

FTC Revives Robinson-Patman Act Enforcement in Lawsuit Against Nation's Top Alcohol Distributor

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On December 12, 2024, the Federal Trade Commission (FTC) [filed a lawsuit](#) against Southern Glazer's Wine and Spirits, alleging violations of the Robinson-Patman Act (RPA). This action, filed in the Central District of California, marks the first time in over two decades that the federal government has taken steps to enforce the RPA.

ROBINSON-PATMAN ACT: BACKGROUND

The RPA was enacted during the Great Depression as a populist reaction to the growth of large national retailers. These retailers were seen as using their purchasing power to obtain large discounts from suppliers that smaller, local stores could not obtain. To level the playing field, the RPA prohibits sellers of commodities from discriminating in price or promotional deals among their customers when those customers compete with one another for the resale of those commodities. Accordingly, the RPA is often referred to as a "price discrimination act." The elements of a price discrimination claim are discussed in greater detail in a previous [Competition Corner post](#).

The Department of Justice (DOJ) and the FTC have the authority to enforce the RPA, as do private actors through lawsuits. However, public enforcement has been rare in recent years. In 1977, the DOJ issued a report stating that it would no longer enforce the RPA and would leave it to the FTC. Although the FTC has [signaled an interest in revitalizing RPA enforcement](#) on numerous occasions in recent years, it had not brought an RPA enforcement action since 2000—until now. Over the past two decades, the RPA has been solely enforced through private action, typically by an allegedly disfavored customer accusing its supplier of providing better pricing terms to its larger competitors. The filing of this complaint marks a significant change in the federal government's approach to RPA enforcement.

THE FTC'S ALLEGATIONS AGAINST SOUTHERN GLAZER'S

The FTC's complaint alleges that Southern Glazer's Wine and Spirits, the largest distributor of wine and spirits in the United States, engaged in "paradigmatic violations of the RPA" through its "deeply engrained" practices of charging small, independent businesses drastically higher prices than it charges large chains.

According to the [complaint](#), Southern Glazer's accomplishes this through a variety of mechanisms. For example, Southern Glazer's allegedly offers discounts for purchases of a quantity unattainable except by a few large chain retailers. It also allegedly allowed those large retailers to qualify for cumulative quantity discounts (requiring meeting

certain cumulative volume thresholds) by combining purchases across many stores—whereas small independent retailers often only operate one or a handful of stores and thus are unable, as a practical matter, to qualify. The complaint also alleges that Southern Glazer’s awarded scan rebates to favored customers that allowed these downstream customers of the retailer (typically end-user consumers) to enjoy a price reduction at the register that Southern Glazer then reimbursed to the retailer dollar-for-dollar.

The complaint also attempts to preempt certain defenses that the RPA permits, namely cost justification, meeting competition, and functional availability:

- **Cost Justification:** A seller accused of an RPA violation may avoid liability by demonstrating that the lower price offered to one customer is the result of an actual lower cost of supplying to that customer. The complaint alleges that Southern Glazer’s discriminatory pricing is not justified by a difference in the cost of distributing product to retailers of different sizes.
- **Meeting Competition:** A seller may also establish a defense to an RPA claim where offering a lower price to one customer was a good-faith effort to meet (but not beat) the lower price being offered to this same customer by one of the seller’s competitors. The complaint alleges that the favored price offered to larger retailers does not reflect a bona fide attempt by Southern Glazer’s to match the prices offered to those retailers by Southern Glazer’s own distributor-competitors.
- **Functional Availability:** A seller may also defend against an RPA claim where it demonstrates that favorable pricing terms were made known to all competing customers and were likewise realistically obtainable by all of those customers. The complaint emphasizes that certain programs are not made known to all competing retailers, but that even where they are made widely known, they are not functionally available to all customers, as they require retailer-customers to purchase at a volume that is impracticable for any but the largest customers.

THE FTC’S 3–2 VOTE

The FTC’s lawsuit against Southern Glazer’s was authorized by a 3–2 party-line vote. The combined dissents issued by the two Republican Commissioners, Andrew Ferguson and Melissa Holyoak, total 118 pages.

Commissioner Ferguson’s 30-page dissent reflected his skepticism of the case’s likelihood of success, along with his criticism of the use of agency resources on the particular case, irrespective of its likelihood of success. Though he clarified that he was not advocating abandonment of RPA enforcement, he emphasized that this case is not among those “in the heartland of the concern that animated the Act’s passage—large retailers with buying power,” and so it should not be receiving outsized attention. In her 88-page dissent, Commissioner Holyoak was likewise skeptical of the merits but also contended that any relief imposed by the Court may itself substantially harm the competitive process.

LOOKING AHEAD

The FTC’s revival of the RPA is consistent with public statements made in the past couple of years by Biden appointees FTC Chair Lina Khan and Commissioner Alvaro Bedoya, who have repeatedly spoken in support of the RPA’s revitalization to combat unfair pricing practices, particularly in rural areas. It is unclear whether the commitment to RPA enforcement will endure under the incoming Trump Administration, but Commissioner Ferguson, who is President-elect Trump’s pick for FTC chair, emphasized in his dissent that the FTC has a “constitutional obligation to treat the Robinson-Patman Act as valid law.” Additionally, President-elect Trump has selected Mark Meador to serve as a Republican commissioner on the FTC, and Meador has recently publicly criticized what he views as a blanket refusal to enforce the RPA in recent history. However, that enforcement looks different from what outgoing Chair Khan had planned, given the statements in dissent in response to this complaint.

As for this case specifically, the FTC has rarely, upon transition of power, decided to withdraw from a lawsuit filed by the prior administration, which suggests this case may be here to stay. On the other hand, the forceful dissents of the two sitting Republican commissioners may foreshadow a sharp decline in support for the allocation of FTC resources to this litigation—including efforts to resolve it through a speedy settlement—once FTC leadership changes hands.

TAKEAWAY

With the FTC following through on its assurances of an RPA comeback, it is critical that companies invest in RPA compliance, where historical trends of non-enforcement may have caused the RPA to become an afterthought. RPA pitfalls may be difficult to identify and address, especially within complex pricing structures, warranting a careful examination of pricing and promotional practices and supply chain relationships generally. Suppliers should ensure they have a written antitrust policy and training that covers the RPA, and are documenting the bases for pricing differentials between customers that can be directly and cleanly tied to an RPA defense.

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