

Session 12:

Disruptive Business Models: Uber, Scheduled Charter Operators, and Spacecraft

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Overview

- What is a disruptive business?
- Why are they disruptive?
- How should airport lawyers (and other executives) analyze a new disruptive business that seeks access to the airport?
- What background legal principles may be at play?
- Lessons learned at PHX



What is a disruptive business?

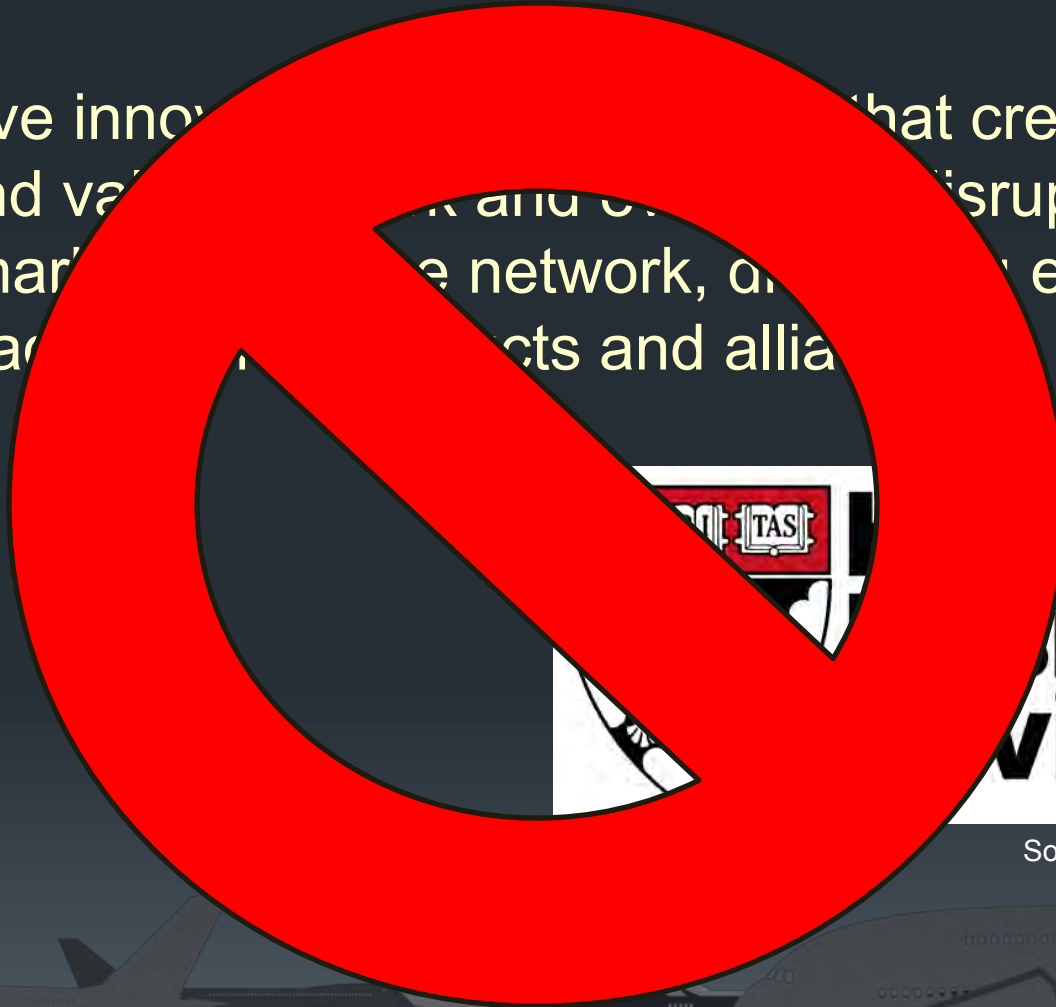
A disruptive innovation is an innovation that creates a new market and value network and eventually disrupts an existing market and value network, displacing established market leading firms, products and alliances.



