United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SC INNOVATIONS, INC.,
Plaintiff,
v.
UBER TECHNOLOGIES, INC., et al.,
Defendants.

Case No. 18-cv-07440-JCS

ORDER GRANTING MOTION TO DISMISS AMENDED COMPLAINT

Re: Dkt. No. 64

I. INTRODUCTION

Plaintiff SC Innovations, Inc. ("Sidecar") is a defunct "transportation network company" that offered services matching passengers with drivers for on-demand transportation, also known as "ride-hailing," through a smartphone app. Sidecar claims that it was driven out of business by Defendants Uber Technologies, Inc. and a number of its subsidiaries (collectively, "Uber").[1] The Court held a hearing on January 17, 2020. For the reasons discussed below, Uber's motion is GRANTED. Sidecar's Sherman Act claims are DISMISSED with leave to amend, and its claim under California's Unfair Practices Act is DISMISSED with prejudice.[2]

II. BACKGROUND

A. Procedural History

Sidecar filed this action on December 11, 2018. On May 2, 2019, the Court granted a

[1] The remaining defendants are Raiser, LLC; Rasier-CA, LLC; Rasier-PA, LLC; Rasier-DC, LLC; Rasier-NY, LLC; and Uber USA, LLC. The parties do not suggest that there is any distinction between the various defendants relevant to the present motion, except perhaps with respect to the scope of California's Unfair Practices Act. The Court does not reach that issue, because to the extent that some or all of the defendants fall within the geographic scope of that statute, they are nevertheless exempt from its requirements as utility corporations regulated by the California Public Utilities Commission.

[2] The parties have consented to the jurisdiction of the undersigned magistrate judge for all

motion by Uber to disqualify Sidecar's then-attorneys, the law firm of Quinn Emanuel Urquhart & Sullivan, LLP. *See* Order Re Mot. to Disqualify Counsel (dkt. 41).[3] Uber moved to dismiss Sidecar's initial complain on July 10, 2019 (dkt. 57), Sidecar elected to file its operative first amended complaint (dkt. 60) rather than oppose the motion, and the Court denied that first motion to dismiss as moot on September 25, 2019 (dkt. 63). Uber now moves to dismiss the amended complaint. *See generally* Mot. (dkt. 64).

B. Allegations of the First Amended Complaint

Because the allegations of a complaint are generally taken as true in resolving a motion to dismiss under Rule 12(b)(6), this section summarizes the allegations of Sidecar's complaint as if true. Nothing in this order should be construed as resolving any issue of fact that might be disputed at a later stage of the case.

Ride-hailing apps allow passengers to request a ride to a particular destination, match them with nearby drivers who will pick up the passengers, and then charge the passengers a fare for the ride. 1st Am. Compl. ("FAC," dkt. 60) ¶¶ 28–30, 35. The company operating the ride-hailing app typically retains a percentage of the fare and transmits the remainder to the driver. *Id.* ¶ 35.

Uber launched the first version of its ride-hailing app in 2009, which "allowed consumers to use smartphones to arrange on-demand transportation in 'black cars' and limousines driven by licensed chauffeurs," and "focused on airport trips and traditional business car service customers." *Id.* ¶¶ 2, 38. Sidecar introduced its own app in 2012, which allowed passengers to arrange for transportation with drivers who used their own personal vehicles,[4] and which introduced features including allowing passengers to input destinations before booking trips, providing estimated fares and trip durations before booking, allowing unaffiliated passengers heading in the same direction to share rides, and allowing drivers to set their own prices. *Id.* ¶¶ 3–4, 41–44. Another company, Lyft, launched a somewhat similar product the same year. *Id.* ¶ 40. According to Sidecar, Uber

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[3] *SC Innovations, Inc. v. Uber Techs., Inc.*, No. 18-cv-07440-JCS, 2019 WL 1959493 (N.D. Cal. May 2, 2019).

[4] Sidecar's complaint refers to this concept as "ridesharing." FAC ¶ 3. In the interest of clarity, this order avoids that term, which has been used to mean a number of different things in different

recognized Sidecar's product as a competitive threat to its business as a result of Sidecar offering lower prices and more flexibility. *Id.* ¶¶ 49–50. In 2013, Uber launched its "UberX" service, which—like Sidecar's product—allows passengers to arrange for transportation in drivers' private cars. *Id.* ¶¶ 5, 50–51. As of that year, "Uber was the dominant ridesharing platform in the United States," having become "enormously capitalized" and experiencing significant growth. *Id.* ¶ 5. Lyft and Uber have since implemented many features pioneered by Sidecar. *Id.* ¶ 45.

During Sidecar's years of operation from 2012 through 2015, its service was available in San Francisco, Austin, Los Angeles, Chicago, Philadelphia, New York, Seattle, San Diego, San Jose, and Washington, DC. *Id.* ¶ 46. Sidecar asserts that each of those cities constitutes a relevant geographic market for the purpose of its antitrust claims. *Id.* ¶¶ 63–64. It had "a meaningful share of the market in several U.S. cities," including at one time an estimated share of between ten and fifteen percent of the market in San Francisco, Los Angeles, and Chicago. *Id.* ¶ 47.

