

Office of Policy Planning
Bureau of Competition
Bureau of Economics

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Mr. Brendan Reilly
Alderman – 42nd Ward
City Council

countervailing benefits to consumers, and advocates for policies that promote competition and consumer protection.³

Consumers benefit from market competition in a variety of ways. As the U.S. Supreme Court has recognized, the benefits of competition not only include lower prices, but go beyond as well: “The assumption that competition is the best method of allocating

III. General Principles for Regulating Evolving Industries

Transportation services facilitated by software applications and provided by individuals using their personal vehicles appear to be a new phenomenon that lies outside most existing regulatory schemes. The initial question for regulators, therefore, is whether there is a public policy justification for regulating them at all, either through entirely new regulatory mechanisms or expansion of current systems for regulating commercial passenger motor vehicle transportation services. Unregulated markets can be adept at accommodating new and innovative forms of competition, whereas traditional regulatory frameworks may lack the flexibility to do so precisely because they tend to mirror, and even entrench, the business models that have developed in the past.

Regulatory frameworks, when needed, should be flexible enough to allow new and innovative forms of competition. Unless regulation is necessary to achieve some legitimate public interest, markets should be left unfettered to permit competition to flourish. Consumers benefit from competition between traditional and new products and services, and from new business models and methods of delivering services. It is advisable, therefore, that laws and regulations be reviewed and revised periodically to facilitate and encourage the emergence of new forms of competition, sometimes through deregulation and other times through the development of new and adaptive regulations.

As with software applications that facilitate commercial passenger motor vehicle transportation services, any regulations directed at TNP services should focus primarily on ensuring the safety of customers and drivers, deterring deceptive practices relating to fares, safety and liability, and other terms of use, and addressing other consumer protection issues, especially data security and the prevention of identity theft. These might include provisions that relate to ensuring qualified drivers, safe and clean vehicles, sufficient liability insurance, transparency of fare information, and compliance with other applicable laws. Regulations should not in purpose or effect favor one group of competitors over another or impose unnecessary burdens on applications or drivers that impede their ability to compete without any justification that benefits the public interest.

Staff notes that the ordinance, in principle, provides a pathway to facilitate and promote transportation services using personal vehicles that consumers appear to be demanding and therefore will promote competition. We respectfully suggest, however, that the Chicago City Council carefully consider the potential direct and indirect impacts on competition of some of the proposed ordinance's provisions. Unwarranted restrictions on competition will undermine the potential benefits of the ordinance and should be avoided. Any restrictions on competition that are implemented should be no broader than necessary to address legitimate subjects of regulation, such as safety and consumer protection, and narrowly crafted to minimize any potential anticompetitive impact.

IV. The Proposed Ordinance

Proposed Ordinance O2014-1367 would amend Title 9 by adding a new Chapter 9-115 to establish a license for transportation network providers. Among other things, the ordinance would: require that TNPs meet certain qualifications and maintain certain insurance; set out certain standards for drivers, vehicles, and operation; establish certain

B. Pricing

Variation in pricing models has been one of the most innovative and defining characteristics of software-based applications for arranging transportation services. Instead of leaving the method of calculating fees to the TNPs, however, proposed Chapter 9-115-170 would permit TNPs to calculate fees for transportation network services in only three ways: (1) distance travelled or time elapsed during service, (2) a flat prearranged fare, or (3) a suggested donation. This specification of fee structures seems overbroad and likely to restrict one of the most important competitive tools of the applications. It would also specifically prohibit fares using a combination of distance and time, which might potentially benefit consumers and competition. More broadly, it locks in specific fee structures, precluding future evolution of new or different methods of calculating value for services using personal vehicles.

In addition, proposed Chapter 9-115-170 does not expressly recognize or permit demand-based pricing. Demand pricing is a mechanism by which resources are allocated to their most highly valued consumer uses. Demand pricing directly responds to the level of consumer demand: when demand increases, prices increase and when demand falls, prices fall. It can be an efficient way to allocate resources (e.g., vehicles and drivers) to consumers, particularly during times of peak demand (e.g., during particular times of day, periods of traffic congestion, around the time of special events), because it provides incentives for increased supply to serve increased demand.²³ Demand pricing also may result in lower fares during off-peak times, which may potentially result in an overall increase in the quantity of service utilized by consumers. Demand based pricing, therefore, can be more responsive to consumer preferences than fixed pricing models.

Staff recommends that, absent some specific evidence that a particular pricing model will harm consumers, the ordinance should clearly allow for greater flexibility and experimentation in structuring fees in order to facilitate innovative forms of pricing that may benefit consumers.²⁴ To the extent that evidence of such harm is received, any restriction designed to address that harm should be narrowly crafted to minimize its anticompetitive impact.²⁵

C. Insurance Requirements

Proposed Chapter 9-115-080 would require each TNP to have commercial general liability insurance with coverage of at least \$1,000,000 per occurrence for bodily injury, personal injury, and property damage, and also commercial automobile liability insurance with a combined single limit for bodily injury and property damage of at least \$1,000,000 per occurrence. By contrast, current Chapter 9-112-330 only requires taxicab licensees to have public liability insurance with at least \$350,000 combined single limit coverage per occurrence. Current Chapter 9-000004 Tc 0.n-1(at)20(d)-10(a vy)20(d)-h2(f)3c(ur)-17((ha)4(t)-, o-2(bi) d)

Internet-enabled communications technologies in ways that were previously impractical. Other examples include: car-sharing, parking space rentals, boat rentals, rentals of personal homes and apartments, dog kennel services, and the rental of personal goods. See generally ECONOMIST, All eyes on the sharing economy, Mar. 9, 2013 (Technology Quarterly: Q1 2013), available at <http://www.economist.com/news/technology-quarterly/21572914-collaborative-consumption-technology-makes-it-easier-people-rent-items>.

²⁰ Proposed 9-115-090(c) states that “No vehicle licensed as a taxi or public transportation vehicle in any jurisdiction shall be operated as a transportation network vehicle.”

²¹ In addition to the provisions discussed in the body of this letter, staff also notes that under proposed amended Chapter 3-46-050 A.-B., TNPs, transportation network drivers, and transportation network vehicles would not be exempt from Chicago’s Motor Vehicle Lessor Tax and Personal Property Lease Transaction Tax, as are, respectively, other lessors or lessees of a ground transportation vehicle and persons leasing a ground transportation vehicle from a license holder. This differential tax treatment may put TNPs at a competitive disadvantage, versus other vehicle types. See generally *infra* note 26 and related text.

