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10<sup>th</sup> July 2006

Senator Ron Boswell  
Level 36, Waterfront Place  
1 Eagle Street  
Brisbane 4000

Dear Ron

I am concerned about the variation in fuel prices and the adverse effects these prices are having on the rural economy. I am setting out below some specific matters which I would like you to pass on to the Senate Inquiry into Fuel Pricing.

Higher fuel prices have a much greater impact on rural communities than on urban and coastal areas because people pay for fuel a number of times:

1. They pay for it in their personal use. (Public transport not an option).
2. Rural communities pay for the freight on the goods they buy.
3. Rural producers pay for the freight on the goods they sell.
4. Production costs are higher because of greater fuel costs.
5. Tradesmen travelling greater distances pass on their fuel costs resulting in higher service fees.
6. These increased costs also result in higher GST for the end user.

The second point I would like to make relates to diesel fuel. Seven or eight years ago diesel fuel was regularly 7 or 8 cents/litre cheaper than petrol. Currently it is 10 to 20 cents/litre dearer than petrol. I find it hard to understand why all of a sudden diesel should be so much dearer than petrol. In the month of May, diesel delivered to my farm cost 146.8 cents/litre, while petrol was selling at around 122 cents/litre in the same area. By comparison, American farmers in the month of May were paying the equivalent of about 80 cents/litre (Australian).

I include a paper cutting (*Sunday Mail*, 14 May 2006) which sets out the various petrol prices throughout Queensland in that week. The variation seems unjustifiable, and discriminates severely against rural communities. The second paper cutting (*Sunshine Coast Daily*, 6 July 2006) reports that on the previous morning fuel was selling at Sunshine Coast service stations at around 119 cents/litre, and in the afternoon it had increased to 133 cents/litre. This would have to be a clear case of profiteering by the oil companies.

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At the time of introduction of the GST the Federal Government provided a support program to the oil companies of between 2 and 3 cents/litre to offset freight costs on fuel, so that rural communities would not be disadvantaged. This apparently was considered as the difference between the cost of fuel on the coast and freight costs involved in transporting it to regional centres. Obviously the great price differences we are seeing cannot be attributed to freight alone.

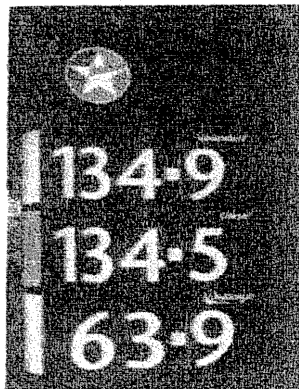
As the fuel companies, together with Woolworths and Coles, control roughly 90% of fuel outlets, I feel it is important that we make every effort to keep the independent fuel retailers in the market. I enclose some information on the Robinson-Patman Act (1936) that was implemented in the USA to protect the rights of small independent operators. Surely if the Americans, in the home of free enterprise, felt the need for such legislation, it is worthy of consideration here to ensure that there is real competition in the market place for fuel, as it plays such an important role in the economy of the nation.

Hoping you can submit this information to the Senate Inquiry on my behalf.

Regards

*B Page*

Bruce Page



## Big fuel price spike hurts

SIX Big Macs or twenty bucks – that's the difference a few hours made to the price of petrol on the Sunshine Coast for motorists with large petrol tanks yesterday.

Servos were selling fuel for around the 119 cents a litre yesterday morning, but this price soared to around 133 cents a litre by the afternoon, amounting to a hefty \$20 increase for those with 145-litre petrol tanks like large four-wheel-drives.

Fuel watchdog Fueltrac said a greater increase had been expected.

General manager Geoff Trotter said he had expected the price to go up to around 135 or 136 cents a litre.

But he had some good news – the price should come back down to around the 119 cents by early next week.

"It is part of the weekly cycle where petrol prices rise on Wednesdays and Thursdays to go down again by Tuesday," Mr Trotter said.

A spike in Singapore's "motor spirit price" was to blame for the latest increase.

"It could be the missiles fired in North Korea or concerns about Iran."

Sunday Mail  
14 May 2006

Huge differences in petrol price hikes across Queensland

# State of change

**SPECIAL REPORT**

**BY DARYL PASSMORE**

PETROL prices have increased by more as much in some parts of Queensland than in other regions as in the past year.

