FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

For Release

FTC Sues PepsiCo for Rigging Soft Drink Competition

Pepsi's illegal conduct has forced consumers, competing retailers to pay higher prices

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Tags: Competition | Bureau of Competition | Nonmerger | Robinson-Patman | Food and Beverages

The Federal Trade Commission today sued PepsiCo, Inc. (Pepsi) alleging that the second-largest food company in the world has engaged in illegal price discrimination by providing one customer—a large, big box retailer—with unfair pricing advantages, while raising prices for competing retailers and customers.

For years, Pepsi has disadvantaged retailers—ranging from large grocery chains to independent, local convenience stores—who compete with one of its largest big box customers by consistently giving that favored large, big box retailer customer key benefits and advantages, such as promotional payments, while denying those same benefits to its competitors, the FTC's complaint alleges.

Pepsi's unfair practices have led to inflated prices for American families, while denying competing retailers the ability to fairly compete. Pepsi's illegal conduct violates the Robinson-Patman Act (RPA), the FTC's complaint alleges.

"When firms like Pepsi give massive retailers a leg up, it tilts the playing field against small firms and ultimately inflates prices for American consumers," said FTC Chair Lina M. Khan. "The FTC's action will help ensure all grocers and other businesses—no matter the size—can get a fair shake and compete on the merits of their skill, efficiency, and talent."

Under the RPA, specifically sections 2(d) and 2(e), sellers are prohibited from engaging in price discrimination by using advertising and promotional allowances—which are financial incentives given to retailers by manufacturers to promote a product or brand—to favor large customers over small businesses. The FTC's lawsuit alleges Pepsi violated the RPA by engaging in price discrimination using advertising and promotional allowances, as well as other tactics, to favor one large, big box retailer customer over other businesses. This case marks the FTC's latest RPA enforcement action since the Commission sued the largest U.S. distributor of wine and spirits—Southern Glazer's—in December 2024.

A substantial portion of the law violations alleged by the FTC are redacted in the complaint due to the legal protections afforded to both Pepsi and their preferred customer—the large, big box retailer. The FTC staff will swiftly seek to lift the redactions in order to show the ways in which Pepsi violated the RPA on behalf their preferred customer and how those violations raised prices for Pepsi products for competing retailers.

Pepsi's Practices

Pepsi provides its favored large, big box retailer customer with promotional payments and allowances without making these equally available to that customer's competitors. Pepsi also provides this favored retailer with various advertising and promotional tools, known as services and facilities, without making those benefits available to its competitors on a similar basis.

Until Pepsi's conduct is remedied, Pepsi's anticompetitive actions will continue to create an uneven playing field by denying competing retailers, which include family-owned neighborhood grocery stores, the chance to fairly compete against Pepsi's favored large, big box retailer customer.

The Commission vote to authorize staff to file for a permanent injunction and other equitable relief in the U.S. District Court for the Southern District of New York was 3-2, with Commissioners Melissa Holyoak and Andrew N. Ferguson dissenting. Chair Lina M. Khan issued a statement. Commissioner Holyoak issued a dissenting statement. Commissioner Ferguson issued a dissenting statement.

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. The case will be decided by the court.

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