Antitrust

Andrews Litigation Reporter

VOLUME 17 ★ ISSUE 5 ★ AUGUST 2009

Expert Analysis

Courts Need to Pay Closer Attention to Injunctions in Robinson-Patman Cases: The *Feesers* Fiasco

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It is settled doctrine that the Robinson-Patman Act must be construed "consistently with broader policies of the antitrust laws." This is particularly true when it comes to injunctive relief. The recent experience of the District Court in *Feesers Inc. v. Michael Foods Inc.* demonstrates why courts must give closer attention, even after finding an R-P Act violation, to the standards for granting injunctions and the terms of those injunctions.

Feesers *in The District Court — The Injunction and Contempt Proceedings*

Feesers, a food distributor, sued its supplier Michael Foods, claiming Michael violated the R-P Act by granting lower prices on egg and potato products to Sodexho, another of Michael's customers. Sodexho was not a food distributor like Feesers, it was a food-service-management company that provided meal preparation services to institutions such as educational and health care facilities.

Despite their separate businesses, competition between Feesers and Sodexho was possible. Institutional customers had a choice between managing their own in-house food service ("self-op"), in which case they could buy food products directly from Feesers or outsource that service to third parties like Sodexho. There was evidence that customers did switch between self-op and outsourcing.

Feesers argued that Michael's lower prices to Sodexho allowed Sodexho to gain or retain outsourcing business from self-ops that otherwise would have dealt with Feesers. Michael argued that any business gained from self-ops was due to factors other than the price of Michael's products to Sodexho, such as service or the institution's inability or unwillingness to self-op.

On April 27, following a three-week injunction hearing, the District Court found that Michael had violated the R-P Act by granting substantially lower prices to Sodexho than to Feesers over a sustained period of time, that

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Michael failed to prove that this discrimination had not caused competitive injury to Feesers and that Michael failed to establish a defense that it simply was meeting competition.

On the prayer for injunctive relief, the court rejected Michael's arguments that Feesers was guilty of unclean hands because it also had accepted discriminatory prices, that in fact Feesers could not demonstrate any injury from the lower prices received by Sodexho and that an injunction that barred all discriminatory pricing would be financially ruinous to Sodexho.

The court entered the following injunction against Michael:

> Michael Foods is hereby enjoined from discriminating unlawfully in price in favor of Sodexho and against Feesers. *Feesers Inc. v. Michael Foods*, 2009 WL 1138126 (M.D. Pa. 2009) (*injunction opinion*)

In little more than a week the parties were back before the District Court on a motion for contempt. The injunction had left Michael with some hard choices.

As one of its employees explained at the contempt hearing, Michael could either:

- Lower Feesers' price so that it matched Sodexho's price, in which case it would have to do the same for other distributors who had contracts with Michael, costing Michael a lot of money in the process;
- Raise Sodexho's price to match the Feesers' price, and probably lose Sodexho's business;
- Lower the distributor price across the board and lose $20 million; or
- Terminate Feesers.

Not surprisingly, it chose termination, or so it thought. In fact, however, Feesers continued to buy Michael's products indirectly, albeit at even higher prices, from another Michael's distributor (Dot Foods) that was also paying higher prices than Sodexho. Michael refused, however, to honor any rebates or discounts on those indirect sales. *Feesers Inc. v. Michael Foods*, 2009 WL 1475270 (M.D. Pa. 2009) (*contempt opinion*).

The District Court found Michael in contempt of the injunction "not for refusing to deal but rather for its continued dealings with Feesers [through Dot] in defiance of the order." The court proceeded to expand the scope of its injunction to prohibit Michael from "refusing to sell its products to Feesers on the same terms as they are sold to Sodexho, so long as Feesers otherwise meets its standards as a customer." *Id.* at 9, 16. The decisions finding Michael in violation of the R-P Act and in contempt of the injunction have been appealed to the 3rd U.S. Circuit Court of Appeals.

Feesers *Has Serious Real-World Implications*

To those who counsel clients on Robinson-Patman issues, the *Feesers* decision is an unwelcome development. For decades competitive pressures have made it virtually impossible for suppliers to comply fully and literally with the requirements of the Act. The most important safety valve that has fostered pro-competitive pricing actions in this hazardous legal environment has been the requirement that an R-P plaintiff prove damages in the form of lost sales to a favored customer.

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This principle, mandated by the U.S. Supreme Court's *Truett Payne* decision (discussed later), has made it possible for clients to make more aggressive pricing and marketing decisions in situations where injury to competition or competitors is unlikely.

