



Office of the Chairman

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**Statement of Chairman Andrew N. Ferguson
In the Matter of Southern Glazer's Wine and Spirits, LLC
Matter Number 2110155**

October 2, 2026

Today the Commission filed a proposed consent decree resolving the Commission's litigation against Southern Glazer's Wine and Spirits, LLC ("Southern").¹ This settlement marks the first relief that the Commission has secured under the Robinson-Patman Act in a generation.² I write to explain why the Commission has settled this case, and how the settlement will protect small, independent businesses from price discrimination in the future.

I

In December 2024, the Commission sued Southern for violating the Robinson-Patman Act.³ The Act generally prohibits a seller from charging competing buyers different prices for commodities of the same grade and quality, if the effect of that differential pricing may be to injure competition.⁴ The Commission alleged that "Southern ... violated the Robinson-Patman Act by selling wine and spirits to small, independent 'mom and pop' businesses at prices that are drastically higher than the prices Southern charges large national and regional chains."⁵ The Complaint alleged that these lower prices drove consumers to purchase alcohol from the large chains rather than the independent retailers, which in turn led to lost sales and lower profits for the independent retailers.⁶

I dissented from the Commission's decision to issue the Complaint. I argued that the government does not have the power to suspend a law merely because it disagrees with the law's underlying policy, and that the Commission's longstanding refusal to enforce the Robinson-Patman Act on that basis was inconsistent with our constitutional design.⁷ But I further argued that the Commission has an obligation to choose carefully how it will spend its limited resources, and

¹ Joint Motion For Entry of Stipulated Order for Permanent Injunction and Other Relief, *FTC v. Southern Glazer's Wine & Spirits, LLC*, No. 8:24-cv-02684-FWS-ADS (C.D. Cal. Oct. 2, 2026), Dkt. No. 231; Stipulated Order for Permanent Injunction and Other Relief, *FTC v. Southern Glazer's Wine & Spirits, LLC*, No. 8:24-cv-02684-FWS-ADS (C.D. Cal. Oct. 2, 2026), Dkt. No. 231-1 ("Stipulated Final Order").

² See *In the Matter of McCormick & Co., Inc.*, No. 961-0050, 2000 WL 264190, at *3 (Mar. 8, 2000).

³ Press Release, FTC, FTC Sues Southern Glazer's for Illegal Price Discrimination (Dec. 26, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/12/ftc-sues-southern-glazers-illegal-price-discrimination>.

⁴ 15 U.S.C. § 13(a).

⁵ Compl. ¶ 1.

⁶ *Id.* ¶ 78.

⁷ Dissenting Statement of Comm'r Andrew N. Ferguson, Joined by Comm'r Melissa Holyoak, *In the Matter of Southern Glazer's Wine and Spirits, LLC*, Matter No. 2110155, at 21–23 (Dec. 12, 2024) ("Ferguson Southern Statement").

that it therefore should pursue only those Robinson-Patman Act cases that the Commission is confident would promote the welfare of American consumers.⁸ Applying that principle of prosecutorial discretion to the allegations against Southern, I concluded that the Commission should not have sued.⁹ First, I determined that the Commission would face an uphill battle to prevail on the merits.¹⁰ Although the Commission had obtained evidence of at least isolated examples of differential pricing, I was unconvinced that the Commission could overcome Southern's affirmative defenses once discovery had concluded.¹¹ Specifically, I believed that Southern would likely succeed in establishing that the overwhelming majority of the price differences could be justified by differences in the costs of supplying various types of retailers.¹² I further concluded that the Commission faced a serious risk of failing to satisfy the Act's requirement that the government prove Southern's sales took place "in [interstate] commerce," as the Act requires, because the alcohol industry's complicated patchwork of state regulations often requires Southern to warehouse and sell alcohol within the same State.¹³ Finally, I believed the Commission had failed to find any meaningful evidence that the allegedly discriminatory pricing had substantially injured competition because the Commission had nothing other than anecdotes suggesting that lower prices offered to some large chain stores had diverted sales away from independent liquor stores.¹⁴

Second, I wrote that even if the Commission were likely to prevail on the merits, this case was a poor use of resources.¹⁵ There was a serious risk that the result of successful litigation would

⁸ *Ibid.*

⁹ *Id.* at 1.

¹⁰ *Id.* at 24–26.

¹¹ *Id.* at 24–27.

¹² *Id.* at 24–25.

