

## STRAIGHT TALK ABOUT THE ROBINSON-PATMAN ACT

After years of ignoring the Robinson-Patman Act, the Federal Trade Commission is reviving the 1936 antitrust law written to level the playing field for small businesses and prevent dominant players from unfairly using their size and buying power to undermine competition. Massive firms that benefited from decades of non-enforcement are mobilizing and spreading disinformation about a law designed to level the playing field for businesses of all sizes so consumers can get the best deals possible.

Robinson Patman enforcement **WILL** ...

- Lower prices because it will increase price competition at the retail level.
- Increase jobs, because suppliers, retailers, and others historically squeezed by dominant firms could channel earnings into growing their own businesses. [One study](#) suggests that underenforcement of the Robinson-Patman Act accounts for about 10 percent of wage stagnation over the past four decades.
- Reverse over 40 years of FTC lawlessly ignoring federal statute, restoring the clear intent of Congress that was suppressed by inaccurate theories and assumptions of unelected bureaucrats.

Robinson Patman enforcement **WILL NOT** ...

- Prevent big companies from receiving volume discounts. In fact, it will open the same kind of discounts to smaller competitors that can band together and buy in similar volume, which facilitates the type of price competition that leads to lower consumer prices.
- Favor small businesses over larger ones. It will level the playing field for businesses of all sizes. Robinson-Patman isn't about favoritism. It's about ensuring that larger businesses can't weaponize their buying power to undercut the competitive process.

**Myth:** Robinson-Patman enforcement will increase prices and hurt consumers.

**Fact:**

- Robinson-Patman will lower prices and help consumers because it requires sellers to extend discounts to *all* similarly situated buyers, not just the ones who can throw their weight around.
- Critics of Robinson-Patman enforcement provide no evidence that prices will go up because no such evidence exists. FTC Commissioner Alvaro Bedoya [pointed out](#) that "there is not one empirical analysis showing that Robinson-Patman actually raised consumer prices." A [bipartisan presidential commission](#) that urged the repeal of Robinson-Patman back in 2007 similarly could not find any evidence to back up the claim that enforcing the law would raise prices, admitting that "estimates of the effects of the Act have been based largely on anecdotal evidence and informed judgments about the way in which markets operate, rather than on systematically collected empirical evidence, which appears to be extremely limited."
- Arguments against Robinson-Patman enforcement are based on the 40-year-old theories of activist legal scholars, not economists. [Modern economic research](#) suggests that Robinson-Patman enforcement will *lower* prices.

- Even the [1977 Justice Department](#) report that became the Magna Carta of the anti-RPA enforcement camp acknowledges the legitimacy of the “waterbed effect” in certain markets. Discounts or other unreasonable terms obtained through the exercise of buyer power can result in suppliers seeking to recoup their losses by *raising* prices for buyers with less clout, potentially raising average prices for the entire marketplace.

**Myth:** Smaller businesses want protection because they are simply not as efficient as larger ones with greater economies of scale.

**Fact:**

- The MSCC agrees that economies of scale are crucial to the generation of efficiencies that accrue to the benefit of consumers. That is why many small businesses band together to create buying groups - so they can purchase by the most efficient means possible and pass the savings on to their customers. Unfortunately, in consolidated industries where buyer power exists, efficiency has nothing to do with wholesale purchase prices. Wholesale costs have simply evolved to respond to market power, rather than actual efficiencies and rational economic behavior. The result – purchasing groups pay significantly more for truck loads or pallets than dominant wholesalers and retailers.
- Robinson-Patman does not tilt markets to favor competitors of any particular size. It creates a level playing field for equally efficient buyers. By protecting fair competition, Robinson-Patman ultimately helps consumers, workers, and businesses of all sizes.
- The MSCC is simply asking for the chance for our members to compete on the merits. We are not seeking special treatment, just the opportunity to compete.

**Myth:** Robinson-Patman prohibits companies from offering discounts, so everyone will pay higher prices.

**Fact:**

- Robinson-Patman prohibits price discrimination, not good faith discounts based on lowering costs. Robinson-Patman cases pursued by [private litigants](#) support this: the victims in these suits almost exclusively ask that suppliers open discounts to smaller customers, rather than ending them for larger ones.
- The law explicitly allows for volume discounts and discounts for economic efficiencies: “*nothing herein...shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities...*”
- Price discrimination increases market power, encourages consolidation, and reduces competition by encouraging dominant buyers to increase prices to extract profits. This harms competitors of all sizes. When a buyer extracts special terms from suppliers, retailers who are unable to receive similar terms are then forced to pass costs on to consumers in the form of [higher prices](#).

