Uber antitrust actions a tough nut for US plaintiffs to crack

PaRR Strong evidence

- Plaintiffs’ lawyers ‘investigate, probe the perimeter’ of Uber’s conduct
- Uber’s asserted right to arbitration gets mixed reception in courts
- Plaintiffs’ accelerated activity produces premature cases

As Uber Technologies puts pedal to the metal to create a ride-sharing market, plaintiffs’ lawyers have seen challenges in finding a legal means to brake its runaway success.

A lawyer familiar with the civil litigation against Uber told PaRR that a network of lawyers around the country currently is “looking at, investigating, probing the perimeter” of Uber’s conduct with a view to finding viable claims against the ride-share giant.

That lawyer said “the blood was in the water” when Uber agreed in April 2016 to pay as much as USD 100m and make policy concessions to settle a pair of class-action labor-related lawsuits in California and Massachusetts that kept its drivers classified as independent contractors instead of employees. That case was set to begin trial in June.

“You are going to see additional lawsuits filed, and you are going to see different claims being filed, sooner rather than later,” that lawyer told PaRR.

But antitrust claims against Uber have had a rough ride thus far in US courts.

The plaintiffs’ main antitrust beef is that Uber’s app—the means by which it matches non-professional drivers in their own cars to consumers seeking transportation—is a high-tech price-fixing tool which illegally organizes and controls the car-for-hire market to the detriment of consumers, not to mention legacy market participants like taxi companies.

Uber could not be reached for comment before press time.

In court papers, Uber rejects the charge that its app and its relationship to its drivers constitute an “antitrust conspiracy.” Uber asserts that its app mainly takes the guesswork and negotiation out of pricing, so that non-professional drivers can profit by giving rides to informed consumers.

Several antitrust attorneys told PaRR that first among the challenges facing both plaintiffs’ and defense lawyers is understanding how Uber’s business model works, and then clearly conveying this to judges and juries in US courtrooms. For instance, as PaRR earlier reported, US District Judge Jed Rakoff who is hearing the Uber antitrust case in New York, told counsel at a hearing that he has “total ignorance” of key issues because he does not have the Uber app and has never used the service.

So far, class plaintiffs have had little success convincing courts that Uber’s “disruptive” business model—disruptive in particular to legacy market participants like taxi companies—violates US antitrust law.

Attorneys say that Rakoff appears determined to hear antitrust claims against Uber in New York. But one of his peers on the federal bench in Seattle this week dismissed an unrelated case and, as PaRR reported, a federal district judge in Philadelphia appeared skeptical of class plaintiffs’ antitrust claims when he heard a
motion to dismiss a class case in July. In addition, class plaintiffs last month withdrew an apparently premature antitrust action filed in federal district court in Houston.

Last month, Rakoff denied a defense motion on behalf of Uber and its founder and CEO Travis Kalanick to send the case filed by Uber passenger Spencer Meyer to arbitration. Rakoff rejected Uber’s contention that Meyer’s “contract” for Uber’s services included an implicit arbitration clause, which US businesses often assert to shield themselves from suit.

Rakoff’s decision now is on appeal before the US Second Circuit Court of Appeals, and several antitrust lawyers told PaRR that they expect the appeals court to overturn that decision. That said, in the California case which settled, the US Ninth Circuit Court of Appeals held Uber’s arbitration clause with drivers to be unenforceable and certified the case as a class action covering most drivers in California.

Uber also faced a setback in federal district court in Seattle in an action brought by the pro-business US Chamber of Commerce in part on Uber’s behalf challenging a proposed Seattle ordinance. US District Judge Robert Lasnik dismissed the case, ruling that the alleged future injuries to US Chamber members Uber and another local car-for-hire service were not actual or imminent.

John Kirkwood, a former official with the Federal Trade Commission (FTC) Bureau of Competition who writes about antitrust issues and teaches at Seattle University School of Law, said that the antitrust claim was central to the US Chamber’s action. He said that the case was dismissed for being premature because Seattle has not written the implementing regulations yet and wants to delay implementation for six months.

Kirkwood explained that the Seattle ordinance, the first and only one of its kind in the US, allows for-hire drivers to unionize, which is something they cannot do without an antitrust exemption. He said that the labor exemption likely is not available because the drivers probably do not qualify as employees, adding that if they were, federal labor laws would apply and there would be no need for the ordinance in the first place.

In addition, there is a class action in California state court in San Francisco filed by drivers of Uber’s competitor Lyft, asserting state business tort claims challenging Uber’s alleged unlawful conduct. Like the federal case in New York, this action is pending an arbitration ruling.

The cases are: Meyer v. Kalanick et al., no 15cv9796, in the US Southern District of New York, and Meyer v Kalanick, no. 16-2750 in the US Second Circuit Court of Appeals; US Chamber of Commerce v. City of Seattle, et al., 16cv322 in the US Western District of Washington; Philadelphia Taxi Association et al. v. Uber Technologies, no. 16cv1207 in the US Eastern District of Pennsylvania; Ryan Swink v. Uber Technologies, no. 16cv1092 in the US Southern District of Texas; and Ryan Smythe v. Uber Technologies et al., no. CGC-16-552035 in San Francisco County Superior Court.

by Peter Geier in Washington DC

- Companies
  - Lyft Inc.
  - Uber Technologies, Inc.
  - U.S. Chamber of Commerce
  - Philadelphia Taxi Association

- CASE Files
  - US private litigation concerning an anticompetitive ordinance enacted by the City of Seattle: Chamber of Commerce of the United States of America v. City of Seattle, et al. (2016)