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Is there an intersection between “market justice” and “social justice”? An analysis of ENDS marketing

Introduction

Many companies profit from manufacturing and promoting products that harm consumers, even when those products are consumed as intended (Proctor, 2011). Although some industries have disputed the link between their products and health harms, comparisons of private knowledge and public claims have undermined these “denial” strategies (Proctor, 2011). For example, the discovery of incriminating internal memos forced tobacco companies to abandon their strategy of claiming that smoking’s risks were neither clearly established nor accepted by scientists (Chaiton et al., 2006, Ling and Glantz, 2002, Lavack and Toth, 2006). Yet, rather than make amends for their sustained duplicity, these companies instead began arguing that smokers have long known the harms they face, and continue smoking in full knowledge of these risks (Imperial Tobacco New Zealand Limited, 2010, Carter and Chapman, 2003).

While this logical *volte-face* has received some critical scrutiny, awareness of the tobacco industry’s deceptive behaviour has not prevented its continued use of fallacious logic; nor has it impeded other industries from adopting similar arguments (Kearns et al., 2016, Waa et al., 2016). For example, manufacturers of energy-dense and nutrient-poor foods such as sugary drinks now describe these as “treat foods” that consumers should recognise as harmful in excess and thus consume in moderation (Hawkes, 2010, Nixon et al., 2015). This description simultaneously sanctions intensive advertising of products known to offer no nutritional benefits while at the same time holding consumers responsible for consuming these (Nixon et al., 2015). Alcohol companies likewise argue that because people should drink “responsibly”, restrictions on marketing activities are inappropriate. If harm occurs, the onus is on those who drink “irresponsibly” to modify their behaviour, rather than on manufacturers to alter their products or marketing strategies (Barry and Goodson, 2010). Focussing on individuals’ actions conveniently overlooks environments saturated with alcohol promotions that foster risky drinking. Ready-access to low-cost products also severely undermines the mindful behaviours alcohol companies exhort consumers to display.

In recent years, these informed choice arguments and the industries that promote them have attracted growing criticism (Ling and Glantz, 2004, Wakefield et al., 2006a, Wakefield et al.,

2006b, Gray et al., 2016, Gifford et al., 2016, Hoek et al., 2016, Friedman et al., 2015). Some sectors have responded by muting their calls for individuals to assert greater responsibility, recognising the relationship between their products and chronic health problems, and declaring themselves to have a role in addressing these problems (Hawkes and Buse, 2011). Others have reviewed their self-regulatory codes, widely perceived as ineffective by public health researchers, but have done very little to introduce measures that would curtail marketing practices and the effects these have (Vandevijvere et al., 2017, Hoek and King, 2008).

At the same time as companies have initiated reviews or conceded that their products contribute to profound health problems, prevalence of non-communicable diseases (NCDs) has continued to rise (Swinburn and Wood, 2013). Indeed, recent projections suggest smoking alone will result in more than a billion deaths in the 21st century (World Health Organization, 2015). Nonetheless, some policy makers have welcomed suggestions that marketers of products causing these problems could ameliorate the adverse health consequences of their products. Contributions from businesses could potentially reduce the costs of regulatory schemes and associated monitoring, thus removing a burden from government. In turn, governments would reciprocate by supporting “light touch” regulation, an approach consistent with the philosophy of more right-wing political movements. However, some have questioned whether companies’ over-riding profit orientation can ever promote social outcomes (Hastings and Angus, 2011). These legitimate concerns raise important questions about whether, where, and how individual and corporate responsibility should intersect, and require explicit consideration of how best to balance the potentially competing interests of consumers and corporations.

The concepts of “market justice” and “social justice” provide a helpful framework for examining this question. Market justice reflects a more libertarian model, assuming that markets will respond to consumers’ needs and can best achieve this outcome if left unfettered (Smith, 1937). This model implicitly allows for harm to occur, since harm stimulates behaviour change among consumers and may ultimately foster market place change. Consumers are assumed to be knowledgeable, despite strong evidence they may find crucial information difficult to find, interpret, or see as personally relevant (Maubach et al., 2009a, Maubach et al., 2009b, Maubach et al., 2014, Gifford et al., 2016, Gray et al., 2016, Hoek et al., 2016). Market justice models also assume rational consumers, even though many

behaviours arise from affect-based heuristics rather than reasoned analyses (Tversky and Kahneman, 1974, Tversky and Kahneman, 1981). Furthermore, reliance on consumers undertaking an extensive information search overlooks the habitual nature and addictive properties of many behaviours (Hoek, 2015). Adopting a market justice approach also minimises the potential role of regulation in shaping behaviour and views the “invisible hand” of the market as sufficient.

Because harm does not always manifest immediately – it took decades for the causal link between smoking and many illnesses to be documented – market justice may occur too slowly to protect consumers. Despite the indisputable links between products (such as tobacco) and risks (such as lung cancer), addiction, combined with industries’ sophisticated marketing and distribution strategies, may make reducing consumption very difficult. Even powerful legislative tools, such as excise tax increases, have not brought about instantaneous reductions in smoking prevalence. Furthermore, public health groups often work with resources only a fraction of those of their commercial competitors and thus face considerable challenges in tackling marketing behemoths. Market justice also takes no account of inequities, which means harm may affect some groups (often those already experiencing disadvantage and with less access to health care and support) more than others.