That comfort level is threatened if courts accept a lesser showing of probable harm to grant injunctive relief. Injunctions impose general, prospective obligations. Their effect on future conduct is direct and immediate, in contrast to damage awards, whose effect on future conduct is indirect and deterrent.

Injunctions also can cause more operational and financial pain than the occasional treble damage award. These effects should be a matter of special concern for injunctions under the R-P Act. If courts are going to enter broad injunctive relief at the behest of plaintiffs who are unable to meet the demanding standards currently in force for proving injury and damages, the risk attending competitive pricing will increase. The result will be more price rigidity and higher prices — a result

that clearly is inconsistent with the broader policies of the antitrust laws.

R-P Injunctions Need to Be Harmonized With The 'Broader Policies of The Antitrust Laws'

In 2007 the Antitrust Modernization Commission reviewed a wealth of legal and economic learning on the R-P Act and concluded that the act should be repealed in its entirety.

Among the many indictments leveled at the act were that it "prevents or discourages discounting that could enable retailers to lower prices to consumers," "creates substantial compliance costs that also likely flow to consumers as higher prices," and "has resulted in the protection of competitors, at the expense of competition overall and consumer welfare." AMC Report and Recommendations (2007) (*AMC Report*), at 317, 322-23.

These are all effects that the Supreme Court has said run counter to the broader policies of the antitrust laws. *See Great Atlantic & Pac. Tea Co. v. FTC*, 440 U.S. 69, 80 & n. 13 (1979) (*A&P*) (rejecting interpretation of R-P Act that would "help give rise to price uniformity and rigidity in open conflict with the purposes of other antitrust legislation'"), *quoting Automatic Canteen Co. of Am. v. FTC*, 346 U.S. 61, 63 (1953); *Volvo Trucks North Am. v. Reeder-Simco GMC*, 546 U.S. 164, 181 (2006) (*Volvo*) (resisting interpretation of the R-P Act "geared more to the protection of existing *competitors* than to the stimulation of *competition*") (emphasis in original).

The court has consistently attempted to minimize that tension by adhering to one cardinal principle: "to construe the act 'consistently with broader policies of the antitrust laws.'" *Volvo*, 546 U.S. at 181; *see also, Brooke Group v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 220 (1993).

This is not always easy. The difficulty in reconciling the R-P Act with the antitrust laws is due in no small measure to the Supreme Court's 1948 decision in *FTC v. Morton Salt Co.*, 334 U.S. 37 (1948). In this R-P case brought by the Federal Trade Commission, the high court held that competitive injury at the customer level can be inferred simply from a significant price differential enduring over a substantial period of time without any showing of "general injury to competitive conditions." *Id.*, 50-51; *see also, Volvo*, 546 U.S. at 177.

The power of the *Morton Salt* "inference" can be seen by the way the courts applied it in *Feesers*. In reversing an earlier grant of summary judgment for the defendants, the appeals court held that the *Morton Salt* inference created a rebuttable presumption that shifted the burden to the defendant to prove affirmatively "that the price differential was not the reason that Feesers lost sales or profits." *Feesers Inc. v. Michael Foods*, 498 F.3d 206, 213 (3d Cir. 2007).

On remand the District Court held that Michael failed to carry that burden largely on the basis of documents from the files of the favored purchaser (co-defendant Sodexho) that trumpeted its lower food costs as a competitive advantage in competing for food service business. At the same time, however, the court apparently accepted the fact that "Feesers has been unable to identify *any* lost sales resulting from [Michael's] pricing." *injunction opinion*, 81 (emphasis added).

This was not surprising since, as the court also found, the egg and potato products at issue constituted "only a small portion of Feesers' sales to any one customer." *contempt opinion*, 4. The court lamented that "if Feesers had produced customer witnesses who testified that the cost of food was the reason they switched from Feesers to Sodexho, that evidence would have been extremely persuasive on the issue of competitive injury." *injunction opinion*, 53.

But Feesers apparently chose to rely on the *Morton Salt* inference and produced no such witnesses, and the court found competitive injury without that evidence. The result was that because of *Morton Salt*, Feesers was able to establish competitive injury even though it could apparently point to no instance in which it lost business because of the price differential at issue.

Results like this have led commentators to criticize the *Morton Salt* inference as unnecessarily exacerbating the conflict between the R-P Act and the other antitrust laws. *See AMC Report*, 321-22. Yet, while the Supreme Court continues to adhere to *Morton Salt*, the court has consistently sought to mitigate its anti-competitive potential. It has done so in at least three ways.

