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# Groups Back DC AG Bid To Revive Amazon Antitrust Suit

By **Matthew Perlman**

Law360 (January 31, 2023, 6:22 PM EST) -- The D.C. Attorney General's Office has received backing from a pair of advocacy groups as it asks the D.C. Court of Appeals to revive claims that Amazon stifled competition through agreements with its merchants and vendors.

The Open Markets Institute and the Committee to Support the Antitrust Laws, which are advocacy groups that support robust antitrust enforcement, filed amicus briefs on Monday and Tuesday supporting the D.C. attorney general's **case in local court**.

OMI's legal director, Sandeep Vaheesan, said in a statement Monday that the decision dismissing the case ignored the law and disregarded Amazon's control of online commerce.

"Through most-favored-nation and other similar trade restraints, Amazon has used its dominance of online retail to stunt the growth of rival platforms, coerce its sellers and suppliers, and perpetuate its power," Vaheesan said. "As a result, Amazon continues to extract an effective tax as high as 40% on some goods sold on its site and to raise prices for consumers on other retail channels."

The Committee to Support the Antitrust Laws **argued in its brief** on Tuesday that the lower court was wrong to require that the attorney general's office name sellers who were "direct counterparts" in the alleged scheme to eliminate competition. The brief also contended that entities with a direct relationship to an antitrust violator are "rightly afraid" to sue or come forward out of fear.

"If this ruling is allowed to stand and courts require a plaintiff to specifically name such entities in a complaint, they will be deterred from coming forward and antitrust enforcement will be chilled," the brief said.

The District of Columbia Attorney General's Office **sued Amazon** in May 2021 alleging that the e-commerce giant uses restrictive contracts with third-party sellers on its website to stifle competition, resulting in higher prices for consumers and less innovation in the online retail marketplace.

Amazon is facing **similar claims** from California's attorney general in state court there and is also facing proposed class actions from **consumers** in federal court in Washington state.

The D.C. case specifically targets restrictions that prevent third-party sellers from selling products cheaper elsewhere and demands that Amazon's bulk product suppliers make up the difference if it fails to realize a specific profit margin. The agreements allegedly violate prongs of the District of Columbia Antitrust Act that bar agreements to restrain trade and monopolization.

D.C. Superior Court Judge Hiram Puig-Lugo dismissed the complaint in 2022, first in an **oral ruling** from the bench and then in a written denial of a **motion to reconsider**, finding that the complaint was too vague to move ahead.

The judge found a lack of specifics about products and sellers allegedly impacted by the policy and rejected contentions that the contracts create a price floor, saying they instead prevent sellers from setting prices on Amazon that are significantly higher than prices offered elsewhere.

The judge also found allegations that Amazon controls 50% to 70% of all online sales were not enough to show that it is a monopolist.

OMI argued in **its amicus brief** on Monday that the lower court ignored detailed allegations of Amazon's power and unfair competitive conduct. Among the court's errors, the brief said, was finding that a company needs to have 100% share of the market in order to have monopoly power.

"This is not the law," the brief said. "Courts have found that firms with 60% or 70% of the market can have monopoly power and are thereby subject to special rules under the antitrust laws."

The group also argued that Amazon's use of pricing restrictions and minimum margin requirements raises special antitrust concerns because of the company's position in the market.

"When used by a monopolistic corporation, these contracts can maintain monopoly-level prices, exclude rivals, and coerce trading partners," the brief said.

The D.C. Attorney General's Office, headed by recently elected Attorney General Brian Schwalb, filed an appeal brief last week contending that the lower court's dismissal of the case entrenches and maintains Amazon's monopoly — enabling the company to charge higher fees and commissions than it would in a competitive environment.

Amazon declined to comment Tuesday on the amicus briefs. Representatives for the attorney general's office did not respond to a request for comment.

The D.C. Attorney General's Office is represented by its own Brian Schwalb, Caroline Van Zile, Graham Phillips and Jeremy Girton.

Amazon is represented by Amy Mauser, William Isaacson and Karen Dunn of Paul Weiss Rifkind Wharton & Garrison LLP.

The case is District of Columbia v. Amazon.com Inc., case number 22-CV-657, in the District of Columbia Court of Appeals.

--Additional reporting by Kelly Lienhard, Nadia Dreid, Bryan Koenig and Greg Lamm. Editing by Rich Mills.