Beauchamp recognised these problems when he called on public health researchers to adopt a social justice perspective, which he argued would reduce harm by redressing social and political inequalities (Beauchamp, 1976). In this model, corporate accountability replaces individual responsibility, and regulation creates a comprehensive, population-level approach to reducing harm. Because of the pivotal role regulation plays, a social justice approach has the potential to respond quickly to evidence of harm and may help reduce inequalities more rapidly than a laissez-faire approach. However, businesses typically reject calls for regulation arguing that this approach imposes unnecessary constraints, limits their economic contributions, and reduces consumers to an infantile status where they require care from a “nanny state” (Food Industry Group, 2006).

Businesses’ efforts to provide “solutions” that reduce the incidence of non-communicable diseases caused by unhealthy food consumption appear to bridge this divide between market and social justice. For example, food reformulation, such as reductions in the salt content of bread, have changed consumers’ food supply indiscernibly and brought overall population

health benefits without requiring consumers to change their behaviour (Nghiem et al., 2015). However, when products offer no nutritional benefits (e.g., sugary soft drinks) and cause fatal diseases when used as intended (e.g., tobacco), the role businesses manufacturing those products could play in ameliorating these harms becomes more ambiguous and requires much closer scrutiny (Crampton et al., 2011). In this paper, I draw on market and social justice concepts to assess the potential benefits of collaborating with businesses to address chronic public health problems. To illustrate this debate, I examine the rising popularity of electronic nicotine delivery systems (ENDS), the role tobacco companies have in promoting ENDS uptake, and the risks that could eventuate from their involvement.

Part of the solution – or not?

Claims businesses could help reduce public health problems focus on three key points. First, that businesses are actors within society and thus have responsibilities that go beyond providing returns to their shareholders. The wider corporate social responsibility (CSR) and critical social marketing literature outlines both the benefits and risks of this approach (Banerjee, 2008, Hastings and Angus, 2011). Second, that social marketing efforts could be enhanced if supported by businesses, which may develop products and services that ameliorate social, environmental or health harms (Truong and Hall, 2016). Finally, that businesses almost certainly have more sophisticated marketing strategies and larger resources than public health promoters, and that public-private partnerships could support the promotion and adoption of more healthful, and environmentally and socially beneficial, products (Bloom et al., 1995). I examine these arguments in turn.

While it is undeniable that businesses are actors in a wider social setting, their corporate social responsibility initiatives have varied considerably. These range from philanthropic donations with no expectations of the beneficiaries, to activities that have a clear commercial imperative, such as cause-related marketing, in which companies donate to a charity in line with brand sales (Hoek and Gendall, 2008). Critics of these latter activities suggest CSR subordinates consumers' interests to over-riding commercial imperatives and aims not to promote consumers' well-being, but to entrench and legitimise corporations' power and dominance (Banerjee, 2008). These CSR activities may thus strengthen the "invisible hand", as evidenced by the *increased* power multi-national corporations responsible for major environmental disasters gained through public relations activities and acquisitions.

These arguments imply that corporations' interests remain paramount to consumers' well-being. Analyses of formerly secret tobacco company memos document numerous strategies to mislead smokers about the harms of smoking and reduce the imperative to quit (Guardino et al., 2007, Eubanks and Glantz, 2012). Initiatives to develop "reduced harm" products did little to ameliorate the risks smokers faced. Filters provided no protection from the harms of smoking and created a toxic environmental hazard (Smith and McDaniel, 2011, Smith and Novotny, 2011). "Light" and "mild" variants fostered a sustained deception that misled smokers into believing they had adopted a safer alternative to "full strength" tobacco, and reduced the perceived urgency of quitting (Borland et al., 2004, Commerce Commission, 2008). Even today, tobacco companies' corporate responsibility strategies appear driven largely by a cynical attempt to sanitise the harm their products cause to users, their families, and the environment.

Yet, while existing tobacco products cannot be consumed safely, disruptive innovations, such as electronic nicotine delivery systems (ENDS) may enable a new model of engagement where market and social interests intersect. There is strong evidence that ENDS are less harmful than combustible tobacco (Chen et al., 2017), though given the toxicity of smoked tobacco, this comparison is less convincing than it may first appear. Nonetheless, any intervention that reduces the harm caused by smoking could achieve both public health and commercial goals. Although tobacco companies' early CSR activities may have done little to promote consumers' interests, their product innovations and capacity to market less harmful products may offer more promise (Farsalinos and Polosa, 2014). Current debate over the potential role ENDS might play in reducing smoking prevalence thus provides an opportunity to explore whether and how competing interests could intersect.

What does the Venn Diagram look like?