An analysis of the average price, month-by-month, in 28 centres around the state reveals enormous differences.

Hardest hit have been motorists in Weymouth.

In May 2005, they had the fourth cheapest fuel prices in Queensland, paying 97.6c for a litre of unleaded.

But by April 2006, the cost had rocketed by 28.2c to 125.8c a litre.

Townsville drivers are paying 96.2c a litre more than they were a year ago.

Motorists in Brisbane and on the Gold Coast are also digging a lot deeper into their pockets, paying 25.7c and 25.5c more.

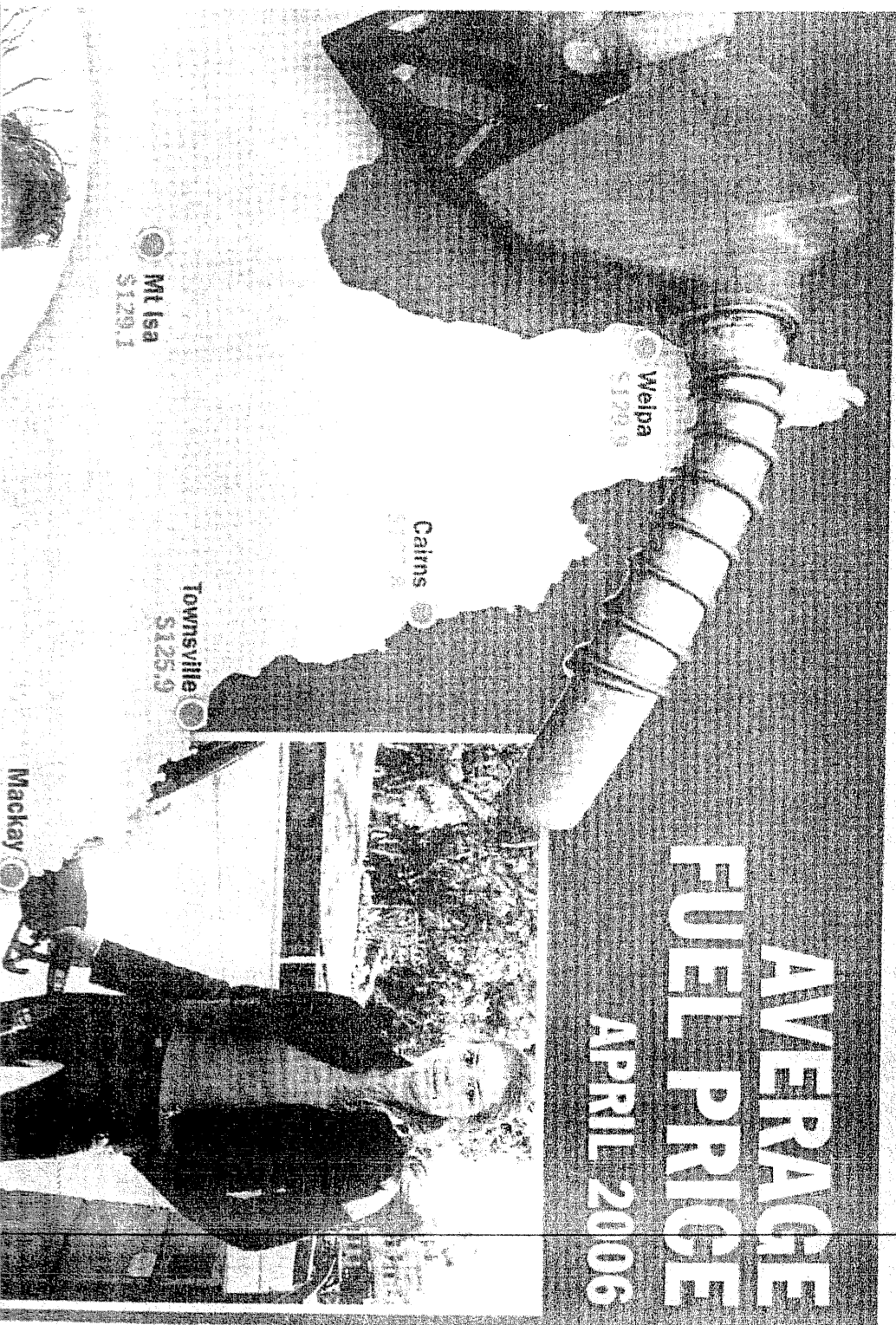
But the study, conducted for the RACQ by FuelTrac Ltd, showed better results for consumers in some of the more far-flung parts of the state.

