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HEADLINE: Regulating Tobacco May Benefit Cigarette Giant Philip Morris Market leader lobbies for new FDA powers, which may curb rivals

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BODY:

Anti-tobacco activists are on the verge of a long-sought victory: giving the Food and Drug Administration the power to regulate the plant. Right by their side is [Altria Group](#)'s Philip Morris, the nation's leading cigarette maker.

Indeed, Philip Morris has not only endorsed legislation to give the FDA broad power over its products, but is also lobbying lawmakers to pass it.

Philip Morris says it supports the bill because it would remove uncertainty regarding tobacco regulation.

Others see a different motive. As written, the law might actually bolster Philip Morris' market-leading position by limiting the ability of all manufacturers to introduce new tobacco products as well as advertise.

Among other things, the legislation would give the FDA considerable oversight over where and how tobacco products can be advertised, as well as regulatory powers over how products are made.

Such measures would likely hurt rivals more than Philip Morris, watchers say.

It currently has about 51% of the U.S. market and the No. 1 brand, Marlboro. Reynolds American, its nearest competitor and maker of Camel cigarettes, has about 28% of the market.

Philip Morris officials "basically see themselves as large enough to withstand any hits that FDA regulation might throw at the tobacco industry, while their competitors would be more vulnerable," said a Senate Republican aide.

Reynolds American spokeswoman Maura Payne, among others, said it was "certainly possible" that Philip Morris would gain an edge with tighter FDA regulations.

"One of the old saws of marketing is that if you reduce the ability to communicate with your potential customers, whatever trend is in place is likely to stay in place,"

she said. Reynolds opposes the legislation and is lobbying against it.

Long Live The King?

Given that Philip Morris is now on top, it would likely stay on top if the bill passed, says Bob Levy, chairman of the free-market **Cato Institute**.

"Philip Morris is going to be pleased with any new regulation that can frustrate the competitive advantage of its rivals. That would in turn lock in Philip Morris' market share," Levy said.

Vince Willmore, a spokesman for the Campaign for Tobacco-Free Kids, concedes that the bill could bolster Philip Morris' position. But he says the need to give the FDA regulatory power is more important.

"It's really speculative what impact this regulation is going to have on any company's market share," Willmore said. "What's important to public health is not the size of any one company's market share. What's important is that we shrink the total market for tobacco products."

For its part, Philip Morris disputes that it will necessarily get an edge, saying only that the legislation will result in a level playing field.

"It would create a framework under which all tobacco product manufacturers must operate at the same high standards," said Altria spokesman Bill Phelps. "We don't think the bill would give any one particular company an advantage."

Giving the FDA power to regulate tobacco has been a goal of anti-tobacco activists since the last major wave of litigation in the 1990 s. Until recently, such efforts have been rebuffed on Capitol Hill.

With expanded Democratic majorities in the Congress and a friendly White House (even though President Obama himself is a smoker), the activists are finally near that goal.

Moving Through Congress

The House passed a bill 298-112 on April 2 granting the FDA regulatory power. The Senate is expected to take up the legislation soon.

A spokesman for Senate Majority Leader Harry Reid, D-Nev., said legislators might decide to bypass the committee process and bring it directly to the Senate floor but no decision had been reached.

Sen. Chuck Schumer, D-N.Y., said: "It's unclear (when), but we do want to do one."

A similar bill introduced last year by Sen. Ted Kennedy, D-Mass., got 59 co-sponsors -- just enough to overcome a Senate filibuster. Backers believe they have retained that support with the new Congress. And top Senate GOP aides say a filibuster might fail.

The House bill passed earlier this month would give the FDA broad powers to restrict tobacco advertising if it deems it as potentially reaching children or making false

claims about the product. It would make it a federal crime to sell tobacco products to minors.

Any new product would require FDA approval before it could be put on the market.

"It would certainly be much more difficult, if not impossible, for tobacco manufacturers to bring products that reduce risk to market," said Reynolds' Payne.

Or any other tobacco products, she adds.

It further bans tobacco advertising at all sporting events and bans free giveaways by tobacco companies, even of nontobacco products. And it restricts the placement of tobacco vending machines.

The proposed legislation also would require that health warnings take up at least 30% of the packaging space.

Finally, it empowers the FDA to require changes to products to reduce or eliminate harmful ingredients -- including nicotine -- though it does not allow complete elimination of those ingredients.

None of these regulations would protect tobacco makers from current or future lawsuits. The new regulations would be paid for with a user fee on tobacco products.

Philip Morris says it is fine with all of this.

"We think it will provide for transparent and accurate and scientifically grounded communications about tobacco products to consumers," Altria's Phelps said. "We think consumers would be the primary beneficiaries of such a framework."

Critics argue that the FDA is the wrong place to vest this regulatory authority, since the agency is meant to ensure that drugs and food supplies are safe.

"It doesn't make any sense to give it regulation over a product that is inherently unsafe," said David Ward, a spokesman for Sen. Richard Burr, R-N.C., who is sponsoring a different tobacco regulation bill.

It would be better, Ward says, to hand it to the Department of Health and Human Services, which oversees the FDA but has a broader mandate. A new agency could be created to deal solely with tobacco.

Burr's bill has only one other co-sponsor: Sen. Kay Hagan, a North Carolina colleague and a Democrat. Reynolds is headquartered in their home state.