



BUREAU OF COMPETITION

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

January 17, 1990

Bonnie B. Larson
Marketing Manager
Independent Video Services
Hult Plaza, Suite 160
401 East 10th Avenue
Eugene, Oregon 97401

Dear Ms. Larson:

This is in response to your letter of September 28, 1989, requesting an advisory opinion regarding the pricing structure for educational video programs that Independent Video Services (IVS) intends to produce and distribute. Your letter was referred to me because I direct the office within the Commission's Bureau of Competition that is responsible for investigating possible restraints on competition in health care service markets.

In a telephone conversation on November 21, 1989, with Judy Moreland of this office, I understand that the distinction between Commission and staff advisory opinions was explained to you. At that time, you indicated that IVS's needs would be served by a staff advisory opinion.

Based on your letter and additional information given to us by telephone, I understand that IVS produces educational video programs and distributes them to schools, libraries, and professionals. IVS is planning a new video that will be marketed primarily to physicians and health institutions. The videos would be purchased for use by the buyer and not for resale. Because of differences in marketing costs, IVS intends to charge institutional buyers a higher price than will be charged to physicians.

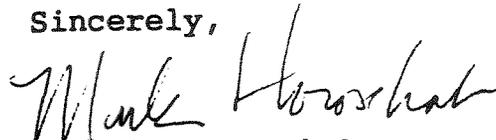
The Robinson-Patman Act generally prohibits a seller in interstate commerce from discriminating in price between purchasers of goods, where the effect of the discrimination may be substantially to lessen competition among those buyers or their customers. However, a seller may charge different prices to buyers in competition with one another to the extent that the price differential reflects differences in the cost of manufacture, sale or delivery of such goods to such buyers. The Act also permits sellers to offer lower prices to customers to meet a competitor's price.

Based on the information you have given us, it does not appear that IVS's proposed sales of videos is likely to violate the Robinson-Patman Act, because it does not appear that such sales are likely to cause any injury to competition. In the first place, many of the institutional buyers who will be charged the higher price appear not to be in competition with the individual physicians who will receive the more favorable price. Sales at different prices to buyers who do not compete with one another, and who do not resell to customers who compete with one another, do not run afoul of the Robinson-Patman Act.

Second, even to the extent that some institutions, such as hospitals, may compete with individual physicians, it does not appear likely that charging a higher price to the institutions will cause the injury to competition that is a necessary element of a violation of the Robinson-Patman Act. The videos will be purchased for use by the buyer, not for resale. Therefore, the higher price charged to some buyers will not affect competition in any resale market. In the market for health care services, where competition between physicians and hospitals may exist to a limited extent, there does not appear to be any reasonable probability that having to pay a higher price for educational videos will impair the ability of the hospitals to compete with physicians. The videos are relatively inexpensive, and it is not anticipated that any institution would purchase them in large quantities. As a result, the price difference would not be likely to have a substantial effect on competition between hospitals and physicians.

This opinion is that of staff of the Bureau of Competition only. Under the Commission's Rules of Practice § 1.3(c), the Commission is not bound by this advice and reserves the right to rescind it at a later time and take such action as the public interest may require. This office retains the right to reconsider the questions involved and, with notice to the requesting party, to rescind or revoke its opinion if implementation of the proposed program results in substantial anticompetitive effects, if the program is used for improper purposes, or if it would be in the public interest to do so.

Sincerely,


Mark J. Horoschak
Assistant Director