



Office of Commissioner
Mark R. Meador

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

In the Matter of Non-Alcoholic Beverages Price Discrimination Investigation
Matter Number 2210158

May 22, 2025

It is imperative that the Federal Trade Commission vigorously enforce the antitrust laws, including the Robinson-Patman Act (“RPA”). I have been clear that the RPA is a validly enacted law that the Commission should enforce when the facts warrant it and there is clear consumer harm that enforcement will remedy.¹ This is not that case. Today’s vote to dismiss our complaint is necessary to prevent lasting harm to our future antitrust enforcement efforts and the agency’s institutional credibility.

The Commission’s statutory and constitutional obligations to enforce each law that Congress has entrusted to it does not relieve us of the concurrent obligation to do so in a way that reflects discipline, seriousness, and respect for our law enforcement authority. Dismissing a deeply flawed case reinforces this commitment.

While I applaud efforts to revive RPA enforcement, I am utterly appalled by the way in which the prior administration went about it in this case. In any other context, the complete lack of intellectual rigor, reckless disregard for sound factual evidence, and nakedly political timing of the suit would lead me to think this was some cunning effort to put the last nail in the coffin of RPA enforcement. All credit for any redeeming features of this complaint is due exclusively to the incredibly talented FTC staff who worked tirelessly to follow the law as best as possible while complying with the directives of the prior administration.

To avoid any ambiguity: the blame for this debacle lies squarely at the feet of the former Chairwoman and the former Commissioners who abetted her 11th hour attempt to grab one last headline. As we have unfortunately learned over the last four years, however, cheap headlines came at a steep price to the Commission’s credibility and resources. This action is possibly the most reckless and irresponsible use of antitrust enforcement resources I have witnessed. The public deserves better from its government and will get better from this Commission.

To fully convey the gravity of the situation, as well as to explain the rare necessity to so quickly reverse the enforcement decision of an outgoing administration, it is appropriate to provide some additional detail within the bounds of our confidentiality obligations.

¹ Mark Meador, *Not Enforcing the Robinson-Patman Act is Lawless and Likely Harms Consumers*, FEDERALIST SOCIETY BLOG (July 9, 2024), <https://fedsoc.org/commentary/fedsoc-blog/not-enforcing-the-robinson-patman-act-is-lawless-and-likely-harms-consumers> (last accessed May 23, 2025).

In the prior administration’s rush to file a complaint, it betrayed a basic understanding of the structure and text of the RPA. Its approach treated distinct statutory provisions as if they are malleable and interchangeable—collapsing the different pleading requirements required for bringing Section 2(a), 2(d), and 2(e) claims into a series of generalized grievances untethered from the RPA’s statutory framework.

A key element of any RPA claim is proving discrimination between competing buyers. Yet the complaint does not mention even a single example of Pepsi refusing to offer comparable terms to other buyers. Nor does it offer any meaningful context regarding how purported disfavored “competing retailers” were identified. To the contrary, the Biden FTC majority commissioners assumed away distinctions between customers in different sales channels and the relative geographic proximity of retail operations. They also referred to purported comments from Pepsi personnel in a fashion that can most generously be described as cherry-picking, referencing quotes from internal documents but failing to offer any indication of their context or actual significance.

At bottom, the prior administration substituted atmospherics for analysis while hanging on a thin thread of decades-old precedent never intended to support this kind of case. It assumed a court would overlook the mismatch between statutory requirements and the facts alleged and flout decades of more recent RPA caselaw. It should go without saying that gambling on judicial ignorance is not how law enforcement is supposed to work.

These deficiencies reflect a failure, at the most basic level, to grasp threshold requirements for investigating and litigating a meritorious RPA case. They also reflect a lack of respect for the FTC staff who were forced to defend the complaint and the American taxpayers forced to pick up the tab to support a political sham.

When an investigation lacks coherent direction and an enforcement action is filed on speculation without an appropriate factual and legal grounding, it does not just jeopardize the case—it risks undermining the credibility of the Commission, its staff, and the enforceability of the antitrust laws. It invites adverse precedent that narrows the statute’s reach and undermines the credibility of the Commission’s future RPA enforcement—even where the facts and law are strong.

This kind of action also sends the wrong message to the business community—that RPA compliance, and antitrust compliance generally, is governed by politics rather than by law. When the FTC offers credible guidance on its enforcement approach and proceeds in deliberate fashion in litigating meritorious cases, companies respond by investing resources in internal compliance. But when enforcement is erratic and nakedly political, it subordinates compliance to lobbying and political gamesmanship.

Today’s dismissal of this ill-conceived action is important to the Commission’s credibility and reaffirms our commitment to enforce all the antitrust statutes without fear or favor. Compliance with the RPA is mandatory, and this Commission will enforce it where sound investigations give the Commission the required “reason to believe” the law has been violated to bring meritorious enforcement actions.

For these reasons, today I cast my vote in favor of dismissing the complaint.