

Price Discrimination Law Enforcement: It's Back

Federal agencies basically ignored the federal price discrimination law for decades. That law – the Robinson-Patman Act – generally prohibits product suppliers from offering more favorable prices, rebates or similar promotional support to favored retailers (like Walmart, Costco or other big-box stores) over smaller retailers (typically “mom-and-pop” shops and local dealers). The law was enforced primarily through private civil actions rather than federal agency prosecution.

But recent events signal that the Robinson-Patman Act is back, at least in the eyes of the Federal Trade Commission (FTC). Current FTC chairperson Linda Khan has called for more active enforcement of the Robinson-Patman Act by federal agencies. FTC commissioners also said in a [June 2022 policy statement](#) that the agency could use the Robinson-Patman Act to target illegal prescription drug rebate and fee agreements that prevent patients from accessing lower-priced alternatives.

According to [Politico](#) and other [publications](#), the FTC recently contacted several large retailers, including Walmart, to gather information about their purchase of Coca-Cola and PepsiCo soft drinks. The FTC appears to be looking into whether the soft drink makers give some retailers better prices or support compared with other rival retailers. The FTC has not brought any action yet, and the soft drink suppliers have denied any wrongdoing, but the FTC announcements and activities indicate that it is putting a spotlight on possible Robinson-Patman violations in the U.S. supply chain.

This recent news illustrates the federal government’s renewed interest in flexing its antitrust enforcement muscle, and not just against technology giants or Taylor Swift ticket sellers. The Robinson-Patman Act applies to goods sales sold in the United States – a less electrifying law for publicity purposes, but one that may have a real impact on the prices of products and the number of retailers who remain in the market to sell them.

The FTC’s reinvigorated focus also shows that it is time for product suppliers to refresh their knowledge of the Robinson-Patman Act. While the act precludes price discrimination when it comes to goods sold in interstate commerce, there are many exceptions that apply if handled correctly. Knowledge of the act is important because, like other antitrust laws, the Robinson-Patman Act provides

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for awards of treble damages, and lawsuits are typically intrusive, time-consuming and costly. And those wholesalers and retailers who feel the pinch of being disfavored when it comes to product prices and promotional support should brush up on the law to check on their own rights under the Robinson-Patman Act.

Please contact James Law, Laura Brenner or any member of Reinhart's Commercial and Competition Law Team with questions about the Robinson-Patman Act or whether your current or planned practices comply with the act.

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