passenger motor vehicle transportation services in the United States had remained largely unchanged since at least the early 1980s.¹² However, primarily in response to the introduction of smartphones around 2007, both incumbent passenger motor vehicle transportation service providers and other entrepreneurs have introduced new software applications, sometimes also called digital dispatch services, which allow consumers to arrange and pay for commercial passenger motor vehicle transportation services in a variety of ways.¹³ These

software applications may

applications, therefore,

A. Proposed Rules That Raise Potential Competition Issues

1. Proposed 1299.1

Proposed 1299.1 would define a “Luxury class vehicle” as a limousine or sedan that meets specific requirements. Among other things, a luxury class vehicle must: be an Environmental Protection Agency-designated Large Car, Mid-size Car, Passenger Van, or Sport Utility Vehicle; have three or more passenger doors; carry four to eight passengers; and have manufacturer-installed luxury features, such as a premium sound system, reading lights, aluminum wheels, and noise-dampening materials. Proposed 1299.1’s definition of a “Sedan” would further require, among other things, that sedan vehicles: not be an EPA-designated Passenger Van; not be stretched; have a curb weight of at least 3,200 pounds; and be black or blue-black in color.

Staff recommends that DCTC consider the extent to which the above requirements may impede competition, or are necessary to ensure safety or some other important consumer benefit. Proposed 1299.1 facially restricts the types of vehicles that can be operated as limousines or sedans, which may be an important consideration for some consumers and a valuable component of competition. For example, the 3,200 pound weight requirement for sedans might exclude certain lighter-weight, more fuel efficient, and more environmentally friendly vehicles from being used for sedan services, including lighter-weight alternative fuel vehicles, that are currently available or that may become more widely available and popular in the future. The use of fuel efficient vehicles may be an important component of consumer demand for sedan services and the proposed rule would impede sedan operators from competing with regard to this feature. In addition, there is no evident rationale for requiring that sedans be either black or blue-black, particularly as this limitation is not applied to other vehicle classes like limousines. Such a provision could restrict the use of available vehicles as sedans, and, thereby, also restrict the use of available vehicles that can be arranged through applications. It would also restrict the ways that sedan services might compete using distinctive branding based on color. Finally, we note that vehicle requirements should also be clear and understandable, and the requirements for luxury features are not precise, are subject to interpretation, and therefore could create uncertainty as to whether certain vehicles would comply with this provision. This uncertainty alone might inhibit competition unnecessarily.

2. Proposed 1605.6

Proposed 1605.6 would prohibit a digital dispatch service from associating with a taxicab operator in a branded taxicab fleet or association unless the fleet or association agrees to permit the association, provided that the fleet or association currently provides dispatch services for its own vehicles or has filed or received registration to operate a digital dispatch service for its own vehicles.

Staff recommends that DCTC allow for flexibility and experimentation in the ways that applications can affiliate with all types of passenger transportation vehicle

operators and organizations. We note that this restriction does not appear to be related to

Staff appreciates that these proposed requirements appear designed to promote the dissemination of truthful and non-deceptive information to consumers. Staff takes no position on these particular requirements, but recommends that DCTC consider evaluating the effectiveness of the proposed requirements before implementation and monitoring their effectiveness, such as through conducting surveys or evaluating consumer complaints, to ensure that disclosures are made in a clear and conspicuous manner and the requirements are otherwise achieving the underlying consumer protection objectives. DCTC may also wish to consider the principles and examples for mobile and other online advertising disclosures provided in FTC staff's recently updated guidance document, ~~Do Not Sell My Personal Information~~.³⁰

Among other things, it emphasizes that advertisers should ensure that disclosures are clear and conspicuous on all devices and platforms consumers may use.