One way has been through a generous application of the meeting-competition defense, which permits any price discrimination that "was made in good faith to meet an equally low price of a competitor." 15 U.S.C. § 13(b). Because it fosters lower prices in individual situations, the Supreme Court has relied on meeting competition as "the primary means of reconciling the

Robinson-Patman Act with the more general purposes of the antitrust laws of encouraging competition between sellers." *A&P*, 440 U.S. at 83 n. 16.

Supreme Court decisions have accordingly given broad scope to the meeting-competition defense so that it can perform this pro-competitive function. The court early on established that Section 2(b) provided a complete defense to an R-P Act claim, even if the plaintiff could prove that the price discrimination led to anti-competitive effects. *Standard Oil Co. v. FTC*, 340 U.S. 231, 250-51 (1951).

The U.S. Supreme Court has relied on meeting competition as 'the primary means of reconciling the Robinson-Patman Act with the more general purposes of the antitrust laws.'

The court has also rebuffed attempts to limit the scope of the defense. In *Falls City Industries Inc. v. Vanco Beverage Inc.*, 460 U.S. 428, 444-51 (1983) (*Vanco),* for example, the court rejected arguments that the meeting-competition defense should not apply to area-wide (as opposed to individual) price reductions, to price discrimination caused by raising (as opposed to lowering) prices and to attempts to retain customers (as opposed to gaining new ones).

Finally, the court has interpreted the "good faith" requirement generously for sellers. In the *A&P* case, for example, it upheld the defense as a matter of law even though the seller substantially "beat" the competing offer and had very little information about the buyer's competing offer. *A&P*, 440 U.S. at 83-84.

A second means employed by the Supreme Court to mitigate the anti-competitive potential of the *Morton Salt* inference has been to impose a more demanding legal standard for proving antitrust injury and damages. In *J. Truett Payne Co. v. Chrysler Motors Corp.*, 451 U.S. 557 (1981), the high court rejected a rule based on the *Morton Salt* inference which would have allowed as a measure of recovery "automatic damages" in the amount of the price discrimination. Instead, the court required R-P Act plaintiffs to prove actual lost sales or profits resulting from the competitive advantage gained by the lower prices given to the favored purchaser. *Id.*, 561-63.

Observers have cited this limiting principle as one of the reasons for the very limited success plaintiffs have had in winning R-P Act cases. AMC Report, 316. The combination of low litigation loss rates and a legal standard that makes damages harder to recover is likely to produce more pricing flexibility as sellers factor reduced litigation risk into their pricing decisions, thus serving to harmonize the R-P Act with broader antitrust policies.

A third way in which the Supreme Court has mitigated the impact of the *Morton Salt* is by building more flexibility into R-P Act injunctions. In *FTC v. Ruberoid Co.*, 343 U.S. 470, 472 (1952), the court refused to approve an R-P Act order containing a blanket prohibition against selling products of like grade and quality to "any purchaser at prices lower than those granted other purchasers who in fact compete with the favored purchaser," largely because the prohibition eliminated the cost-justification and meeting-competition defenses.

Rather than simply remand the case for modification of the order, the court held, apparently as a matter of law, that these defenses "are necessarily implicit in every order issued under the authority of the act, just as if the order set them out *in extenso*." *Id.*, 476.

The court did the same thing again in *FTC v. Henry Broch & Co.*, 368 U.S. 360, 366-67 (1962), interpreting a broad R-P Act order to give Broch by implication "the benefit of statutory defenses or exceptions" in any future enforcement proceeding. This time the court warned the FTC about "the necessity for fashioning orders which are, at the outset, sufficiently clear and precise to avoid raising serious questions as to their meaning and application." *Id.*, 367-68 (footnote omitted).

The lesson of *Broch* and *Ruberoid* is that injunctions in R-P Act cases should be crafted with sensitivity to the need to preserve pricing flexibility, again aligning the act more closely with the other antitrust laws.

The District Court's Treatment of R-P Act Injunction Issues in Feesers Was Inadequate

The 17-word injunction entered against Michael failed to meet the minimum requirements of Rule 65(d), much less the Supreme Court's more demanding standards for R-P Act orders. Michael was prohibited from "unlawfully" discriminating in price, but it was entirely unclear what that meant.

