

FTC Commissioners Tout Looming Revival of the Robinson-Patman Act

APRIL 3, 2023

On March 27, Federal Trade Commission Chair Lina Khan revealed that the Commission is preparing to bring enforcement actions under the Robinson-Patman Act in “short order,” signaling the impending revival of a seldom-used Depression-era antitrust law aimed at protecting small and rural businesses. Three of the four current FTC Commissioners have indicated a willingness to revive enforcement of the Robinson-Patman Act, including Commissioner Alvaro M. Bedoya, who emphasized the importance of the Robinson-Patman Act during a panel discussion at the American Bar Association’s Antitrust Spring Meeting last week.

Enacted in 1936, the Robinson-Patman Act prevents suppliers, wholesalers, and manufacturers from “discriminat[ing] in price between different purchasers of commodities of like grade and quality . . . where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition.”^[1] Congress passed the law to protect small mom-and-pop stores from having their prices undercut by larger chain stores that could demand lower prices from upstream sellers because of market power and volume purchasing. But this protection of competitors, rather than consumers, led to disfavor of the Robinson-Patman Act and waning government enforcement. And while there has been an array of civil cases over the years alleging violations of the Robinson-Patman Act, enforcement actions by the FTC—the Act’s primary enforcer—declined over time, and federal antitrust enforcers have not filed a Robinson-Patman Act case in decades.

In 2022, rumblings from the FTC suggested federal enforcement of the Robinson-Patman Act would return soon. In a June [policy statement](#), the FTC identified the Robinson-Patman Act as a potential tool to use in enforcement actions alleging illegal bribes and rebate schemes involving pharmacy benefits managers. A [statement from Commissioner Bedoya](#) followed in September in which he argued for enforcement of the antitrust laws, including the Robinson-Patman Act, based on fairness to aid the original beneficiaries of the law—rural small businesses. And in November, the FTC [announced](#) that it would “restore[] the agency’s policy of rigorously enforcing the federal ban on unfair methods of competition,” including enforcement of the Robinson-Patman Act against conduct that “may not be covered by the literal language” of the law. But it was not until last week that the FTC confirmed that enforcement actions are in the pipeline.

Rumors have circulated for the last several months that the FTC has invoked the Robinson-Patman Act to open new investigations. Most recently, news outlets reported that the FTC is investigating an alcohol distributor in the United

States under both the Robinson-Patman Act and Section 5 of the FTC Act, which prohibits unfair methods of competition.^[2]

While the Robinson-Patman Act has often been an afterthought for in-house legal teams, the FTC's push to bring it back to the forefront provides an important inflection point for companies to reinvest in compliance. To help navigate this new frontier, Competition Corner will be releasing a series of posts devoted to the Robinson-Patman Act and common compliance pitfalls.

[1] 15 U.S.C. § 13.

[2] A November 2022 Competition Corner [post](#) discussed the FTC's foreshadowing of its Section 5 enforcement actions.

2 Min Read

Authors

[Conor Reidy](#)

[Adam J. Dale](#)

[Mike Toomey](#)

Related Locations

[Chicago](#)

[New York](#)

[San Francisco](#)

Related Topics

[Antitrust Intelligence](#)

[Federal Trade Commission \(FTC\)](#)

[Robinson-Patman](#)

Related Capabilities

[Antitrust/Competition](#)

Related Regions

[North America](#)

Related Professionals



Conor Reidy



Adam I. Dale



Mike Toomey

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.