

Antitrust Alert

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Another Loss for the Robinson-Patman Act

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In *Drug Mart Pharmacy Corp. v. American Home Products Corp.*, 2012 U.S. Dist. LEXIS 11582 (E.D.N.Y. Aug. 16, 2012), Magistrate Judge Steven M. Gold gave the Robinson-Patman Act another drubbing. He granted summary judgment for the defendants in this complex, long pending antitrust litigation between retail pharmacies and various pharmaceutical companies.

Numerous independently owned retail pharmacies claimed that five manufacturers of brand name prescription drugs offered discounts and rebates to their competitors in violation of the Robinson-Patman Act prohibition on price discrimination. In order to establish their losses, the pharmacies set out to compare their customers with the customers of favored pharmacies for the brand name prescription drugs in question. The “matching” process showed a very low number of lost customers. On average, each plaintiff pharmacy lost less than 200 customers and 537 transactions over the entire period examined—a 12-year time frame from 1998 to 2010.

Magistrate Judge Gold characterized these results as “de minimis.” “Many pharmacies lost no more than ten customers per defendant over the relevant twelve-year time period, or less than one customer per year.”

Accordingly, Judge Gold held summary judgment was appropriate—especially in light of the Supreme Court’s admonition in *Volvo Trucks N. Am, Inc. v. Reeder-Simco GMC, Inc.*, to construct the Robinson-Patman Act narrowly. With that view in mind, the court concluded that plaintiffs could not show competitive injury required by Section 2(a) of the Robinson-Patman Act. Moreover, the same de minimis impact made it impossible for plaintiffs to demonstrate antitrust injury.

Despite the existence of a price disparity in drug prices, the plaintiffs were not able to show any real consequences in their business or as a matter of antitrust competitive injury. This doomed their Robinson-Patman claims.

Mintz Levin has a variety of lawyers who can explain the complicated Robinson-Patman Act and how this recent decision will impact Robinson-Patman compliance. If you would like to discuss the impact of the Robinson-Patman Act on your business, please contact one of the authors listed above or another attorney in our Antitrust Practice.

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