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Supreme Court Reverses $1.3 Million Verdict in Robinson-Patman Act Case Despite Evidence of Price Differences

The Supreme Court recently reversed a lower court decision that upheld a $1.3 million verdict against a truck manufacturer who offered different wholesale prices to its dealers who resold specially-ordered trucks through a competitive bidding process.

The Supreme Court held that the complaining truck dealer failed to prove a Robinson-Patman Act violation because it had failed to show that the manufacturer discriminated between dealers who were contemporaneously competing to resell to the same retail customer, or that the discrimination substantially affected competition between the dealers. *Volvo Trucks North America, Inc. v. Reeder Simco GMC, Inc.*, No. 04-905, —S. Ct.—, 2006 WL 43971 (Jan. 10, 2006). While the decision by the Roberts Court is consistent with prior Robinson-Patman Act rulings, the unique facts of the case help clarify the scope of lawful pricing activity under the Robinson-Patman Act.

Background

Reeder-Simco GMC, Inc. ("Reeder") was an authorized dealer in heavy trucks manufactured by Volvo Trucks North America, Inc. ("Volvo"). Reeder typically sold Volvo trucks through a competitive bidding process, initiated only when a potential customer sought a bid from Reeder on a special-order truck. Once Reeder received the potential customer's specifications, Reeder turned to Volvo for a discount off the wholesale price of the truck.

Reeder purchased the truck from Volvo only in the event its bid to the customer was successful. Other Volvo dealers purchased trucks from Volvo in the same manner. Potential customers often sought bids from Volvo dealers in different geographic territories, and the dealers were not geographically limited in their ability to sell the trucks.

After Volvo announced an intention to reduce the number of its authorized dealers, Reeder began to suspect that Volvo had chosen Reeder for elimination. Reeder believed that Volvo, to effectuate its restructuring plan, began granting more favorable price concessions to other dealers in order to reduce Reeder's margins and sales, and to eventually force Reeder out of business.

Reeder sued Volvo, claiming that it had suffered "secondary-line" injury (injury to competition at the level of a customer of the discriminating seller) from price discrimination in violation of the Robinson-Patman Act. Reeder claimed that it was injured in its ability to compete with other dealers for customers of Volvo trucks because Volvo gave other dealers greater discounts.

At trial, Reeder presented evidence that:

- Volvo offered lower discounts to Reeder than it offered to other Volvo dealers when Reeder and the other Volvo dealers successfully bid against non-Volvo dealers for different sales to different customers
- Volvo offered lower discounts to Reeder in connection with its unsuccessful bids against non-Volvo dealers in comparison with the discounts Volvo offered to other Volvo dealers who bid successfully against non-Volvo dealers for sales on which Reeder did not bid

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- On one occasion when Reeder bid against another Volvo dealer for the same sale, Volvo initially offered both dealers the same discount, but raised the discount to the other dealer *after* it had won the bid

- On another occasion when Reeder bid against another Volvo dealer for the same sale, Volvo had initially offered a lower discount to Reeder, but then raised the discount to match that offered to the competing Volvo dealer; neither dealer won the bid

A jury returned a verdict against Volvo and awarded Reeder $1.3 million in damages, which under the Act was automatically trebled by the trial court to $3.9 million. The trial court also awarded Reeder attorney fees. The U.S. Court of Appeals for the Eighth Circuit affirmed the judgment. The Supreme Court reversed.

A Review of Relevant Robinson-Patman Act Principles

It is well-established that, at a minimum, the Robinson-Patman Act requires at least two simultaneous purchases of goods of like grade and quality. The Supreme Court has also previously held that secondary-line discrimination is actionable under the Act only when the purchases involved in such discrimination are made by those who are in actual competition with each other for the same sales.

Moreover, a Robinson-Patman Act plaintiff must prove a substantial injury to competition, either by direct evidence that the price difference diverted sales or profits from a disfavored purchaser to a favored purchaser, or by earning a rebuttable inference of competitive injury by presenting proof that a favored competitor received a significant price reduction over a substantial period of time.

The Eighth Circuit Affirmed the Jury's Verdict

In *Volvo*, the Eighth Circuit held that Reeder had "'purchaser' status" to sue under the Robinson-Patman Act because it had purchased trucks on a regular basis from Volvo, even if those purchases were not simultaneous with purchases from other Volvo dealers. *Reeder-Simco GMC, Inc. v. Volvo GM Heavy Truck Corp.*, 374 F.3d 701 (8th Cir. 2004).

The Eighth Circuit also held that a jury could reasonably find that Reeder was in "actual competition" with favored dealers, even in the absence of direct competition, because Reeder operated at the same functional level and within the same geographic market as the other Volvo dealers. The court also affirmed the jury's finding of competitive injury based on the evidence of Volvo's intent to reduce the number of dealers, as well as evidence that Reeder lost sales to the non-Volvo dealers, and that its overall margins decreased by more than 75% in the four years after the initiation of Volvo's restructuring program.

The Supreme Court Reversed

The Supreme Court held that Reeder failed to show actual competition or competitive injury, and thus the Court did not need to decide whether Reeder qualified as a purchaser under the Act. The Court held that the first two categories of Reeder's evidence—that Volvo provided lower discounts to other dealers who were *not* bidding against Reeder and who were attempting to sell trucks to *different* retail customers—was insufficient to establish either the actual competition or the injury to competition requirements of the Robinson-Patman Act. There was no direct evidence of a diversion of sales or profits from Reader to a "competing" Volvo dealer, and the Court "decline[d] to permit an inference of competitive injury" from Reeder's selective and "mix-and-match" evidence of price comparisons.

