Monsanto Co. v. Spray-Rite Service Corp.

465 U.S. 752 (1984)

Justice POWELL delivered the opinion of the Court.

This case presents a question as to the standard of proof required to find a vertical price-fixing conspiracy in violation of Section 1 of the Sherman Act.

I

Petitioner Monsanto Company manufactures chemical products, including agricultural herbicides. By the late 1960's, the time at issue in this case, its sales accounted for approximately 15% of the corn herbicide market and 3% of the soybean herbicide market. In the corn herbicide market, the market leader commanded a 70% share. In the soybean herbicide market, two other competitors each had between 30% and 40% of the market. Respondent Spray-Rite Service Corporation was engaged in the wholesale distribution of agricultural chemicals from 1955 to 1972. Spray-Rite was essentially a family business, whose owner and president, Donald Yapp, was also its sole salaried salesman. Spray-Rite was a discount operation, buying in large quantities and selling at a low margin.

Spray-Rite was an authorized distributor of Monsanto herbicides from 1957 to 1968. In October 1967, Monsanto announced that it would appoint distributors for one-year terms, and that it would renew distributorships according to several new criteria. Among the criteria were: (i) whether the distributor's primary activity was soliciting sales to retail dealers; (ii) whether the distributor employed trained salesmen capable of educating its customers on the technical aspects of Monsanto's herbicides; and (iii) whether the distributor could be expected "to exploit fully" the market in its geographical area of primary responsibility. Shortly thereafter, Monsanto also introduced a number of incentive programs, such as making cash payments to distributors that sent salesmen to training classes, and providing free deliveries of products to customers within a distributor's area of primary responsibility.

In October 1968, Monsanto declined to renew Spray-Rite's distributorship. At that time, Spray-Rite was the tenth largest out of approximately 100 distributors of Monsanto's primary corn herbicide. . . . Spray-Rite brought this action under Section 1 of the Sherman Act. It alleged that Monsanto and some of its distributors conspired to fix the resale prices of Monsanto herbicides. Its complaint further alleged that Monsanto terminated Spray-Rite's distributorship . . . and encouraged distributors to boycott Spray-Rite in furtherance of this conspiracy. Monsanto denied the allegations of conspiracy, and asserted that Spray-Rite's distributorship had been terminated because of its failure to hire trained salesmen and promote sales to dealers adequately.

The case was tried to a jury. The District Court instructed the jury that Monsanto's conduct was per se unlawful if it was in furtherance of a conspiracy to fix prices. . . . [T]he jury found that the termination of Spray-Rite was pursuant to a conspiracy between Monsanto and one or more of its distributors to set resale prices, . . . [and that] Monsanto conspired with one or more distributors to limit Spray-Rite's access to Monsanto herbicides after 1968. The jury awarded $3.5 million in damages, which was trebled to $10.5 million. . . . The Court of Appeals for the Seventh Circuit affirmed.

In substance, the Court of Appeals held that an antitrust plaintiff can survive a motion for a directed verdict if it shows that a manufacturer terminated a price-cutting distributor in response to or following complaints by other distributors. . . . We granted certiorari. . . .

II

This Court has drawn two important distinctions that are at the center of this and any other distributor-termination case. First, there is the basic distinction between concerted and independent action—a distinction not always clearly drawn by parties and courts. Section 1 of the Sherman Act requires that there be a "contract, combination ... or conspiracy" between the manufacturer and other distributors in order to establish a violation. Independent action is not proscribed. A manufacturer of course generally has a right to deal, or refuse to deal, with whomever it likes. . . .

The second important distinction in distributor-termination cases is that between concerted action to set prices and concerted action on nonprice restrictions. The former have been per se illegal since the early years of national antitrust enforcement. See *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U.S. 373, 404–409 (1911). The latter are judged under the rule of reason, which requires a weighing of the relevant circumstances of a case to decide whether a restrictive practice constitutes an unreasonable restraint on competition. See *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36 (1977).

While these distinctions in theory are reasonably clear, often they are difficult to apply in practice. In *Sylvania* we emphasized that the legality of arguably anticompetitive conduct should be judged primarily by its "market impact." But the economic effect of all of the conduct described above—unilateral and concerted vertical price-setting, agreements on price and nonprice restrictions—is in many, but not all, cases similar or identical. . . . And judged from a distance, the conduct of the parties in the various situations can be indistinguishable. For example, the fact that a manufacturer and its distributors are in constant communication about prices and marketing strategy does not alone show that the distributors are not making independent pricing decisions. A manufacturer and its distributors have legitimate reasons to exchange information about the prices and the reception of their products in the market. Moreover, it is precisely in cases in which the manufacturer attempts to further a particular marketing strategy by means of agreements on often costly nonprice restrictions that it will have the most interest in the distributors' resale prices. The manufacturer often will want to ensure that its distributors earn sufficient profit to pay for programs such as hiring and training additional salesmen or demonstrating the technical features of the product, and will want to see that "free-riders" do not interfere. . . .

Nevertheless, it is of considerable importance that independent action . . . be distinguished from price-fixing agreements, since under present law the latter are subject to per se treatment and treble damages. On a claim of concerted price-fixing, the antitrust plaintiff must present evidence sufficient to carry its burden of proving that there was such an agreement. If an inference of such an agreement may be drawn from highly ambiguous evidence, there is a considerable danger that the doctrines enunciated in Sylvania and Colgate will be seriously eroded.

. . . Permitting an agreement to be inferred merely from the existence of complaints . . . could deter or penalize perfectly legitimate conduct. As Monsanto points out, complaints about price-cutters "are natural—and from the manufacturer's perspective, unavoidable—reactions by distributors to the activities of their rivals." . . . Moreover, distributors are an important source of information for manufacturers. In order to assure an efficient distribution system, manufacturers and distributors constantly must coordinate their activities to assure that their product will reach the consumer

persuasively and efficiently. To bar a manufacturer from acting solely because the information upon which it acts originated as a price complaint would create an irrational dislocation in the market. . . .

Thus, something more than evidence of complaints is needed. There must be evidence that tends to exclude the possibility that the manufacturer and nonterminated distributors were acting independently. . . .

III

A

Applying this standard to the facts of this case, we believe there was sufficient evidence for the jury reasonably to have concluded that Monsanto and some of its distributors were parties to an "agreement" or "conspiracy" to maintain resale prices and terminate price-cutters. . . .

B

If, as the courts below reasonably could have found, there was evidence of an agreement with one or more distributors to maintain prices, the remaining question is whether the termination of Spray-Rite was part of or pursuant to that agreement. It would be reasonable to find that it was, since it is necessary for competing distributors contemplating compliance with suggested prices to know that those who do not comply will be terminated. Moreover, there is some circumstantial evidence of such a link. . . .

IV

We conclude that the Court of Appeals applied an incorrect standard to the evidence in this case. The correct standard is that there must be evidence that tends to exclude the possibility of independent action by the manufacturer and distributor. That is, there must be direct or circumstantial evidence that reasonably tends to prove that the manufacturer and others had a conscious commitment to a common scheme designed to achieve an unlawful objective. Under this standard, the evidence in this case created a jury issue as to whether Spray-Rite was terminated pursuant to a price-fixing conspiracy between Monsanto and its distributors. The judgment of the court below is affirmed.

It is so ordered.

Justice WHITE took no part in the consideration or decision of this case.

Justice BRENNAN, concurring.