In Wepa, where drivers were paying a Queensland high of 115.7c in May last year, the price had risen by just 14.2c by April this year.

And the price in Roma increased only 15.7c.

Cairns, Gladstone, Bundaberg and Hervey Bay all recorded rises of less than 20c a litre over the 12-month period.

The Gold Coast retained its position as the region with the lowest average price, but Brisbane, which



risen by just 1.2m by April this year.

And the price in Roma increased only 15.7c. Cairns, Gladstone, Bundaberg and Hervey Bay all recorded rises of less than 20c a litre over the 12-month period.

The Gold Coast retained its position as the region with the lowest average price but Brisbane, which was second a year ago, slipped behind the Sunshine Coast, Toowoomba, Gladstone and Bundaberg.

RACQ economic and public policy manager Ken Willett said they were at a loss to explain the big variations across the state.

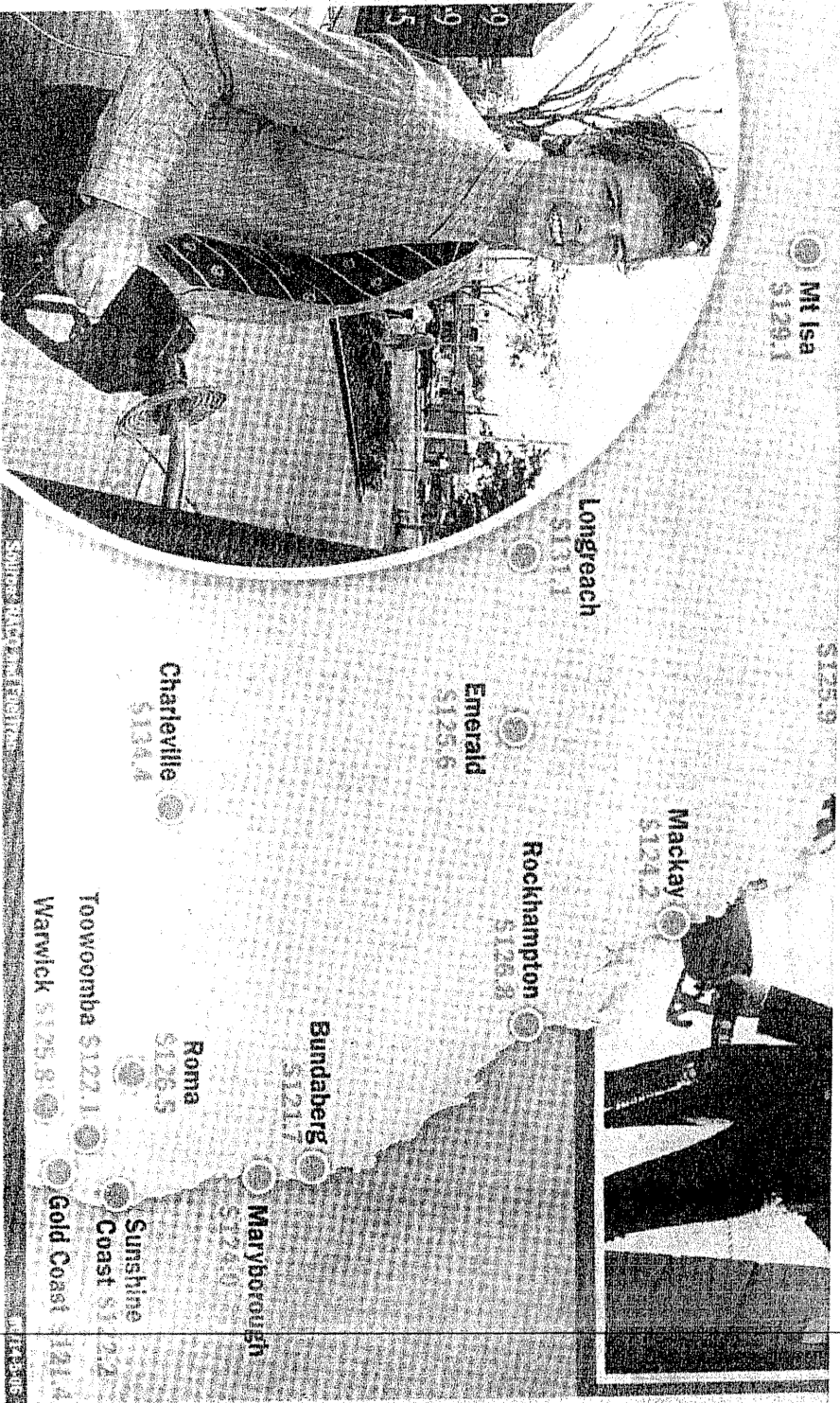
"The big oil companies blame the retailers.

