



WWW.WSWA.ORG



WWW.ABLUSA.ORG

May 30, 2018

The Honorable Makan Delrahim
Assistant Attorney General
United States Department of Justice
Antitrust Division
950 Pennsylvania Ave., NW
Washington, DC 20530
CompReg3@usdoj.gov

Re: Department of Justice May 31, 2018 Roundtable Discussion Series Assessing the Consumer Costs of Anticompetitive Regulations

Dear Assistant Attorney General Delrahim:

On behalf of the Wine & Spirits Wholesalers of America (WSWA)¹ and American Beverage Licensees (ABL)², we are pleased to provide comments in advance of the May 31 Department of Justice (DOJ) Antitrust Division Roundtable Assessing the Consumer Costs of Anticompetitive Regulations.

As supporters of the long-standing presumption that competition yields the best allocation of economic resources, the lowest prices, the highest quality, and the most innovation, we write to highlight the success of the highly competitive U.S. beverage alcohol marketplace, which notably, is also highly regulated. Alcohol, after all, is a unique product which calls for a balance of unrestrained interaction of competitive forces with competing federal and state public safety concerns.

Under the current system of beverage alcohol production, distribution and sales, consumers enjoy a dynamic market that rewards innovation and provides a wide array of product choices at varying price points. Though it is the most vibrant beverage alcohol marketplace in the world, some critics claim that the current system of alcohol regulation is anticompetitive. We urge the DOJ to reject

¹ WSWA is a national trade association representing the wholesale tier of the wine and spirits industry. Its members distribute more than 80 percent of all wine and spirits sold at wholesale in the U.S. WSWA-member companies are family-owned, U.S. businesses that provide marketing and logistical services in the distribution of wine and spirits. WSWA advocates for state-based regulations that ensure an effectively-regulated, competitive, and responsible marketplace for the distribution and sale of beverage alcohol.

² ABL represents licensed off-premise beverage alcohol retailers (such as package liquor stores) and on-premise retailers (such as bars, taverns, restaurants) across the nation. ABL members are primarily independent, family-owned businesses that have fostered a beverage alcohol marketplace driven by innovation and opportunity for entrepreneurs while remaining committed to operating under effective regulation toward the responsible sale of beverage alcohol products.



this myopic view. A comprehensive understanding of alcohol regulation and its real-world effects on the consumer-purchasing environment demonstrates quite the opposite.

Today's ever-evolving beverage alcohol marketplace is evidence that current state-based regulatory systems succeed in successfully balancing regulation with competition; promote an exciting and diverse purchasing environment; and protect citizens from the harmful effects of alcohol misuse. As such, the current legal systems underpinning this marketplace not only protect competition, but also promote pre-competitive effects of innovation, product choice, and more efficient industries with respect to the markets for beverage alcohol products and do not warrant deregulation.

The Beverage Alcohol Industry and Its Customers are Well Served by a Robust Regulatory Structure

Beverage alcohol is a unique product in all societies and no less so in the United States. The detrimental impacts on individuals, families, and society as a whole that result from overconsumption and underage consumption of alcohol are dramatically different from those related to the use of other products, whether measured by scale, severity, nature, or remediability. Accordingly, government has attempted to mitigate these impacts through regulation. Indeed, alcohol has always been a regulated product in the country. No other product has been the subject of one, let alone two, Constitutional Amendments. The first was the 18th Amendment, which established National Prohibition, followed by the 21st Amendment, which conferred primary responsibility for alcohol regulation to the states.

The adoption of the 21st Amendment reflected recognition by both Congress and the states that the challenge of regulating alcohol required that the states be granted sweeping authority to develop comprehensive, manageable solutions to protect their citizens. Ever since, states have wrestled with the formidable task of designing systems for alcohol commerce that prevent the abuses and problems that had prompted Prohibition, which arose from inadequately regulated and overstimulated retail sales. What has evolved under the overarching regulatory structure is a range of local controls that best fit the individual needs of unique communities and are reflective of local community values.

Today, laws and regulations governing the production, distribution, and sale of beverage alcohol exist at the federal, state, and local levels. These laws and regulations work together to ultimately address important public policy concerns. Even regulations that seemingly focus on purely business concerns, ultimately are in place to protect the public from menaces including a marketplace of excessive retail capacity and reckless sales, which ultimately lead to overconsumption and alcohol abuse. The regulations also successfully ensure product safety as evidenced by the absence of tainted or counterfeit alcohol, which is unfortunately all too common in other countries.



