Tobacco Harm Reduction

A Submission to the Australian Senate Select Committee on Tobacco Harm Reduction

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My Background:

I was the first lawyer in the world to work fulltime on policy measures to reduce the carnage from tobacco use. Though based in Canada, my work has been global, and I have had extensive experience in Australia starting in early1985, collaborating with Steven Woodward, Nigel Gray and other 'greats' of this field. I have played a key role in attaining many global precedents in tobacco control, including the effective use of tobacco taxation, smoke-free airlines, graphic package health warnings, ad bans and product regulations. I have also played a key role in litigation against the transnational cigarette companies, and a focus of my work throughout my near-40 year career has been in studying the tobacco industry so as to more effectively achieve health goals. I do not take funding from any commercial interests in tobacco or nicotine nor from bodies that take abstinence-only positions on nicotine or any other positions that are at odds with established public health principles.

The Public Health Goal:

Where we find risks, we should reduce them. We should do so in pragmatic, rational ways that are consistent with established public health principles in liberal democracies. We should seek to empower people to make better personal health decisions, should respect their autonomy, recognise their lived experience and 'meet them where they are'.

Effective regulatory actions to reduce risks have been a direct result of Enlightenment reasoning. The impact on human welfare has been dramatic, as outlined very well in Steven Pinker's recent bestselling book *Enlightenment Now*.

The potential to dramatically reduce the horrendous harms caused by cigarette smoking is not hard to grasp. It has been known since even before I started working in this field that people smoke for the nicotine but die from the smoke. Cigarettes are an exceptionally dirty delivery system, and a range of viable far less hazardous products already exist. As with a wide range of other public health issues throughout history, this is a contest between a rational, scientific approach and an absolutist, moralistic one. When reason, science and humanism succeed, public health wins. This is a topic I have written about extensively, including this law journal overview.

The enormous difference in both risk and addictiveness of different nicotine products, and the potential for substitution, creates an opportunity to rapidly reduce Australia's leading cause of preventable death. The role of substitution has, of course, been a huge factor in improving health and well-being on a vast range of other goods, services and behaviours, and there is no reason to see nicotine use as exempt from such an impact. Indeed, the huge differential in risks, the fact that consumers make purchase decisions daily (unlike, say, automobiles, airlines and industrial machinery where products have multi-year periods before a replacement is possible) and the evidence of a robust willingness to switch products means that the potential for rapid declines in cigarette use is extraordinary. With a move to risk-proportionate regulation there is the potential to accelerate this move away from the lethal inhalation of the products of combustion, and thus to rapidly relegate cigarettes to history's ashtray.

The Role of the Tobacco Industry:

The Focus of this Submission is to respond to the request for information on "tobacco industry involvement in the selling and marketing of e-cigarettes". I feel I have relevant expertise due to my study and regulation of the cigarette industry and my role in litigation against this industry over several decades.

The most important point to make is that vaping is absolutely not a strategy hatched by Big Tobacco to somehow create gains for their shareholders. Vaping is a classic example of disruptive technology that was developed independently of Big Tobacco, has been spurred on by consumers and entrepreneurs, and is an existential threat to the longstanding business model of Big Tobacco.

While cigarette companies have sought to market vaping products, this has been in response to other entities having developed the market. For Big Tobacco the moves into vaping technologies has been defensive; they are seeking to protect their market dominance and are primarily focused on how to prolong their ultra-lucrative cigarette business. Big Tobacco has lost huge sums of money from failed R&D on vaping technology and failed investments in technology developed by others. But the problems facing these companies from new technologies such as vaping go far deeper.

Cigarette companies have done very well for a very long time. By some measures Altria was the single best performing stock in the world over the half century coinciding with orchestrated attempts by anti-smoking groups to put the company out of business.

The companies managed, through consolidation and regulatory measures that reduced competitive dynamics, to effectively become a cartel selling a widely used dependence producing product. In most countries (Australia being an example) they can seemingly raise prices at will. That is why these companies achieve profit margins tremendously greater than seen in other industries. Based on the analysis of Wall Street analysts, Altria for instance has an estimated cost of around 30 cents for making a pack of cigarettes that it sells (once we deduct all the excise taxes, fees, etc.) for around $2.40. Most of that $2.40 is from price increases just since 2013, as the companies raise prices multiple times a year and generally in unison. Much like OPEC once tried to do with oil prices. Profit margins dwarf anything found in other consumer product companies.

