

**BLOGS**
Antitrust

Pennsylvania Federal Court Takes Broad View of “Competitors” in Robinson-Patman Act Claim

In *Feeser’s, Inc. v. Michael Foods, Inc.*, No. 1:CV-04-0576 (M.D. Pa. April 27, 2009), the United States District Court for the Middle District of Pennsylvania ruled that a food manufacturer’s pricing structure violated the Robinson-Patman Act’s prohibition on price discrimination. The price discrimination claim arose in the arena of the supply of food products to institutional food service providers, such as schools and hospitals. Institutional food service providers generally obtain food products in one of two ways. An institution is either a “self-operator” that manages its food service operation internally, in which case the institution negotiates prices and purchases products from a variety of distributors. Or, an institution will engage a food management company to manage all aspects of the institution’s food service operations, including the purchase and delivery of food products. The defendant, a large manufacturer of egg and potato products, utilized a pricing structure that resulted, according to the court’s findings, in drastic product discounts to Sodexo, a multi-national food management company (and a co-defendant), as compared to plaintiff Feeser’s, a distributor operating on a regional level.

Price discrimination under the Robinson-Patman Act requires that the plaintiff prove, among other things, different prices being charged to two parties that are *in competition* with one another. Here, the defendant argued that the vastly different services provided by distributors (such as the plaintiff) and food management companies (such as Sodexo) required a finding that plaintiff and Sodexo were not competitors. The Third Circuit’s prior remand order in the case had instructed the district court to analyze carefully the underlying facts to determine whether the purported competitors “compete to resell food products to the same group of customers” and are “each directly after the same dollar.” On remand, the district court found that: (1) institutions routinely switch between acting as self-operators that buy directly from distributors to utilizing the services of food management companies; (2) specific customers had switched from buying from plaintiff to buying from and using Sodexo’s services; and (3) Sodexo’s internal documents characterized food distributors like the plaintiff as competitors. Relying on these findings, and taking a broad view of the notion of “competitors,” the court ruled that plaintiff and Sodexo do “compete” for the same food service customers, for purposes of the Robinson-Patman Act. The court enjoined the defendant from further price discrimination against the plaintiff.

In a subsequent ruling, the court held the defendant in contempt of the April 27 order. The defendant had apparently refused to sell directly to the plaintiff altogether, forcing the plaintiff to purchase through a different reseller at an even higher price. The court found that the defendant was attempting to avoid the effect of the order by simply inserting an additional link in the distribution, which also was held to be unlawful.