"We think it's more likely the majors are responsible but we will never really know because we don't have access to their internal data.

"I think it is most likely simply down to competition. Outbreaks of competition in particular areas can have a significant impact."

Meanwhile, other analysis by the RACQ shows that it now costs up to \$25 more than a year ago every time you fill the tank of the family car.

The cost for a Hyundai Accent (4.3 litre family) went up from \$843.50 in May 2005 to \$868.50 last week, a Holden Astra (4.2 litre) from \$30.28 to \$47.66, a Subaru Liberty RX from \$91.89 to \$93.29, and a Holden Commodore Acadia from \$72.52 to \$97.50.



# Redcliffe has Brisbane's cheapest fuel

BY DARYL PASSMORE

WILL COME to the Redcliffe Peninsula, the cheap-fuel capital of Queensland.

A six-month survey of more than 500 service stations by price watch website motorwatch.com.au reveals motorists in the state have been spoiled for choice.

Of the 40 cheapest outlets across the greater Brisbane region, nine are in Redcliffe.

And two areas surrounded by other clusters of low cost services, Price in the Seaside. Penang area make the Top 40, too at Deception Bay and two at Moree Hill.

The other northern Brisbane suburbs of Aspley, Bracken Ridge and Zillmere are the other places to find a bargain when filling up.

And a cluster of southside services around Woodridge, Slack Creek, Kingston and Underwood also features strongly in the Top 40.

But the inner northside and southside western suburbs and the backside areas in Brisbane's south-east are consequently missing from the list.

"It shows the power of competition in keeping

prices down to the consumer's benefit. Motorwatch spokesman Alan Price said.

"There are a lot of service stations on that stretch through Penang to Redcliffe and there's no doubt they are competing fiercely with each other.

"There are also significant numbers of motorists heading to Brisbane from Redcliffe each day and no real line and so relatively poor public transport.

Fern Rose, who has run the Matilda on the corner of Oxley Ave and Kilmer Rd in Redcliffe for eight years,

said her trade was almost entirely local but some outlets closer to the beaches probably benefited from weekend visitors.

She said price competition had always been strong in the area even though several services had closed in recent years.

"Topping the table for the cheapest average price anywhere in the Brisbane region over the past six months was the Matilda outlet on the corner of Boundary Rd and The St in Carole Park.

Manager Treat Prudmore said: "We try hard to keep

the price down and obviously it's worked. Someone has to keep the big boys in check."

Their average price of 109.1c a litre for unleaded petrol was well below the Brisbane average of \$111.8 over the period.

"We get a lot of comments from people (who) have come from quite a distance away because they know our prices are low."

Eight of the 10 cheapest service stations were independents, six of them Matilda outlets.

Matilda general manager Garth Anderson said it

clearly indicated the importance of independent retailers in the market to keep prices down.

"We've copied a heck of an onslaught from the Coles-Woolworths big boys and we've weathered it and we're still here fighting. We're very grateful for the support of our consumers in an aggressive marketplace."

M F P R C I T O in Motorwatch said virtually all the brands were represented in the Top 40.

"Motorists should shop around and try to have their fuel purchases to take advantage of the weekly cycle."



