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SUPREME COURT OF THE UNITED STATES

No. 04–905

VOLVO TRUCKS NORTH AMERICA, INC., PETITIONER *v.* REEDER-SIMCO GMC, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[January 10, 2006]

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns specially ordered products—heavy-duty trucks supplied by Volvo Trucks North America, Inc. (Volvo), and sold by franchised dealers through a competitive bidding process. In this process, the retail customer states its specifications and invites bids, generally from dealers franchised by different manufacturers. Only when a Volvo dealer's bid proves successful does the dealer arrange to purchase the trucks, which Volvo then builds to meet the customer's specifications.

Reeder-Simco GMC, Inc. (Reeder), a Volvo dealer located in Fort Smith, Arkansas, commenced suit against Volvo alleging that Reeder's sales and profits declined because Volvo offered other dealers more favorable price concessions than those offered to Reeder. Reeder sought redress for its alleged losses under §2 of the Clayton Act, 38 Stat. 730, as amended by the Robinson-Patman Price Discrimination Act, 49 Stat. 1526, 15 U. S. C. §13 (Robinson-Patman Act or Act), and the Arkansas Franchise Practices Act, Ark. Code Ann. §4–72–201 *et seq*. (2001). Reeder prevailed at trial and on appeal on both claims.

We granted review on the federal claim to resolve the question whether a manufacturer offering its dealers different wholesale prices may be held liable for price discrimination proscribed by Robinson-Patman, absent a showing that the manufacturer discriminated between dealers contemporaneously competing to resell to the same retail customer. While state law designed to protect franchisees may provide, and in this case has provided, a remedy for the dealer exposed to conduct of the kind Reeder alleged, the Robinson-Patman Act, we hold, does not reach the case Reeder presents. The Act centrally addresses price discrimination in cases involving competition between different purchasers for resale of the purchased product. Competition of that character ordinarily is not involved when a product subject to special order is sold through a customer-specific competitive bidding process.

I

Volvo manufactures heavy-duty trucks. Reeder sells new and used trucks, including heavy-duty trucks. 374 F. 3d 701, 704 (CA8 2004). Reeder became an authorized dealer of Volvo trucks in 1995, pursuant to a five-year franchise agreement that provided for automatic one-year extensions if Reeder met sales objectives set by Volvo. *Ibid.* Reeder generally sold Volvo's trucks through a competitive bidding process. *Ibid.* In this process, the retail customer describes its specific product requirements and invites bids from several dealers it selects. The customer's "decision to request a bid from a particular dealer or to allow a particular dealer to bid is controlled by such factors as an existing relationship, geography, reputation, and cold calling or other marketing strategies initiated by individual dealers." *Id.*, at 719 (Hansen, J., concurring in part and dissenting in part).

Once a Volvo dealer receives the customer's specifica-

tions, it turns to Volvo and requests a discount or "concession" off the wholesale price (set at 80% of the published retail price). *Id.*, at 704. It is common practice in the industry for manufacturers to offer customer-specific discounts to their dealers. *Ibid.;* App. 334, 337. Volvo decides on a case-by-case basis whether to offer a discount and, if so, what the discount rate will be, taking account of such factors as industry-wide demand and whether the retail customer has, historically, purchased a different brand of trucks. App. 348–349, 333–334.[1] The dealer then uses the discount offered by Volvo in preparing its bid; it purchases trucks from Volvo only if and when the retail customer accepts its bid. *Ibid.*

Reeder was one of many Volvo dealers, each assigned by Volvo to a geographic territory. Reeder's territory encompassed ten counties in Arkansas and two in Oklahoma. 374 F. 3d, at 709. Although nothing prohibits a Volvo dealer from bidding outside its territory, *ibid.,* Reeder rarely bid against another Volvo dealer, see *id.*, at 705; 5 App. in No. 02–2462 (CA8), pp. 1621–1622 (hereinafter C. A. App.). In the atypical event that the same retail customer solicited a bid from more than one Volvo dealer, Volvo's stated policy was to provide the same price concession to each dealer competing head to head for the same sale. 4 C. A. App. 1161–1162; 5 *id.*, at 1619, 1621.

