Feds Come Out Against Seattle's Law to Unionize Rideshare Drivers

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The gig economy just got a strong ally in its fight to remain union-free: the federal government. The latest development in the ongoing saga involving an attempt to put into place the nation's first unionization law that would cover certain gig economy companies involves the U.S. Department of Justice and the Federal Trade Commission throwing its support behind gig companies.

Quick background: in 2015, the City of Seattle became the first to pass a law aimed at unionizing ride-sharing drivers – typically classified as independent contractors rather than employees. As we have been discussing in this blog, the controversial ordinance has been embroiled in legal challenges since last year. While the federal district court in Washington initially granted a preliminary injunction blocking the key portions of the ordinance, it later dismissed the underlying lawsuit brought the U.S. Chamber of Commerce and others challenging the landmark ordinance, who claimed it violated federal anti-trust laws. The district court's August 2017 decision found that the City of Seattle's law remained valid because the State of Washington delegated certain authority to enact certain anti-competitive restraints to the City, known as the "state action doctrine." As expected, the lower court decision went to appeal before the 9th Circuit, where the parties are briefing the matter in advance of a critical oral argument.

On November 3, the U.S. Department of Justice and the Federal Trade Commission, which both enforce federal antitrust laws, filed a brief strongly supporting the Chamber's position challenging the law. The agencies' legal position essentially argues that City of Seattle's law displaces competition, a "lynch pin of the U.S. economy," and allowing independent contractors to work together to set fees "is price fixing" that strikes "at the very core of the harms the antitrust laws seek to address." The agencies went on to state that the city exceeded the limits of the state action doctrine because the state of Washington had never clearly articulated an intention to displace competition in the for-hire transportation market when it allowed municipalities to regulate other aspects of for hire transportation. In other words, while state law may authorize Seattle to regulate consumer concerns such as price and safety, it did got give the city the authority to regulate the terms under which drivers are engaged, including how much they earn. The government went on to criticize the district court's holding on the state action doctrine as far too expansive, and opening "the antitrust exemption door for nearly every type of regulation."

How this will play out remains to be seen. The City of Seattle and others supporting the ordinance should file their responses in a few weeks. Oral argument will be the next step before the 9th Circuit

should file their responses in a few weeks. Oral argument will be the next step before the 9th Circuit issues a decision, and we'll keep you posted. Stay tuned.

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