DAILY NEWS

How the vaping ban will hit small businesses

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Sudden concern over lung illnesses possibly associated with vaping has led to a rash of state and federal bans on flavored vaping liquids. Public attention has focused on the biggest e-cigarette company, Juul, which has taken to running full-page ads in newspapers proclaiming that its products are safe and only for sale to adults.

But in this case, like many others, the dirty little secret of regulation is that it ends up imposing more costs on small companies than on the biggest players. Juul, which received a $12.8 billion investment from Altria (formerly Philip Morris), can afford legal and regulatory compliance costs that may squeeze out its smaller competitors.

Travis Pritchard, manager at Vaporz in Whitesboro, N.Y., told the Washington Post, "After the mom-and-pop stores are essentially flushed out of New York, the only devices you'll find are Juuls."

University of Notre Dame economist Benjamin Pugsley agreed: "When you have regulations that are increasing the entry cost of any particular industry, that tends to favor the large incumbents."

Prohibition in the 1920s shut down many small brewers and distillers, but the big companies such as Anheuser-Busch and Brown-Forman, the makers of Jack Daniel's, had the resources to wait out the 14-year ban and emerged bigger than ever.

In 2016 the European Union passed sweeping new regulations on tech firms to protect data privacy. Big companies like Facebook and Google fought hard against the new rules. But once the legislation passed, they invested big in dealing with it. They mobilized hundreds of people in Europe and the United States, many of them highly paid lawyers, to study the detailed law and review contracts and internal procedures. They had frequent contact with EU regulators.

Smaller companies didn't have such resources. Some online-ad companies including Verve and Drawbridge pulled out of Europe. Journalists began to report that the regulations were disproportionately burdensome to smaller firms. Investors worried that smaller firms couldn't handle the compliance costs. The Wall Street Journal reported that "some of the restrictions are having an unintended consequence: reinforcing the duopoly" of Facebook and Google.

Meanwhile, about the same time, California legalized marijuana. As a libertarian, I applaud that move. People would no longer be arrested for buying, selling, or using marijuana. We can expect less crime, more legal jobs, and rejuvenated cities.

But there’s a catch. California didn’t just repeal laws and stop arresting people; instead, it set up a regime of taxes, licensing fees and regulation. And again we see that big companies are better prepared to deal with regulation and paperwork.

Scott Wilson of the Washington Post reported, “Fewer than 1 in 10 of [Humboldt] county’s estimated 12,500 marijuana farmers are likely to make it in the legal trade....Less than 1% of the estimated 69,000 growers statewide have received a permit to farm marijuana since the beginning of the year." Large agricultural companies started planning to cultivate cannabis on an industrial scale. Long-time small growers saw the legalization law as just another way to put them out of business.

These aren’t isolated cases. As a Small Business Association study in 2010 found, “Small businesses, defined as firms employing fewer than 20 employees, bear the largest burden of federal regulations. . . . 36% higher than the regulatory cost facing large firms.”

Goldman Sachs CEO Lloyd Blankfein noted in 2015 that new regulations created a “moat” around his firm:

"In some ways, and there are some parts of our business, where it’s very hard for outside entrants to come in, disrupt our business, simply because we’re so regulated. You’ll hear people in our industry talk about the regulation. And they talk about it, you know, with a sigh: Look at the burdens of regulation. But in some cases, the burdensome regulation acts as a bit of a moat around our business.”

There are some understandable rationales for regulations — to protect consumers or workers, safety or the environment, to ensure competition, to stabilize markets. The costs and benefits of each regulation — and the aggregate burden of regulations — should be debated. But one thing is clear: the more complex and costly regulations are, the more they will disproportionately burden smaller companies and start-ups compared to large incumbents.

If we want an economy and society characterized by innovation, progress, competition and upward mobility, let’s not regulate smaller businesses out of existence.

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