



**BLOGS**  
Antitrust

## FTC Sues PepsiCo for Illegal Price Discrimination Under Robinson-Patman Act

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The Federal Trade Commission recently sued PepsiCo, Inc. alleging that the company engaged in illegal price discrimination by providing a large retailer with unfair pricing advantages in violation of the Robinson-Patman Act. In a sealed complaint filed in the Southern District of New York on January 12, 2025, the FTC alleges that PepsiCo provided the retailer with “promotional payments, allowances, and services while failing to make similar benefits available to [the undisclosed retailer’s] competitors on proportionally equal terms.”

The FTC alleged that the conduct disadvantaged retailers who compete in the “resale of Pepsi soft drinks across the United States, including family-owned neighborhood grocery stores, local convenience stores, mid-tier grocers, and independent retailers.” The identity of the large retailer is redacted in the public Complaint but has been reported by the Wall Street Journal to be Walmart. The FTC’s action is significant because there has been almost no federal enforcement of the Robinson-Patman Act in recent years, but this is the second such action filed in two months.

It remains to be seen whether the recent RPA actions signal a continued interest in closely monitoring pricing practices that may impact franchisors and suppliers. The new lawsuit was filed immediately before the leadership of the FTC changed, and FTC Commissioner Melissa Holyoak filed a dissenting opinion that sharply criticized the agency’s decision to file the complaint on the eve of the transition between the Biden and Trump administrations and asserted that the complaint itself was “wholly deficient.” The new Chairman of the Commission, Andrew Ferguson, also dissented and argued that the case against PepsiCo was rushed to the courthouse without adequate staff investigation and represented a “politically motivated travesty” even though he philosophically supported a bipartisan push for renewed enforcement of the Robinson-Patman Act.

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