The Need for Regulatory Structure Is More Relevant and Important than Ever

This past March, the Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau (“TTB”) issued a press release announcing how it “conducted a joint operation with Agents from the California Department of Alcoholic Beverage Control into alleged prohibited trade practices in Napa and Sonoma Counties. The focus of this TTB investigation [was] on consignment sales arrangements, which, like other unlawful trade practices, are used to gain an unfair advantage over law-abiding industry members and ultimately limit consumer choice.”³ The regulatory system highlights one of TTB’s goals, which is to “ensure that existing industry members and smaller businesses just entering the marketplace can compete fairly based on customer service and consumer preference.” Similar enforcement actions have recently occurred in Massachusetts and are ongoing in a number of locations.⁴ These enforcement actions highlight the current relevance and compelling need for these laws and regulations.

Strong regulation, especially where public policy concerns exist, is necessary. Given the dangers associated with alcohol abuse, the effective regulation of alcohol production, distribution and sales is of paramount importance. As one commentator has noted, alcohol is “no ordinary commodity,” and, therefore, extra care must be taken in regulating it.⁵

Regulations in the Alcohol Industry Have Not Only Provided a Public Policy Benefit, but Have Also Created a Highly Competitive Marketplace

There is no question that competition is good for both businesses and consumers. It strengthens businesses’ ability to adapt and provide valuable goods and services to the marketplace. It provides consumers with competitive prices, product choices, and the information they need to make informed purchasing decisions. The U.S. marketplace for alcohol is a powerful example of such a competitive system.

A report published by the Boston Consulting Group illustrates how today’s system of alcohol distribution and state alcohol laws create an open market for brewers of all sizes, large and small.⁶ The report, “For Small and Large Brewers, the U.S. Market Is Open,” finds that the American beer market is “freely competitive, and driven by consumer choice.” It goes on to say that, “Regulators of the beer industry, which is one of the most highly regulated industries in the U.S., should recognize that the marketplace is working. And they should be skeptical of complaints (legal and

³ *TTB and California Authorities Conduct Joint Trade Practice Investigations*, TTB Press Release (Mar. 1, 2018), <https://www.ttb.gov/press/press-release-fy-18-03-joint-operation.shtml>.

⁴ *In re Craft Beer Guild LLC d/b/a Craft Brewers Guild, Amended Notice of Suspension* (MA Dep’t of the State Treasurer, Alcoholic Beverage Control Commission) (Feb. 12, 2016); Alcohol Annual and Tobacco Tax and Trade Bureau Annual Report, Fiscal Year 2017, <https://www.ttb.gov/foia/pdf/ttbar2017.pdf>.

⁵ Thomas Babor, Thomas F. Babor, Raul Caetano, Sally Casswell, Griffith Edwards, Joel W. Grube & Norman Giesbrecht, *Alcohol: No Ordinary Commodity: Research and Public Policy* (2d ed. 2010).

⁶ Neil Houghton, Jr. & Marin Gjaja, *For Small and Large Brewers, the U.S. Market Is Open* (2014), <https://www.bcg.com/en-us/publications/2014/consumer-products-for-small-large-brewers-us-market-open.aspx>.



otherwise) that the marketplace favors only large players.” This report explains the daily relevance of today’s system – which is procompetitive by any measure and is built upon strong regulation.

Conclusion

No other country in the world offers consumers the choice, variety, and innovative products that Americans have available when it comes beer, wine and spirits. This environment is made possible by a fundamentally transparent, accountable beverage alcohol market that is the best in the world in terms of safety, choice, and innovation.

The playing field for beverage alcohol is one of constant and intense competition. From nearly every perspective, beverage alcohol demonstrates how robust state laws governing production, distribution and retail provide benefit to consumers while satisfying the policy interests of the given state. These laws create opportunity for entrepreneurs to enter this exciting industry by ensuring fairness, thereby allowing all members of the industry to compete on even terms.

We encourage the DOJ to recognize that beverage alcohol is unique and requires a policy balance that promotes competition, innovation, and quality products with a well-regulated system that ensures public safety.

Please reach out to us if you would like further information or have any questions on the topics discussed in this comment.

Warm regards,

A handwritten signature in black ink that reads "Craig Wolf".

Craig Wolf
President and CEO
Wine & Spirits Wholesalers of America
craig.wolf@wsa.org
Office: (202) 371-9792

A handwritten signature in black ink that reads "John D. Bodnovich".

John Bodnovich
Executive Director
American Beverage Licensees
bodnovich@ablusa.org
Office: (301) 656-1494