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# Robinson-Patman Act

Legal Encyclopedia



Robinson-Patman Act

The Robinson-Patman Act is a 1936 statute (15 U.S.C.A. §§ 13(a-f) that amended Section 2 of the Clayton Act (Oct. 15, 1914, ch. 123, 38 Stat. 730), which was the first antitrust statute aimed at price discrimination. The Robinson-Patman Act prohibits a seller of commodities from selling comparable goods to different buyers at different prices, except in certain circumstances.

The Robinson-Patman Act seeks to limit the ability of large, powerful buyers to gain price discounts through the use of their buying power. Although the act remains an important antitrust statute, private parties do not use it nearly as often as they use the Sherman Act, in part due to the Robinson-Patman Act's convoluted and complicated language. The government, which may bring an action under the Robinson-Patman Act through the Federal Trade Commission (FTC), rarely initiates actions under the statute.

In fact, the Robinson-Patman Act has been severely criticized throughout its history, both for its poor drafting and the economic theory behind it. Even the Supreme Court has criticized the act on more than one occasion, stating in 1952 that it is "complicated and vague in itself and even more so in its context. Indeed, the Court of Appeals seems to have thought it almost beyond understanding" (*FTC v. Ruberoid Co.*, 343 U.S. 470, 72 S. Ct. 800, 96 L. Ed. 1081 [1952]). Nevertheless, the Robinson-Patman Act remains an important deterrent and remedy to market power abuses by large and powerful buyers.

The Robinson-Patman Act was passed during the Great Depression following the emergence of large, successful grocery-store chains. Small, independent grocery stores and their suppliers lobbied Congress to do something about the large chains, which were alleged to have exercised their superior buying power to achieve price discounts, driving small grocers out of business. The United States Wholesale Grocers Association drafted the original bill of what was to become the Robinson-Patman Act. Many critics of the act point out that Congress passed the act with the protection of small grocers and their wholesalers in mind, rather than the welfare of competition or the consumer.

The Robinson-Patman Act was intended to remedy perceived shortcomings in the Clayton Act. The federal courts had determined that the Clayton Act did not apply to price discrimination based on quantity, which was precisely what the small, independent businesses were worried about. The Robinson-Patman Act considerably expanded the scope of the Clayton Act. The Robinson-Patman Act specifically prohibits discounts based solely on quantity, except in certain situations. The act's provisions apply both to sellers who offer discriminatory prices and buyers who knowingly receive them. The act is also intended to remedy secondary line injury, which is injury to competitors of a buyer who receives a discriminatory price, in addition to primary line injury, which refers to injury to competitors of a seller who offers a discriminatory price. Both private parties and the FTC may use the statute. A private party can obtain, in appropriate circumstances, treble damages from a price discriminator—in other words, three times the party's actual damages.

To invoke the provisions of the Robinson-Patman Act, certain jurisdictional elements must be established. The act applies only (1) to sales (2) in commerce (3) of commodities (4) of like grade and quality. The sales requirement excludes transfers, leases, or consignment sales from the act's provisions. Other transfers that do not meet the legal definition of a sale, such as an offer or bid, are not covered by the act. Finally, the plural sales is important. The act applies only where there are two completed sales to different purchasers at different prices. The commerce specification requires at least one of the sales to be in interstate commerce, meaning that the goods must have physically crossed a state line.

The Robinson-Patman Act applies only to sales of commodities or tangible goods. The courts have determined that the act is not

available to remedy discriminatory pricing of services, money (e.g., loans), insurance, electricity, advertising, or photo processing (primarily a service). In a case such as photo processing, where the product is really both a commodity and a service, the courts look to the "dominant feature" of the transaction. If the dominant feature is not a commodity, the act will not apply. Finally, the act applies only to goods of "like grade or quality." Obviously the determination of whether two goods are of like grade and quality is somewhat subjective. The courts have applied several evidentiary standards to this determination. For the act to apply, the goods must be at least reasonably interchangeable. For example, a generic and brand-name food product are of "like grade and quality" if the only real difference between them is the brand name or label itself.

After the jurisdictional elements of the Robinson-Patman Act have been satisfied, a plaintiff must establish price discrimination by the defendant and injury to competition to prove a violation of the main provisions of the act. The price discrimination element is actually easy to establish; only a difference in price in two different sales is required. The price refers to the actual price paid, net of discounts and allowances. Conversely, there is no price discrimination under the act where the same price is charged to two buyers, even if the seller's costs in serving one buyer are much higher than the costs of serving the other.