In 1997, Volvo announced a program it called "Volvo Vision," in which the company addressed problems it faced in the market for heavy trucks, among them, the company's assessment that it had too many dealers. Volvo projected enlarging the size of its dealers' markets and reducing the number of dealers from 146 to 75. 374 F. 3d,

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[1]To shield its ability to compete with other manufacturers, Volvo keeps confidential its precise method for calculating concessions offered to dealers. 374 F. 3d 701, 704–705 (CA8 2004); App. 337–338.

at 705. Coincidentally, Reeder learned that Volvo had given another dealer a price concession greater than the concessions Reeder typically received, and "Reeder came to suspect it was one of the dealers Volvo sought to eliminate." *Ibid.* Reeder filed suit against Volvo in February 2000, alleging losses attributable to Volvo's violation of the Arkansas Franchise Practices Act and the Robinson-Patman Act.

At trial, Reeder's vice-president, William E. Heck, acknowledged that Volvo's policy was to offer equal concessions to Volvo dealers bidding against one another for a particular contract, but he contended that the policy "was not executed." 4 C. A. App. 1162. Reeder presented evidence concerning two instances over the five-year course of its authorized dealership when Reeder bid against other Volvo dealers for a particular sale. 374 F. 3d, at 705, 708–709. One of the two instances involved Reeder's bid on a sale to Tommy Davidson Trucking. 4 C. A. App. 1267–1268. Volvo initially offered Reeder a concession of 17%, which Volvo, unprompted, increased to 18.1% and then, one week later, to 18.9%, to match the concession Volvo had offered to another of its dealers. 5 *id.*, at 1268–1272. Neither dealer won the bid. *Id.*, at 1272. The other instance involved Hiland Dairy, which solicited bids from both Reeder and Southwest Missouri Truck Center. *Id.*, at 1626–1627. Per its written policy, Volvo offered the two dealers the same concession, and Hiland selected Southwest Missouri, a dealer from which Hiland had previously purchased trucks. *Ibid.* After selecting Southwest Missouri, Hiland insisted on the price Southwest Missouri had bid prior to a general increase in Volvo's prices; Volvo obliged by increasing the size of the discount. *Id.*, at 1627. See also *id.*, at 1483–1488; 374 F. 3d, at 720 (Hansen, J., concurring in part and dissenting in part).

Reeder dominantly relied on comparisons between concessions Volvo offered when Reeder bid against non-

Volvo dealers, with concessions accorded to other Volvo dealers similarly bidding against non-Volvo dealers for other sales. Reeder's evidence compared concessions Reeder received on four occasions when it bid successfully against non-Volvo dealers (and thus purchased Volvo trucks), with more favorable concessions other successful Volvo dealers received in connection with bidding processes in which Reeder did not participate. *Id.*, at 705–706. Reeder also compared concessions offered by Volvo on several occasions when Reeder bid unsuccessfully against non-Volvo dealers (and therefore did not purchase Volvo trucks), with more favorable concessions received by other Volvo dealers who gained contracts on which Reeder did not bid. *Id.*, at 706–707.

Reeder's vice-president, Heck, testified that Reeder did not look for instances in which it received a *larger* concession than another Volvo dealer, although he acknowledged it was "quite possible" that such instances occurred. 5 C. A. App. 1462. Nor did Reeder endeavor to determine by any statistical analysis whether Reeder was disfavored on average as compared to another dealer or set of dealers. *Id.*, at 1462–1464.

The jury found that there was a reasonable possibility that discriminatory pricing may have harmed competition between Reeder and other Volvo truck dealers, and that Volvo's discriminatory pricing injured Reeder. App. 480–486. It further found that Reeder's damages from Volvo's Robinson-Patman Act violation exceeded $1.3 million. *Id.*, at 486.[2] The District Court summarily denied Volvo's motion for judgment as a matter of law and the company's alternative motion for new trial or remittitur, awarded

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[2]The jury also awarded Reeder damages of $513,750 on Reeder's state-law claim under the Arkansas Franchise Practices Act. No question is before us respecting that claim, which trained on Volvo's alleged design to eliminate Reeder as a Volvo dealer. See *supra*, at 4.

treble damages on the Robinson-Patman Act claim, and entered judgment.

