



MEMORANDUM

From: Robinson-Patman Act Study Group
To: All Commissioners
cc: Andrew J. Heimert and Commission Staff
Date: May 4, 2005
Re: Robinson-Patman Act Study Plan

Issues Adopted by the Commission for Study

- A. Should the Robinson-Patman Act be repealed in whole or in part, or otherwise be modified?
- B. Should Section 3 of the Robinson-Patman Act (providing for criminal penalties) be repealed?

Questions for Public Comment

1. What are the benefits and costs of the Robinson-Patman Act as currently enforced? Does the Robinson-Patman Act promote or reduce competition and consumer welfare? If so, how? What other benefits does it afford or costs does it impose, if any?
2. What purposes should the Robinson-Patman Act serve?
3. Should the Robinson-Patman Act be repealed or modified, or its interpretation by the courts altered? Please identify specific changes and explain why they should be adopted. For example:
 - A. Should private plaintiffs asserting Robinson-Patman claims be required to prove "antitrust injury," *i.e.*, proof of injury reflecting the anticompetitive effect of the challenged conduct?
 - B. Should the inference of harm to competition under recognized in *FTC v. Morton Salt Co.*, 334 U.S. 37 (1948), be modified, *e.g.*, by requiring plaintiffs to make a showing of harm to competition similar to that required to establish a Sherman Act violation?
 - C. Does limiting the substantive provisions of the Robinson-Patman Act to the sale of commodities, not services, make sense in today's economy?
 - D. What role should buyer market power play in applying the Robinson-Patman Act?
4. To what extent do state antitrust laws prohibit price discrimination that is also prohibited by the Robinson-Patman Act? Would repeal or reform of the Robinson-Patman Act

affect the likelihood that states would adopt their own prohibitions on price discrimination? How, if at all, would repeal or reform of the Robinson-Patman Act affect the amount of litigation under such state laws?

Hearings

- One panel of approximately three to four hours.
- 1. What are the benefits and costs of the Robinson-Patman Act as currently enforced? Should the Act be repealed or modified, and if so how?
 - Academic economist
 - Scholar
 - Practitioner
 - Representative of retailer groups
 - Representative of consumer groups
 - Representative of manufacturer interests
 - Representative of large buyer interests