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Review of “Complete Guide to the Robinson-Patman Act,” By Wright Patman

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felt by a considerable number of lawyers, namely, that "civil rights legislation" which infringed on traditional rights could not be justified. Property rights, and freedom of association and choice, are too deeply imbedded in our constitutional fabric to be torn asunder at the behest of those who claim deprivation at the hands of the majority. The housing symposium represents a protest which will be welcomed by lawyers who would speak out in support of traditional liberties.

For those who oppose anti-discrimination legislation in housing, the symposium represents a refreshing affirmation of the principles they hold dear articulated in a scholarly, comprehensive, and persuasive form. Proponents of such measures will find in the symposium arguments worthy to challenge their beliefs, and the analysis, data, and citations necessary to present these arguments in their most persuasive form. All will find the symposium informative. It is basic material in this area, and deserves wide reading.

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COMPLETE GUIDE TO THE ROBINSON-PATMAN ACT. By Wright Patman. Englewood Cliffs: Prentice-Hall, Inc., 1963. Pp., xiv, 401. \$15.00.

When signed by President Roosevelt twenty-eight years ago June 19th, the Robinson-Patman Act¹ was heralded as the beginning of a new era in federal anti-trust laws. Enacted as an avowed anti-chain store statute, it was intended as a constructive force to protect small businessmen and consumers by outlawing discounts, rebates, and price discrimination, thereby restraining the competitive advantages enjoyed by large monopolistic buyers while preserving the economics of mass merchandising. In the first chapter of the book, by way of highlighting the economic background of this act, the author (one of the original co-sponsors of the bill) recalls that prior to 1935 the A & P received 6 million dollars yearly in advertising allowances from manufacturers of branded goods and another 2 million in brokerage fees on its purchases.²

This book is another chapter in the history of the Congressman's defense of the act, which act has been under increasingly more critical analysis by courts, lawyers, and economists. As a powerful figure on Capitol Hill, he has

1. 49 Stat. 1526 (1936), 15 U.S.C. § 13 (1958).

2. Pp. 1-10, 114-15, 121-22, 127-28. *Great Atlantic & Pacific Tea Co. v. FTC*, 106 F.2d 667 (3d Cir. 1939).

answered the major judicial restraints upon the interpretation of the act with *ad hoc* bills which would restore the original broad scope of the act, freeing it from the limiting effects of the Court's holdings. Thus, when in the *Nashville Milk Co. case*³ the Supreme Court held that Section 3 of the act was purely criminal in its effect, and so not available to private parties in civil actions, Mr. Patman introduced bills into sessions of the 85th (1958), 86th (1959), and 87th (1961) Congresses directed to achieve the opposite result.⁴ When the Supreme Court ruled in *Standard Oil*⁵ that the defense of meeting competitive prices in good faith is an absolute defense under the act, H.R. 11 was introduced at the beginning of the 86th Congress to establish an exception in the scope of the defense.⁶ Likewise, when *Automatic Canteen*⁷ required the FTC to show—before a buyer may be held to have violated the act—that he had knowledge of being favored over other buyers,⁸ Mr. Patman introduced H.R. 124 to relieve the Commission of this burden.⁹

The unusual selection of the title of this book is more than descriptive of its content. It is also a significant admission by one of the authors of the Robinson-Patman Act that to understand this law there is need for a "guide," and that only a "complete guide" will do. In this self-styled role, the book is a most useful tool of practitioners and students of the subject. Some 140 typical questions concerning the applicability and construction of the act are presented and answered with ample references to adjudications by the FTC and the court, and to the legislative history which is set out in one of the generous appendices.

However, as if the unassuming label of a "guide" were some excuse, the book fails to explore the most challenging issue in a price discrimination law, *i.e.*, the underlying inconsistency between the free play of competitive forces, which is the goal of the Sherman Act, and the restraint upon certain forms of pricing policies. Nor does the author explain why a showing of resulting injurious effect upon competition should not be required to establish actionable discrimination in allowances and services, while price discriminations are barred only when accompanied by injurious competitive effects. A similar inconsistency is found in the author's advocacy that the good faith meeting competition defense should be relegated to cases of price discrimination

3. *Nashville Milk Co. v. Carnation Co.*, 355 U.S. 373 (1958).

4. Pp. 174-75, 210.

5. *Standard Oil Co. of Indiana v. FTC*, 340 U.S. 231 (1951).

6. P. 212.

7. *Automatic Canteen Co. v. FTC*, 346 U.S. 61 (1953).

8. P. 156.

9. P. 165.

alone. But the emphasis of the book is not as much on scholarly dissertation of principles as on the practical explanation of business operation under the act and of the trends of its enforcement. In this role, Patman's *Guide* is a valuable contribution to the understanding of an act which, with or without some modification, is here to stay.

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