Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

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

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

No. 04–905. Argued October 31, 2005—Decided January 10, 2006

Reeder-Simco GMC, Inc. (Reeder), an authorized dealer of heavy-duty trucks manufactured by Volvo Trucks North America, Inc. (Volvo), generally sold those trucks through an industry-wide competitive bidding process, whereby the retail customer describes its specific product requirements and invites bids from dealers it selects based on such factors as an existing relationship, geography, and reputation. Once a Volvo dealer receives the customer's specifications, it requests from Volvo a discount or "concession" off the wholesale price. Volvo decides on a case-by-case basis whether to offer a concession. The dealer then uses its Volvo discount in preparing its bid; it purchases trucks from Volvo only if and when the retail customer accepts its bid. Reeder was one of many regional Volvo dealers. Although nothing prohibits a Volvo dealer from bidding outside its territory, Reeder rarely bid against another Volvo dealer. In the atypical case in which a 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. In 1997, after Volvo announced plans to enlarge the size of its dealers' markets and to reduce by almost half the number of its dealers, Reeder learned that Volvo had given another dealer a price concession greater than the discounts Reeder typically received.

Reeder, suspecting it was one of the dealers Volvo sought to eliminate, filed this suit under, *inter alia*, §2 of the Clayton Act, as amended by the Robinson-Patman Act, 15 U. S. C. §13, alleging that its sales and profits declined because Volvo offered other dealers more favorable price concessions. At trial, Reeder presented evidence of two instances when it bid against another Volvo dealer for a particular sale. In the first, although Volvo initially offered Reeder a

lower concession, Volvo ultimately matched the concession offered to the competing dealer. Neither dealer won the bid. In the second, Volvo initially offered the two dealers the same concession, but increased the other dealer's discount after it, rather than Reeder, was selected. Reeder dominantly relied on comparisons between concessions it 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 bidding processes in which Reeder did not participate. Reeder also compared concessions Volvo offered it on several occasions when it bid unsuccessfully against non-Volvo dealers (and therefore did not purchase Volvo trucks), with more favorable concessions accorded other Volvo dealers who gained contracts on which Reeder did not bid. Reeder did not look for instances in which it received a larger concession than another Volvo dealer, but acknowledged it was "quite possible" that such instances occurred. Nor did Reeder offer any statistical analysis revealing whether it was disfavored on average as compared to other dealers. The jury found a reasonable possibility that discriminatory pricing may have harmed competition between Reeder and other Volvo dealers, that Volvo's discriminatory pricing injured Reeder, and that Reeder's damages from Volvo's Robinson-Patman violation exceeded $1.3 million. The District Court awarded treble damages on the Robinson-Patman Act claim, and entered judgment.

Affirming, the Eighth Circuit, among other things, noted the threshold requirement that Reeder show it was a "purchaser" within the Act's meaning; rejected Volvo's contention that competitive bidding situations do not give rise to Robinson-Patman claims; held that the four instances in which Reeder purchased trucks following successful bids rendered it a purchaser under the Act; determined that a jury could reasonably decide Reeder was in actual competition with favored dealers at the time price differentials were imposed; and held that the jury could properly find Reeder had proved competitive injury based on evidence that (1) Volvo intended to reduce the number of its dealers, (2) Reeder lost one contract for which it competed with another Volvo dealer, (3) Reeder would have earned more profits, had it received the concessions given other dealers, and (4) Reeder's sales declined over time.

Held: A manufacturer may not 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. The Act does not reach the case Reeder presents. It 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. Pp. 7–15.

1. Section 2 was enacted to curb financially powerful corporations' use of localized price-cutting tactics that gravely impaired other sellers' competitive position. *FTC* v. *Anheuser-Busch, Inc.*, 363 U. S. 536, 543, and n. 6. Augmenting §2, the Robinson-Patman Act targeted the perceived harm to competition occasioned by the advent of large chain stores able to obtain lower prices for goods than smaller buyers could demand. Robinson-Patman does not ban all price differences charged to different purchasers of similar commodities, but proscribes only "price discrimination [that] threatens to injure competition," *Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp.*, 509 U. S. 209, 220. Of the three categories of competitive injury that may give rise to a Robinson-Patman claim, secondary-line cases, like this one, involve price discrimination that injures competition among the discriminating seller's customers (here, Volvo's dealerships). Reeder has satisfied the Act's first two requirements for establishing secondary-line injury: (1) The relevant Volvo truck sales were made in interstate commerce, and (2) the trucks were of "like grade and quality," 15 U. S. C. §13(a). 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, see *e.g., FTC* v. *Sun Oil Co.*, 371 U. S. 505, 518–519, Volvo and *amicus* United States maintain that Reeder cannot satisfy the Act's third and fourth requirements—that (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," *ibid*. Absent actual competition with a favored Volvo dealer, Reeder cannot establish the competitive injury the Act requires. Pp. 7–10.

2. The injury to competition targeted by the Robinson-Patman Act is not established by the selective comparisons Reeder presented at trial: (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) comparisons of two occasions on which Reeder bid against another

Volvo dealer (head-to-head comparisons). Pp. 10–14.

(a) Because the purchase-to-purchase and offer-to-purchase comparisons fail to show that Volvo sold at a lower price to Reeder's "competitors," those comparisons do not support an inference of competitive injury. See *Falls City Industries, Inc.* v. *Vanco Beverage, Inc.,* 460 U. S. 428, 435. Both types of comparisons fall short because in none of the discrete instances on which Reeder relied did it 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 over it. 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. This Court declines to permit an inference of competitive injury from evidence of such a mix-and-match, manipulable quality. 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 that such a dealer exists. For all that appears, Reeder, on occasion, might have gotten a better deal vis-à-vis one or more of the dealers in its comparisons. While Reeder may have competed with other Volvo dealers for the opportunity to bid on potential sales in a broad geographic area, competition at that initial stage 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. Once the customer has chosen the particular dealers from which it will solicit bids, the relevant market becomes limited to the needs and demands of the particular end user, with only a handful of dealers competing for the sale. Volvo dealers' bidding for sales in the same geographic area does not import that they in fact competed for the same customer-tailored sales. Pp. 11–12.

(b) Nor is a Robinson-Patman violation established by Reeder's evidence of two instances in which it competed head to head with another Volvo dealer. 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. Even assuming the Act applies to 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. 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. Per its policy, Volvo initially offered Reeder and the other dealer the same concession, but ultimately granted a larger concession to the other dealer after it had won the bid. In the only other instance of head-to-head competition, Volvo increased Reeder's initial discount to match the discount offered the other competing Volvo dealer, but neither dealer won the bid. 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. Pp. 12–13.

3. The Robinson-Patman Act signals no large departure from antitrust law's primary concern, interbrand competition. Even if the Act's text could be construed as Reeder urges and the Eighth Circuit held, this Court would resist interpretation geared more to the protection of existing *competitors* than to the stimulation of *competition*. There is no evidence here 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. By declining to extend Robinson-Patman's governance to such cases, the Court continues to construe the Act consistently with antitrust law's broader policies. Pp. 13–14.

374 F. 3d 701, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion, in which THOMAS, J., joined.