2. Proposed 1603.17 and 1603.6(d)

Proposed 1603.17 would require a dispatch service, traditional or digital, to store its business records in compliance with industry best practices and all applicable laws. The latter requirement would seem to include compliance with the FTC Act.³¹

In contemplating the collection, handling, and use of customer data, such as personal information, trip information, and credit card information by applications, DCTC may wish to consider the flexible approach that the FTC has taken regarding data security in its consumer protection law enforcement actions, consumer and business education, and policy activities relating to data security. The FTC's approach requires that businesses implement security practices that are reasonable and appropriate in light of the types of information they collect and the risks and vulnerabilities they face, and also takes into account the costs associated with implementation of these practices.³² The FTC has brought law enforcement actions against a variety of commercial entities, such as retailers, data brokers, and social networking web sites, which have failed to implement reasonable and appropriate security measures to protect consumer data. In these cases, the FTC has required businesses to establish, implement, and maintain a data security program.³³

Proposed 1603.6(d) would further require each digital dispatch service that processes digital payments to meet certain standards of the Open Web Application Security Project, PCI Security Standards Council for payment card data security, and the National Automated Clearing House Association for direct debit transactions.

Staff appreciates that these proposed requirements appear intended to address data security issues that may arise relating to payment processing. Staff takes no position on these particular standards, but emphasizes that the collection, use, and retention of consumer information, such as payment information, should be reasonable and appropriate for the totality of the circumstances at issue.

3. Proposed 1603.15

Proposed 1603.15 would prohibit dispatch services, both traditional and digital, from releasing information that would result in a violation of the personal privacy of the passenger or person requesting service or threaten passenger or operator safety, or permit a person not authorized by the dispatch service to access real-time information about the location, apparent gender, or number of passengers awaiting pick up. However, the provision does not elaborate on these prohibitions, their enforcement, or possible remedies.

As suggested above, DCTC may wish to consider the FTC's approach to data security. In particular, DCTC may wish to consider the remedy and monitoring provisions that the FTC has secured in settlement orders, as means to addressing any security breaches that occur.³⁴

V. Conclusion

FTC staff appreciates this opportunity to provide views in regard to this matter and would be happy to address any questions you may have regarding competition and consumer protection policy in the passenger motor vehicle transportation marketplace.

Respectfully submitted,

Andrew I. Gavil, Director
Office of Policy Planning

Richard A. Feinstein, Director
Bureau of Competition

Charles A. Harwood, Acting Director
Bureau of Consumer Protection

Howard Shelanski, Director
Bureau of Economics

¹ This staff letter expresses the views of the Federal Trade Commission’s Office of Policy Planning, Bureau of Competition, Bureau of Consumer Protection, and Bureau of Economics. The letter does not necessarily represent the views of the Federal Trade Commission (“FTC” or “Commission”) or of any individual Commissioner. The Commission has, however, voted to authorize staff to submit these comments.

² Federal Trade Commission Act, 15 U.S.C. § 45.

³ Specific statutory authority for the FTC’s competition advocacy program is found in Sections 6(a) and (f) of the FTC Act, under which Congress authorized the FTC “[t]o gather and compile information concerning, and to investigate from time to time the organization, business,

ANTICIPATING THE 21ST CENTURY: CONSUMER PROTECTION POLICY IN THE NEW HIGH-TECH, GLOBAL MARKETPLACE (1996), *ibid*
http://www.ftc.gov/opp/global/report/gc_v2.pdf.

⁹ For example, the FTC designs numerous energy cost disclosures, including the Energy Guide label (applicable to 17(C)6w -9.9cl)8(t3(a-3(n)20 TcH(1)6en)13(er) A(1p)2s,a nh O(v)11865 Tw

¹⁸ L19-270, 19th Council Sess. (D.C. 2012) (enacted Jan. 18, 2013) (Public Vehicle-for-Hire Innovation Amendment Act of 2012); L19-184, 19th Council Sess. (D.C. 2012) (enacted Aug. 2, 2012) (Taxicab Service Improvement Amendment Act of 2012).

¹⁹ L19-270, note 1 8 (amending D.C. Official Code § 50-329.02).

²⁰ *Id.* (emphasis added).

²¹ Among these conditions are that: if a digital dispatch service connects a consumer with a vehicle other than a taxicab, before booking the vehicle the digital dispatch service shall disclose to the customer the applicable fare calculation method, applicable rates, and the option for an estimated fare; upon completion of the trip, the customer shall receive a paper or electronic receipt that lists the origination and destination of the trip, the total distance and time of the trip, and a breakdown of the total fare paid, including any fees and gratuity; and the digital dispatch

~~Office of the Attorney General, 1100 17th Street, N.W., Washington, D.C. 20036-1005 (Tel: 202-490-5100) (Fax: 202-490-5101) (Email: oag@dc.gov)~~

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