A divided Court of Appeals for the Eighth Circuit affirmed. The appeals court noted that, "as a threshold matter[,] Reeder had to show [that] it was a 'purchaser' within the meaning of the [Act]," 374 F. 3d, at 708, *i.e.*, that "there were actual sales at two different prices[,] . . . a sale to [Reeder] and a sale to another Volvo dealer," *id.*, at 707–708. Rejecting Volvo's contention that competitive bidding situations do not give rise to claims under the Robinson-Patman Act, *id.*, at 708–709, the Court of Appeals observed that Reeder was "more than an unsuccessful bidder," *id.*, at 709. The four instances in which Reeder "actually purchased Volvo trucks following successful bids on contracts," the court concluded, sufficed to render Reeder a purchaser within the meaning of the Act. *Ibid.*

The Court of Appeals next determined that a jury could reasonably decide that Reeder was "in actual competition" with favored dealers. *Ibid.* "[A]s of the time the price differential was imposed," the court reasoned, "the favored and disfavored purchasers competed at the same functional level . . . and within the same geographic market." *Ibid.* (quoting *Best Brands Beverage, Inc.* v. *Falstaff Brewing Corp.*, 842 F. 2d 578, 585 (CA2 1987)). The court further held that the jury could properly find from the evidence that Reeder had proved competitive injury from price discrimination. Specifically, the court pointed to evidence showing that (1) Volvo intended to reduce the number of its dealers; (2) Reeder lost the Hiland Dairy contract, for which it competed head to head with another Volvo dealer; (3) Reeder would have earned more profits, had it received the concessions other dealers received; and (4) Reeder's sales had declined over a period of time. 374 F. 3d, at 711–712. The court also affirmed the award of treble damages to Reeder. *Id.*, at 712–714.

Judge Hansen dissented as to the Robinson-Patman Act claim. "Traditional [Robinson-Patman Act] cases," he observed, "involve sellers and purchasers that carry inventory or deal in fungible goods." *Id.*, at 718. The majority, Judge Hansen commented, "attempt[ed] to fit a square peg into a round hole," *ibid.,* when it extended the Act's reach to the marketplace for heavy-duty trucks, where "special-order products are sold to individual, pre-identified customers only after competitive bidding," *ibid.* There may be competition among dealers for the opportunity to bid on potential sales, he noted, but "[o]nce bidding begins, . . . the relevant market becomes limited to the needs and demands of a particular end user, with only a handful of dealers competing for the ultimate sale." *Id.*, at 719. Violation of the Act, in Judge Hansen's view, could not be predicated on the instances Reeder identified in which it was a purchaser, for "there was no actual competition between" Reeder and another Volvo dealer at the time of Reeder's purchases. *Ibid.* "Without proof of actual competition" for the same customer when the requisite purchases were made, he concluded, "Reeder cannot demonstrate a reasonable possibility of competitive injury." *Ibid.*

We granted certiorari, 544 U. S. ___ (2005), to resolve this question: May a manufacturer be held liable for secondary-line price discrimination under the Robinson-Patman Act in the absence of a showing that the manufacturer discriminated between dealers competing to resell its product to the same retail customer? Satisfied that the Court of Appeals erred in answering that question in the affirmative, we reverse the Eighth Circuit's judgment.