Read literally, the injunction said nothing more than "do not violate the law." An injunction that broad does not meet the requirements of Rule 65(d) to "describe in reasonable detail … the act or acts restrained." Fed. R. Civ. P. 65(d)(1)(C); *Calvin Klein Cosmetics Corp. v. Parfums de Coeur*, 824 F.2d 665, 669 (8th Cir. 1987). Nor does it meet the minimum standard for injunctive relief in R-P Act cases.

In *Morton Salt* the Supreme Court faulted the FTC for an order that "did no more than shift to the courts in subsequent contempt proceedings for their violation the very fact questions of injury to competition, etc., which the act requires the commission to determine as the basis for its order." 334 U.S. at 54.

In a later decision involving a parallel injunction against Sodexho for "unlawfully" inducing an R-P Act violation, the District Court denied that such an order violated Rule 65(d)(1) by referring to its "83-page trial opinion," which purportedly "places Sodexho on notice" of the conduct prohibited by the order. *Feesers Inc. v. Michael Foods*, 2009 WL _____ (M.D. Pa. 2009), slip op., 6 (June 30, 2009).

The 17-word injunction entered against Michael Foods failed to meet the minimum requirements of Rule 65(d), much less the Supreme Court's more demanding standards for R-P Act orders.

It is questionable whether reference to the court's opinion and findings can cure an otherwise improperly vague injunction any more than reference to "the opinion heretofore entered," *Schmidt v. Lessard*, 414 U.S. 473 (1974), or to the arbitration proceeding and award that gave rise to the injunction, *International Longshoremen's Association Local 1291 v. Philadelphia Marine Trade Association*, 389 U.S. 64 (1967), or to a magistrate's findings and recommendation, *Seattle-First National Bank v. Manges*, 900 F.2d 795, 799-800 (5th Cir. 1990).

The District Court's injunction also fails to clarify the status of specific exclusions and exemptions built into the R-P Act. *Broch* and *Ruberoid* would appear to read the cost-justification and meeting-competition defenses into any R-P Act injunction as a matter of law, at least in the absence of contrary language in the injunction itself. By limiting the scope of the injunction to "unlawful" price discriminations, the court in *Feesers* may have opened the door for these defenses in any subsequent contempt proceeding. It is not at all clear whether the court intended to do so, however.

The injunction also created a serious ambiguity over whether it was intended to deprive Michael of the statutory right to refuse to deal with Feesers — an ambiguity that led immediately to the contempt proceeding. The R-P Act expressly permits sellers to "select [] their own customers in bona fide transactions." 15 U.S.C. § 13(a). A refusal to deal permitted by the statute would therefore not be an "unlawful" discrimination. This conclusion is bolstered by the general presumption from *Broch* and *Ruberoid* that R-P Act orders, at least absent language to the contrary, are deemed to incorporate and permit assertion of all defenses and exclusions provided for in the R-P Act itself.

It is further reinforced by the Supreme Court's strong policies favoring the right of businesses "to choose the parties with whom they will deal, as well as the prices, terms and conditions of that dealing." *Pacific Bell Tel. Co. v. LinkLine Commc'ns*, 129 S. Ct. 1109, 1118 (2009), *citing United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919).

While the *Feesers* court obviously did not agree that the language limiting the injunction to "unlawful" price discriminations effectively preserved Michael's right to terminate, a contrary interpretation of the injunction was at least as probable, if not more so. Whether the appeals court will uphold a finding of contempt for violating so vague an injunction is an interesting question beyond the scope of this comment.

An R-P injunction, such as the one entered in *Feesers*, that says merely "do not discriminate" raises broader problems than mere lack of notice. Even a narrow injunction directed at a single buyer-seller relationship can produce a broader "domino effect." While the defendant can in theory comply with that injunction by lowering its price to the plaintiff, pursuing that alternative will often create a new price discrimination *vis-a-vis* customers that compete with the plaintiff.

In fact, that would have been precisely the situation in *Feesers*. If Michael had lowered its price just to Feesers in order to comply with the injunction, Feesers would have been receiving more favorable pricing than other distributors with whom it was competing. *contempt opinion*, *5*.

As the court pointed out, Michael could have lowered its price to all its distributors to avoid that problem. Michael claimed, however, that to do so would have resulted in "financial ruin." *injunction opinion*, 82. This left Michael with the other option that the District Court offered: Raise the price to Sodexho. *Id.* According to Michael, the result would have been to lose the business to a competitor (*contempt opinion*, 5), presumably at a higher price, which would then have been built into the value chain and possibly passed on to consumers.

