Portfolio Media. Inc. | 111 West 19th Street, 5th Floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Uber Can't Escape Defunct Rival's Antitrust Suit

By **Hannah Albarazi**

Law360 (May 1, 2020, 5:44 PM EDT) -- A California federal judge denied the majority of Uber's bid to escape a defunct competitor's claims that the ride-hailing giant's predatory pricing and underhanded tactics drove it out of business, saying Friday that claims Uber's market power violates the Sherman Act can move forward.

U.S. Magistrate Judge Joseph C. Spero said SC Innovations Inc. — the successor to defunct ride-hailing startup Sidecar Technologies Inc. — has plausibly suggested a mechanism "by which Uber can leverage its dominant market share to raise both passenger fares and commissions withheld from drivers without a rival increasing output to restore competitive equilibrium."

Judge Spero denied Uber Technologies Inc.'s bid to dismiss Sherman Act claims for monopolization and attempted monopolization, saying that Sidecar has sufficiently pled that Uber's competitor Lyft Inc. is unable to respond effectively or increase its share of rides as a restraint on Uber's pricing, "in part due to the network effects of Uber's market dominance."

Sidecar plausibly alleged that Uber could unilaterally raise its commission on rides "to supracompetitive levels while insulated by network effects from Lyft or a new market entrant usurping Uber's market share," the judge said.

This, Judge Spero said, shows market power and "provides a plausible means for Uber to recoup its losses from alleged predatory pricing."

The judge said the fact that drivers would benefit from increased passenger fares, absent further increases in Uber's commissions, presents a fact-intensive issue to be resolved based on evidence.

Sidecar debuted its ride-hailing app in 2012, but shut down in late 2015, selling its technology and most of its assets to General Motors in January 2016. SC Innovations is the assignee of certain Sidecar litigation rights, according to court filings, which is why it's the plaintiff in this case, which kicked off in 2018.

Uber's operating coda in its early days involved "overpaying" drivers by offering sign-up bonuses and other subsidies that allowed them to earn more than they would under normal competitive market conditions, Sidecar claims.

As a result, Uber now has such a stronghold in the industry that it's able to "impose its will on both passengers and drivers in the form of higher, supracompetitive prices," Sidecar says.

Uber even had clandestine internal programs to undermine the competition, according to the suit. For example, the company unleashed "Hell," a secret software program purportedly used to spy on Lyft's drivers and riders.

In another project, known as "SLOG," Uber had individuals — working under Uber's direction, but posing as real passengers — submit fraudulent ride requests that sent drivers for rival apps chasing rides that were canceled before the driver even arrived, Sidecar claims. The other goal of SLOG was to have the Uber rider plants aggressively recruit drivers to work exclusively for Uber, according to Sidecar.

In 2019, the court granted a motion to disqualify Sidecar's previous counsel based on a conflict of interest.

In January, Judge Spero granted Uber's bid to dismiss a previous version of the suit, slashing the California Unfair Practices Act claim, but leaving an opening for Sidecar to flesh out its Sherman Act claim.

Judge Spero said Friday that Sidecar's allegations that Uber conducted campaigns to harm competitors and caused Sidecar to close in order to gain monopoly power are sufficient at the pleading stage — in conjunction with allegations of market power — "to plausibly allege harm to competition."

Lewis T. LeClair of McKool Smith PC, counsel for Sidecar, praised Judge Spero's order Friday.

"Sidecar's former owners are pleased with Judge Spero's ruling and they welcome the case moving forward to the next phase, including discovery, with the goal of holding Uber accountable for its long history of improper and anti-competitive behavior," LeClair told Law360 via email.

Uber declined to comment Friday.

While Sidecar's Sherman Act claims got the go-ahead, Judge Spero also granted Uber's motion to strike the previously dismissed California Unfair Practices Act claim.

Judge Spero's order didn't weigh in on Sidecar's allegations that Uber engaged in discriminatory pricing by using "surge pricing" to set higher prices at times of high demand, and "dynamic pricing" to set different prices depending on users' perceived price sensitivity and ability to pay.

"The court need not reach the parties' arguments regarding price discrimination, including whether allegations of price discrimination can in themselves support a plausible inference of market power," Judge Spero wrote.

SC Innovations Inc. is represented by Lewis T. LeClair of McKool Smith PC, Kirk D. Dillman of McKool Smith Hennigan PC and Judith A. Zahid and James R. Martin of Zelle LLP.

Uber is represented by Theodore J. Boutrous Jr., Daniel G. Swanson and Cynthia E. Richman of Gibson Dunn & Crutcher LLP.

The case is SC Innovations Inc. v. Uber Technologies Inc. et al., case number 3:18-cv-07440, in the U.S. District Court for the Northern District of California.

--Editing by Orlando Lorenzo.