The injury to competition element is more difficult to establish. Harm to only the individual plaintiff is not enough to prove injury to competition. Although the plaintiff need not prove actual harm to competition, due to the difficulty of proving it in court, there must be at least a "reasonable possibility" that the price discrimination affected competition in the overall market for the product. As noted earlier, there are two types of injury to competition due to price discrimination: primary line injury and secondary line injury. Primary line injury refers to injury to the competitors of the seller, who lose the business of the buyers who take advantage of the seller's discriminatory price. Secondary line injury refers to injury to the competitors of the buyer, who are unable to take advantage of the discriminatory prices obtained by the buyer.

A primary line injury may be proved in two ways. A plaintiff may present evidence of the seller's intent to destroy a competitor, either by direct evidence or indirect evidence such as business tactics and unexplained price moves. Otherwise, the plaintiff must prove that the seller's discriminatory price caused a substantial change in market shares in the product. The latter is nearly impossible to prove, because courts, commentators, and economists have frequently rejected the idea that discriminatory pricing poses a long-term threat to competition. It is also difficult to prove a seller's intent to destroy a competitor, because a seller isn't likely to leave evidence of such an intent and it is difficult to infer such an intent. One way to prove intent to injure competition is to show that the seller made sales at prices below the seller's average cost of producing the product long enough to force equally efficient competitors out of business. Because of the difficulties in proving a primary line injury under the Robinson-Patman Act, plaintiffs alleging a primary line injury from a discriminatory price are more likely to seek a remedy under other antitrust statutes.

A plaintiff claiming a secondary line injury must also meet several requirements to prove injury to competition. The plaintiff must show that it competed in fact, not potentially, with a buyer who received a discriminatory price, that the price difference was substantial, and that the price difference existed over time. Once these factors are established, a presumption is created that the price discrimination injured competition. This presumption can be overcome only by evidence proving there was no causal connection between the discriminatory price received by the buyer and lost sales or profits of the buyer's competitors.

Even if a plaintiff establishes the jurisdictional elements of a claim under the Robinson-Patman Act and proves a discriminatory price and injury to competition, the defendant may still raise defenses that will defeat the plaintiff's claim. Three main defenses exist: "meeting competition," "cost justification," and "functional availability."

Under the meeting competition defense, a discriminatory price is lawful when the seller is acting in good faith to meet an equally low price of a competitor. This defense is absolute and will bar a claim under the Robinson-Patman Act regardless of injury to competitors or competition.

Under the cost justification defense, a seller who offered a discriminatory price may defeat a Robinson-Patman Act claim by establishing that the difference in price was justified by "differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities" in which the goods are sold. Proving cost justification is difficult because of the complicated accounting analysis required to establish the defense, and therefore it is rarely used.

Although it is not mentioned in the act itself, the functional availability defense allows a seller who offered a discriminatory price to avoid liability under the Robinson-Patman Act if the seller can prove that the discriminatory price the disfavored buyer did not receive was functionally or realistically available to that buyer. Usually this defense involves proof that the disfavored buyer was able to qualify for some discount offered by the seller but failed to take advantage of it.

The basic prohibitions and defenses are contained in sections 2(a) and 2(b) of the Robinson-Patman Act. The act contains some special provisions as well. Sections 2(d) and 2(e) of the act deal with services and promotional payments that might be provided in connection with a sale of goods. Section 2(d) allows a seller to give discounts to buyers who perform certain services, such as promotions, that the seller would otherwise provide. Substantially similar discounts must be offered to all buyers of like goods, or else the act is violated. Section 2(e) prohibits a seller from discriminating in the furnishing of facilities and services for the processing, handling, or sale of goods.

Section 2(c) of the act prohibits bogus brokerage arrangements whereby large buyers attempt to obtain illegal discounts disguised as brokerage commissions. This provision is usually invoked where the "broker" does not actually render any service to the seller but is merely a large-volume buyer. This section also applies to certain illegal brokerage payments and commercial bribery. Section 2(f) of the act specifically provides that it is unlawful for a buyer to knowingly solicit or receive an unlawfully discriminatory price.

