Introduction of the case

Background of uber

Background of urging price

Consumer surplus paper

Labor market paper (implication of better supply

Pro: uber conspire with drivers to implement price-fixing strategy when demand is high

Against: uber is sharing economy firm which makes it different. It creates competition to the traditional industry, which decreases price. It links demand to supply directly with an incredible cheap cost, and it also smooth the demand with its surge price mechanism. Increasing price is not for grasp consumer surplus, but create incentive for supply so more service is available to consumers. This process creates consumer surplus.

Meyer accused Kalanick of illegally conspiring with Uber drivers to coordinate high surge pricing fares during periods of heavy demand, by agreeing to charge prices set by an algorithm in the Uber smartphone app for hailing rides.

~~Recently, Uber driver (and CEO) Travis Kalanick has been sued under antitrust laws with the plaintiffs arguing that he and the other drivers have engaged in a price-fixing arrangement that violates §1 of the Sherman Act. The case, Meyer v. Kalanick, has not yet been decided. This article will analyze the potential arguments from each side, and eventually make the case for the best reasoning the court should offer for not finding Uber drivers in violation of the Sherman Act. This determination will be based on the merits of the various arguments, how such a decision would fit within the history of antitrust law, and how it would be good precedent for the future. Additionally, there will be an analysis as to why Uber’s place in the sharing economy distinguishes it from previous antitrust violators that the plaintiffs will likely try to analogize it to.~~

The sharing economy refers to the emergence of peer-to-peer services that allow owners

to give strangers access to their property during the time the owner does not wish to use it. Peer-to-peer markets allow small suppliers to compete with traditional providers of the same good or service, making it easy for buyers to engage in convenient, trustworthy transactions.3

Einav, L., Farronato, C., & Levin, J., National Bureau of Economic Research, NBER Working

Paper No. 21496 (2015).

For example, Airbnb allows owners to rent

their homes to others when they may be away for a weekend, allowing the resource to be used

and the owners to make money. In Uber’s case, the owner of the vehicle is not only renting out

the vehicle, but also providing the service of driving. Therefore an Uber driver is renting out his

or her vehicle and time when both are being unused in order to earn extra income.

Uber began in 2008 as an idea to create an app to get a ride when a person had trouble

hailing a taxi.11 Today, the transportation juggernaut allows people in thousands of cities get

rides from opportunistic, everyday people looking to make some extra money on the side by

giving rides in their personal vehicles. This model cements Uber’s place in the sharing economy

because it takes a privately owned resource – one’s vehicle – and allows them to share it with

strangers who need it when they do not.

Uber, “Our Story,” < <https://www.uber.com/our-story/>>.

From the consumer perspective, Uber is an app that connects them with available drivers

in the area. The app allows the rider to view the estimated arrival time of their ride, car

description, and the likely fare using the Uber Fare Estimator.12 After the ride, the rider’s card is

charged (in some locations, cash payment is available).13 From the driver perspective, things are

not as simple as hitting download in the app store. Diver requirements include being 21 years

old, having 3 years of driving experience, having in-state car insurance, having a license and registration, having a Social Security Number, going through a background check, owning a

vehicle with in-state plates that is less than 15 years old, and having that vehicle pass an Uber car

inspection.14 Additionally, drivers are subject to a background check, and can be deactivated if

an investigation demonstrates that the driver has violated the deactivation policy.15 Investigations

are typically triggered through multiple customer reviews complaining of conduct that violates

the deactivation policy.16

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Uber, “How does Uber work?” < https://help.uber.com/h/738d1ff7-5fe0-4383-b34c-

4a2480efd71e>.

14 Uber, “I Drive With Uber,” < http://www.idrivewithuber.com/uber-driver-requirements/>.

15 Uber, “Driver Deactivation Policy – US ONLY,” < https://www.uber.com/legal/deactivationpolicy/

us-en/>.

The key aspect of the service that led to the lawsuit in question is Uber’s price algorithm.

Uber drivers use the app’s algorithm to calculate the fare.17 By looking at how many consumers

in a given geographic location are looking for a ride on the app at a given time, the price of a ride

changes to increase along with the demand. Therefore, if for some reason a lot of consumers are

requesting a ride in midtown Manhattan because there’s a thunderstorm after a Knicks playoff

game, there will be a significant increase in fares. The fact that all Uber drivers use the pricing

algorithm is a necessary part of the allegation that the drivers are part of a price-fixing

conspiracy that violates the Sherman Act. Uber has claimed that drivers have the freedom to

depart from the algorithm so long as they depart downward.18 However, it has been noted that

there is no practical method that allows the drivers to do so.19 Additionally, the complaint in

*Meyer v. Kalanick* alleges that all drivers must use the algorithm.20 In fact, the defendant’s motion to dismiss arguably admits this when it states, “[h]ere, that independent action is the

individual decision of each driver-partner to sign up with Uber and accept the contractual terms

offered, which include use of the pricing algorithm.”21 Therefore, while it is unclear whether the

drivers *must* use the algorithm, it does not appear that the defense will be heavily contesting this

portion of the allegations in the complaint.

At first glance, one might ask, “how can there be a price-fixing conspiracy among Uber

drivers if they all work for the same company?” Surely, individual Ford factory managers are not

violating the Sherman Act by agreeing with corporate headquarters on the design of a Mustang.

Rightfully so, a valid defense to an antitrust allegation is that the agreement in question is among

parties of the same firm. Thus, it does not violate antitrust laws because cooperation is necessary

among members of the same firm, and so the action is really unilateral.22 Typically, this

argument comes up in the context of members of a joint venture or a parent corporation and its

wholly or partially owned subsidiary offering up this “single entity” defense amidst allegations

of a conspiracy among them.23

That being said, such a defense would be futile in the Uber case because Uber has not

only admitted, but also zealously argued that its drivers are *not* employees or part of the Uber company.24 Rather, Uber has claimed that its drivers are independent contractors.25

The case in its pleadings appears to be one in which the plaintiffs allege only a horizontal

price-fixing conspiracy among Uber drivers. The named defendant, Kalanick is the CEO of

Uber, but the pleadings make clear he was being sued, at least in part, because he admitted in an

interview that he was also an Uber driver. However, the Southern District of New York has

found that the pleadings were sufficient to include an allegation of a hub-and-spoke arrangement

involving vertical agreements between Kalanick and the drivers because Kalanick also designed

the business model by which drivers must use the pricing algorithm that is central to the case.28

There is essentially no overhead cost and there would be no profit without the platform anyway, so these operators can afford to price fairly low while remaining “profitable.” The defendant in this case have argued in their motion to dismiss that only mobile app-based ride-share services should be considered part of the relevant market, excluding traditional taxi services and public

transportation.82 This ignores the reality of the sharing economy, which is that it exists to replace

the traditional, more costly way the services were previously consumed. This is not only intuitive; it is supported by significant data. For example, medallion prices for cabs in New York City went down 40% in 2015, a drastic change after increasing 50% over the 5 prior years.83

Also, in 2015 the New York City Taxis created the Arro app where people could hail taxis

similarly to how they would get a ride from Uber.84 The direct effect Uber’s presence and

popularity has on the value and progression of the taxi service as a product clearly demonstrates

that the two compete against each other for the same consumers.

83 Isidore, C., *CNN Money*, New York City’s Yellow Cab Crisis, (July 22, 2015), accessed at

<http://money.cnn.com/2015/07/21/news/companies/nyc-yellow-taxi-uber/>.