

Price Discrimination Under Robinson-Patman

Antitrust

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Robinson-Patman Act

15 U.S.C § 13a

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates to his knowledge against competitors of the purchaser, in that, any discount, rebate, allowance, or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance, or advertising service charge available at the time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity; to sell, or contract to sell, goods in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition, or eliminating a competitor in such part of the United States; or, to sell, or contract to sell, goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.

Two kinds of violations:

- (1) Primary-line:
A form of predatory pricing
- (2) Secondary-line:
Competition is hurt among buyers

Primary-line violation:

[P]rimary-line competitive injury under the Robinson- Patman Act is of the same general character as the injury inflicted by predatory pricing schemes actionable under 2 of the Sherman Act. ... With whatever additional flexibility the Robinson-Patman Act standard may imply ... two prerequisites to recovery remain the same. First, a plaintiff seeking to establish competitive injury resulting from a rival's low prices must prove that the prices complained of are below an appropriate measure of its rival's costs ... [Second, the plaintiff must demonstrate] ... that the competitor had a reasonable prospect, or, under 2 of the Sherman Act, a dangerous probability, of recouping its investment in below-cost prices.

Requirements for violation:

- (1) Strong interstate commerce requirement (generally, one sale must cross a state line)
- (2) Sales of commodities (not leases, not services)
- (3) Like grade and quality
- (4) Competitive injury (for secondary-line, differentially treated buyers must compete)

Affirmative defenses:

- (1) Cost-justification
- (2) Good-faith in meeting competition
A&P v. FTC

