Arash Etemad

presents

The 1985 Supreme Court Case

of

ASPEN SKIING CO. *v.* ASPEN HIGHLANDS SKIING CORP

Background

- Aspen Skiing Co. owned one of four major ski resorts in Aspen, Colorado; Aspen Highlands Skiing Corp. owned the other three
- In 1979, Aspen Skiing Co. filed a treble-damages action in Federal District Court alleging Aspen Highlands Skiing Corp. had monopolized the downhill skiing market in Aspen and was in violation of §2 of the Sherman Antitrust Act
- In 1985, the case was taken to the Supreme Court

Sherman Antitrust Act §2

Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

The Good Times

(Oligopoly)

- Prior to 1977, there were only three major ski resorts in Aspen, all of which were independently owned

- Each competitor offered its own daily and half-day ski passes, as well as a 6 day All-Aspen ticket

- The All-Aspen ticket was a booklet containing six coupons, each redeemable at any of the three resorts. The coupons were voided if not used within six days of purchase, and were sold at a considerable discount to buying a separate lift ticket each day
- Initially, the revenue from the sale of the coupons was distributed at the end of the year in accordance with the number of coupons collected at each resort
- Later this policy was changed so that revenue was distributed based on a system of random-sample surveys that attempted to determine the percentage of All-Aspen pass users that would visit each resort

And the Bad Times

(Aggressive market share seeking)

- In 1977, Aspen Highlands Skiing Corp. acquired another of the original three resorts that was suffering from poor management and marketing
- Soon after, Aspen Highlands Skiing Corp. opened a fourth large resort in the Aspen area and issued a multi-resort ticket covering only its own ski resorts

- In 1978, Aspen Highlands Skiing Corp. threatened to discontinue sales of the All-Aspen ticket unless Aspen Skiing Co. accepted a fixed percentage of the ticket revenue rather than an amount based on the fluctuating survey system

- The fixed revenue percentage Aspen Highlands Skiing Corp. offered Aspen Skiing Co. was considerably lower than Aspen Skiing Co.'s historical average based on both the survey and the coupon assessment methods

The Start of War
(Anti-Competitive Accusations)

- Aspen Skiing Co. refused to accept the understated fixed percentage. So, Aspen Highlands Skiing Corp. ceased sales of the All-Aspen ticket and stated that they would not honor any coupons from All-Aspen tickets sold by Aspen Skiing Co. the following ski season
- Aspen Skiing Co.'s market share dramatically declined the subsequent two ski seasons
- In 1979, Aspen Skiing Co. filed for damages

Aspen Skiing Co. *v.* Aspen Highlands Skiing Corp

- The original District Court case resulted in a verdict against Aspen Highlands Skiing Corp. and the court entered a judgment for treble damages reparations
- Aspen Highlands Skiing Corp. appealed the verdict
- The Court of Appeals stated that there cannot be a requirement for cooperation between competitors, even if one possesses monopoly power; Aspen Highlands Skiing Corp.'s appeal was affirmed
- In 1985, the case made it to Supreme Court

The Supreme Court's Rulings

- Although even a firm with monopoly power is not obligated to participate in a joint marketing program with a competitor, the decision not to cooperate may have significance, and can give rise to a liability in certain circumstances
- It is important to identify intent in determining whether the monopolist's conduct can be fairly characterized as exclusionary, anti-competitive, or predatory
- In this case, the monopolist did not merely reject an offer to participate in a cooperative venture that had been proposed by a competitor, but instead elected to make an important change in the pattern of distribution
- This pattern of distribution of all-Aspen tickets that had originated in a competitive market and had persisted for several years

- It must be assumed that the jury, as instructed by the trial court, differentiated between exclusionary or restrictive practices and success due to a superior product, luck, or well-run business

- Apparently, the jury decided that Aspen Highlands Skiing Corp. was engaged in exclusionary practices

- The jury concluded that there were no valid business reasons for Aspen Highlands Skiing Corp. to refuse to deal with Aspen Skiing Co.

- In determining whether Aspen Highland Skiing Corp.'s conduct can be characterized as anti-competitive, it is necessary to examine the effect on consumers, Aspen Skiing Co., and itself:

  1.) The evidence showed that skiers had over the years developed a strong demand for the all-Aspen ticket, and that they were adversely affected by its termination

  2.) Aspen Skiing Co. experienced a steady and significant decline in market share after elimination of the all-Aspen

  3.) The evidence could not justify Aspen Highland Skiing Corp.'s behavior under any normal business purpose, other than to reduce competition in the market by hurting its smaller competitor

- The US Supreme Court maintained the original District Court verdict (Aspen Skiing Co. received treble damages compensation)

- Today, Aspen Skiing Company, LLC owns all four major ski resorts in Aspen

Links to Microsoft Anti-Trust Case

- Many describe this case as one of the roots of the Microsoft anti-trust case, Verizon *v.* Trinko, and others
- The court forced Aspen Highlands Skiing Corp. to do business with its rival, a precedence referred to by the Justice Department in seeking to force Microsoft to install Netscape's browser alongside its own
- According to Charles Rule, Microsoft legal consultant, primary difference is that Microsoft's conduct resulted in better products and lower prices

Arash Etemad's Concluding Commentary

- The final verdict is absurd
- Regardless of the effects, a firm should not be required to continue a cooperative campaign with another competing firm unless contracts were signed
- Aspen Highlands Skiing Corp.'s actions did not cause Aspen Skiing Co.'s resort to be excluded from the market