

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

**WEYERHAEUSER CO. v. ROSS-SIMMONS HARD-
WOOD LUMBER CO., INC.****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

No. 05–381. Argued November 28, 2006—Decided February 20, 2007

Respondent Ross-Simmons, a sawmill, filed suit under §2 of the Sherman Act, alleging that petitioner Weyerhaeuser drove it out of business by bidding up the price of sawlogs to a level that prevented Ross-Simmons from being profitable. The District Court, *inter alia*, rejected Weyerhaeuser’s proposed predatory-bidding jury instructions that incorporated elements of the test applied to predatory-pricing claims in *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U. S. 209. The jury returned a verdict against Weyerhaeuser. The Ninth Circuit affirmed, rejecting Weyerhaeuser’s argument that *Brooke Group*’s standard should apply to predatory-bidding claims.

Held: The test this Court applied to predatory-pricing claims in *Brooke Group* also applies to predatory-bidding claims. Pp. 4–13.

(a) Predatory pricing is a scheme in which the predator reduces the sale price of its product hoping to drive competitors out of business and, once competition has been vanquished, raises prices to a supra-competitive level. *Brooke Group* established two prerequisites to recovery on a predatory-pricing claim: First, a plaintiff must show that the prices complained of are below cost, 509 U. S., at 222, because allowing recovery for above-cost price cutting could chill conduct—price cutting—that directly benefits consumers. Second, a plaintiff must show that the alleged predator had “a dangerous probability of recouping its investment in below-cost pricing,” *id.*, at 224, because without such a probability, it is highly unlikely that a firm would engage in predatory pricing. The costs of erroneous findings of predatory-pricing liability are quite high because “[t]he mechanism by which a firm engages in predatory pricing—lowering prices—is the same mechanism by which a firm stimulates competition,” and

Syllabus

therefore, mistaken liability findings would ““chill the very conduct the antitrust laws are designed to protect.”” *Id.*, at 26. Pp. 4–7.

(b) Predatory bidding involves the exercise of market power on the market’s buy, or input, side. To engage in predatory bidding, a purchaser bids up the market price of an input so high that rival buyers cannot survive, thus acquiring monopsony power, which is market power on the buy side of the market. Once a predatory bidder causes competing buyers to exit the market, it will attempt to drive down input prices to reap supracompetitive profits that will at least offset the losses it suffered in bidding up input prices. Pp. 7–8.

(c) Predatory-pricing and predatory-bidding claims are analytically similar. And the close theoretical connection between monopoly and monopsony suggests that similar legal standards should apply to both sorts of claims. Both involve the deliberate use of unilateral pricing measures for anticompetitive purposes and both require firms to incur certain short-term losses on the chance that they might later make supracompetitive profits. More importantly, predatory bidding mirrors predatory pricing in respects deemed significant in *Brooke Group*. Because rational businesses will rarely suffer short-term losses in hopes of reaping supracompetitive profits, *Brooke Group*’s conclusion that “‘predatory pricing schemes are rarely tried, and even more rarely successful,’” 509 U. S., at 226, applies with equal force to predatory-bidding schemes. And like the predatory conduct in *Brooke Group*, actions taken in a predatory-bidding scheme are often ““the very essence of competition,”” *ibid.*, because a failed predatory-bidding scheme can be a “boon to consumers,” see *id.*, at 224. Predatory bidding also presents less of a direct threat of consumer harm than predatory pricing, which achieves ultimate success by charging higher prices to consumers, because a predatory bidder does not necessarily rely on raising prices in the output market to recoup its losses. Pp. 8–12.

(d) Given these similarities, *Brooke Group*’s two-pronged test should apply to predatory-bidding claims. A predatory-bidding plaintiff must prove that the predator’s bidding on the buy side caused the cost of the relevant output to rise above the revenues generated in the sale of those outputs. Because the risk of chilling procompetitive behavior with too lax a liability standard is as serious here as it was in *Brooke Group*, only higher bidding that leads to below-cost pricing in the relevant output market will suffice as a basis for predatory-bidding liability. A predatory-bidding plaintiff also must prove that the defendant has a dangerous probability of recouping the losses incurred in bidding up input prices through the exercise of monopsony power. Making such a showing will require “a close analysis of both the scheme alleged by the plaintiff and the [relevant market’s] struc-

Syllabus

ture and conditions,” 509 U. S., at 226. Pp. 12–13.

(e) Because Ross-Simmons has conceded that it has not satisfied the *Brooke Group* standard, its predatory-bidding theory of liability cannot support the jury’s verdict. P. 13.

411 F. 3d 1030, vacated and remanded.

THOMAS, J., delivered the opinion for a unanimous Court.