Source: volometrix.com

What is a disruptive business?

A disruptive innovation is a product or service that creates a new market and value network and eventually disrupts an existing market structure, network, or established market leadership. It often involves new business models and alliances.



Source: volometrix.com

What is a disruptive business?



Source: uber.com



Source: vanityfair.com



Source: businessinsavannah.com



Source: cntraveler.com



Source: pnewswire.com



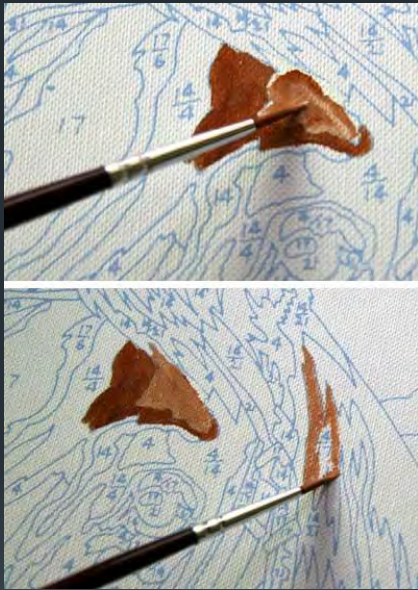
Source: amazon.com



Source: pkmngo.world

Why are they disruptive?

- Difficult to provide clear answers or definitive advice.



Source: about.com



Source: johnhembree.com

Why are they disruptive?

- Difficult to provide clear answers or definitive advice.
- Trying to make disruptors “fit” into existing systems can be a lot like trying to round a square peg.



Source: brettellis.net

Why are they disruptive?

- As a heavily regulated industry, aviation has been relatively “disruption free” until recently.
- There is rarely a “playbook,” and even if there is, disruptors often don’t care.
- Incumbents are comfortable in the existing environment, protective of their “turf,” and resistant to change.



Analyzing a Disruptor

Is this something *new*...?



Source: vanityfair.com

Analyzing a Disruptor

Is this something *new*...or something *different*?



Source: vanityfair.com



Source: robbreport.com

Analyzing a Disruptor

Is this something *new*...or something *different*?

Sometimes it is hard to tell!



Source: vanityfair.com



Source: robbreport.com



Source: rt.com

Analyzing a Disruptor

- Will (can) the activity generate revenue?



Source: businessinsavannah.com

Analyzing a Disruptor

- Will (can) the activity generate revenue?
- Is it revenue that I want to have?



Source: pkmngo.world



Source: businessinsavannah.com

Analyzing a Disruptor

- Will (can) the activity generate revenue?
- Is it revenue that I want to have?
- Is it going to cost me revenue?



Source: pkmngo.world



Source: businessinsavannah.com



Source: greshamsmith.com

Analyzing a Disruptor

- Will (can) the activity generate revenue?
- Is it revenue that I want to have?
- Is it going to cost me revenue?
- Is the answer likely to change in future?



Source: pkmngo.world



Source: businessinsavannah.com



Source: greshamsmith.com



Source: uber.com

Analyzing a Disruptor

- Will the activity interfere with established businesses or relationships with other airport stakeholders?



Source: ayekoo.com



Source: flightpath.ie

What are the legal constraints?

- Intentionally *after* analysis: remember, disruptors do not fit in existing legal frameworks!
- The Big Questions:
 - Aeronautical or Non-Aeronautical?
 - “Any activity that involves, makes possible, or is required for the operation of aircraft or that contributes to or is required for the safety of such operations.”
 - Federal / State Law Preemption?
 - See, e.g., FAA, *State and Local Regulation of Unmanned Aircraft Systems Fact Sheet* (Dec. 17, 2015).
 - Local Authority?

What are the legal constraints?

- Aeronautical Activities
 - Airport must be available on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities (Grant Assurance 22, Economic Non-Discrimination).