Debate over ENDS has divided the public health community. While some regard ENDS as a potential solution to the tobacco epidemic and an innovation that draws together market and social justice, others believe these devices perpetuate harms and even reduce successful cessation (Hajek, 2014, Kalkhoran and Glantz, 2016). To assess the potential benefits and risks ENDS pose, I briefly examine whether tobacco companies are divesting themselves of smoked tobacco products or supporting public health initiatives to reduce smoking. I also examine whether tobacco companies' promotions are consistent with public health goals. That is, whether they are promoting ENDS specifically to smokers as devices that could

reduce or eliminate the harm caused by smoking, rather than as devices that enable circumvention of smokefree area restrictions.

To date, there is little evidence that tobacco companies have stopped opposing public health efforts to reduce smoking. Litigation taken against the Australian government's decision to introduce plain packaging claimed the measure was contrary to Australia's constitution; violated free trade agreements, and represented an unfair misappropriation of intellectual property (Lieberman, 2013, Davison, 2012). Suits taken against numerous other governments have opposed the introduction of on-pack pictorial warning labels or measures that would increase the salience and impact of these (Crosbie et al., 2017). Furthermore, even where tobacco companies have not directly imposed policy measures, such as increases in the excise tax applied to tobacco products, there is strong evidence they have systematically undermined these measures (Marsh et al., 2015). Tobacco companies' implacable opposition to proportionate and evidence-based measures does not inspire confidence that they are changing their business model, accepting the demise of smoked tobacco, or working rapidly to replace smoked tobacco with new products that present fewer risks.

Nor is there any evidence that tobacco companies plan to phase out smoked tobacco, despite incontrovertible evidence of its harmful effects. Commentary following the US Surgeon General's 2016 statement on ENDS outlines concerns that tobacco companies are developing or acquiring ENDS subsidiaries to consolidate their core business of nicotine delivery, rather than moving out of combustible tobacco sales (ASH US, 2016). Tobacco manufacturers' rapid acquisition of small ENDS companies, development of their own ENDS brands, and existing large-scale distribution network, suggest an aggressive positioning to capitalise on ENDS' growing popularity (Tobacco Tactics, 2014). No tobacco company has yet outlined a strategy to eliminate sales of smoked tobacco. Furthermore, marketing campaigns for ENDS have promoted dual-use, where smoking continues alongside ENDS use (also known as 'vaping' (Duffy and Jenssen, 2014)), reducing or nullifying any health gains that might have been achieved by switching to ENDS.

If ENDS were to meet public health goals, brand marketing would target smokers, encourage them to transition fully from smoking to vaping, and avoid appeals or executions likely to attract non-smokers' interest. However, while some ENDS marketing does focus on smokers, the Blu brand has encouraged management of smokefree settings rather than cessation. For

example, some advertisements call on smokers to “Take Back [Their] Freedom”, while another shows a smoker giving a one finger salute to smoking bans (Anonymous, 2015, Anonymous, 2013b). Other brands have featured images of smokers using an END in traditionally smokefree settings, such as aircraft (Anonymous, 2013a). These creative strategies appear more likely to encourage ENDS use in smokefree settings than they are to foster a full substitution of vaping for smoking.

ENDS advertising also features provocative imagery that is arguably more likely to appeal to young people than to heavily addicted smokers aiming to quit. A Blu advertisement titled: ‘Slim. Charged. Ready to Go’ featured a crotch-shot of a young woman whose bikini bottom advertised Blu (Campaign for tobacco-free kids, 2014). This sexualised imagery raises many ethical questions, not least of which is why ENDS manufacturers would want to develop such an overtly youth-oriented campaign to promote a product designed to help heavily addicted smokers become smokefree.

Conclusions

This brief analysis of ENDS marketing does not suggest that market justice and social justice *cannot* intersect; nor does it suggest that tobacco companies cannot put to one side their egregious behaviour of the past and demonstrate they now adhere to higher ethical standards. However, current industry practices do not inspire confidence that tobacco companies share public health goals; rather, they suggest the industry is moving rapidly to augment smoked tobacco sales and increase overall returns to shareholders. Until tobacco companies proactively remove smoked tobacco from sale, a gesture that public health experts have called on them to make, their foray into developing reduced harm products (whose long-term safety remains unknown) is likely to attract scepticism.

If tobacco companies are accepted as offering a solution to the harms caused by the smoked tobacco products they manufacture, they may have opportunities to participate in policy discussions. Such a status poses particular challenges to treaties such as the WHO Framework Convention on Tobacco Control (FCTC); Article 5.3 of the FCTC calls for exclusion of tobacco companies from regulatory decisions. So long as tobacco companies have interests in producing and selling smoked tobacco, they would seem to have fundamental conflicts with public health goals protected by the FCTC.

Tobacco is a uniquely unambiguous product, given it cannot be used safely if consumed as intended. This unusual status makes it difficult to generalise from tobacco to other products, where connections between market and social justice may be more easily and sustainably forged. Nonetheless, given use of tobacco companies' strategies by other industries, claims by any other industry whose products harm health that it has a role to play in supporting public health goals, need to be treated with caution. Before market and social justice can intersect and consumers can assert responsibility for their actions, these industries need to delist products that harm health and demonstrate the compatibility between their marketing strategies and public health goals. Only then will their introduction of more healthful (or less harmful) alternatives appear credible and support claims that marketing and social justice can intersect.

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