The effect of raising the prices charged to Sodexho might have been mitigated if Michael's could have properly asserted a meeting-competition defense. Whether Michael's rejected this option because of uncertainty about whether the injunction permitted such a defense or because of the way the court had rejected Michael's meeting-competition defense in the liability phase of the case is unclear.

What is clear is that the practical effect of the court's injunction will probably be to raise prices to Sodexho, and possibly to consumers. This is not consistent with the Supreme Court's directive to interpret the R-P Act "consistently with broader policies of the antitrust laws." *Volvo Trucks*, 546 U.S. at 181. The District Court did not seem overly concerned with this eventuality. Its position on whether prices would be raised or lowered by the injunction was one of complete indifference. *injunction opinion*, 82.

Rather than reflexively reach for a blanket injunction against future discrimination, it should be incumbent on courts in R-P Act cases to inquire more deeply into potential consequences and tailor injunctions so as to minimize their adverse effects on competition and consumers.

Such an inquiry in *Feesers* might have forced the court to acknowledge that reducing Michael's prices across the board was simply unrealistic and to focus more intensely on the impact on consumers of forcing Michael to increase its prices to Sodexho That realization might in turn have led the court to consider how to mitigate that impact through an explicit incorporation of the meeting-competition defense into the injunction — perhaps tailored to define more precisely the shortcomings that led the court to reject the defense in its liability decision.

In the end, the result may not have been much different in *Feesers*, but it might have been, and in other cases it may be, pivotal.

The Standards for Injunctive Relief In R-P Act Cases Should Be Stricter Than Other Antitrust Cases

There is another respect in which the District Court's injunction might have violated sound principles relating to R-P Act relief, and that is by finding that Feesers had made a sufficient showing to warrant any injunctive relief at all.

As stated earlier, the price discrimination between Feesers and Sodexho had apparently continued for many years, yet the court was apparently unable to identify any lost sales that Feesers lost to Sodexho during that time, possibly because the products at issue constituted a very small portion of Feesers' sales to any one customer. The court nevertheless entered an injunction against future discrimination.

There is no question that the standard for injunctive relief differs from the standard for damages ... yet, that does not mean that the burden should be less, only that it is different.

Its sole explanation in the face of these contrary facts was that it was just "a matter of time before that price disparity causes Feesers to lose customers to Sodexho." *injunction opinion*, 82. The court failed to explain how it could be "a matter of time" for the plaintiff to suffer lost sales in the future, when it had apparently not suffered any demonstrable losses over many years previously, and for reasons that were well-documented in the record.

How the court reached such an odd result is not clear from its opinion. Two rationales come to mind. One would be that the *Morton Salt* inference relieved Feesers of the obligation to prove likelihood of future injury. There is little authority to support this argument. *Morton Salt* was brought under Section 5 of the FTC Act, 15 U.S.C. § 45, which gives the FTC "wide discretion in its choice of a remedy." *Jacob Siegel Co. v. FTC*, 327 U.S. 608, 611, 613 (1946) ("courts

will not interfere [with an FTC cease-and-desist order] except where the remedy selected has no reasonable relation to the unlawful practices found to exist").

The authority to grant injunctive relief in private cases, however, comes from Section 16 of the Clayton Act, 15 U.S.C. § 26. The Supreme Court has not faced squarely the requirements for injunctive relief under Section 16 in the specific context of Robinson-Patman cases.

There is the statement in *Vanco* that "a showing of competitive injury as part of a *prima facie* case is sufficient to support injunctive relief, and to authorize a further inquiry by the courts into whether the plaintiff is entitled to treble damages." *Vanco*, 460 U.S. at 435.

Insofar as this statement relates to injunctive relief, it is dictum, as *Vanco* involved an appeal of a damages award without injunctive relief. *Vanco Beverages v. Falls City Indus.*, 654 F.2d 1224, 1227 & n.7 (7th Cir. 1981), *vacated and remanded*, 460 U.S. 428 (1983). The statement also provides no insight into the essential question of how strong a "showing of competitive injury" is actually required under Section 16.

The few appellate cases that have considered Section 16 relief in cases applying the *Morton Salt* inference have imposed upon the plaintiff the added burden of proving that it is entitled to the injunctive remedy it seeks. In *H. L. Hayden Co of New York Inc. v. Siemens Medical Systems Inc.*, 879 F.2d 1005, 1022 (2d Cir. 1989), for example, the 2nd Circuit applied the *Morton Salt* inference to find competitive injury, but no R-P Act damages.