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- Airport must be available on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities (Grant Assurance 22, Economic Non-Discrimination).

BUT:

- Reasonable and non-discriminatory standards for safe and efficient operation of the airport; and
- Prohibition of activities that are necessary for the safe operation of the airport or to serve the civil aviation needs of the public.

What are the legal constraints?

- Revenue Concerns

- Airports must maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible (Grant Assurance 24).
- Revenues generated by the airport must be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property (Grant Assurance 25).

What are the legal constraints?

- Non-Aeronautical Activities
 - Airport and all facilities which are necessary to serve the aeronautical users of the airport must be operated in a safe and serviceable condition, and the airport; may not cause or permit any activity or action thereon which would interfere with its use for airport purposes (Grant Assurance 19).
 - Equal Protection
 - Substantive Due Process
 - State or Local Law

What are the legal constraints?

- Airport Policies
 - Minimum Standards
 - Rules and Regulations



Transportation Network Companies at Phoenix Sky Harbor Airport

The Challenge



Source: asianjournal.com

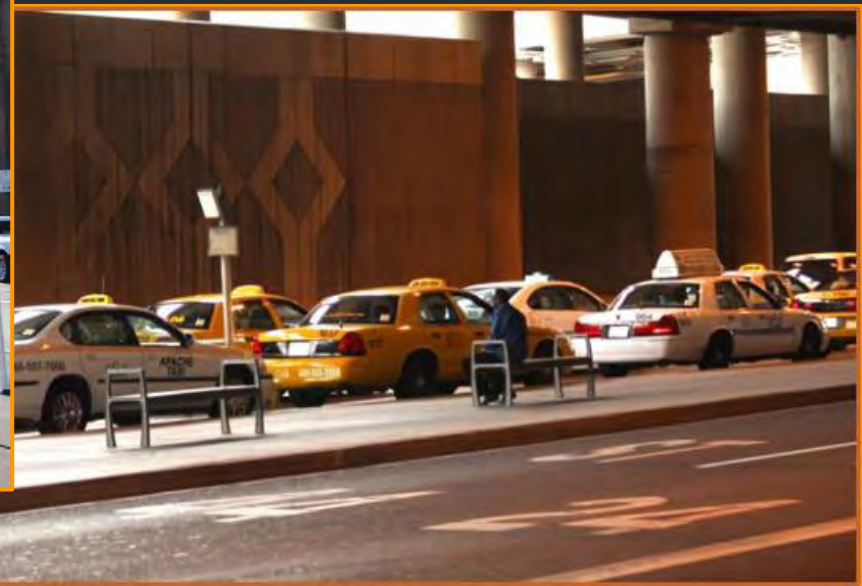
Why Airports Manage Roadways

Public Safety
Curb Efficiency

Customer Service
Grant Assurances



Source: City of Phoenix Aviation Department



Source: City of Phoenix Aviation Department

Ground Transportation Issues

- Transportation Network Companies
- Current fee allocation is unbalanced
- Ground transportation is operating at a loss
- Impact on infrastructure



Change Fee Structure

- Not a new fee
- Transition to demand-based fee
- Treats all commercial GT businesses equally



Why Change?

- Positive experience for our customers and visitors
- Manage a limited resource
- Provide platform for the future of Sky Harbor Airport



Sky Harbor Today

- 650 Companies
- 4,000 Drivers
- 3,500 Vehicles
- 2.6 Million annual trips



Sky Harbor Types of GT Services

- Contracted On-Demand providers
 - Taxis
 - SuperShuttle
- Permitted Providers
 - Pre-Arranged
 - Courtesy
 - Inter-City
 - Charter

