FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

For Release

FTC Sues Southern Glazer's for Illegal Price Discrimination

Commission enforces Robinson-Patman Act to create a level playing field for small, independent retailers to compete fairly, benefiting consumers

December 12, 2024

Tags: Competition | Bureau of Competition | Nonmerger | Robinson-Patman | Alcohol

The Federal Trade Commission sued the largest U.S. distributor of wine and spirits—Southern Glazer's Wine and Spirits, LLC (Southern)—alleging the company violated the Robinson-Patman Act, harming small, independent businesses by depriving them of access to discounts and rebates, and impeding their ability to compete against large national and regional chains. This loss of competition ultimately harms consumers on choice and price.

The FTC's complaint alleges that by selling wine and spirits to small, independent "mom and pop" businesses at prices that are drastically higher than what Southern charges large chains—with dramatic price differences that provide insurmountable advantages that far exceed any real cost efficiencies for the same bottles of wine and spirits—Southern engaged in anticompetitive and unlawful price discrimination.

Under the Robinson-Patman Act, it is generally illegal for sellers to engage in price discrimination that harms competition by charging higher prices to disfavored retailers that purchase similar goods. The FTC's case filed today seeks to ensure that businesses of all sizes compete on a level playing field with equivalent access to discounts and rebates, which means increased consumer choice and the ability to pass on lower prices to consumers shopping across independent retailers.

"When local businesses get squeezed because of unfair pricing practices that favor large chains, Americans see fewer choices and pay higher prices—and communities suffer," said Chair Lina M. Khan. "The law says that businesses of all sizes should be able to compete on a level playing field. Enforcers have ignored this mandate from Congress for decades, but the FTC's action today will help protect fair competition, lower prices, and restore the rule of law."

Since at least 2018 and continuing today, Southern has repeatedly discriminated in price between disfavored independent purchasers—which include neighborhood grocery stores, local convenience stores, and independently owned wine and spirits shops—and favored large chain purchasers of wine and spirits, such as Total Wine & More, Costco, and Kroger, the FTC's complaint states.

In 2023, Southern generated roughly $26 billion in revenues from wine and spirits sales to retail customers, making it the tenth largest privately held company in the country. Southern serves as the distributor for many of the largest wine and spirits suppliers, including Pernod Ricard (Jameson Irish Whiskey, Absolut Vodka), Bacardi U.S.A., Inc. (Patron Silver Tequila, Grey Goose Vodka, Bacardi Rum), Diageo (Smirnoff Vodka, Aviation Gin), and Beam Suntory (Jim Beam Bourbon, Makers Mark Whiskey).

Southern's discriminatory pricing is pervasive and deeply engrained in Southern's business strategy and is accomplished through a variety of pricing mechanisms, according to the FTC's complaint.

Southern's lower prices for large national chains are not derived from differences in Southern's cost of distributing products to larger retailers, nor do they reflect legitimate attempts to meet prices offered to chain retailers by competing distributors according to the FTC's complaint. Instead, the FTC alleges that Southern has squarely violated the Robinson-Patman Act by intentionally and illegally providing steep discounts without any market justification to a specific set of retailers.

Southern's Discriminatory Tactics

Southern has charged significantly higher prices for sales of identical bottles of wine and spirits during the same time period to independent retailers than to competing large chains, even when they are located a few miles or even a few blocks from each other. Price differences can be significant for the same bottle of wine or spirits, which directly impacts the cost for consumers.

Southern engages in discriminatory pricing via a variety of mechanisms, such as by offering quantity discounts and rebates to large buyers that are inaccessible to small competitors and are not justified by differences in the cost of distributing products to different retailers, the FTC's complaint stat[illegible]or example, disfavored independent retailers frequently are not informed about the large quantity discounts, rebates, and other special deals available to favored chain retailers, even when it may be logistically feasible for the independent retailer to participate in the deal.

Southern's unlawful practices have caused independent retailers to lose sales and customers. Small, independent retail businesses are a critical component of the American economy and provide valuable alternatives to megastore chains—to the great benefit of consumers, communities, and competition. For many years, Southern has harmed, and it continues to harm, smaller grocery stores, convenience stores, and other independent retailers by charging them higher prices as compared to large national and regional chains.

The FTC's enforcement action via the Robinson-Patman Act does not prohibit quantity discounts, also known as volume discounts. Instead, under the Robinson-Patman Act, volume discounts are permitted so long as a seller can demonstrate real cost efficiencies achieved from selling goods at different quantities to purchasers. However, as the complaint alleges, in many instances, Southern's price discrimination exceeds any such cost savings permitted under the Robinson-Patman Act.

Protecting Fair Competition

Congress enacted the Robinson-Patman Act in 1936 to address a concern that large sellers were favoring newly arisen large corporate chains by granting them special prices, exclusive discounts, and secret rebates that the sellers withheld from smaller rivals. Congress feared that discriminatory prices on offer to a few chain corporations would undercut or eliminate competition from local, community-based businesses selling the same products.

Independent and community-based retailers provide consumers with choice. Consumers may decide to purchase products because of convenience, a particular affinity for a store or its employees, price, or other factors. When sellers withhold access to volume discounts from independent businesses or agree to secret rebate schemes with favored chain stores, they threaten the viability of independent businesses that give consumers a choice in the market. This loss of choice and competition creates market conditions that can ultimately raise prices for consumers.

The FTC's lawsuit is aimed at ensuring that small, independent retailers served by Southern have access to the same discounts, rebates, and pricing as the large chains that they compete direct' against, except to the extent that differential pricing is justified by actual cost differences, changeu conditions, or a good faith effort to meet a competitor's equally low price.

The FTC's lawsuit seeks to obtain an injunction prohibiting further unlawful price discrimination by Southern against these small, independent businesses. When Southern's unlawful conduct is remedied, large corporate chains will face increased competition, which will safeguard continued choice which can create markets that lower prices for American consumers.

The Commission vote to authorize staff to file for a permanent injunction and other equitable relief in the U.S. District Court for the Central District of California was 3-2 with Commissioners Andrew Ferguson and Melissa Holyoak dissenting. Commissioner Alvaro M. Bedoya issued a statement joined by Chair Lina M. Khan and Commissioner Rebecca Kelly Slaughter. Commissioners Ferguson and Holyoak each issued separate dissenting statements.

NOTE: The Commission issues a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest.

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