After further acknowledging that a failure to prove past damages does not automatically preclude injunctive relief, the court nevertheless denied an injunction. Noting that "[a]n injunction is appropriate only where there is a threat of continuing injury," the court found no such threat because the defendant had ceased dealing with the plaintiff for other reasons, "as is its right." *See also, B-S Steel of Kansas Inc. v. Texas Industries Inc.*, 439 F.3d 653, 668-69 (10th Cir. 2006) (*B-S Steel*) (injunction denied in R-P Act case because plaintiff no longer purchased products from the defendant "and has failed to show any possibility that it might resume such purchases in the future.")

Under this approach, the plaintiff should, even if the *Morton Salt* inference is applied, have to carry the additional burden of proving it is entitled to an appropriate remedy.

A second possible argument to support the court's injunction would cite to case law to the effect that requirements for injunctive relief under Section 16 are less stringent than the requirements for recovery of damages under Section 4. In *Zenith Radio Corp. v. Hazeltine Research Inc.*, 395 U.S. 100 (1969) (*Zenith*), the Supreme Court held that injunctive relief under Section 16 is appropriate in a Sherman Act case, even if the plaintiff has failed to prove injury and damages under Section 4.

The court stated that for injunctive relief in such a case, the plaintiff "need only demonstrate a significant threat of injury from an impending violation of the antitrust laws or from a contemporary violation likely to continue or recur." *Id.* at 130.

There is no question that the standard for injunctive relief differs from the standard for damages. One deals with past harm, the other with the possibility of future harm. So, as one court pointed out, simply because the plaintiff "failed to meet its evidentiary burden in regard to past violations does not mean, as a matter of law, that it would be impossible for [the plaintiff] to show a threat of future injury." Yet, that does not mean that the burden should be less, only that it is different.

Even under the *Zenith* formulation, a plaintiff must still prove that the threat of injury from a contemporary violation must be "likely to continue or recur." In *Feesers*, the failure to prove any injury cognizable under the R-P Act during a prolonged past period raises the serious question as to whether the price discrimination was likely to produce any such injury in the future.

Moreover, even if *Zenith* does establish a more relaxed standard for injunctions than for damages, such a rule should be limited to remedies for Sherman Act violations. A more demanding standard should be required for Robinson-Patman Act injunctions. The argument for a more demanding standard for R-P Act injunctions proceeds from the Supreme Court's mandate, cited earlier, to interpret the R-P Act so as to reconcile it with the broader policies of the antitrust laws. It also proceeds from the Supreme Court's admonition that Section 16 should be "flexible and capable of nice 'adjustment and reconciliation between the public interest and private needs.'" *Zenith*, 395 U.S. at 131 (citation omitted).

The Supreme Court has persistently taken steps, noted earlier, to reduce the anti-competitive potential from the R-P Act. One of those steps was to reject the concept of "automatic damages" in favor of a more demanding standard for proving injury in damages cases. A Robinson-Patman Act plaintiff should be no more entitled to an "automatic injunction" than to "automatic damages." R-P Act "injunctions may injure consumers just as surely as damages may." *Local Beauty Supply Inc. v. Lamaur Inc.*, 787 F.2d 1197, 1204 (7th Cir. 1986).

The R-P Act plaintiff should therefore have to prove that it is threatened with the same type of injury from the favored buyer's competitive advantage in order to obtain injunctive relief under Section 16 of the Clayton Act as it must prove to claim damages under Section 4. Such a rule would be consistent with the mandate to reconcile the R-P Act with the "broader policies of the antitrust laws." It would also maintain consistency within the R-P Act and between the two remedial provisions of the Clayton Act.

Conclusion

Injunctions in R-P Act cases are not like other antitrust injunctions. They have greater potential for effects that are inconsistent with fundamental goals of the antitrust laws. This means courts should give more serious thought in R-P Act cases to the standards for granting injunctions and to their scope. Courts should require R-P Act plaintiffs to demonstrate a future prospect of the same type of injury that is required to prove damages. If an injunction is warranted, courts should specifically determine which statutory exemptions and exclusions should be permitted and whether those exemptions should be molded to fit the facts supporting the violation. In this respect, there should be a strong presumption against cutting back on or eliminating the meeting-competition defense in view of the Supreme Court's recognition of that defense as a primary means of reconciling the R-P Act with the more general purposes of the antitrust laws.

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