



Antitrust Law Update

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FTC Investigating Price Discrimination Under Long-Dormant Robinson-Patman Act

For the first time in decades, the Federal Trade Commission (FTC) opened a preliminary investigation for potential price discrimination under the Robinson-Patman Act (Act). The FTC is investigating Coca-Cola's and PepsiCo's pricing strategies in the soft drink industry. For at least the last month, it has been reaching out to large retailers to seek data and other information on how they purchase and price soft drinks.

The Act prohibits suppliers from selling goods of like grade and quality at different prices to competing resellers. "Price" includes discounts, rebates, credit terms, or other factors affecting the net price a reseller pays for goods. The law was passed to protect small retailers from price advantages chain stores and other large purchasers receive for high-volume buying.

Although the Act was regularly enforced after its 1936 enactment, it has been all but abandoned by federal regulators for the last 45 years. In 1977, the Department of Justice (DOJ) issued a report stating it would cease Robinson-Patman enforcement. Likewise, the FTC has not brought a Robinson-Patman Act case since 2000, and before that, its last case was in 1988.

The FTC, however, issued a policy statement in June 2022 that promised more intense scrutiny on prescription drug pricing including through aggressive enforcement of the Act. FTC Chairwoman Lina Khan's interest in reviving the Act was echoed by the FTC's newest commissioner, Alvaro Bedoya, who in a speech last year stressed the need to reinvigorate enforcement of the Act to target price discrimination among large retailers in all industries. The renewed interest in Robinson-Patman enforcement is the

latest step in the FTC's and DOJ's continued focus on heightened antitrust enforcement.

In light of the FTC's renewed interest in the Act, manufacturers and others that sell goods to resellers should review their pricing practices, including discount and rebate programs, and be aware of the Act's applicable price discrimination prohibitions.

FOR MORE INFORMATION

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