Current Ground Transportation Costs

Expenses Attributed to Commercial GT: \$ 10 million

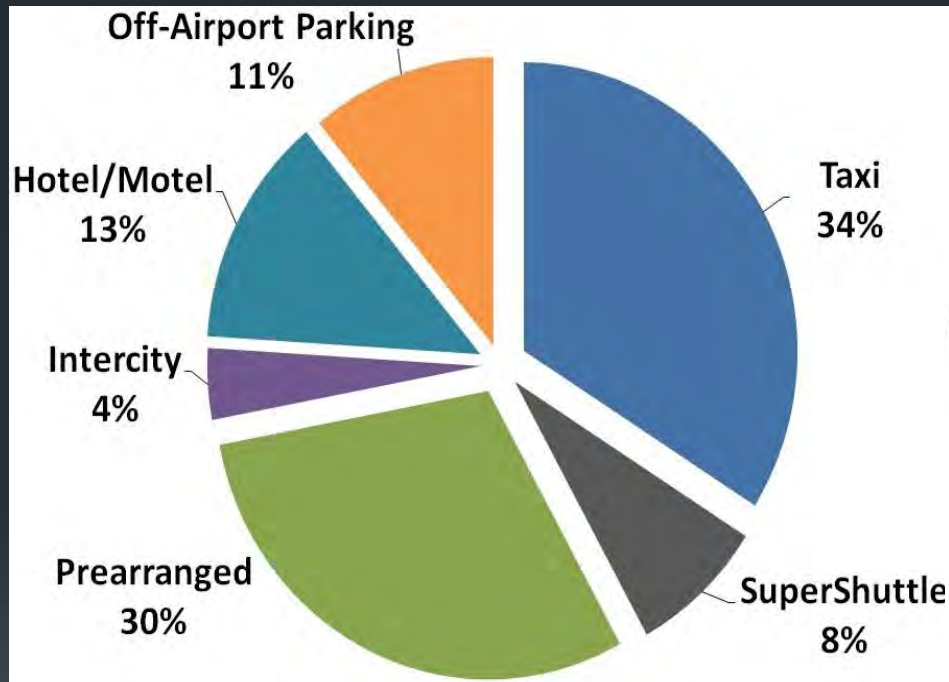
GT Industry Currently Pays: \$ 6.3 million

Annual Loss to Aviation Department: \$ 3.7 million

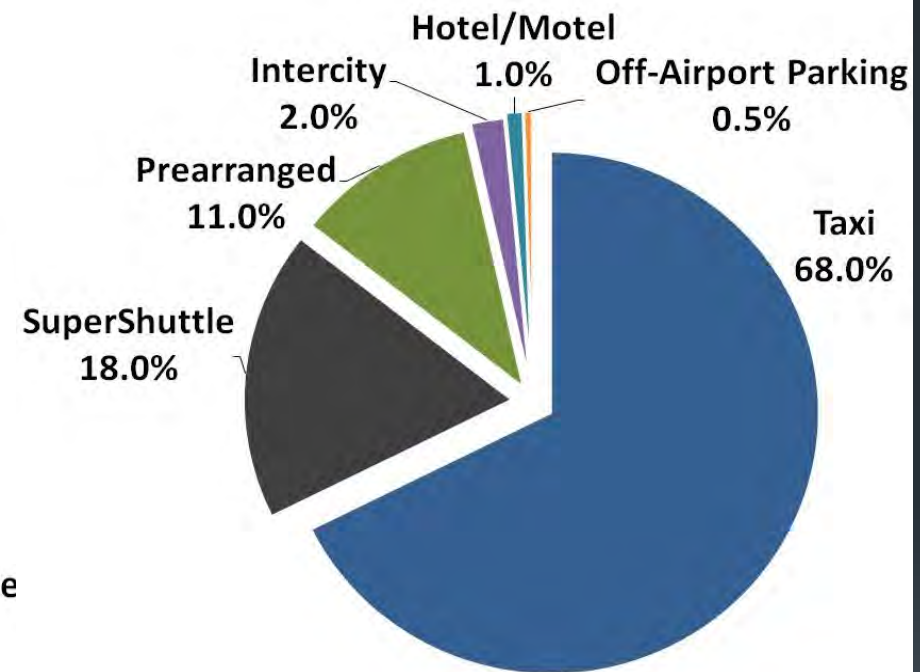


Unbalanced Fee Structure

Percent Total Trips (FY2015)



