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Rachel Wolff

PepsiCo and Coca-Cola face FTC scrutiny over potential price discrimination

Article

The news: **PepsiCo** and **Coca-Cola** are being investigated by the Federal Trade Commission (FTC) for a potential breach of the Robinson-Patman Act, a law that prohibits suppliers from offering better prices to larger retailers to the detriment of smaller competitors, per Politico.

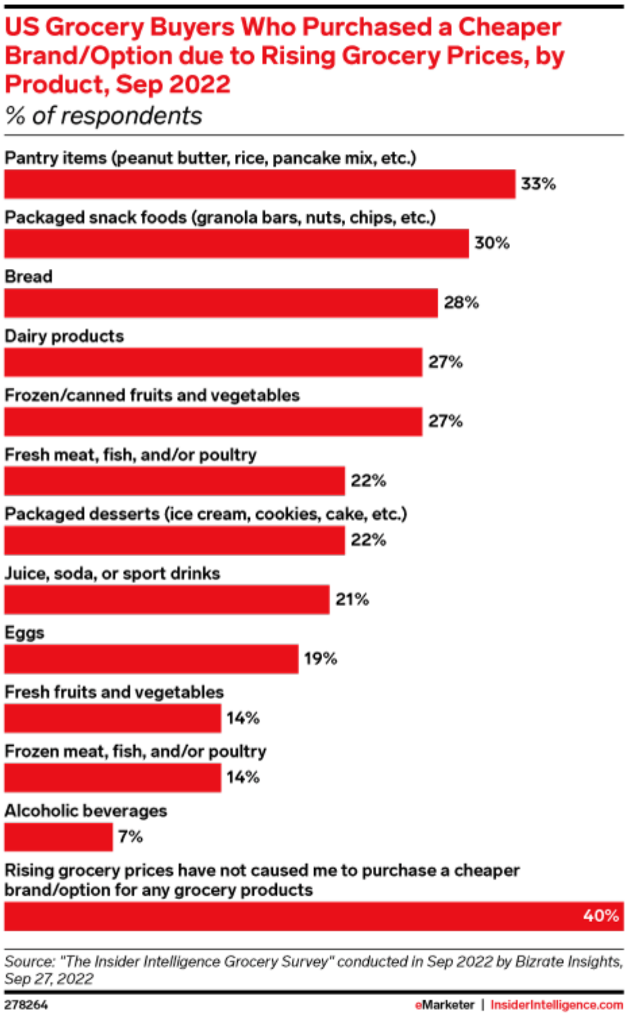
- While the scope of the investigation is currently limited to the companies' soda businesses, the move functions as a test case for the FTC's aggressive strategy to curb anti-competitive behavior, and could act as a blueprint for further probes.

What it means: The central argument behind the Robinson-Patman Act is that smaller retailers are at an inherent disadvantage when it comes to negotiating with suppliers. Large chains like **Walmart** have the muscle to work out terms directly with suppliers like PepsiCo, but smaller companies often work with a wholesaler to secure access to products, leaving them out of discussions and at the mercy of the supplier's pricing decisions.

- The FTC largely abandoned enforcement of the law over 20 years ago, but it has come back into vogue under new commissioner **Alvaro Bedoya**, who has made the act's application a top priority during his tenure.
- That could pose problems for Walmart and other big-box retailers that have staked their reputation and market share on being able to offer lower prices than their competitors.
- Critics argue the move could hurt consumers by forcing big-box stores to charge more—but given the current price-sensitive environment, it's more likely that suppliers will be forced to charge smaller retailers lower rates to keep their biggest customers happy.

Pricing power: The FTC isn't the only threat to companies' pricing power. With real wage growth failing to keep pace with inflation, brands and retailers are rapidly losing their abilities to use price hikes to reinforce their bottom lines.

- **Constellation Brands** said it would take a "muted" approach to price hikes during the next fiscal year, after higher-than-expected price hikes significantly dampened consumer demand during its most recent quarter.
- While higher prices helped **Conagra** increase revenues by 8.3% year-over-year (YoY) during its latest quarter, it came at the expense of sales volumes, which fell 8.4% YoY.
- Walmart is actively looking to replace products from suppliers unwilling or unable to keep prices down with private labels and "tertiary brands," CEO **Doug McMillon** told attendees at the Morgan Stanley Global Consumer & Retail Conference.



The big takeaway: The pandemic playbook of raising prices to make up for inflationary cost increases won't work in 2023, as more consumers actively look to save money by trading down to cheaper brands or reducing consumption.

- And it's not only shoppers who are sick of price increases; retailers are becoming increasingly impatient with constant price hikes from suppliers, causing many to push back or look for alternatives.
- Last but not least, growing scrutiny from the FTC into pricing practices and how they affect competition should cause brands and retailers to think more carefully about how to approach cost increases.

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