Monopoly on Medical Marijuana?

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“DOJ Brings Antitrust Suit to Protect Americans’ Right to Weed.” Imagine that headline. Strange how the tables would have turned. Not that this is likely, but with all of the hype building around the licensing hurdles to production of medical marijuana in the states that have legalized it, who knows. With only a handful of nurseries in each state meeting the eligibility requirements, high demand coupled with low, costly supply may prove fertile ground for an anticompetitive market for medical marijuana.

Colorado, Washington, Oregon and Alaska—each of which has legalized recreational marijuana — have not imposed regulations as strict as those states (Florida, Illinois, New York, etc.) that have legalized it for medicinal purposes. These states have seen fit to set such high barriers to entering the marijuana production business that growth will be held back far more so than in many other industries affecting health.

As a nursery in Florida, you’ll need to post a bond of $5M and have thirty years in the business before you’ll be considered to grow and distribute medical marijuana. The state’s legislature has only elected to make five licenses available in the state. Five!

Speaking of, only five operators currently run the only twenty medical marijuana dispensaries in New York. What is the population of New York? Google says 19.75M today. Just for fun, if we assume, on average, medical marijuana patients comprise 0.8% of the population, that translates to 7,900 guaranteed patients for each facility. So, how did the five New York operators get there? By paying a good deal of money: a $10k non-refundable application fee, a $200k refundable registration fee, as well as a $2M bond or proof they already had the real estate necessary to grow their batch.

In Hawaii, the licensing requirements begin with a five-year residency requirement and a $5k non-refundable application fee. Also, your nursery must be majority-owned by Hawaiians. Talk about keeping it in the family. If you are awarded a license in Hawaii, be prepared to shell out $75k just for the honor, and do that within a week. Dispensary licensees are also required to pay an additional $50,000 renewal fee.

If you want to apply in Nevada, they’re going to ask to see detailed floor plans, security measures, personnel manuals, even your marketing and advertising plans. Applicants also need to show no less than $250k in liquid assets, pay a $5k non-refundable application fee, and another $30k on top of that if awarded a license as a “license issuance fee.”

What is the reasoning behind such stringent, costly barriers? Are the state legislatures and Departments of Health worried the distributors will overstep their bounds and want to make sure they can fund restitution if criminal charges are pursued? Or perhaps they foresee civil litigation if the marijuana, which is still a controlled substance, is improperly distributed and they want to be sure these operators can fund judgments or settlements? Perhaps they recognize that in the medical marijuana industry a strong incentive must be present to keep legal and illegal production separate, and that setting high barriers of investment will give producers ample reason to protect their licenses from any appearance of impropriety. The costs of an irresponsible act are thereby transferred to licensees, as their investment in entering the cannabis market vanishes if things go awry.

Other controlled substances trade in both legal and illegal markets, from cold medicine to opioids, but it is not often that a substance undergoes a decriminalization of this scale, and a whole new industry is spontaneously established. The economics of placing the ability to grow, manufacture, and distribute a substance that is now...
used by roughly 0.8% of the population (a figure which will likely grow as the benefits of therapeutic marijuana gain more attention) into the hands of so few is something to watch. Will there be regulations on pricing? Will the high demand and low supply work to the detriment of patient rights? With licensing requirements that might result in an anticompetitive environment for medical marijuana, we’re likely to see requests for cannabis market experts in our future.

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