



Chapter 39 - A Case Study on the Tobacco Industry, Social Responsibility and Regulation

A Handbook of Corporate Governance and Social Responsibility

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Effectiveness Of Recent Tobacco Control Measures

There is a long history of the tobacco industry's ambivalence towards smokers' health; smoking kills over half a million EU citizens per year and in the UK alone, tobacco illnesses cost the NHS £1.7 billion in 2006. Tobacco advertising has traditionally showed that it was smart to smoke, but in recent times there have been new restrictions on smoking on an almost annual basis, including health warnings, restrictions on sports sponsorship, banning of all advertising and, of course, most recently the ban on smoking in public places and a future plan to put gruesome pictures of tarred lungs on cigarette packets in the UK. Other countries have not been so strict or diligent and in order to lay the basis for a global tobacco control effort, WHO enacted the 2005 Framework Convention on Tobacco Control (FCTC), in order to encourage signatories from the international community to implement national measures. These include, for example, imposing restrictions on tobacco advertising, sponsorship and promotion; establishing new packaging and labelling of tobacco products; establishing clean indoor air controls; and strengthening legislation to clamp down on tobacco smuggling. During discussions in May 2001, Philip Morris Companies Inc demanded 11 provisions be deleted from the draft FCTC treaty, of which ten deletions were supported. United States government negotiators also objected to a provision that warning labels on cigarette packages be printed in the main language(s) of the country of sale and have since continued to oppose important public health provisions. In November 2001, the United States delegation again insisted successfully that trade principles ought to override public health concerns (FCTC Negotiations, 2002). Not only was the tobacco industry deeply concerned about the impact of the FCTC on its profits and plans for expansion, but it would also appear that the United States government fought the FCTC at every opportunity whilst publicly claiming support. Of course there are huge gains to be made from taxation revenue, direct and indirect, for example during the financial year 2000–2001 the UK Treasury earned £7,648 million (ex VAT) in excise duty (Shaw, 2004). During the period 2006–2007 this figure had risen to £8,149 million (ex VAT) and, anticipating an initial decline in tobacco sales following the July 2007 public smoking ban, revenue of £8,107 million (ex VAT) is forecast for the period 2007–2008. ^[1]

A pack of 20 premium brand cigarettes currently costs around £5.50 of which £4.40 (80 per cent) is tax. Similarly in the United States, federal tax on tobacco stands at 39 cents per 20 unit pack and about \$7.2 billion was generated for the United States Treasury in 2005. In addition States also tax cigarettes at rates ranging from \$2.58 cents a pack in New Jersey to 7 cents a pack in South Carolina^[12] and with the price of a pack of cigarettes costing around \$4.30 for 20, this amounts to a considerable gain. It is unsurprising therefore that at the Intergovernmental Working Group meetings in June 2004 and February 2005, the United States government continued to engage in obstructionist tactics especially in relation to treaty funding. Progress has been slow and it has been suggested that there is a clear pattern in recent history of the United States negotiating down to the lowest common denominator, then failing to support environmental, human rights and other treaty agreements.^[13] However the purpose of the recent 2008 WHO initiative is to expand and expedite the FCTC treaty provisions by outlining six proven strategies to assist Member States in reducing tobacco use in their countries, namely:

- monitor tobacco use and tobacco-prevention policies;
- protect people from tobacco smoke in public places and workplaces; offer help to people who want to stop using tobacco;
- warn people about the dangers of tobacco;
- enforce bans on tobacco advertising, promotion and sponsorship; and raise tobacco taxes and prices.

It remains to be seen how effective this FCTC upgrade proves to be. In the meantime, legislation protecting the rights of non-smokers has been enacted, to a greater or lesser extent, in many US states and throughout the developed world. Many countries have enacted tobacco advertising prohibition rules, making it more difficult for tobacco companies to promote their products. In the UK and other EU countries, smoking bans, raising the minimum smoking age and anti-smoking incentives have increased, for example, insurance companies offering non-smoker rated policies, which will be discussed later. Even so, people continue to smoke^[14] and the tobacco industry has continued to deny liability and to date ensures it wins all litigation. Repeated attempts are made to undermine regulation by routinely refuting and obfuscating the findings of legitimate research bodies, as discussed later. One example involved a comparison of the dangers of second-hand smoke with the ‘risks’ associated with drinking milk and biscuit consumption (Davey-Smith & Phillips, 1996).

