



News Release

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N.G.A. Strongly Opposes AMC Recommendation to Repeal the Robinson-Patman Act

Arlington, VA -- On April 4, 2007, the Antitrust Modernization Commission's (AMC) recommended to repeal The Robinson-Patman Act to Congress. "The AMC's April 4 recommendation to Congress for the repeal does a disservice to the food industry and the nation's economy," according to Thomas K. Zaucha, the National Grocers Association (N.G.A) President and CEO.

N.G.A. believes the Robinson-Patman Act must be strengthened – not repealed, and that the FTC should enforce it. Zaucha said that, "In today's atmosphere of power-buyers, the Act is more important than ever. It is critical to maintaining a diverse and healthy retail marketplace for the benefit of American consumers."

"American consumers have access to a more diverse marketplace than at any time in the country's history; consumers can choose among competing brands, store formats, service levels and a steady flow of new products in virtually everything they buy. Because of R-P, American consumers have benefited from the diversity fostered by the "5 Ps" available to retailers – non-discriminatory prices, packaging, promotions, product availability and payment terms," stated Zaucha.

Robinson-Patman (R-P) issues have long been the subject of discussions of fairness between retailers and wholesalers, and their suppliers. The Act has historically leveled the playing field enabling suppliers to say "no" to the unfair, unjustified and illegal demands of power buyers for various forms of competitive advantages over their rivals. Robinson-Patman has been a leveling force for the playing field on which retailers, wholesalers and suppliers compete and consumers benefit. Compare our retail landscape to that of Europe, where there has never been anything like R-P. That market is much more concentrated than ours, and with that concentration comes a loss of diversity and consumer choice. European suppliers have no R-P-like protection from the demands of power buyers. And because R-P-type law can contribute to less concentrated markets, the absence of such legislation can help erect barriers to entry that are much higher than they now are in this country.

N.G.A. former Chairman J.H. Campbell, Jr., President and CEO of Associated Grocers Baton Rouge, testified before the Commission in July 2005, "The R-P Act should be retained and strengthened. For the last seventy years, the R-P has served as a code of conduct and has provided a set of guidelines for marketplace behavior. The success of R-P's role cannot

seriously be underestimated.” N.G.A. believes that no federal antitrust law guarantees any competitor a right to remain in the market. It does believe, however, that the law does, and should continue to, guarantee that those who elect to enter and compete in the market have a level playing field. The Robinson-Patman Act is part of that guarantee.

N.G.A. supports a modernized and strengthened Robinson-Patman Act. Among the changes to consider are:

- placing the statute’s primary focus on power buyers, not discriminating sellers,
- codifying the meaning of *competitors* to eliminate class-of-trade discrimination, and
- expanding the Act’s coverage to certain services, such as debit and credit card interchange rates.

The Act must be enforced. Rather than calling for repeal as FTC Chairwoman Majoras testified, the FTC should enforce the law. Robinson-Patman’s principles make a difference, even when government enforcement waned. It has been decades since the FTC brought a meaningful enforcement action. It is unacceptable for a federal agency to ignore any federal statute it does not like. Congress must use its oversight authority, and, if necessary, its fiscal power, to assure that the R-P Act is enforced by the FTC. Few victims of discrimination have the economic ability to enforce the statute by bringing private suits. Federal statutes must be federally enforced.

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N.G.A. is the national trade association representing the retail and wholesale grocers that comprise the independent sector of the food distribution industry. An independent retailer is a privately owned or controlled food retail company operating a variety of formats. Most independent operators are serviced by wholesale distributors, while others may be partially or fully self-distributing. Some are publicly traded but with controlling shares held by the family and others are employee owned. Independents are the true entrepreneurs of the grocery industry and dedicated to their customers, associates, and communities. N.G.A. members include retail and wholesale grocers, state grocers associations, as well as manufacturers and service suppliers. For more information about N.G.A. and the independent sector of the industry, see the N.G.A. website: www.NationalGrocers.org.