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Robinson-Patman Ascendant?

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It almost goes without saying that Walmart gets the best prices, which are then passed on to customers in the store. You go to Walmart for deals because Walmart gets deals. But this wasn't always the prevailing American view. In the depths of the Great Depression, a distrust of competition festered, as well as an animosity to big business: primarily, the big chain stores of the day. Enter the Robinson-Patman Act (aka, "RPA"). The RPA's primary provision directly attacked the notion that buying more should lead to a lower price, prohibiting discrimination "in price … of commodities of like grade and quality" that substantially lessens competition. The RPA has never been an object of praise. Rather, it has spent its nearly 90 years on the books the subject of befuddlement ("a dense undergrowth of confusion") and even outright ridicule ("the misshapen progeny of intolerable draftsmanship"). The DOJ hasn't touched it since the 1960s, and the FTC has not brought an RPA case in over 20 years. Until this year, this was the story of the rise, fall, and languishment of the RPA. But the RPA could be entering a new chapter of prominence at the FTC. As FTC Commissioner Lina Khan recently said, "We're taking a fresh look at the Robinson-Patman [and] Robinson Patman is absolutely going to be fair game." In this article, we pick up the story with the state of the RPA today, explore how the FTC might wield it going forward, and discuss whether the weight of the last 40 years of RPA jurisprudence might still keep the RPA down.

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