Current Fee Allocation



Source: City of Phoenix Aviation Department

Fee Schedule for Current Companies

2017		2018		2019	
Seats	Fees	Seats	Fees	Seats	Fees
1-8	\$2.75	1-8	\$3.25	1-8	\$4.00
9-23	\$3.50	9-23	\$4.25	9-23	\$6.00
24+	\$7.50	24+	\$9.00	24+	\$11.00

Source: City of Phoenix Aviation Department

- Fees based on pick-ups only
- New companies pay 2019 rates
- Beginning in 2020, fees increased at *lesser of CPI or 3%*

Background Check

Option 1

Fingerprint-based check with federal government Security Threat Assessment (STA)

Option 2

Enhanced name-based check with STA and audit

Background Check

Option 3 Requirements

Identity Verification

7-Year, Multi-jurisdictional Local and National Criminal Background Check

National Sex Offender Registry

Motor Vehicle History Check

Valid Driver's License

Source: City of Phoenix Aviation Department

Additional Airport Oversight:

- Alternate pick-up locations
- Field enforcement
- Independent Audit – Up to 10% driver pool per month

New GT Policy/City Code Provisions

- Reallocates fees in a fair and equitable way
- Provides a safe, modern, and flexible framework to accommodate all operators
- Positions Sky Harbor to support commercial ground transportation needs for the future



Off Airport Businesses Commercial Activity on Airport

- Valet Company Announces Start Up December 22, 2015 by Voice Message
- Advertises on Internet and Media
- Off Airport Parking Lot Site
- No Authorization from Airport



Commercial Activity on Airport

- Employees meet customers at airport, take keys and park cars off airport
- Greet customers upon return to airport and deliver car curbside
- Charge valet parking fee



Source: freedomparkdfw.com



Source: freedomparkdfw.com

How to Stop Unauthorized Commercial Activity at Airport

Phoenix City Code Sec. 4-4:

“The use of any portion of the airport for revenue-producing commercial activities or to solicit business or funds is prohibited unless authorized by the Aviation Director by lease, permit or license . . . for the safe, efficient and orderly use of the airport.”
No commercial activity is authorized at the Airport without authorization from the Aviation Director by lease, license or permit.”

Phoenix City Code Sec. 4-1:

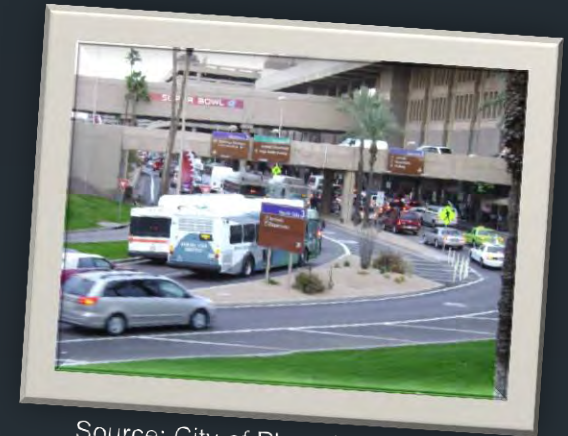
“Commercial Activity” means the conduct of any aspect of a business or concession on the airport for revenue.”

Legal Remedies

- Cease and Desist
- Temporary Restraining Order
- City Code violation enforceable in court
- Trespass employees and arrest upon return to airport

Take Control of Your Airport

- Plan ahead to adapt to new business models
- Consider impact on other commercial activity at airport
- Evaluate impact on airport infrastructure
- Enact laws or policies to regulate & control activities at the airport



Source: City of Phoenix Aviation Dep't

Questions?

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