¹³ *Id.* at 26–27. In its order denying Southern's motion to dismiss, the court viewed the interstate commerce requirement as a "question[] of fact" that it need not decide "at this stage." Order Denying Defendant's Motion to Dismiss at 6–8, *FTC v. Southern Glazer's Wine & Spirits, LLC*, No. 8:24-cv-02684-FWS-ADS (C.D. Cal. Apr. 17, 2025), Dkt. No. 72. Accordingly, the risk remained that this issue could have been decided against the Commission at summary judgment or trial, crippling the case.

¹⁴ Ferguson Southern Statement at 25; see also *Volvo Trucks N. Am., Inc. v. Reeder-Simco GMC, Inc.*, 546 U.S. 164, 171 (2006).

¹⁵ The Democrat members of the Commission at the time were fixated on reviving the Robinson-Patman Act, and were not shy about their fixation. See, e.g., Lina Khan (@linamkhan), X, *The law says small businesses must get a fair shot at competing—but for decades the government stopped enforcing that law. Last week @FTC revived the law and sued Southern Glazer's ... The Robinson-Patman Act says firms must be able to compete on the merits and get ahead based on real efficiencies, rather than due to abuses of raw size and power.* (Dec. 16, 2024, at 5:25 PM ET), <https://x.com/linamkhan/status/1868784519136133223>; Lina M. Khan, Q&A with Lina Khan, Chair of the U.S. Federal Trade Commission and Mark Glick, Professor of Economics at the University of Utah, 2023 Utah L. Rev. 757, 760 (2023) ("For decades Robinson-Patman was actually a real mainstay of FTC enforcement. Through the 1960s Robinson-Patman cases comprised a pretty sizable share of the FTC's docket. That of course has looked very different over the last couple of decades. We're taking a fresh look at Robinson-Patman."); Alvaro Bedoya, I Work at the F.T.C. I Know What Is Killing Local Groceries., NY Times (Jan. 13, 2025), <https://www.nytimes.com/2025/01/13/opinion/ftc-robinson-patman-grocery-food-desert.html> ("When I was sworn in at the Federal Trade Commission almost three years ago, I took a special interest in Robinson-Patman."); Alvaro Bedoya, Returning to Fairness, Midwest Forum on Fair Markets: What the New Antimonopoly Vision Means for Main Street (Sep. 22, 2022) (calling for increased Robinson-Patman Act enforcement). But that fixation does not fully explain the decision to bring this case. Thanks to the Biden Administration's disastrous economic policies, American consumers were justly complaining about high prices in plenty of markets. In some of those markets, independent retailers were alleging that large chain retailers used buyer power to compel suppliers to raise prices for the independent retailers, grocery markets being one example. See, e.g., NGA urges FTC to scrutinize anti-competitive

be to increase prices at the large chain stores rather than decrease prices at the independent liquor stores because the Commission had no evidence that the chain stores had the sort of buyer power that could compel suppliers to increase prices at the chain stores' competitors.¹⁶ I reasoned that this litigation was likely to be enormously costly, and that those resources would be better spent pursuing litigation that would protect consumers, rather than cases that might protect retailers but injure consumers.¹⁷

I acknowledged that courts almost uniformly interpreted the Robinson-Patman Act not to require a showing that the alleged price discrimination injured consumers.¹⁸ But that does not mean that the Commission should pursue cases where success will improve the lot of retailers while injuring consumers. Instead, I argued that the Commission should exercise sound discretion to pursue only those Robinson-Patman Act cases where both retailers and consumers are injured by second-line price discrimination.¹⁹

Given the case's infirmities, I disagreed with the Democrat Commissioners' imprudent decision to tie up the Commission's budget and staff for years to come.

II

Although I would not have brought this case, when I became Chairman, it became my responsibility to steer the litigation to a satisfactory conclusion. Shortly after the Commission filed