The Robinson-Patman Act has been widely criticized throughout its history, although Congress has retained the act in its original form. The complicated and convoluted language of the act makes it difficult to understand and interpret. The courts have applied its provisions inconsistently over the years and have often confused the proof required for a violation of the Robinson-Patman Act with the standards used in cases brought under the Sherman Act (July 2, 1890, ch. 647, 26 Stat. 209, 15 U.S.C.A. §§ 1 et seq.). Also, many critics suggest that the act is designed merely to protect small business and that it protects competitors rather than competition.

The act has been attacked on economic grounds as well. Most economists believe that discriminatory pricing cannot lead to monopoly power and injury to competition, because the seller offering the discriminatory price cannot profitably sustain the discriminatory price long enough to drive out competitors and, more importantly, keep them out. In fact, the act may discourage competition. For example, the Supreme Court held in the widely criticized *Utah Pie* case that under the Robinson-Patman Act, a national frozen pie seller that sought to enter a new geographical market could not charge a lower price in the new market than it charged in its existing markets (*Utah Pie Co. v. Continental Baking Co.*, 386 U.S. 685, 87 S. Ct. 1326, 18 L. Ed. 2d 406 [1967]). Critics suggest that this interpretation of the act may discourage large, national sellers from entering a new market, even though the consumer and competition in the new market would benefit.

Over the last several decades, fewer and fewer enforcement agencies and private litigants have used the Robinson-Patman Act, for several reasons. First, the nation's attitude toward large, commercial businesses has changed since the act was passed during the Depression, partly because these large businesses have often increased competition, resulting in lower prices for consumers. Also, the legal precedents and theories behind the act have become so complex that plaintiffs usually resort to the more basic antitrust statutes, such as the Sherman Act. Finally, the defenses to actions under the Robinson-Patman Act, such as the meeting competition defense, have become substantially more available and effective as the markets for most products have expanded and increased in sophistication.

Despite the decline in its use, the Robinson-Patman Act is still an important antitrust statute. It acts as both a deterrent and a remedy to abuses to market power by large and powerful businesses and reflects the nation's desire to offer some protection to small, family businesses against the predatory acts of powerful competitors.

See: [Antitrust Law](#); [Sales Law](#).

## Encyclopedia



Robinson-Patman Act, passed by the U.S. Congress in 1936 to supplement the [Clayton Antitrust Act](#). The act, advanced by Congressman Wright Patman, forbade any person or firm engaged in interstate commerce to discriminate in price to different purchasers of the same commodity when the effect would be to lessen competition or to create a monopoly. Sometimes called the Anti-Chain-Store Act, this act was directed at protecting the independent retailer from chain-store competition, but it was also strongly supported by wholesalers eager to prevent large chain stores from buying directly from the manufacturers for lower prices.

## Bibliography

See studies by D. J. Baum (1964) and R. Posner (1986).

## Wikipedia

Robinson-Patman Act  
The Robinson-Patman Act of 1936, or Anti-Price Discrimination Act, (now modified as 15 U.S.C. § 13) outlawed the anticompetitive practice of producers lowering chain stores to purchase goods at lower prices than other retailers. The act provided for criminal penalties, but contained a specific exemption for cooperative associations". The Act is an amendment to Section 2 of the Clayton Act.

In general, the Robinson-Patman Act (RPA) prohibits sales that discriminate in price on the sale of goods to equally-situated distributors when the effect of such sales is to reduce competition. Sales to original equipment manufacturers (OEM) are not subject to RPA. Price means net price and includes all compensation paid. The seller may not throw in additional goods or services. Injured parties or the US government may bring an action under RPA.

Liability under section 2(a) of the RPA (with criminal sanctions) may arise on sales



that involve:

discrimination in price; on at least 2 consummated sales; from the same seller; to 2 different purchasers; sales must cross state lines; sales must be contemporaneous; of "commodities" of like grade and quality; sold for "use, consumption, or resale" within the United States; and the effect may be "substantially to lessen competition or tend to create a monopoly in any line of commerce."

Defenses to RPA include cost justification and matching the price of a competitor. In practice, the "harm to competition" requirement often is the make-or-break point.

See also:

- [Sherman Antitrust Act of 1890](#)
- [Clayton Antitrust Act of 1914](#)
- [List of United States federal legislation](#)

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