

PAUL MCMORROW

The state's liquor laws are broken

By Paul McMorrow SEPTEMBER 16, 2011

A RECENT dust-up over licenses for small brewers briefly thrust the inner workings of state alcohol policy into public sight. It wasn't pretty. And, according to a blistering letter that federal officials recently sent to the State House, the dysfunction in the way Massachusetts regulates alcohol goes far beyond last month's licensing scuffle. This letter, from the Federal Trade Commission, describes a regulatory regime written to protect a small but powerful gang of wholesalers, at the expense of would-be competitors and consumers.

Laws get twisted when nobody but their beneficiaries look after them. And for decades, liquor laws in Massachusetts have tilted in favor of the only group with the money and organization to shape them - the wholesalers who distribute alcohol to bars, restaurants, and package stores.

This dynamic has a chance to pivot now. The small brewer licensing skirmish has focused public attention on state liquor regulations at the moment that those laws are being called out by federal officials as supremely anti-competitive, if not anti-capitalist. Meanwhile, local wholesalers are making a bid to strengthen their grip on the market - a fact that should show just how broken the system is.

Beer, wine, and liquor manufacturers haven't been able to sell directly to Massachusetts consumers since before Prohibition. Prohibition's repeal gave states broad latitude to regulate alcohol sales, resulting in a hodgepodge of extreme regulatory regimes across the country. Massachusetts was one of the states to erect barriers between manufacturers, wholesalers, and retailers and consumers, as a way of controlling the liquor trade.

This system gives Massachusetts wholesalers tremendous money and power. Over the years, they've used their legislative clout to carve out fatter slices of the market for

themselves. Most importantly, state law locks manufacturers and wholesalers into a tight contractual relationship, and effectively prevents manufacturers from switching wholesalers. One exception to this no-divorce regime occurs when a manufacturer is sold, but wholesalers are currently pursuing a bill that would earn them a hefty breakup fee if a manufacturer's new owner takes its product to another wholesaler. The bill is specifically targeted at the brewing industry, which is seeing dramatic consolidation among its big players.

The FTC letter, sent to state lawmakers earlier this year, said the wholesalers' proposed breakup fee would raise prices, dampen consumer choice, and impede competition in Massachusetts. It urged the Legislature to vote down the proposed new fee.

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The letter then went on to describe the state's alcohol regulations as a system for insulating wholesalers from competition, and for exerting restrictive ownership rights over manufacturers' products. In effect, the FTC said, Massachusetts liquor laws have enshrined the positions enjoyed by the current crop of alcohol wholesalers, at the expense of everybody else.

By law, wholesalers sit in the middle of a supply pipeline, and they've used their legislative clout to stifle competition on both ends of that pipeline. One example is the no-divorce rule that the FTC letter spotlights. It prevents brewers and winemakers from switching between wholesalers, even if they could get better pricing or service somewhere else, and commands hefty payments in the event that a switch does occur. This system restricts competition among wholesalers for alcohol brands, and the big fees that come with moving a brand between wholesalers mean that existing wholesalers are protected from competition from potential start-ups.

The wholesalers had these rules written into law decades ago, and are trying to tighten them. They're doing this because it's the same thing they've always done - put their money to work on Beacon Hill, win an obscure rule change here and there, and tilt the market in their favor a few degrees more. They're also lining up against a measure, sponsored by the state's small brewers and backed by the FTC, that would let small accounts move freely between wholesalers.

It turns out that their timing isn't so great, though. The wholesalers are getting greedy

just when the FTC is turning up the heat on the state's broken alcohol regulations, and just when, thanks to the small brewer licensing fight, the public has enjoyed an eyeful of just how backwards state liquor regulations can be. That's a tough road to travel, even for a group like the wholesalers, who are used to pushing their legislative wish lists through Beacon Hill.

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