'retail power buyers', *The Packer* (Nov. 15, 2022), <https://www.thepacker.com/news/retail/nga-urges-ftc-scrutinize-anti-competitive-retail-power-buyers>; Independent Grocers Accuse Big-Boxes of Edging Them Out, *Law360* (Mar. 17, 2021), <https://www.law360.com/articles/1365709/independent-grocers-accuse-big-boxes-of-edging-them-out>. Thanks to the Biden Administration, American families were feeling the pinch in the dairy section and at the meat counter, but they were not suffering from high alcohol prices. And the Commission did not even try to argue that its case was going to benefit American consumers by lowering prices for alcohol. This case was purely about the margins of liquor stores. I therefore remain utterly baffled by my former colleagues' decision to commit thousands of man hours and millions of dollars of resources to a case addressing an issue that was not injuring American consumers, rather than focusing on enforcement that could have. The Democrat Commissioners tried to recover from this foolish decision by filing a grocery-related Robinson-Patman Act case in the waning hours of the Biden Administration. See Press Release, FTC, *FTC Sues PepsiCo for Rigging Soft Drink Competition* (Jan. 17, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-sues-pepsico-rigging-soft-drink-competition>; Complaint, *FTC v. PepsiCo, Inc.*, No. 1:25-cv-00664-JMF (S.D.N.Y. Jan. 23, 2025), Dkt. No. 1. But the Commission had conducted no meaningful investigation before filing that complaint and had nowhere near the amount of evidence the government should have before accusing someone of breaking the law. Dissenting Statement of Comm'r Andrew N. Ferguson, *In the Matter of Non-Alcoholic Beverages Price Discrimination Investigation*, Matter No. 2110158, at 3 (Jan. 17, 2025). The Commission under President Trump promptly dismissed that shambolic case. See Press Release, FTC, *FTC Dismisses Lawsuit Against PepsiCo* (May 22, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/05/ftc-dismisses-lawsuit-against-pepsico>.

¹⁶ Ferguson Southern Statement at 26–30. Commission resources would be better spent on Robinson-Patman Act cases involving buyers with market power because such cases are more likely to protect consumers as well as disfavored buyers. See *ibid.*

¹⁷ *Id.* at 30. This argument was particularly important given the enormous strain imposed on consumers by the damaging economic policies of the Biden Administration.

¹⁸ *Id.* at 17–18; but see Dissenting Statement of Comm'r Melissa Holyoak, *In the Matter of Southern Glazer's Wine & Spirits, LLC*, Matter No. 2110155, at 56–58 (Dec. 12, 2024) ("Holyoak Southern Statement") (arguing that this interpretation is incorrect and should be revisited).

¹⁹ Ferguson Southern Statement at 27–30.

its Complaint, Southern moved to dismiss the case for failure to state a claim.²⁰ The district court denied the motion in April 2025.²¹ In the face of the district court’s decision that the Commission had stated a claim, I concluded that dismissal without any effort to investigate whether the evidence sustained the Commission’s claim would undermine the Commission’s credibility in other cases. The case proceeded to discovery.

But discovery bore out many of the concerns I raised in my dissent. For example, once the Commission had acquired comprehensive sales data for tens of millions of transactions with thousands of retailers in thirty-three States, it became clear that the Commission had overestimated the alleged harm to independent retailers. That is true even if one assumes that Southern could not have prevailed on any of its affirmative defenses. The evidence revealed what we already knew: Southern had engaged in differential pricing. But it undermined the Commission’s arguments that the alleged price discrimination caused the sort of “substantial” injury to competition that the Act forbids.²² In fact, in seven of the thirty-three States that were originally the subject of the Commission’s suit, the Commission uncovered no evidence whatsoever of a single Robinson-Patman Act violation even on the Commission’s disputed theory. And for many of the remaining twenty-six States—again, assuming that the Commission would prevail on every contested factual and legal question—the estimated harm figures were well below a million dollars per year across the five-and-a-half-year timeframe at issue. That means that across tens of millions of transactions among thousands of competing retailers in twenty-six States, even on the Commission’s most robust theory of the case, it uncovered only modest quantifiable harm to independent retailers. The total harm from overcharges across all transactions for all retailers in all twenty-six States on the strongest version of the Commission’s theory amounted to just an estimated \$15.7 million per year for the same timeframe. The evidence thus substantially narrowed the case and made it much harder for the Commission to prove substantial injury in what remained of the case.

This evidentiary weakness was serious, but it did not wholly dispose of the case. In a number of States, the Commission had a credible argument of substantial injury, and Southern would have borne the burden of proving its affirmative defenses at trial. Litigation risk runs in both directions: the Commission increasingly faced the real prospect of losing, and Southern faced the prospect of an adverse judgment and an injunction written without its input. A settlement reflects both sides’ discount for that uncertainty. The Commission therefore continued to litigate this case while engaging in difficult negotiations with Southern to explore whether it could protect the interests of small and independent liquor retailers without sinking further millions of taxpayer dollars into this cause. Both parties—the Commission and Southern—faced significant litigation risk and uncertainty if the case continued. And both sides faced the risk of massive future litigation expenditures—an acute risk for the Commission given its many priorities.

The challenge confronting Commission staff in negotiations was substantial. First, the Commission cannot obtain an injunction that merely forbids a party from violating the law. “Obey-the-law” injunctions are disfavored, often unenforceable, and perhaps unlawful. An injunction

²⁰ Notice of Motion and Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted, *FTC v. Southern Glazer’s Wine & Spirits, LLC*, No. 8:24-cv-02684-FWS-ADS (C.D. Cal. Feb. 3, 2025), Dkt. No. 52.

