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Judgement against lumber firm tossed

Weyerhaeuser had lost \$79 million antitrust lawsuit over predatory buying

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WASHINGTON - The Supreme Court on Tuesday tossed out a \$79 million verdict against lumber giant Weyerhaeuser Co. for allegedly trying to monopolize the Pacific Northwest alder sawlog market, in a decision that could encourage other businesses to be more aggressive in buying raw materials.

The court ruled unanimously that lower courts had applied the wrong standard in judging whether Weyerhaeuser had violated federal antitrust laws when it overpaid for more logs than it needed and then cut its prices on finished lumber.

A now-defunct sawmill in Longview, Wash., had sued Weyerhaeuser, alleging the company had engaged in predatory buying tactics that drove it out of business by preventing them from buying the logs at a "fair" market price. The company accused Weyerhaeuser of buying more logs than it needed at prices higher than the market could normally sustain.

The decision, which settles a long-running dispute arising from the forests of southern Washington and northern Oregon, is a win for companies nationwide that are now free to be more aggressive in buying materials without worrying about running afoul of federal antitrust laws.

A number of companies, including AT&T Inc. and the Coca-Cola Co., had filed friend-of-the-court briefs warning that a ruling against Weyerhaeuser would chill competition. The Bush administration also backed Weyerhaeuser.

Writing for the unanimous court, Associate Justice Clarence Thomas noted that aggressive buying techniques "are often the very essence of competition."

"There are myriad legitimate reasons -- ranging from benign to affirmatively procompetitive -- why a buyer might bid up input prices," Thomas said. For instance, he noted, a company might miscalculate how much it needs in raw materials or bid up prices to make sure it gets enough of "scarce" resources.

"There is nothing illicit about these bidding decisions," Thomas wrote. "Indeed, this sort of high bidding is essential to competition and innovation on the buy side of the market."

Most antitrust lawsuits alleging anti-competitive tactics focus on predatory selling, where businesses slash prices to drive out rivals. But this is a rare case focusing on the other end of the economic equation -- when a company is accused of engaging in predatory buying.

The case revolves around the market for red alder sawlogs, a hardwood that is popular among guitar and furniture manufacturers.

Two lower federal courts had already ruled for the sawmill, Ross-Simmons Hardwood Lumber Co., and ordered Weyerhaeuser to pay it roughly \$79 million for violating federal antitrust laws. The lower courts found that Weyerhaeuser had trimmed its profit margin on finished lumber made from alder sawlogs and tried to monopolize the market in the Pacific Northwest.

The issue before the Supreme Court was the standard for deciding when buying practices are predatory, and therefore a violation of federal antitrust laws. Ross-Simmons wanted the court to adopt the lower courts' assessment that companies are liable whenever they buy more materials than needed or buy the raw goods at a higher price than necessary to edge out competitors who can't absorb the higher cost.

The high court rejected that approach Tuesday, ruling that predatory buying and predatory selling should be judged by essentially the same standard, because they are "similar" behaviors.

To prevail in both kinds of cases, the court said, competitors have to prove the final products were sold below cost.

In the case of predatory buying, like that alleged to have been done by Weyerhaeuser, "a plaintiff must prove that the alleged predatory bidding led to below-cost pricing of the predator's outputs," Thomas wrote.

In this case, Weyerhaeuser didn't sell the finished lumber below cost. And during oral arguments in the case last November, Ross-Simmons conceded that it could not meet the tougher standard.

The court's decision Tuesday relied heavily on a 14-year-old ruling in which the panel outlined the standard for predatory selling. In that 1993 case, involving a company that under-priced tobacco products to drive out competitors, the court ruled that the behavior is illegal when the company is selling the goods below cost and when the company is likely to recoup the lost profits later -- after competitors go under.

Weyerhaeuser's senior vice president and general counsel, Sandy D. McDade, said the ruling "fully supports our position all along that our conduct was lawful and consistent with the guidelines for competitive conduct as set by the Supreme Court."

Richard Samp, chief counsel of the non-profit **Washington Legal Foundation** that promotes free enterprise, said the decision is a win for consumers who can expect to pay less for products when companies are aggressively competing.

"Consumers are always helped by companies spending lavishly and reducing prices and incurring losses," Samp said.

Tuesday's decision continues a long-running trend by the court to raise the threshold for proving wrongdoing in antitrust cases, Samp said.

"In these kinds of predatory pricing or predatory buying cases, you want to encourage people to lower their prices and bid up what they bid for inputs," Samp said. He added that the justices know "if you were to attach antitrust liability too freely in these cases, you suppress competition."

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