The business model has essentially been based on consumers being nicotine dependent, having no access to viable alternatives to cigarettes, and thus being not overly price sensitive. Companies can keep padding profits through price increases and cost savings (consolidating manufacturing, for instance). One could put a value on each customer based on how much they smoked, how long they were likely to remain smoking (all too often until cigarette smoking killed them) and how much prices could be raised over that time. In much the same way one could once value the customer base of cable television companies, mobile phone companies or taxi licences. There was a captive market. Plus, cigarette companies, not facing pricing oversight, could raise prices far more freely than those other cartel-like businesses.

But when competition enters the picture and consumers start getting choices, that business model falls apart. What is the value per cable television subscriber once streaming becomes available, or those taxi licences when Uber enters the market? The current value of each cigarette smoker, based on a calculation of how long they are likely to be in the market and how much you can make from them during that time, similarly crashes when consumers can readily switch to other products.

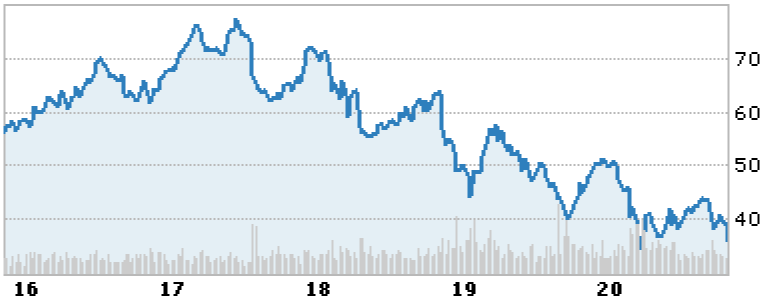
This is clearly seen in the five-year stock charts of the transnational cigarette companies. These companies, having long been very good investments, saw massive declines in value as alternative, non-combustion, products such as vaping became viable substitutes for cigarettes.

Tobacco Company 5-Year Stock Charts as of End of October 2020

Imperial Brands:

British American Tobacco:

Altria:



Japan Tobacco:

Philip Morris International:

Overall, these companies shed over US$300 billion dollars of market value. That is hardly in keeping with the theory that this disruptive technology is a development pushed by these companies in order to generate wealth for their owners.

Indeed, things that were protective of the profitability of cigarette companies, such as high taxes that masked the impact of price increases, and marketing restrictions that prevented new entrants getting a market foothold, become a competitive disadvantage if risk-proportionate regulation is adopted for lower risk alternatives to cigarettes. Also, based on my legal expertise in litigation against these companies, the tort law risks associated with selling a lethal product when far less hazardous viable alternatives are readily available is a further threat to the sustainability of Big tobacco.

Markets look to the future. Values are based on views of future profitability. So, for instance, when disruptive technology like Apple phones started to hit the market Blackberry's share price plummeted even while sales and profit continued to do very well in the short run. It was the flow of future profits that was starting to look bleak.

We now see cigarette company shares trading at prices that are a very low multiple of current earnings, with dividends that are extraordinarily lucrative given current interest rates. That is a sign that investors do not think the long-term viability of these companies is secure.

This is not a time to protect the cigarette business from competitive, regulatory and litigious threats. Rather, it is a time to seize the opportunity to finally address the inherent lethality of companies focused on selling a product that delivers nicotine through repeated inhalation of the toxic products of combustion.

Tobacco companies have faced other existential threats, often from litigation, over the years and found a way to not just survive but thrive. Ironically, that is often due to actions from their supposed enemies who, in pursuing an abstinence-only agenda on nicotine have had the unintended consequence of protecting the cigarette trade. We should not be repeating that mistake.

Placing vaping at a huge competitive disadvantage via such things as pharmaceutical style regulations protects cigarette companies rather than public health. A far better approach is to use a rational system of risk-proportionate regulation to facilitate cigarettes going the way of dangerous foodstuffs, snake oil medicines, automobiles that were unsafe at any speed, leaded motor fuel and paints, dangerous industrial equipment and a myriad of other unreasonably hazardous good, services and behaviours. Products that are unreasonably dangerous can be identified through scientific effort, while acting on that information requires political and regulatory effort.

We should not mistake opportunities for threats.