Although advances have been made in recognising and addressing the public health risks associated with tobacco use, it is noteworthy how much of this awareness is due to the efforts of a small number of individuals from the private and public sectors, as opposed to a coordinated and sustained legislative/executive initiative. For example the above-mentioned US Surgeon General, Luther Terry, was a key figure in pioneering the original 1964 Report and was assisted not by an appointed government body, rather by a group of academic lawyers from the public interest sphere who also published influential educative papers.

In view of the inherent incompatibility between the objectives of the tobacco industry and aim of the state in promoting public health, it would appear that government and international agencies have been largely negligent in their duty to implement successful tobacco control policies, relying on soft law options. Following on from ratifying the FCTC, the US 2005 Family Smoking Prevention and Tobacco Control Act gave the Food and Drug Administration (FDA) limited authority to regulate cigarettes to ‘protect the public health’ but this didn’t go far enough. In July 2008 the United States

House of Representatives approved a bill which would allow the FDA the necessary and broad authority to regulate the manufacturing, marketing and sale of tobacco products and impose specific restrictions on tobacco advertising that appeals to children and further restrict tobacco marketing. It remains to be seen if the Bill becomes law, and what restrictions are imposed on the FDA.

Other countries have promoted anti-tobacco strategies, for example between 1996 and 2006 the UK Department of Health spent £96.6 million on advertising the dangers of smoking and most recently, the Health Act, which bans smoking in all enclosed workplaces received Royal Assent in July 2006 and came into force in July 2007.

Although this sort of measure is a step in the right direction, experience shows that such legislation is unlikely to substantially reduce smoking or related deaths since tobacco companies are among the world's most sophisticated and successful marketers and will not tolerate any curb on their sales figures. On numerous occasions they have used their substantial resources to bury such policies, dilute them when they cannot halt implementation, and undermine their enforcement when protective measures are passed. More invidious strategies have included establishing inappropriate relationships with WHO staff members to influence policy, payment of WHO consultants and advisors for inside information or services, employment of former WHO officials or use of similar inducements to elicit the support of current WHO officials.^[15]

Assisted by years of public indifference, tobacco companies have enjoyed decades of unrestrained influence in which they have developed a range of subtle and aggressive methods of promotion, especially in the developing world and to young people. The 2008 WHO report outlines the tobacco industry's strategy to target young people and adults in the developing world, where 80 per cent of the more than 8 million annual tobacco-related deaths projected by 2030 are expected to occur. Young women are another group highlighted as one of the 'most ominous potential developments of the epidemic's growth'.^[16] The tobacco industry is one of the most lucrative and is constantly seeking to develop new markets. Resistant to proposals for control, the scale and intensity of the industry's often deceptive yet successful strategies have assumed many forms.

^[11]HM Revenue and Customs Annual Receipts, October 2007:
http://www.hmrc.gov.uk/stats/tax_receipts/table1-2.pdf

^[12]US Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau;
http://www.ttb.gov/tobacco/tobacco_stats.shtml.

^[13]'Global Tobacco Treaty Action Guide', *Corporate Accountability International Report*, September 2005.

^[14]For example, despite the UK being more hostile to tobacco than any other European country, some 22 per cent of British adults continue to smoke daily; *The Economist*, 29 March 2008.

^[15]T. Zeltner, D.A. Kessler, A. Martiny, F. Randera 'Tobacco Company Strategies to Undermine Tobacco Control Activities at the World Health Organisation' Report of the Committee of Experts on Tobacco Industry Documents 2000; http://www.who.int/tobacco/en/who_inquiry.pdf

^[16]See note 1 *supra*.



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