By mid-2014, Uber operated in all of Sidecar's geographic markets. *Id.* ¶ 48. "Uber's CEO has publicly admitted in security filings that Uber intentionally prices its rides in certain markets below the costs paid to drivers for the ride." *Id.* ¶ 6; *see also id.* ¶¶ 85–92. In the time period and geographic markets where Uber competed against Sidecar, the prices that Uber charged passengers were lower than its variable costs. *Id.* ¶ 90. Uber cannot achieve profitability while paying its drivers more than it receives for rides, and has in fact lost billions of dollars, but continues to attract financing because "network effects" inherent in the ride-hailing industry "will eventually financially reward the successful platform for its elimination of competition." *Id.* ¶ 6; *see also id.* ¶¶ 87, 89. According to Sidecar, Uber's leadership "specifically planned for this subsidized pricing strategy to foreclose competition," sustaining losses in the short term "designed to drive Sidecar and other competing ride-hailing apps out of the market" in the expectation that Uber could later recoup those losses by charging higher prices. *Id.* ¶ 7. Sidecar alleges that network effects would serve as a barrier to entry protecting Uber from meaningful competition after it consolidated the market, *id.*, analogizing Uber's approach to that of Amazon.com, Inc., which weathered significant losses for many years before dominating its market and reaping large

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In 2015, Sidecar left the ride-hailing market, driven out of business by Uber's purportedly anticompetitive conduct. *Id.* ¶¶ 8, 12. Sidecar's exit reduced competition to just Uber and Lyft in the markets where Sidecar previously operated. *Id.* ¶¶ 112–13. Uber continued to price below costs, targeting the only significant competitor left in the market, Lyft. *Id.* ¶¶ 8, 93. Sidecar alleges that more recently, however, Uber and Lyft have "transitioned toward classic duopoly behavior with Uber holding the dominant position in the market and Lyft holding on to a position as a weakened competitor," and Uber has started to increase the prices it charges passengers while decreasing the amounts that it pays drivers. *Id.* ¶ 8; *see also id.* ¶¶ 93–98. According to Sidecar, Lyft—weakened by competition with Uber at prices below costs—will defer to Uber's pricing to recover its own losses as well, and Uber has signaled its price increases to Lyft by announcing a shift to no longer focusing on "incentives." *Id.* ¶¶ 8, 99–100.

Sidecar alleges that in addition to engaging in predatory pricing, Uber also launched "clandestine campaigns" to interfere with its competitors' operations, submitting "fraudulent ride requests" by Uber personnel intended "to undermine its competition and raise their costs, including by (a) inundating competitors with fraudulent ride requests that were cancelled before the driver arrived; or (b) using fraudulently requested trips as an opportunity to convince drivers to work exclusively with Uber instead of competitors." *Id.* ¶ 9; *see also id.* ¶¶ 101–10. Such tactics increased the waiting time for drivers and passengers using the competing apps to be matched with legitimate rides, causing them to abandon those apps. *Id.* ¶¶ 10, 106. The fraudulent requests also violated Sidecar's terms of service. *Id.* ¶¶ 108–09.

According to Sidecar, ride-hailing apps are "a relevant antitrust product market" in which a hypothetical monopolist could impose a "small but significant non-transitory increase in price," or "SSNIP," both by raising prices for passengers and by reducing the payments made to drivers, without enough passengers or drivers switching to other methods of transportation to render such a pricing strategy unprofitable. *Id.* ¶¶ 52–53. Sidecar cites conveniences including the ability to split fares with friends, book carpool rides with strangers, automatically pay and tip drivers, select the origin and destination of a ride on a map, determine estimated cost and travel time in advance, why passengers would not respond to a price increase by switching to other forms of transportation like taxis. *Id.* ¶¶ 53–54. Sidecar also alleges that walking, driving a passenger's own vehicle, and public transit are not reasonable substitutes. *Id.* ¶¶ 59–60. The flexibility of ride-hailing and lack of need for special licensing or up-front investment are reasons why drivers would not switch to the taxi or limousine industry if payouts from ride-hailing companies decreased. *Id.* ¶¶ 55–56. Sidecar notes that ride-hailing is subject to different government regulation than taxi companies, including often a prohibition against picking up "street hails," and that Uber has in the past asserted that it does not compete with taxis. *Id.* ¶¶ 57–58.

Sidecar alleges that "network effects" serve as a significant barrier to entry to a consolidated ride-hailing market. *Id.* ¶¶ 65–79. As a particular ride-hailing network becomes more established with more drivers and passengers using it, the waiting time for passengers and drivers to be matched with one another decreases, as does the typical distance that drivers need to travel to pick up the passengers they are matched with. *Id.* ¶¶ 67–68. That reduces the inconvenience to passengers of waiting for rides, and increases the value to drivers as a result of being able to spend more of their time with paying customers in their cars. *Id.* A new entrant to the market would not be desirable to passengers while the number of participating drivers was smaller than more established rivals, nor would it be desirable to drivers without a large user base of passengers. *Id.* ¶ 71. Uber itself and market observers have recognized these market dynamics. *Id.* ¶¶ 69–70, 75, 79. No significant competitors have entered the market since Sidecar ceased operations, and Sidecar asserts that it would be "difficult, if not impossible, for a new entrant or smaller firm to overcome" Uber's entrenched advantages. *Id.* ¶¶ 72–73.

Uber now has more than forty million passengers using its service. *Id.* ¶ 74. At all times since 2014, it has controlled at least 60% of the market in San Francisco and Los Angeles; 65% of the market in Chicago, Seattle, San Diego, and San Jose; 70% of the market in Philadelphia, Boston, and Washington, DC; and 75% of the market in New York. *Id.* ¶ 82. Sidecar asserts that these market shares are sufficient for Uber to "ha[ve] monopoly power" in each of those cities. *Id.* Uber's national market share is around 70% and Lyft's national market share is around 30%, with

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