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Antitrust: Final Exam (January 1973)

William & Mary Law School

Antitrust Exam

Dominik Dulsovic immigrated from Lebanon to Southern California in the early twentieth century. As a laborer, he quickly acquired enough money to purchase a small farm and immediately began growing and marketing vegetables and fruits in the expanding Los Angeles area. He added land, opened three produce retail outlets, and established a wholesale fruit and vegetable market. He also opened a restaurant specializing in mideastern cuisine which immediately became a success among the free spending motion picture people of the area. Throughout the 1920's he added, with great prudence, to his holdings. Retail outlets grew to eleven; his wholesale business was extended south to San Diego. He purchased farm lands in proximity to Los Angeles. His restaurants grew to a number of four in Los Angeles and three in the area south of the City.

During this time, Dominik Dulsovic was also developing a large family - seven children in all. The last child was born in July, 1929. Dominik established substantial trusts for their education.

About the same time,Dominik sold much of his holdings to real estate speculators, disposed of three of his weakest resale outlets, two restaurants and about 30% of his physical assets of his remaining holdings. He demanded and got cash which he placed in a safety deposit box.

At the same time, Dominik, himself uneducated, took an interest in economic and social phenomena. His attention focused on the operations of the New York Stock Exchange as an economic institution and the phenomenon of prohibition as a social experiment. In late September, 1929, (to the amusement of the resident partner of the brokerage firm who regarded Dominik as an eccentric albeit well-of farmer) Dominik took a short position of major proportions in 14 of the 20 largest corporations in the United States. In early December, discovering he was still solvent, the resident partner telephone Dominik, now his most affluent customer, to advise him to cover his shorts. Dominik did so patiently over the next months.

With proceeds from the short sales and otherwise, Dominik pursued his other new found interest. Perceiving a waning interest in social reform through law, Dominik began purchasing wineries and vineyards, entered exclusive contracts for the importation of Tequile, Khalua, and Sake' with leading Mexican and Japanese distillers and bought a small brewery in Los Angeles.

At the same time, Dominik was also beseiged with the real estate speculators, grocers and restaurantiers to whom he had sold his properties previously wishing to resell to Dominik. He ultimately did repurchase the retail outlets and restaurants and some land at bankruptcy sales from 2% to 5% of his sale price.

As he did so, he continued to acquire farm property and, as an adjunct to his fruit and vegetable business, a bankrupt cannery. This acquisition was an important one in that he decided to turn to the corporate form at this point. Dominik assigned his vineyards, wineries, import contracts, farms, cannery, brewery, retail and wholesale grocery business, and restaurants to Dominik Dulsovic Enterprises, Inc. (Enterprises).

Enterprises did well in the following period. While it canned produce from Dominik Dulsovic farms and sold them in his tores, as well as to others, it sought wider horizons. Chief among these was the development of means of canning and otherwise preserving the mideastern delicacies and California produced fruits and vegetables.

The middle 1930's also saw an expansion of Enterprises in all respects. Profits from liquor importation, brewery and wine sales were good. Six new restaurants were added. Retail outlets grew to twelve. In 1939 a series of seven beer gardens was opened near military bases in southern California, each featuring a full line of items produced by Enterprises. In 1940, Dominik's eldest son received a bachelor of science degree from California's Institute of Technology and proceeded to the Massachusetts Institute of Technology to study physics.

The war was a period of increased prosperity. Military deployment favored Enterprises' business except for Sake' importation. His eldest son was deferred and because of his combined expertise in electronics and optics he was assigned to work on a number of problems useful to the military effort in which he was joined by the second and third children, both daughters, as research associates upon completion of their college educations.

In 1945, Dominik found Enterprises unwieldy. Accordingly, it was divided into divisions in the form of wholly owned subsidiary corporations. Supermarkets, Inc., controlled the stores; Restaurants, Inc., controlled the restaurants and beer gardens; Canneries, Inc., controlled farming, retailing and wholesale of foods; Brewery, Inc., controlled the beer production; Wineries, Inc., controlled the vineyard and wine production; and Imports, Inc., controlled the import business. In addition, Optics, Inc., was created to provide specialized lenses for motion picture cameras based upon patents granted to the eldest son. Finally, a section for research and development was created headed by the eldest children.

The next few years were tranquil. The final four children joined the business in non-technical positions. Optics became the producer of 20% of motion picture camera lenses and about 2% of general camera lenses, while other parts of the business did well. Breweries, Inc., Canneries, Inc., Wineries, Inc., and Imports, Inc., expanded while other parts of the business held their positions. The early 1950's brought both distress and success. The partial collapse of the motion picture industry forced retrenchment. While Optics held 20% of the market absolute sales fell greatly. Among its competitors, Omega seized 50% of the market, Mark VII 20%, and Giraud 10%. All others abandoned the field. Supermarkets, Inc., was faced with the crush of increased competition and initially was unable to do more than avoid losses. Restaurants did better. It established new restaurants in the Los Angeles area and began experimenting with fast food services based on the specialties and products; in conjunction with Restaurants, Canneries began producing a line of gourmet packaged foods including mideastern dishes, semi-tropical fruits and vegetables of a quality that has never been equalled, and a line of general gourmet foods. Wineries and Breweries developed in full an ordinary line of products, and Importers continued to prosper in its business.

