

The results of beer regulation in Ontario

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The beer beverage industry is one of the most regulated industries in Ontario. There are rules on where beer can be sold, when it can be sold, who can buy it, for what purpose it can be bought, how much it can be sold for, the quantity it can be sold in, where it can be consumed, and who can sell it. Of particular interest is the regulatory framework for beer retailing in Ontario, and how it has resulted in a market that gives an artificial advantage to one



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set of breweries over another, i.e., limits competition in the beer beverage industry.

In Ontario there are only four types of beer retailers allowed by government regulation: The Beer Store (TBS), the Liquor Control Board of Ontario (LCBO), brewery stores, and TBS retail partners. Together they do not represent a truly competitive market for retailing beer. Also, because of the interests of major breweries within TBS, some breweries are disadvantaged and left with little to no recourse.¹

The beer retail market in Ontario

The Beer Store is the most prominent retailer of beer in Ontario with an estimated 79.2% of the market share (LCBO Annual Report 2009-2010: 42). It is also a private organization that is owned by three major breweries: Labatt Brewing Company Ltd., Molson Coors Brewing Company Ltd., and Sleeman Brewery Ltd. Each of these companies is in turn owned by multinational conglomerates. TBS is technically meant to be a non-profit organization but owner breweries are able to use their position to improve their competitiveness at the cost of the non-owner breweries.

There are two fees that TBS charges breweries to have their products sold in its store. The first is a one time listing fee with a base charge of \$2,650.14 plus \$212.02 per store that the product is sold in. This amount is paid per product that the brewery would like to sell. For example, if a brewery had six distinct brands of beer and wanted to sell each brand in packages of 6, 12, and 24, they would need to pay a listing fee for 18 products. The second is what TBS refers to as a “handling fee.” This fee is charged at between \$43.40/hectolitres and \$49.40/ hectolitres or between \$3.65 and \$4.15 for every case of 24 beers. Both of these fees only apply to non-owner breweries (Beer Store Operational Report, 2009: 34-35). In principle the fees are meant to recover an unspecified amount of cost, but critics have claimed that the fee exceeds the likely costs of TBS operations (Flavelle, 2008).

If a non-owner brewery wishes to sell a product en masse, then it has little choice but to pay a substantial fee to its competitor. There are alternatives, which will be discussed shortly, but they are limited in their usefulness. If a non-owner brewery wants to reach a large market and provide a variety of package sizes², TBS is the only option provided by government regulators and so they are compelled to pay the fees to the owner breweries.

Another way that owner breweries have an advantage over non-owners is the placement

In Ontario, the four types of beer retailers do not represent a truly competitive market for selling beer



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of the products within the store. Non-owners have long been critical of TBS saying that they are concerned about receiving inferior visibility for their products (Beverage Alcohol System Review, 2005). This practice can be defended by saying that the owner breweries supply the most popular brands, but the non-owners don't have a realistic alternative option. By government regulations, non-owners cannot open their own stores, besides an onsite store, where they could prominently display their products. The non-owners are therefore stuck with the competitive disadvantage of relatively poor shelf placement.

The main alternative to TBS is the LCBO which has an estimated 20.8% share of the beer retail market (LCBO Annual Report 2009-2010: 42). Unlike TBS, the LCBO is a government owned and operated retailer and thus does not have the same incentive to favour owner breweries. In fact, many of the LCBO stores have a section that is set aside specifically for Ontario craft beers to make it easier for customers to discover new products and alternatives to the larger breweries. Partly as result of this treatment, craft beer sales have increased significantly (LCBO Annual Report 2009-2010: 3). The LCBO, however, is a limited alternative to TBS for two reasons: shelf space and package restrictions.

The Beer Store

The Beer Store's market share is 79.2% while LCBO claims a 20.8% share of the Ontario beer trade—what's left?



The LCBO is mandated to sell a wide range of alcoholic beverages. Beer, from both owner and non-owner breweries, makes up slightly less than a quarter of the total net sales for the LCBO (LCBO Annual Report 2009-2010: 3). As a result, beer products must compete for shelf space, not just with each other, but with other alcoholic products. Once an appropriate

amount of space has been given to the owner breweries, the non-owner breweries are actually competing over a very limited amount of shelf space to offer their products. This means that even if the LCBO offers a wide range of choice, individual stores may only be able to offer a limited selection. This hampers a smaller brewery's ability to mass retail its product.

The LCBO limits breweries to selling their products as singles or in packages of six. If non-owner breweries wish to compete by selling in larger packages, they are left with no option but to do so through The Beer Store. The LCBO is limited to breweries that make the strategic choice to restrict their products to smaller packages.

If a non-owner brewery wishes to avoid TBS, and thus avoid selling through its competitor's outlet, but finds the LCBO to be too limited of an option, the only remaining alternative that is permitted by regulations is an on-site brewery store. A licensed brewery may apply for a permit to sell its product directly to the public but only on the brewery's premises (*Liquor Licence Act* s.22.1). This has the obvious drawback that many breweries are not located in a retail friendly area and it severely limits the number of available outlets for customers

Smaller beer producers must compete for shelf space, and with each other



The Taste of Cottage Country.

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to access the product. For a non-owner brewery that wishes to reach a wider customer base, selling from the brewery site is not a practical alternative to TBS.

The only remaining type of beer retail outlet is the TBS retail partner. This is a retailer that operates in partnership with the TBS but is not owned by the TBS. Usually they operate in low population density areas where it is financially prohibitive for TBS to establish its own store. The retail partners do not act as an alternative to TBS since breweries can only deal with them through the TBS.

Conclusion

The beer retail regulatory framework limits competition and is unfair to breweries that are not owners of The Beer Store. The system establishes the three largest breweries with a near monopoly over the storefront selling of beer in Ontario. If smaller breweries wish to retail their product, they are stuck with the choice of working within the limitations of the LCBO or paying their competitors for shelf space. Non-owner breweries have no option of finding other retailers that may offer a better deal nor are they allowed to attempt to open stores of their own other than on the site of their brewery. This puts the three major breweries into a position of power that is easily open to abuse to enhance their share of the market.

References

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Notes

- 1 The breweries that have an ownership share with TBS will be referred to throughout this article as owner breweries and breweries without ownership share will be referred to as non-owner breweries.
- 2 For example, packages of 6, 12, and 24. ■



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