²¹ Order Denying Defendant’s Motion to Dismiss, *FTC v. Southern Glazer’s Wine & Spirits, LLC*, No. 8:24-cv-02684-FWS-ADS (C.D. Cal. Apr. 17, 2025), Dkt. No. 72.

²² See Ferguson Southern Statement at 25–26.

must “state its terms specifically” and “describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.”²³ The Commission has lost cases where its cease-and-desist orders failed adequately to explain precisely what a defendant was required to do.²⁴ A court cannot simply order a party to obey the Robinson-Patman Act and leave it to the party to figure out what that means on pain of contempt.²⁵

Second, even if it were lawful, an “obey-the-law” injunction would be entirely useless in a case like this one. The parties here do not simply dispute the facts; they disagreed fundamentally on what the law requires Southern to do. And the motion to dismiss did not resolve those disputes; it held only that the Commission’s general pleading was sufficient to satisfy the light burden of plausibility.²⁶ The Commission therefore had to articulate in concrete, specific terms what it believed Southern had to do to comply with the Act across many millions of transactions in dozens of States.

Finally, the Commission had not enforced the Act in a generation. It therefore had little experience doing the difficult work of articulating an enforceable remedy for alleged violations of the Act. That difficulty was further compounded by the sprawling nature of the case the Commission chose to bring. Articulating a remedy that the Commission could actually enforce in dozens of States with different liquor laws and regulatory requirements was far more complicated than the small cases that the Commission used to bring before it abandoned enforcement entirely.²⁷

What the Commission staff produced in the face of these obstacles is remarkable. Today’s proposed consent decree establishes a framework that forbids price discrimination that would violate the Robinson-Patman Act while also establishing enforcement mechanisms that disincentivize Southern from trying its luck and hoping the Commission will not catch all potential violations. The order is self-calibrating: Southern pays only where a monitor finds that an independent retailer actually paid more than a competing chain. If Southern obeys the law, its compliance costs are low. If it does not, its costs will balloon to such an extent that Southern has every incentive to obey the law rigidly even before the Commission would contemplate seeking contempt sanctions.

²³ Fed. R. Civ. P. 65(d); *Schmidt v. Lessard*, 414 U.S. 473, 475–76 (1974) (“[T]he specificity provisions of Rule 65(d) are no mere technical requirements. The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood.”); *Fortyune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1086–87 (9th Cir. 2004) (same).

²⁴ See, e.g., *LabMD, Inc. v. FTC*, 894 F.3d 1221, 1234–37 (11th Cir. 2018) (holding that the terms of the Commission’s cease and desist order were too vague and nonspecific to be enforceable).

²⁵ See *Schmidt*, 414 U.S. at 476 (“Since an injunctive order prohibits conduct under threat of judicial punishment, basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed.”).

²⁶ Order Denying Defendant’s Motion to Dismiss at 12, *FTC v. Southern Glazer’s Wine & Spirits, LLC*, No. 8:24-cv-02684-FWS-ADS (C.D. Cal. Apr. 17, 2025), Dkt. No. 72; see *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

²⁷ See Ferguson Southern Statement at 8–10 (noting that, during the slew of Robinson-Patman Act cases the Commission brought after *Morton Salt*, “a huge number of small businesses found themselves the targets of the Commission’s Robinson-Patman Act campaign”); see also Holyoak Southern Statement at 8 (explaining that between 1937 and 1974, the Commission brought nearly 1,400 Robinson-Patman Act cases, often alleging that mere price differences constituted a *per se* violation of the Act).

First, the settlement imposes rigorous monitoring requirements for all “paired transactions,” that is, sales of the same product to one of the five major chain stores in the relevant State, and to any independent retailer that competes with that chain store.²⁸ Those are the transactions for which the Robinson-Patman Act forbids discriminatory pricing, subject to important exceptions.²⁹ Twice a year for the next six years, Southern must submit extensive reports and sales data to an independent monitor appointed by and answerable to the Commission, but funded by Southern.³⁰ The monitor will review those transactions to determine whether any of them involved unlawful discrimination.

