Discussion Questions: July 20 Meeting of Reform on Tap

1. The 180-day notice that is required in the State of Maryland for a brewery seeking to terminate an existing relationship with their distributor, or vice-versa, is the most restrictive in our region. By contrast, Virginia and Pennsylvania only require a 90-day notice, and Delaware mandates a 60-day notice. What is the justification for a period of notice that is 2-3 times longer than that of our neighbors and economic competitors?

2. Based upon the experiences of those who have gone through the process, how long does it actually take for a brewery in the State of Maryland to complete the process of terminating its relationship with a distributor or vice versa?

3. Recent studies have quantified the extraordinary economic and fiscal contributions that beer distributors make in those aforementioned states. Most recently, a landmark study that was produced for the National Beer Wholesalers Association by the University of Delaware highlighted the direct and indirect jobs, economic activity, federal, state and local tax revenues, and philanthropic contributions generated by this industry.

   Mindful of the information contained in this report, is there any empirical evidence to indicate that the distribution industries in these states have suffered undue injury, or have been exposed to undue risk of harm, due to the termination provisions established in their respective states?

4. As noted at our June meeting, wine and spirits manufacturers – from the smallest craft distilleries to Diageo – who wish to sever their business relationships with their distributors may do with a 30-day written notice. With regard to their respective laws of distribution, why do we treat beer differently than other alcohol beverages?

5. As a matter of general practice, how often do breweries attempt to discontinue their business relationships with their distributors? Is there reason to believe that this practice would occur with greater frequency as a result of a narrower period of notice?

6. Maryland's beer distributors have articulated the need for, and suitability of, the state's existing franchise laws by underscoring their industry's pivotal role in building the brand of the brewers with whom they partner. How, exactly, do Maryland's beer distributors build and maintain these market brands, above and beyond what the brewers could do themselves if they had the unrestrictedlegal authority to self-distribute?

7. At our last meeting, there was considerable discussion about the payout that is provided to the distributor as part of the termination agreement. Based upon the experiences of those who have gone through that process, what is a typical payout?

8. With the notable exception of Delaware, which doesn't permit breweries to self-distribute, the State of Maryland's self-distribution laws are the most restrictive in our region. Neither Virginia, DC nor Pennsylvania impose a cap on the amount of beer that a brewery can self-distribute.

   What is the justification for breaking with the rest of the region by imposing arbitrary self-distribution limits on Maryland breweries? Particularly given that, if anecdote is reflective of fact, larger brewers appear to have little interest in distributing their own products in the first place?

9. In testimony that was submitted in December 2015 before the Senate Judiciary Committee, Mr. Bob Pease, President of the Brewers Association pointed out that in 15 states, Anheuser Busch- InBev has the right to own distributors. Which, therefore, gives the corporation the chance to promote its own product lines to the exclusion of others. This has, to quote Mr. Pease, created *"enormous disruption"* "as *"the brewers had to abandon long-term business relationships and scramble to establish new sales and distribution operations in a very short time period."* All while substantially diminishing the number of independent wholesalers in these states.

10. Two questions. First, what is it about those particular states that makes it possible for them to subvert the three-tier system in such an aggressive manner? Second, does the State of Maryland have adequate statutory protections to prevent something like this from occurring here? 10.In that same testimony, Mr. Pease discussed the strategies that are used by Anheuser Busch to incentivize sales of its products to the exclusion of others. Here's what he had to say:

    "The ABI system is based on a sliding scale with the largest financial rewards to those who limit sales of competing brands to 2 percent, 5 percent and 10 percent. Anything less than 90 percent gets a "C" rating in the tight AB grading scale."

Do Anheuser Busch distributors in Maryland participate in similar financial incentive programs that are designed to maximize sales of AB products at the expense of all others?

11. Last year, in a highly-publicized case in Massachusetts, a distributor served a 120-day license suspension and paid $750,000 to settle an investigation of its "pay-to-play" practices; namely, that it was offering cash kickbacks and other inducements to area bars and restaurants that agreed to carry its brands. And according to *Forbes* Magazine, pay-to-play is, and I'm quoting here, "*probably the biggest open secret in the beer business*."

    What are the controlling legal authorities that prohibit the use of pay-to-play tactics like this?

12. Is there reason to believe that pay-to-play practices are utilized here in Maryland?

13. House Bill 1283 included a provision that would enable Class 5 brewers to increase their taproom sales limit from 2,000 to 3,000 barrels if the brewer sells its own beer to the wholesaler and then buys it back. The distributor, under the provisions of this law,

    - Must physically remove the beer from the premises;
    - Transport it to their own distribution facility;
    - Remove it from the vehicle (the "come to rest" provision);
    - Physically place it back on the vehicle; and,
    - Deliver the beer back to its brewery of origin, for taproom sale.

    The Maryland Comptroller's Office has confirmed that this buy-back provision exists nowhere else in our region. Is anyone aware of such a provision of law anywhere else in the United States?

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