The evidence of the only two sales for which Reeder *had* bid against another Volvo dealer for the same retail customer was insufficient for a more basic reason—the Supreme Court held that the evidence did not show that Reeder was actually disfavored in those sales. In the first example, Volvo initially offered the dealers the same discount, and only increased the discount to the other dealer *after* it had won the bid.

In the second example, Volvo initially gave Reeder a lower discount, but then increased Reeder's discount to match the discount offered to the other dealer, but neither dealer won the bid. In short, Reeder could not prove that any difference in the discount offered for either sale had "substantially" affected its competition with the other allegedly "favored" Volvo dealer, as required under the Act. Accordingly, the Court reversed and directed the lower court to enter judgment in favor of Volvo.

Practical Lessons

The *Volvo* decision does not appear to break any new ground in the application of the Robinson-Patman Act. The case does, however, provide some helpful reminders:

- An essential element of a Robinson-Patman Act secondary-line violation is proof that the discriminatory price was granted to a purchaser who competes with the disfavored purchaser for resale *to the same customer*. *Volvo* illustrates that in a special order competitive bidding situation, the requisite competition would ordinarily require proof of attempts to resell to the *exact* same customer. Where re-sales are made from inventory, however, the actual competition requirement would be satisfied if the competition were for customers in the same geographic market. Of course, a successful plaintiff under either scenario would also need to show proof of *injury* to competition, either through direct evidence of a diversion of substantial sales or profits, or by qualifying for an inference of such injury.

- The *Volvo* decision re-affirmed that an inference of competitive injury "may arise from evidence that a favored competitor received a significant price reduction over a substantial period of time." Although Reeder's evidence did not qualify for the inference, the Supreme Court left open the possibility that an inference of competitive injury may apply in competitive bidding situations, even where there is little or no evidence of head-to-head bidding for the same customer. The Court twice hinted that Reeder may have been able to qualify for the inference had it established, through a systematic study or statistical analysis, that the other Volvo dealers were *consistently* favored in comparison to Reeder over a relevant and substantial time period.

- Proving a Robinson-Patman Act violation also requires evidence that a discriminatory price substantially affect competition between the favored and disfavored purchaser. The *Volvo* decision reminds us that discrimination in price must be substantial *and* must be proven to have caused the harm alleged, such as lost sales or lost profits. A mere difference in price between two simultaneous purchasers, without more, is insufficient to prove a violation of the Act. Practically speaking, to prevail on its claim against Volvo, Reeder would have had to identify specific, significant sales he had lost to other Volvo dealers *and* that it lost those sales *as a result of* the difference in price.

- Moreover, it is worth noting that there is no safe haven for special order or competitive bidding sales as a result of this decision. While the Supreme Court observed that the Robinson-Patman Act's requirement of at least two different purchasers "ordinarily" does not apply "when a product subject to special order is sold through a customer-specific bidding process," the Court specifically declined to exempt all such sales from Robinson-Patman scrutiny.

- Finally, while the Court noted that the Robinson-Patman Act "does not bar a manufacturer from restructuring its distribution networks to improve the efficiency of its operations," inequitable treatment of a wholesaler by a manufacturer may still be actionable under state franchise and/or unfair competition laws. Indeed, the jury in *Volvo* awarded Reeder $500,000 in damages under the Arkansas Franchise Practices Act because of its attempts to eliminate Reeder as a dealer. The lesson here is that even though conduct may not violate the Robinson-Patman Act, businesses must still act within the requirements of other laws that protect customers, or risk liability.

Practice group contacts

If you have questions regarding the information in this legal update, please contact the Dechert attorney with whom you regularly work, or any of the attorneys listed. Visit us at www.dechert.com/antitrust.

Terri L. Bowman
Washington
+1 202 261 3326
terri.bowman@dechert.com

Stephen D. Brown
Philadelphia
+1 215 994 2240
stephen.brown@dechert.com

Peter R. Crockford
London
+44 20 7775 7506
peter.crockford@dechert.com

Paul T. Denis
Washington
+1 202 261 3430
paul.denis@dechert.com

Rebecca P. Dick
Washington
+1 202 261 3432
rebecca.dick@dechert.com

Michael D. Farber
Washington
+1 202 261 3438
michael.farber@dechert.com

Carolyn H. Feeney
Philadelphia
+1 215 994 2247
carolyn.feeney@dechert.com

James A. Fishkin
Washington
+1 202 261 3421
james.fishkin@dechert.com

Paul H. Friedman
Washington
+1 202 261 3398
paul.friedman@dechert.com

George G. Gordon
Philadelphia
+1 215 994 2382
george.gordon@dechert.com

Reid B. Horwitz
Washington
+1 202 261 3365
reid.horwitz@dechert.com

Kevin T. Kerns
Philadelphia
+1 215 994 2729
kevin.kerns@dechert.com

Edward L. Kling
London
+44 20 7184 7612
edward.kling@dechert.com

Christine C. Levin
Philadelphia
+1 215 994 2421
christine.levin@dechert.com

Pierre-Manuel Louis
Brussels
+32 2 535 5411
pierre-manuel.louis@dechert.com

Isabelle M. Rahman
Brussels
+32 2 535 5445
isabelle.rahman@dechert.com

Stephen A. Stack, Jr.
Philadelphia
+1 215 994 2660
stephen.stack@dechert.com

Joseph A. Tate
Philadelphia
+1 215 994 2350
joseph.tate@dechert.com

Dechert LLP
www.dechert.com

U.S.

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Harrisburg
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