Understanding the Relationship Between State Minimum Pricing Laws and Discount Mechanisms, 2005-2014

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### Background

Pricing laws for tobacco, intended to promote fair competition, have an added benefit of standardizing consumer prices. Unfortunately, the power of these pricing laws may be reduced at both the producer and consumer level. Allowing distributing parties to reduce their costs using trade/cash discounts or competitor price-matching, in conjunction with allowing consumers to reduce the purchase price of products below cost using coupons or to purchase bundled products below cost, lowers the intended strength of these laws.

### Purpose

With this study, we sought to understand the complexity and variety of minimum pricing schemes across the United States, and to identify areas that increase or reduce the strength of a state’s pricing efforts.

### Methods and Tools

Primary legal research was conducted using the state statutory and administrative law databases for all 50 state and the District of Columbia using Lexis-Nexis and Westlaw. Boolean keyword and key terms such as “cigarette,” “tobacco,” “fair,” “price,” “sales,” “cigarettes,” and “below.” A detailed coding scheme was piloted and tested to capture minimum pricing/markup law provisions. Data were compiled as of January 1 of each year, 2005-2014 inclusive; with 2012 used as the baseline year against which other years’ data were compared. PATH charts were developed using policy data for each state (cigarette and OTP) to aid in analysis. Charts illustrate pricing formulas for each party, as outlined by coded law. Below is an example of a multi-level markup state.

### Results

#### U.S. Tobacco Pricing Scheme Types (2014)

#### How States Utilize Regulatory Mechanisms That Increase and Decrease Base Cost of Cigarettes

#### Frequency of Factors That Decrease the Base Cost of Cigarettes (2014)

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### Common Forms of Discount Programs

#### Buydown (Promotional Coupon)

An agreement between a manufacturer and a dealer, where a manufacturer pays the retailer a certain amount per pack or on a per pack or carton of cigarettes if the dealer agrees to sell those packs or cartons at a discounted price (often in the form of a below-cost rebate).

#### Master-Type Program/Plan

A program sponsored by a manufacturer where retailers receive rebates from stamping coupons or to purchase bundled products below cost using coupons or to purchase bundled products below cost.

#### Trade Discount

A discount given to the buyer of tobacco products by the manufacturer or by the manufacturer's wholesalers, to defray the costs of the delivery of the products to the manufacturer or by the manufacturer's wholesalers.

### Implications

The intended strength of minimum pricing laws seems to be reduced with the introduction of trade discounts, combination sales, coupons, and competitor price-matching. Correspondingly, applying sales and percentage markups, cartage, taxes, and other fees to the base cost of cigarettes makes more than one distribution level may result in higher retail prices. These factors should be balanced to reflect the intended effect of minimum pricing laws at the state level.

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