

GTNF 2016

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Session 10: Unintended consequences for emerging products

The GTNF breakout session on the afternoon of Sept. 29 titled “TPD2: Unintended consequences for emerging products” turned out to be more about newly emerged and emerging products than about unintended consequences. In part this seemed to be because it was conceded early on that a number of outcomes that sometimes are put down to unintended consequences are down to intended consequences, or at least down to consequences that are foreseen but not heeded.

One participant pointed out that when the TPD2 (the revised EU Tobacco Products Directive) was under consideration, both the European Commission and European Parliament saw vapor devices and smoking products as different. However, their interest wasn’t so much in the products per se, but was instead focused on public health.

Participants had been discussing the need to put clear water between vapor devices and smoking products, and it was argued that, given the commission and Parliament’s position, it wouldn’t be possible to establish such clear water until a better consensus was achieved on the ability of new and emerging products to address public health concerns about vaping and smoking.

And, it was suggested, the way to achieve this better consensus was to use the results of consumer and scientific research to show that the two categories were different and should therefore be regulated differently. Until that happened, vapor products would always get drawn back into tobacco regulation, and regulators would come down on these products with a sledgehammer.

The question of the need for research had arisen earlier when one participant pointed out that, as more and more research was carried out, the time would come when it would be increasingly untenable to put into effect regulations such as the U.S. deeming regulations. It was said that though it would never be possible to satisfy all the critics of using a harm reduction strategy involving vapor products, the results of research would put them in a more difficult position, given time.

One caveat needs to be inserted here, however. Although it seemed as if, in talking about clear water, most participants were referring to that between vaping and smoking products, at least one participant made the point that he would want to see clear water established between nontobacco products and tobacco products. Presumably, the difference between the two viewpoints concerned heat-not-burn products and any tobacco-containing products that might emerge in the future.

An illustration was given of the need for differentiating products when it was described how a vaping device in the U.S. had been promoted as producing no smoke and no tar, a description that had to be dropped after the imposition of the deeming regulations. It was pointed out that it was impossible to obtain smoke or tar out of the product but that in the world in which the U.S. industry now existed, a world in which vapor devices had been

deemed to be tobacco products, it was not possible to say such things. Given that most observers believed vaping was far less risky than was smoking, bans or unnecessarily tight restrictions on the advertising of vapor devices were generally seen as very negative.

From what was described through the session, there seemed to be something of a vicious circle in play. One unintended or unheeded consequence of some of the regulations being imposed was that it was going to take longer for innovators to get to the point where they had products that truly replaced tobacco cigarettes—where they could give consumers exactly what they wanted. But the longer the delay in getting such new products to market, the more harm that would continue to be done by traditional cigarettes; and the more harm that continued to be visited on smokers, the more incentive there would be for regulators to bring in further regulations, which could slow product innovation.

One participant made the point, however, that whereas it was easy to say that all regulators were failing to do the right thing, this was not so. And he illustrated his argument by saying that though most people attending the GTNF session would see the U.S. deeming regulations as bad, not all of them would realize just how much worse they could have been if public health advocates had not interceded with officials at the U.S. Office of Management and Budget before the regulations were finalized. He urged the vapor industry to innovate for consumers but with one eye on future regulations.

Another participant questioned whether the nicotine industry was doing all it could to recognize the regulators' legitimate concerns, intimating that some of the products available at a recent vapor event were not conducive to establishing good relations between the industry and the regulators. At the same time, he asked, had the regulators taken the trouble to look at and try to understand what was a very diverse and fragmented industry?

One seemingly unintended consequence of regulation was seen in the fact that restrictions on the size of e-liquid bottles and mandatory labeling did not leave enough room for brand owners to connect properly with consumers and thereby establish an equity in their products. This situation was seen as possibly leading to the commoditization of this part of the business, a possible loss of trust by consumers in the quality of the products on offer, and the entry into the market of players with little regard to quality. This was of particular concern since TPD2 did not provide for factory inspections outside the EU.

At least one participant thought that the provisions of TPD2 weren't bad, and it was pointed out that they provided a far easier and less costly route to market for products than was the case in the U.S. Regulation wasn't bad and did sometimes drive innovation, but overregulation was bad.

However, another voice saw the TPD2 provisions as putting more and more obstacles between the manufacturers of products and their consumers. Nicotine users were becoming more conscious consumers, and conscious consumption drove fragmentation, but the TPD2 rules were systematically reducing choice right at the time when consumers were looking for more choice.