II

Section 2, "when originally enacted as part of the Clayton Act in 1914, was born of a desire by Congress to curb the use by financially powerful corporations of localized price-cutting tactics which had gravely impaired the com-

petitive position of other sellers." *FTC* v. *Anheuser-Busch, Inc.*, 363 U. S. 536, 543, and n. 6 (1960) (citing H. R. Rep. No. 627, 63d Cong., 2d Sess., 8 (1914); S. Rep. No. 698, 63d Cong., 2d Sess., 2–4 (1914)). Augmenting that provision in 1936 with the Robinson-Patman Act, Congress sought to target the perceived harm to competition occasioned by powerful buyers, rather than sellers; specifically, Congress responded to the advent of large chain stores, enterprises with the clout to obtain lower prices for goods than smaller buyers could demand. See 14 H. Hovenkamp, Antitrust Law ¶2302, p. 11 (2d ed. 2006) (hereinafter Hovenkamp); P. Areeda & L. Kaplow, Antitrust Analysis ¶602, pp. 908–909 (5th ed. 1997) (hereinafter Areeda). The Act provides, in relevant part:

> "It shall be unlawful for any person engaged in commerce . . . to discriminate in price between different purchasers of commodities of like grade and quality, . . . where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them . . . ." 15 U. S. C. §13(a).

Pursuant to §4 of the Clayton Act, a private plaintiff may recover threefold for actual injury sustained as a result of a violation of the Robinson-Patman Act. See 15 U. S. C. §15(a); *J. Truett Payne Co.* v. *Chrysler Motors Corp.*, 451 U. S. 557, 562 (1981).

Mindful of the purposes of the Act and of the antitrust laws generally, we have explained that Robinson-Patman does not "ban all price differences charged to different purchasers of commodities of like grade and quality," *Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp.*,

509 U. S. 209, 220 (1993) (internal quotation marks omitted); rather, the Act proscribes "price discrimination only to the extent that it threatens to injure competition," *ibid.* Our decisions describe three categories of competitive injury that may give rise to a Robinson-Patman Act claim: primary-line, secondary-line, and tertiary-line. Primary-line cases entail conduct—most conspicuously, predatory pricing—that injures competition at the level of the discriminating seller and its direct competitors. See, *e.g.*, *id.*, at 220–222; see also Hovenkamp ¶2301a, pp. 4–6. Secondary-line cases, of which this is one, involve price discrimination that injures competition among the discriminating seller's customers (here, Volvo's dealerships); cases in this category typically refer to "favored" and "disfavored" purchasers. See *ibid.; Texaco Inc.* v. *Hasbrouck*, 496 U. S. 543, 558, n. 15 (1990). Tertiary-line cases involve injury to competition at the level of the purchaser's customers. See Areeda ¶601e, p. 907.

To establish the secondary-line injury of which it complains, Reeder had to show that (1) the relevant Volvo truck sales were made in interstate commerce; (2) the trucks were of "like grade and quality"; (3) Volvo "discriminate[d] in price between" Reeder and another purchaser of Volvo trucks; and (4) "the effect of such discrimination may be . . . to injure, destroy, or prevent competition" to the advantage of a favored purchaser, *i.e.*, one who "receive[d] the benefit of such discrimination." 15 U. S. C. §13(a). It is undisputed that Reeder has satisfied the first and second requirements. Volvo and the United States, as *amicus curiae*, maintain that Reeder cannot satisfy the third and fourth requirements, because Reeder has not identified any differentially-priced transaction in which it was both a "purchaser" under the Act and "in actual competition" with a favored purchaser for the same customer.

A hallmark of the requisite competitive injury, our

decisions indicate, is the diversion of sales or profits from a disfavored purchaser to a favored purchaser. *FTC* v. *Sun Oil Co.*, 371 U. S. 505, 518–519 (1963) (evidence showed patronage shifted from disfavored dealers to favored dealers); *Falls City Industries, Inc.* v. *Vanco Beverage, Inc.*, 460 U. S. 428, 437–438, and n. 8 (1983) (complaint "supported by direct evidence of diverted sales"). We have also recognized that a permissible inference of competitive injury may arise from evidence that a favored competitor received a significant price reduction over a substantial period of time. See *FTC* v. *Morton Salt Co.*, 334 U. S. 37, 49–51 (1948); *Falls City Industries*, 460 U. S., at 435. Absent actual competition with a favored Volvo dealer, however, Reeder cannot establish the competitive injury required under the Act.