**Myth:** Robinson-Patman will harm sellers by increasing compliance costs, creating legal risks, and reducing price flexibility.

**Fact:**

- Sellers and agriculture producers are members of the Main Street Competition Coalition because unchecked buyer power represents a more existential threat to their business than the threat of enforcement action. All sellers want the power to invest in customers who will grow their business, not crush them through unreasonable ultimatums.
- Sellers are unable to act in their economic interests when a handful of powerful buyers are gatekeepers in markets, demanding superior terms of trade relative to their smaller competitors. One of most egregious examples was the grocery marketplace during the Covid-19 pandemic. [Consumer data demonstrated](#) that consumers preferred to shop at their local grocery store rather than line up at a massive Big Box retailer. Nonetheless, dominant retailers [imposed onerous delivery requirements](#) on consumer product sellers. Suppliers responded by acting contrary to their economic interests by reorganizing their supply chains around their largest customers, away from their customers who could move products faster and generate more revenue by actually satisfying consumer preferences.
- Large grocery suppliers who are publicly traded routinely disclose the economic threat that dominant retailers pose to their business in 10-K investment statements required by the Securities and Exchange Act. Almost every one of them point to consolidation and buyer power in the grocery sector representing a material business risk given the power that the largest retailers wield over sellers in the US grocery marketplace.

**Myth:** The Robinson-Patman Act hinders free market competition.

**Fact:**

- Markets are not free when a handful of large firms dictate the terms by which everyone else must compete. Antitrust policy must strike the right balance by allowing markets to prosper while preventing dominant firms from abusing their market power. The RPA is simply a tool to help strengthen markets for the benefit of all competitors and consumers.
- The Sherman Act is inadequate to remedy the consumer harm that flows from economic discrimination and buyer power. By using enforcement discretion and targeting cases where consumers are harmed by market power abuses, antitrust enforcers can better promote free enterprise, entrepreneurship and innovation.

**Myth:** The Robinson-Patman Act is incompatible with the consumer welfare standard.

**Fact:**

- The consumer welfare standard is an economic and legal principle that says, when applying the antitrust laws, courts should interpret harm to competition as meaning a detrimental effect on the economic welfare of consumers (as opposed to competitors).
- Anti-RPA activists argue that the Act is incompatible with the consumer welfare standard because they misrepresent how the law affects consumer prices. Robinson-Patman Act enforcement should be based on actual marketplace experience, not economic speculation. The MSCC believes that Robinson-Patman enforcement will maximize consumer welfare when used in cases where buyer power is used to extract consumer surplus and limit consumer choice.

- The argument that consumer welfare is only concerned with output and price is also an overly narrow reading of our antitrust laws. As FTC Chairman [Andrew Ferguson](#) and Assistant Attorney General [Abigail Slater](#) have stated, the consumer welfare standard also cares about consumer choice and innovation. Robinson-Patman Act enforcement allows small businesses to compete in a fair marketplace and offer consumers increased choice and creative ways to shop.

**Myth:** The Robinson-Patman Act is a “dead letter” law.

**Fact:**

- The FTC filed two new Robinson-Patman complaints, against [Southern Glazer’s](#) and [Pepsi Co.](#), at the end of the Biden Administration. The court [rejected](#), in full, Southern Glazer’s motion to dismiss the case against it and re-affirmed several important principles including a long standing presumption of harm known as the *Morton Salt* inference, what constitutes commerce under Robinson-Patman, and when purchasers are in competition with each other..
- Private plaintiffs have had similar success enforcing their rights under Robinson-Patman. Last year, the Ninth Circuit [reversed](#) a district court’s refusal to grant injunctive relief to a small wholesaler competing with Costco for the sale of 5-Hour Energy. And a jury [delivered a verdict](#) in favor of another small wholesaler challenging price discrimination in favor of Costco for Clear Eyes eye drops.