



Office of the Chairman

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

**Statement of Chairman Andrew N. Ferguson
Joined by Commissioner Melissa Holyoak
In the Matter of Non-Alcoholic Beverages Price Discrimination Investigation
Matter Number 2210158**

May 22, 2025

After having been shown the door by the American people, the Biden-Harris FTC rushed, on January 17, 2025, to authorize a suit against PepsiCo, Inc., alleging that the company violated Sections 2(d) and (e) of the Robinson Patman Act¹ and Section 5 of the Federal Trade Commission Act.² Commissioner Holyoak and I vehemently dissented.³ As I noted at the time, filing the suit was purely political; one more press release to add to the pile.⁴ The then-Democrat majority marched staff into court with no evidence to support the most important allegations in the Complaint.⁵ Their choice was an insult to the Commission's credibility, its hardworking and talented staff who care deeply about their significant work,⁶ and the American people.

The guiding principle of *this* Commission is the rule of law. We bring enforcement actions only when we have the required “reason to believe” the law is being or has been violated.⁷ That means doing the difficult work of thoroughly investigating alleged misconduct before filing a complaint—an approach the Democrat majority of the previous FTC rejected when it voted to bring this case in the blind. That principled, law-abiding approach is how the Commission maintains public trust in its work. And it assures judges that when the FTC shows up to court, it has good reason to be there. This Commission cannot justify spending taxpayer dollars—

¹ 15 U.S.C. § 13(d) and (e); Complaint ¶¶ 74–79, *FTC v. PepsiCo*, No. 1:25-cv-664 (S.D.N.Y. Jan. 23, 2025), ECF No. 1 (“Complaint”).

² 15 U.S.C. § 45; Complaint, ¶¶ 80–81.

³ Dissenting Statement of Comm’r Andrew N. Ferguson, *In the Matter of Non-Alcoholic Beverages Price Discrimination Investigation*, Matter No. 2210158 (Jan. 17, 2025) (“Ferguson Pepsi Dissent”); Dissenting Statement of Comm’r Melissa Holyoak, *In the Matter of PepsiCo, Inc.*, Matter No. 2210158 (Jan. 17, 2025) (“Holyoak Pepsi Dissent”).

⁴ Ferguson Pepsi Dissent at 1, 3.

⁵ Ferguson Pepsi Dissent at 3 (“In order to declare in a complaint that a defendant is violating the Robinson-Patman Act, then, we must have evidence that the defendant treated at least one customer better than it treated that customer’s competitors. . . . We have no evidence of disparate treatment. None.”); *id.* at 4 (“The Democratic majority has decided to file this case while knowing we do not have any evidence to support the Complaint’s most important allegations.”); see also Holyoak Pepsi Dissent at 3–4 (“First, it does not allege that Pepsi made a payment to the retailer for anything. . . . Second, even if a price discount somehow amounts to a payment from Pepsi to the retailer, the payment for the retailer’s services or facilities was not ‘in connection with the processing, handling, sale, or offering for sale’ of Pepsi’s products. . . . Finally, for unlawful conduct under both Sections 2(d) and 2(e), any payments or services provided cannot be available on ‘proportionally equal terms’ to the retailer’s competitors. The Complaint’s allegations in this regard are entirely conclusory.”).

⁶ Ferguson Pepsi Dissent at 2 & n.26.

⁷ 15 U.S.C. § 45(b); *FTC v. Standard Oil of Cal.*, 449 U.S. 232, 241 (1980); *Boise Cascade Corp. v. FTC*, 498 F. Supp. 772, 779 (D. Del. 1980).

potentially millions of them if we were to proceed to trial—pursuing a weak complaint filed by an outgoing administration for nakedly political purposes.

As I said months ago, the Robinson-Patman Act is a valid law that the Commission is constitutionally obliged to enforce.⁸ But we must do so only after a thorough investigation has assured us that the defendant has violated the Act, that we are likely to prevail in litigation, and that we are maximizing the effect of our finite enforcement resources consistent with the purpose of the Act.⁹

None of that is true in this case. We therefore dismiss it—and clean up the Biden-Harris FTC’s mess.¹⁰

⁸ Dissenting Statement of Comm’r Andrew N. Ferguson, *In re Southern Glazer’s Wine and Spirits*, Matter No. 2110155, at 21–23 (Dec. 12, 2024) (“The upshot is that unelected bureaucrats cannot take it upon themselves to repeal a law. We must of course prioritize our enforcement resources consistently with the public interest. But the power to prioritize does not carry with it the power to suspend. We have a constitutional obligation to treat the Robinson-Patman Act as valid law, and to make enforcement decisions accordingly.”).

⁹ *Id.* at 27–30 (“We ought to enforce the Act where it will serve the broad public interest, and bring only those cases we are likely to win.”); Ferguson Pepsi Dissent at 2–3.

¹⁰ Ferguson Pepsi Dissent at 5.