III

The evidence Reeder offered at trial falls into three categories: (1) comparisons of concessions Reeder received for four successful bids against *non-Volvo* dealers, with larger concessions other successful Volvo dealers received for *different sales* on which Reeder did not bid (purchase-to-purchase comparisons); (2) comparisons of concessions offered to Reeder in connection with several unsuccessful bids against *non-Volvo* dealers, with greater concessions accorded other Volvo dealers who competed successfully for *different sales* on which Reeder did not bid (offer-to-purchase comparisons); and (3) evidence of two occasions on which Reeder bid against another Volvo dealer (head-to-head comparisons). The Court of Appeals concluded that Reeder demonstrated competitive injury under the Act because Reeder competed with favored purchasers "at the same functional level . . . and within the same geographic market." 374 F. 3d, at 709 (quoting *Best Brands*, 842 F. 2d, at 585). As we see it, however, selective comparisons of the kind Reeder presented do not show the

injury to competition targeted by the Robinson-Patman Act.

A

Both the purchase-to-purchase and the offer-to-purchase comparisons fall short, for in none of the discrete instances on which Reeder relied did Reeder compete with beneficiaries of the alleged discrimination *for the same customer*. Nor did Reeder even attempt to show that the compared dealers were consistently favored vis-à-vis Reeder. Reeder simply paired occasions on which it competed with *non-Volvo* dealers for a sale to Customer A with instances in which other Volvo dealers competed with *non-Volvo* dealers for a sale to Customer B. The compared incidents were tied to no systematic study and were separated in time by as many as seven months. See 374 F. 3d, at 706, 710.

We decline to permit an inference of competitive injury from evidence of such a mix-and-match, manipulable quality. See Tr. of Oral Arg. 34–35, 55. No similar risk of manipulation occurs in cases kin to the chain-store paradigm. Here, there is no discrete "favored" dealer comparable to a chain store or a large independent department store—at least, Reeder's evidence is insufficient to support an inference of such a dealer or set of dealers. For all we know, Reeder, on occasion, might have gotten a better deal vis-à-vis one or more of the dealers in its comparisons. See *supra*, at 5.

Reeder may have competed with other Volvo dealers for the opportunity to bid on potential sales in a broad geographic area. At that initial stage, however, competition is not affected by differential pricing; a dealer in the competitive bidding process here at issue approaches Volvo for a price concession only after it has been selected by a retail customer to submit a bid. Competition for an opportunity to bid, we earlier observed, is based on a variety of

factors, including the existence *vel non* of a relationship between the potential bidder and the customer, geography, and reputation. See *supra*, at 2.[3] We reiterate in this regard an observation made by Judge Hansen, dissenting from the Eighth Circuit's Robinson-Patman holding: Once a retail customer has chosen the particular dealers from which it will solicit bids, "the relevant market becomes limited to the needs and demands of a particular end user, with only a handful of dealers competing for the ultimate sale." 374 F. 3d, at 719. That Volvo dealers may bid for sales in the same geographic area does not import that they in fact competed for the same customer-tailored sales. In sum, the purchase-to-purchase and offer-to-purchase comparisons fail to show that Volvo sold at a lower price to Reeder's "competitors," hence those comparisons do not support an inference of competitive injury. See *Falls City Industries*, 460 U. S., at 435 (inference of competitive injury under *Morton Salt* arises from "proof of a substantial price discrimination between *competing purchasers* over time" (emphasis added)).

