

ANOTHER FAR-REACHING DECISION FROM SUP CT?

Last's weeks decision from US Sup Ct on minimum retail prices got lotsa attention, but not likely to have as an immediate or direct impact on beer biz as the Granholm direct shipping cases. While decision hailed by free marketers for giving suppliers more tools and caused deep concern among others that discounts will be harder to find, not likely to drive beer prices up anytime soon. First, decision doesn't allow minimum retail price maintenance, but simply ruled practice is no longer per se illegal and will be judged, like exclusive territories and other restraints, under rule of reason. Then too, hard to see where any beer supplier (or wholesaler) has juice to demand Wal-Mart or other chains charge a minimum price.

More interesting may be interplay with state alc bev laws. Atty Richard Blau sees a "potential for conflict" between decision and states with laws that regulate alc bev pricing, insisting for example that wholesalers and/or retailers remain free to price independently. Even after this decision, Richard believes: "The state's ability to regulate pricing relationships, or the prohibition of those relationships, remains intact within the context of alcohol commerce." There was some buzz at recent mtg of state liquor administrators that such a ruling could impact Costco case, given state laws challenged (and tossed) there included a minimum mark-up and uniform pricing. Gotta remember those laws not defended as pro-competitive, but as state policy. As atty Drew Jaglom points out: "The minimum mark-up law may have other benefits in 21st Amendment terms, such as trying to 'avoid stimulating over-consumption.' But those non-competition concerns are not traditionally part of a rule of reason analysis, and it's far from clear that the court would take them into account in deciding whether minimum mark-up provisions are lawful." In fact, a state's attempt to avoid stimulating over-consumption itself would be "viewed as anti-competitive in antitrust terms," Drew continues. "If the law fails under a pure rule of reason analysis, then the 21st Amendment issues that the court said didn't save the law under the per se rule wouldn't save it under a rule of reason analysis either."

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