



**Asia-Pacific
Economic Cooperation**

2016/SOM1/CPLG/009

Agenda Item: 12

Disruptive Innovation

Purpose: Information
Submitted by: United States



**Competition Policy and Law Group Meeting
Lima, Peru
27-28 February 2016**

Disruptive Innovation



Timothy T. Hughes
Attorney, U.S. Federal Trade Commission*

APEC Competition Policy & Law Group Meetings
Lima, February 27, 2016

*The views expressed are those of the speaker and not of the Commission or any individual Commissioner

1

What Does Disruptive Innovation Mean

- ***A reasonable definition would be that it is a product or business model that is a relatively new and efficient form of production, marketing, or distribution that provides an alternative to, and potentially threatens to erode the sales of incumbent firms.***
- ***Disruptive innovation is different from incremental innovation such as increasing computer processing speed.***
- ***Introducing a modernization, mechanization or technology into a developing economy that has already existed for many years in developed economies would be disruptive innovation. E.g., Using cranes instead of individual laborers carrying sacks to load palm products at a port facility.***

2

How, If At All, Does Disruptive Innovation Change Antitrust Analysis

- **Competition laws and regulations should have the flexibility to address competition issues that arise in markets in which disruptive innovation plays a role.**
 - *A rule of reason analysis of market power and anticompetitive effect focuses not only on price effect of merger or conduct, but also on quality, service, reputation, innovation, etc. In markets characterized by disruptive innovation factors such as quality, service, etc., will likely have greater weight than, for example, in a market for commodities. Price is sometimes a proxy for these other factors, but in itself may not be as important in markets in which disruptive innovation is taking place as it would be in other markets.*
- **Investigation should be open-minded and interview broad sample of industry participants and disinterested experts to understand dynamics of the market.**

3

Two Mergers In Markets Characterized By Disruptive Innovation

- **Mobile Advertising Networks**
 - *Google sought to acquire AdMob. The FTC permitted Google to make the acquisition with no conditions because Apple was in the process of launching its own mobile advertising network.*
- **Cross-Platform Audience Measurement Services**
 - *Nielsen sought to acquire Arbitron. The FTC permitted the acquisition only after the parties agreed to accept the condition that Arbitron divest its cross-platform audience measurement services. The divestiture restored competition lost by what otherwise would have been a merger to monopoly*

4

Power Buyer Lost Market Power In Market Characterized By Disruptive Innovation

- **Changes In Channels For Retail Sales of Children's Toys**
 - *In 2014 FTC modified a 1998 order against big box toy retailer, Toys R Us (TRU), because TRU no-longer has market power. The growth of discount and on-line toy sales have "disrupted" traditional retail channels. This eroded TRU's power. Order that prohibited TRU urging or pressuring suppliers to refuse to sell to discounters was eliminated.*
 - *Some might argue that this is not an example of disruptive innovation because the growth of a chain of big-box stores that eroded TRU's power by selling toys at discounted prices was really only an incremental innovation.*

5

Agreement That Impedes Innovation

- **Technological Developments Like the MLS Data Feed are Enabling Consumers to Self-supply Certain Services and Are Exerting Competitive Pressure on Traditional Real Estate Listing Services**
 - *FTC found that RealComp II engaged in anticompetitive behavior by restricting the ability of member real estate agents to offer consumers lower-priced alternatives to traditional real estate services. Realcomp is an association of local real-estate boards and associations in southeastern Michigan, with a membership composed of local real-estate agents and brokers. The primary service to its member brokers is its operation of a database of property listings searched by Realcomp members. Pursuant to its website policy, Realcomp prohibited information about exclusive agency and other nontraditional listings on Realcomp's MLS from being distributed to public real-estate advertising websites through its MLS feeds. The Appeals Court upheld the FTC order. 635 F.3d815(6th Cir. 2011)*

6

Advocacy On Regulations Affecting Disruptive Innovation In Taxi and Similar Transportation Services

- **Letters to Washington, DC Taxi Commission, Colorado Public Utilities Commission and Chicago Alderman (all letters are available on FTC webpage)**
- **E.g. Letter to Chicago**
 - *Staff cautioned that a proposed \$25,000 annual license fee for companies that allow consumers to arrange transportation using software applications could put transportation network providers at a competitive disadvantage compared to \$500 annual license fee for taxicab providers . At the same time, staff letter recognized that regulation that focused on ensuring qualified drivers, safe and clean vehicles, sufficient liability insurance, and transparency of fare information was proper. Also, any regulation of smartphone applications should focus primarily on issues such as privacy, data security, and prevention of identity theft.*

7

Workshop On Sharing Economy, Speeches, Blogs

- **Various tools are needed to stay abreast of developments in markets characterized by disruptive innovation**
 - *A report on the Workshop on the Sharing Economy will be published and place on the FTC webpage. Industry, academic, and other experts were invited to make submissions and presentations.*
 - *FTC held a Workshop in January 2016 to explore competition and related issues in the U.S. auto distribution system*
 - *FTC have also posted blogs on these issues*

8

Advocacy On Regulations Affecting Disruptive Innovation for Automotive Distribution and Sales

- **Letters to legislators in Missouri, Michigan and New Jersey**
 - **Some states have laws that prohibit manufacturers' direct sales to consumers. Two new auto manufacturers, Tesla and Elio, distribute their autos using methods that do not include franchised dealers.**
 - **Staff letter emphasized that the weight of economic literature suggests that allowing firms in competitive marketplaces to decide how to distribute their products leads to better outcomes for consumers.**
 - **FTC held a workshop in January 2016 to explore and understand better issues in the U.S. auto distribution system.**