B

Reeder did offer evidence of two instances in which it competed head to head with another Volvo dealer. See *supra*, at 4. When multiple dealers bid for the business of the *same* customer, only one dealer will win the business and thereafter purchase the supplier's product to fulfill its contractual commitment. Because Robinson-Patman "prohibits only discrimination 'between different *purchas-*

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[3] A dealer's reputation for securing favorable concessions, we recognize, may influence the customer's bidding invitations. Cf. *post*, at 3, n. 2. We do not pursue that point here, however, because Reeder did not present—or even look for—evidence that Volvo consistently disfavored Reeder while it consistently favored certain other dealers. See *supra*, at 5.

ers,'" Brief for Petitioner 26 (quoting 15 U. S. C. §13(a); emphasis added), Volvo and the United States argue, the Act does not reach markets characterized by competitive bidding and special-order sales, as opposed to sales from inventory. See Brief for Petitioner 27; Brief for United States as *Amicus Curiae* 9, 17–20. We need not decide that question today. Assuming the Act applies to the head-to-head transactions, Reeder did not establish that it was *disfavored* vis-à-vis other Volvo dealers in the rare instances in which they competed for the same sale—let alone that the alleged discrimination was substantial. See 1 ABA Section of Antitrust Law, Antitrust Law Developments 478–479 (5th ed. 2002) ("No inference of injury to competition is permitted when the discrimination is not substantial." (collecting cases)).

Reeder's evidence showed loss of only one sale to another Volvo dealer, a sale of 12 trucks that would have generated $30,000 in gross profits for Reeder. 374 F. 3d, at 705. Per its policy, Volvo initially offered Reeder and the other dealer the same concession. Volvo ultimately granted a larger concession to the other dealer, but only after it had won the bid. In the only other instance of head-to-head competition Reeder identified, Volvo increased Reeder's initial 17% discount to 18.9%, to match the discount offered to the other competing Volvo dealer; neither dealer won the bid. See *supra*, at 4. In short, if price discrimination between two purchasers existed at all, it was not of such magnitude as to affect substantially competition between Reeder and the "favored" Volvo dealer.

IV

Interbrand competition, our opinions affirm, is the "primary concern of antitrust law." *Continental T. V., Inc.* v. *GTE Sylvania, Inc.*, 433 U. S. 36, 51–52, n. 19 (1977). The Robinson-Patman Act signals no large departure from

that main concern. Even if the Act's text could be construed in the manner urged by Reeder and embraced by the Court of Appeals, we would resist interpretation geared more to the protection of existing *competitors* than to the stimulation of *competition*.[4] In the case before us, there is no evidence that any favored purchaser possesses market power, the allegedly favored purchasers are dealers with little resemblance to large independent department stores or chain operations, and the supplier's selective price discounting fosters competition among suppliers of different brands. See *id.,* at 51–52 (observing that the market impact of a vertical practice, such as a change in a supplier's distribution system, may be a "simultaneous reduction of intrabrand competition and stimulation of interbrand competition"). By declining to extend Robinson-Patman's governance to such cases, we continue to construe the Act "consistently with broader policies of the antitrust laws." *Brooke Group*, 509 U. S., at 220 (quoting *Great Atlantic & Pacific Tea Co.* v. *FTC*, 440 U. S. 69, 80, n. 13 (1979)); see *Automatic Canteen Co. of America* v. *FTC*, 346 U. S. 61, 63 (1953) (cautioning against Robinson-Patman constructions that "extend beyond the prohibitions of the Act and, in doing so, help give rise to a price uniformity and rigidity in open conflict with the purposes of other antitrust legislation").[5]

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[4] The dissent assails Volvo's decision to reduce the number of its dealers. *Post*, at 2, 5. But Robinson-Patman does not bar a manufacturer from restructuring its distribution networks to improve the efficiency of its operations. If Volvo did not honor its obligations to Reeder as its franchisee, "[a]ny remedy . . . lies in state laws addressing unfair competition and the rights of franchisees, not in the Robinson-Patman Act." Brief for United States as *Amicus Curiae* 28.

[5] See also 14 H. Hovenkamp, Antitrust Law ¶2333c, p. 109 (2d ed. 2006) (commenting that the Eighth Circuit's expansive interpretation "views the [Robinson-Patman Act] as a guarantee of equal profit margins on sales actually made," and thereby exposes manufacturers to treble damages unless they "charge uniform prices to their dealers").

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For the reasons stated, the judgment of the Court of Appeals for the Eighth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.