Press Release

Pepsi and Coke Targeted for Price Discrimination

PAULINA ENCK | JANUARY 30, 2023

The Federal Trade Commission (FTC) launched a preliminary investigation into Coca-Cola and PepsiCo alleging that the beverage makers offered lower prices to larger retailers and are thus in violation of the Robinson-Patman Act (RPA), a law that prohibits price discrimination between large and small retailers for like products. In a new insight, Competition Economics Analyst Fred Ashton discusses the potential case against PepsiCo and Coca-Cola and warns against the harmful implications to consumers of reviving the RPA.

Key points:

- President Biden's executive order on Promoting Competition in the American Economy inspired the revival of the long-dormant RPA as the FTC continues to advance its "return to fairness" doctrine and replace the nearly 50-year-old consumer welfare standard of enforcement.
- If the FTC is successful in its potential challenge, companies would likely respond by raising prices for large retailers, perhaps leading to a shift from savings for consumers to profits for suppliers.
- Using the RPA to protect small businesses would translate into higher prices for the end consumer, an easily avoidable outcome if the FTC had simply followed the consumer welfare standard.

Read the analysis