Campaign for a Healthy Alcohol Marketplace

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What do alcohol fair business practices have to do with public health and safety?

By Pamela S. Erickson

Did you know there are regulations governing fair "trade practices" for those licensed to promote and sell alcohol? For example, a supplier can't pay a supermarket to stock their alcohol product. That is a standard practice for many commodities such as soft drinks or breakfast cereal.

While most think fair play is good, few understand how it relates to the public health and safety goals of alcohol regulation.

Because alcohol abuse is very costly to society, it is a product that must be sold with great care. It is very important that licensees be responsible people who play by the rules and do not cheat.

But, what is not always clear is that some common business practices, legitimate for other commodities, can cause problems for alcohol. For example, companies typically advertise to youth to build new generations of customers. But for alcohol, such advertising would encourage underage drinking. Another example is promotions aimed at a company's "best customers"; that is, those who buy most frequently. With alcohol, that category would include binge and heavy drinkers. Attempts to increase sales among to those groups would not be wise. These examples demonstrate the need for regulations that prevent social problems due to excess consumption particularly among vulnerable populations.

Because selling large amounts of alcohol at very cheap prices can promote consumption, there are a number of regulations that are designed to prevent that scenario.

These regulations were adopted because of our historical experience before Prohibition when alcohol was sold in an unregulated free market. Social problems were extreme due to heavy-handed sales practices of national alcohol companies that owned most of the retailers in all of our communities. These retailers were bars known as saloons. The national alcohol companies pushed hard for the saloon to make as much money as possible through whatever means they could. These suppliers also used money to influence politicians in an effort to thwart any new regulations. Alcohol problems were so severe that they lead to the equally severe solution of Prohibition.

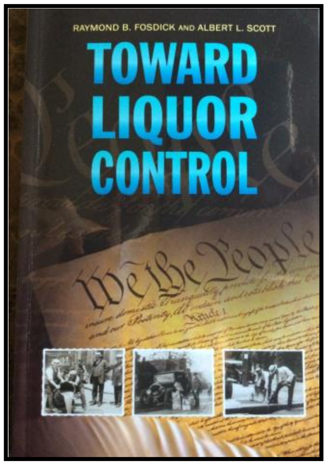
After Prohibition, the leaders who helped craft new regulations vowed to prevent the return of market conditions that fostered alcohol problems. That is the context for the following types of regulations.

Basic Fair Trade Regulations: Tied House, Exclusive Outlet, Commercial Bribery and Consignment Sales.

These four categories are found in federal law (the Federal Alcohol Administration Act) and in most state regulations. Here is what they do:

Tied House: these regulations prevent a monopolistic practice known as vertical integration where a supplier, distributor and retailer are financially tied by ownership or a business arrangement. When financial ties are allowed, companies are more likely to dominate local markets by lowering prices to undercut competitors. Because the supplier is usually a national company, they have no loyalty to the community; they only want to make as much money as possible.

Exclusive outlet: This occurs when a supplier offers a favorable business deal (usually a cheap price) if the retailer will not sell a competitor's product or sell less of that product. This is actually the way alcohol is sold in other parts of the world and the way other commodities are sold in the US. That is why a server may ask if "Pepsi is okay" when you order a Coke. Exclusive arrangements are another way to dominate a market and use pricing to drive out competition. It also restricts product selection and business development. For example, in Mexico, craft brewers have had difficulty getting retailers to carry their products because most have exclusive arrangements with one of the two dominant beer companies, Groupo Modelo and Cuauhtemoc Moctezuma. The exceptional growth of craft beer in the US could not have happened if we allowed exclusive arrangements. (In 2013, the Mexican Competition Commission placed some limits on exclusive contracts for these companies; see link to article.)



Commercial bribery: This is what it sounds like…a supplier pays a retailer to carry its products exclusively or with favorable treatment. The payments can be in cash, gift cards or with other things of value.

Consignment sales: These are incomplete sales which continue to tie the business of the supplier and retailer. The sale is not complete because the retailer may return product if it doesn't sell or the retailer only pays when the product is sold. Historically, such sales lead to quota requirements or continued pressure by the supplier to buy more product than needed. Once the retailer has excess product, they may need to sell at deep discount just to clear the inventory.

States add fair pricing regulations

Many states attempt to enhance fair play by requiring suppliers to offer the same price to all retailers. Some states allow a different set of uniform prices for on and off sale licensees. This ***reduces*** the incentive to sell at deep discount.

Fair Trade Practice Rules Mirror Anti-trust Laws

Far from being antiquated or irrelevant for today's economics, fair trade practice laws are similar to those found in the Sherman Anti-trust Act. In 1914, that Act was amended to include:

- **Exclusive** dealing agreements
- **Tying** arrangements
- Merger and acquisitions that substantially reduce market competition
- **Price discrimination** between different purchasers, if such discrimination tends to create a monopoly

Not only do these regulations protect the public, but they help ensure that consumers get the benefit of fair competition: a wide variety of products including new and local-based products, fair prices based on supply and demand, robust local business environment with small and large enterprises making profits.

Public Protection is Number One!

When our country set out to regulate alcohol they were very focused on preventing the social problems brought on by the market conditions they witnessed before Prohibition. This is not an old problem. Alcohol continues to be intoxicating, according to the CDC, is related to over 88,000 deaths and untold taxpayer cost. Deregulation could bring back market conditions that would increase this severe social cost.

New Report to be Available in September

A new short report on Fair Trade Practice Regulation will be available in late September at www.healthyalcoholmarket.com. It will deal with this subject in much greater depth. An announcement with download information will be coming soon!

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