

Robinson-Patman Act Discussion Outline

Note: Italicized text are based on the questions on which the Commission requested comment from the public.

1. *What purposes should the Robinson-Patman Act serve?*

- [1] Find that the Robinson-Patman Act should promote consumer welfare, total welfare, and competition.
- [2] Find that the Robinson-Patman Act should protect small retailers from the exercise of buyer power.
- [3] Find that the Robinson-Patman Act should protect small retailers from the exercise of buyer power, but only where such protection is consistent with promoting consumer welfare, total welfare, and competition.
- [4] Find that the Robinson-Patman Act does not serve any purposes not already served by Sections 1 and 2 of the Sherman Act.

2. *What are the benefits and costs of the Robinson-Patman Act as currently enforced?*

- [5] Find that the Robinson-Patman Act imposes significant costs on U.S. businesses and consumers that outweigh its benefits to consumers and competition.
- [6] Find that the Robinson-Patman Act provides benefits to U.S. consumers through preservation of fair competition that exceed the costs it imposes on businesses and consumers.
- [7] Make no specific finding with respect to the costs and benefits of the Robinson-Patman Act.

3. *Should the Robinson-Patman Act be repealed or modified, or its interpretation by the courts altered?*

- [8] No statutory change to the Robinson-Patman Act is appropriate.
- [9] Recommend that Congress repeal the Robinson-Patman Act in its entirety.
- [10] Recommend that Congress repeal the criminal provisions of the Robinson-Patman Act, but leave the civil provisions as is [or with specified changes, as proposed below].
- [11] Recommend that the FTC increase its enforcement of the Robinson-Patman Act.
- [12] Recommend that Congress amend the Robinson-Patman Act so that it covers sales of services (in addition to commodities).

- [13] Recommend that plaintiffs in Robinson-Patman cases be required to make a showing of injury to competition similar to that required under the other antitrust laws.
If so:
 - [a] Encourage the courts to interpret the existing law to impose such a requirement.
 - [b] Recommend that Congress amend the Robinson-Patman Act to impose such a requirement.
- [14] Recommend that Congress amend the Robinson-Patman Act to require that plaintiffs in Robinson-Patman cases establish “buyer power” on the part of the favored buyer.
- [15] Recommend that Congress amend Sections 2(d) and 2(e) of the Robinson-Patman Act (regarding promotional services and materials) to require that a plaintiff asserting a claim meet the same competitive injury requirement applicable to discriminatory pricing claims.
- [16] Recommend that Congress repeal Section 2(c) of the Robinson-Patman Act (regarding the payment of commissions or brokerage).
- [17] Recommend that Congress amend the Robinson-Patman Act to permit defendants to establish the cost justification defense by showing that the preferential price was “reasonably related” to cost savings.