

Utah Pie
v.
Continental Banking

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EEP-142

Background Info

- In late 1957 Petitioner, a Utah corporation joined the frozen pie business
- The product involved is frozen dessert pies
- The years in question are from 1958-1st 8 months of 1961
- For 30yrs Petitioner baked pies in its plant in Salt Lake City and selling them in Utah and surrounding states
- The frozen pie market was rapidly growing and so was Utah Pie's share of this market
- Petitioner was not a large company, it only had 18 employees, and 9 of them were from the Rigby family
- The 'Utah' label was petitioner's proprietary brand. In 1960 it also sold pies of like grade and quality under controlled label 'Frost 'N' Flame' to Associated Grocers

More info

- The major competitive weapon in the Utah market was price
- The location of petitioner's plant gave it natural advantages in the Salt Lake City marketing area and it entered the market at a price below the then going prices for respondents' comparable pies
- Evidence shows that there was enough information to prove that each of the respondents contributed to what proved to be a deteriorating price structure over the time period of this suit
- Each respondent in the course of the ongoing price competition sold frozen pies in Salt Lake market at prices lower than it sold prices of like grade and quality in other markets considerable closer to its plants
- Continental prices of pies ranged from \$5 per dozen in 1958 to \$2.85 in 1961

The Case

- **Issue:** Is below-cost pricing by large firms (such as Continental Baking Co) enabling them to enter new geographic markets (such as the Salt Lake City frozen pie market) already occupied by smaller firms (like the petitioner Utah Pie, with 18 employees and family owned) illegally discriminatory?
- Continental Baking Co. (a large company) was engaging in predation, charging a lower price in the market where it faces rivals (Utah) and a higher price where not.
- During the period when Continental entered Salt Lake city market, the prices decreased and moreover, the price it charged in the Salt Lake city market was lower than the prices charged for similar pies of like grade and quality in other markets closer to its plants.

The Case

- Sales of frozen 22-ounce dessert pies amounted to only 1.3% of the market in 1958, 2.9% in 1959, and 1.8% in 1960
- Their main problem was that of cost and in turn that of price
- In late 1960, it worked out a co-packing arrangement in California by which fruit would be processed directly from the trees into the finished pie without large intermediate packaging, storing and shipping expenses
- June 1961 it took the initial steps which are the main reasons for petitioner's complaint
- For the last two weeks of June it offered its 22-ounce frozen apple pies in the Utah area at \$2.85 per dozen and then selling the same pie at substantially higher prices in other markets

The Case

- At these new prices, Continental sold pies to American Grocers in Pocatello, Idaho and to American Food Stores in Ogden, Utah
- Utah responded by reducing its price on all of its apple pies to \$2.75 per dozen
- Continental refused Safeway's request to match Utah's price, but renewed its offer at the same prices effective July 31 for another two-week period
- September 8, 1961 Utah filed suit
- Continental's total sales of frozen pies increased from 3,350 dozen in 1960 to 18,000 dozen in 1961

Conclusion

- The Court of Appeals concluded that Continental's conduct had only minimal effect, that it had not injured or weakened Utah Pie as a competitor, that it had not substantially lessened competition and that there was no reasonable possibility that it would do so in the future
- However, critics argued that the reason it did not seem as though Utah was damaged as a competitive force was because Utah's sales volume continued to climb in 1961 and on the court's own factual conclusion that Utah was not deprived of any pie business which it might have otherwise might have had
- This aspect fails to acknowledge the fact that Continental's discriminatory below-cost price caused Utah Pie to reduce its price

Conclusion

- The jury could have concluded that had Utah not lowered its price, Continental would have continued it, that Safeway would have continued to buy from Continental
- The jury could also have reasonably concluded that a competitor who is forced to reduce its price to a new all time low in a market of declining prices will in time feel the financial pinch and will be a less effective competitive force
- Another interesting fact is that even if it seemed as though the impact of Utah Pie as a competitor was negligible, there remains the consequences to others in the market who had to compete with Continental's \$2.85 price and Utah's \$2.75 price.
- Critics feel there was enough information to find Continental in violation of 2 (a) of the Clayton Act