If the monitor determines that, over the course of twelve months, any independent retailers end up paying more than the big chains for the same products, Southern can cure the harm only by writing the injured retailer a check for the amount of the disparity, as well as a penalty equal to fifty percent of the disparity.³¹ The purpose of the penalty is to reduce the risk that Southern may engage in efficient breach of the order, that is, venturing noncompliance in close cases in order to turn a quick buck on the discrimination and betting that the Commission will not be in a position to catch every violation. And if that is not sufficient incentive against violation, the premium for noncompliance escalates. If Southern does not cure a violation willingly, then the Commission can seek a judicial order compelling compliance with the injunction, which in turn triggers a requirement that Southern pay the retailer twice the amount of the disparity.³²

These escalating costs for noncompliance incentivize Southern to charge small retailers lower prices for its wine and spirits. And where it does not, the order provides an enforcement mechanism that will fully protect independent retailers without forcing the Commission to race to court every single time there is an alleged violation. Requiring Southern to cure violations promptly before contempt proceedings begin is far more likely to prevent Southern from engaging in illegal price discrimination, and to provide justice for injured retailers, than an order that imposed the risk of contempt alone.³³

Of course, the Act does not forbid every discriminatory price. It expressly authorizes price discrimination when the costs associated with supplying different customers justify different prices, or when price discrimination is necessary to meet competition.³⁴ It also does not forbid *de minimis* price discrimination even when that discrimination is not otherwise justified.³⁵ The parties

²⁸ See Stipulated Order § I.A; *id.*, Definitions C (“Covered Retailer”), I (“In-Commerce Retailer”), O (“Paired Transaction”); *id.* §§ VIII, IX.

²⁹ See *id.* § IV.

³⁰ *Id.* §§ VIII, IX; XIII.

³¹ *Id.* § II.

³² *Id.* § III.

³³ The order contains purely prospective relief because, by Congressional design, § 13(b) does not allow equitable monetary relief. See *AMG Capital Management, LLC v. FTC*, 593 U.S. 67, 75 (2021) (“[Section] 13(b)’s ‘permanent injunction’ language does not authorize the Commission directly to obtain court-ordered monetary relief.”). Even had the Commission prevailed against Southern after many years of trial and appeals, it never could have obtained redress for past wrongs.

³⁴ 15 U.S.C. § 13(a).

³⁵ See *Cash & Henderson Drugs, Inc. v. Johnson & Johnson*, 799 F.3d 202, 211 (2d Cir. 2015) (holding that Section 2(a) of the Robinson-Patman Act requires evidence of substantial evidence of lost sales, and *de minimis* evidence of lost sales is insufficient to state an injury in secondary-line cases); *Chrysler Credit Corp. v. J. Truett Payne Co.*, 670

strongly disagreed in litigation over the meanings of the cost-justification, meeting-competition, and *de minimis* defenses. The proposed consent decree represents a compromise between the two views, imposing concrete requirements on Southern before it can avail itself of those defenses.³⁶

The settlement also contains anti-circumvention provisions. The proposed consent decree prohibits Southern from making changes to its supplier-support practices intended to evade the requirements of the agreement.³⁷ It further requires Southern to maintain a compliance program to prevent violations of the proposed injunction and of the Robinson-Patman Act in general.³⁸ Finally, should the Commission discover a violation of the settlement after its six-year term has expired, the Commission may bring an enforcement action.³⁹

I did not support this case at its conception. But I congratulate staff on their work in reaching this milestone in the history of Robinson-Patman Act enforcement. It is highly unlikely that the Commission could have secured greater relief in this case had it proceeded to trial, because this order is more specific and more readily enforceable than a litigated injunction would likely have been. The difficulties of proof concerned past injury, but the order governs Southern's pricing practices going forward. The settlement constitutes a major victory for the Trump FTC and for small, independent businesses. The Act remains good law, and where the Commission sees evidence of unlawful price discrimination that injures disfavored retailers and consumers, it will act to protect competition in our markets.

F.2d 575, 580 (5th Cir. 1982) (“[A] plaintiff must demonstrate that the likely effect of the alleged price discrimination was to allow a favored competitor to draw significant sales or profits away from him.”).

³⁶ See Stipulated Order, Definitions N (“Operating Expense Efficiency”), R (“Safe Harbor”), T (“Supplier Support”). The aggregated price differential must be greater than \$5,000 across all paired transactions in a given year to trigger the reimbursement obligation. See *id.*, Definition E (“Enforcement Threshold”).

³⁷ *Id.* § VII.B.

³⁸ *Id.* § VII.D.

³⁹ *Id.* § XIV.C (“For a period of 2 years following the expiration of this Order, if the Commission determines that Defendant violated this Order before it expired and Defendant declines or fails to exercise the Cure Option, the Commission may file an enforcement action in this Court against Defendant seeking the remedies set forth in Section III of this Order and any additional relief needed to ensure Defendant complies with the terms of this Order.”).