In 1964, Supermarkets, Inc., purchased all the assets of Ace Groceries. At this time Supermarkets, Inc. sold 3% of the Los Angeles market and .3% of the California market based on total sales. The combination increased the amount to 4% and 1.2% respectively. There were 24 chains in Los Angeles, 52 in California of which 10 in Los Angeles and 20 in California were larger than Supermarkets, while there were 6,200 individual stores in Los Angeles and 24,000 in California. The late 1950's saw a developing market situation in foods. Canneries continued to sell to Supermarkets, Inc. but began to expand its gourmet food sales for which there were high profits. During the period 1954 to 1961, markups of over 200% of cost occurred in the industry in California. Prices were fully stable in the industry during this period. Canneries, Inc. held its major share of the market, about 20% of the general gourmet line, 100% of the mideastern foods line and about 50% in the line of tropical fruits and vegetables with three other large manufacturers. 1961, a drastic drop in margin occurred; the largest producer of gourmet foods in California reduced the overall margin to 100%, but the profits remained comfortable.

In the same period, Restaurants began franchising its highly successful fast food restaurants. The effort was to be a brilliant franchising operation. The agreement established an exclusive area of service, menus with set prices, established standards for fresh food including the approval of vendors, required exclusive purchase of packaged gourmet and nongourmet items from Canneries, required exclusive use of Breweries' beer, if available, required stocking of Wineries' full line, and sale of Imports' full line of liquor be sold.

In 1960, the research and development section of Optics realized its first success, a significant development in laser technology which greatly aided the focus and general quality of motion picture cameras. Optics took a mixed series of action after patenting the product. A motion picture camera production division was established. A license was granted Kodak for use of the device in all cameras except motion picture cameras sold to commercial producers of motion pictures and television cameras with a license fee of $7 per unit. A license was extended to Servatron, Inc. for use in television cameras with a license fee of $250 per unit. At present, Optics, Kodak and Servatron control the overwhelming bulk of their markets ranging from 85% to 95% of each.

In late 1962, faced with substantial retail unhappiness at prices they were requested to charge, Canneries sent its retail customers a retail price list without substantial changes from prior prices title "revised suggested retail price list." On January 4, 1963, Canneries informed Metropolitan Markets it would no longer sell to them because of price cutting. Similar actions were taken against two other retailers on January 14 and January 17. On February 4, 1963, Canneries informed its retailers that the revised suggested retail price list was made mandatory. On February 14 it terminated the sales to Grand Valley Stores for selling below less. On February 20, 1963, Canneries contacted its competitors in gourmet foods and formed the Gourmet Food Wholesalers League of California. The League agreed to notify all members of sales after made, requests of purchase of raw materials, labor and other contracted services, and any price changes within seven days of their taking effect. The League ceased operations in January, 1964 because Crest Foods, Inc., the third largest gourmet food marketer in California, refused to join after eleven months of negotiations.

Also in 1964, Supermarkets purchased Acme Stores, the 11th chain in Los Angeles, increasing its percentage of the market to 7.1% and 1.6% for Los Angeles and California and raising his Los Angeles rank to third among 26. There survived 4,300 retail outlets in Los Angeles. Later in the year, Supermarkets bought Murphy's Super Sales, a thinly spread company which had stores in all areas of California except Los Angeles, raising its statewide market shares 3% and bringing it to 15 in the statewide size of 54 supermarkets. Around 17,000 independent retailers survived. Since then Supermarket has taken no other internal action of consequence.

1964 was also a year of significance for Canneries. The gourmet foods situations stabilized so that they held over 95% of the mideastern specialties, 25% fruit and vegetables, 33% tropical fruits and vegetables, and 20% of general gourmet items in California. Three local competitors remained, two in tropical fruits about equally dividing the remaining market. Canneries then began expansion of its line nationally. It utilized resources from other divisions of Enterprises, as well, as establishing, advertising, producing, distributing and customer services organization of exceptional quality nationwide. As a result, outside of California it held 84% of the semi-tropical fruit and vegetable market (in spite of vigorous efforts by its California competitors), 89% of the mideastern specialties (in spite of the fact that two New York concerns entered the market), and 9% of the other gourmet foods market (11%, if tropical fruit and mideastern specialties combined with others). Since 1970, when Canneries felt itself securely established nationwide, it has reduced its advertising budget 80% while maintaining its other services at previous levels.

Also in 1970, Restaurants closed two of its six remaining beer gardens and purchased the only other three independently owned gardens left in the Los Angeles and San Diego areas. The closing of the restaurant beer gardens resulted from a general decline in the beer garden business nationally, including California. At present, Restaurants operates the only beer gardens in this area.

In 1972, Enterprises purchased Crystal Clean Products, a financially floundering California manufacturer of household cleaning products. Before the purchase it held a declining 14% of the market in these materials in California. Since, Canneries has informed its gourmet food customers it expects to stock and prominently display Crystal Clean Products or lose the Canneries line of gourmet foods. Supermarkets has increased and improved the shelf space of Crystal Clean products, and letters to Restaurants franchise-approved suppliers have been urged to feature Crystal Clear cleaning products. Thus prospers Dominik Dulsovic and family.

Have Dominik or any of his businesses violated the Sherman Act, the Clayton Act or The Federal Trade Commission Act?