

# How Smoking Increased When TV Advertising of Cigarettes Was Banned

Gideon Doron

**T**HE U.S. DISTRICT COURT for the District of Columbia ordered major cigarette manufacturers on January 25, 1979, to turn over to the Federal Trade Commission data on the effects of advertising on cigarette sales. Meanwhile, there are reports that the FTC is considering (informally) the possibility of going back to the old days of anti-cigarette ads on TV—the “anti” ads having gone off the air with the “pro” ads eight years ago. The current situation prompts a look at one of the neater examples of industry’s using regulation for its own purposes.

In 1970 Congress passed an advertising prohibition act banning all cigarette commercials from the broadcast media effective January 2, 1971. The ban was expected to decrease cigarette smoking, the assumption being that the commercials induced people, particularly young people, to take up the habit and also that the “public service” anti-smoking ads were ineffective. But the expectation was not met: in-

---

*Gideon Doron is assistant professor of political science, State University of New York at Binghamton.*

deed, cigarette consumption, which had been declining before 1971, began to increase.

In fact, not only was the original prohibition fully compatible with the self-interest of the tobacco industry, but its benefits to the industry were predictable long before the act was implemented. And, as we will see, they were actually predicted, but not so widely that enough members of Congress caught on.

## Regulating Cigarettes

While health complaints against the practice of smoking had been sounded long before the 1960s, it was the release of the surgeon general’s report in January 1964 that put the issue on the public agenda and made cigarettes subject to new forms of government regulation. The anti-smoking coalition that emerged after the report was led by the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC). Both concentrated primarily on the nature and content of the information transferred by the industry to its customers through advertising. As a result of the coalition’s activities, three major regulations emerged.

First, the Cigarette Labeling and Advertising Act of 1965 (P.L. 89-92) required a health warning label on each cigarette package effective January 1, 1966. In 1971 a health warning label was also required in each cigarette advertisement. Second, the Fairness Doctrine, as embodied in section 315(a) of the Communications Act and as newly interpreted by the FCC in 1967, guaranteed free broadcasting time to anti-smoking forces and provided public assistance for the filming of those anti-smoking commercials. These commercials were aired during the years 1968–70 at an estimated cost of \$50 million worth of broadcasting time each year. Third, the Public Health Cigarette Smoking Act, enacted in April 1970, prohibited television and radio commercials for cigarettes effective January 2, 1971 (P.L. 91-222).

While the release of the surgeon general’s report and the immediate controversy that surrounded it had been followed by a reduction of about 4 percent in the total consumption of cigarettes, the labeling act had no significant effect. (After all, by 1966, most smokers were aware of the health risks they incurred by smoking.) It was, in fact, a boon of sorts to the

industry, now legally protected by the warning label against potential liability suits for damages to health arguably caused by cigarettes.

The effects of the other two regulations are of greater importance. To understand these, we should first analyze the objective of cigarette advertising.

### **The Role of Cigarette Advertising**

The cigarette industry consists of six major firms—their familiar historic names being R. J. Reynolds, Philip Morris, American Tobacco, Brown and Williamson, P. Lorillard, and Liggett and Myers—and several smaller ones. The industry is an oligopoly in which these six firms control over 99 percent of the market. But the “special” feature of this oligopoly (distinguishing it from many other oligopolies) is that prices are inflexible downward because costs are largely determined by outside forces, including government. Essentially, the tobacco firms cannot lower the prices of cigarettes unless taxes are lowered or unless the amount of tobacco in a cigarette is reduced (on which more later), or unless the price of tobacco is lowered. That is, most of the costs to cigarette manufacturers are beyond their control; and with no additional economies of scale likely and profit per package around one-and-a-half cents, the firm would have to cut this profit by 66 percent in order to produce a one-cent-per-pack reduction for the consumer. This is unlikely as well as unattractive.

This is not to say, however, that firms in the industry do not compete against each other. They do indeed, but their competition is for the most part competition by advertising, and it is advertising that the government decided to regulate at the beginning of the 1970s. The prime objective of cigarette advertising is not to generate new demand—that is, convincing non-smokers to smoke—but rather to convince smokers to experiment with another brand at the expense of the brand usually smoked. This was plainly stated by Frank Saunders, top executive of Philip Morris Tobacco Company, who told *News and Observer* in October 1971 that “TV advertising was never designed to create new smokers” and that “it’s main purpose was to switch people from one brand to another. . . .” To put the matter another way, cigarette firms use advertising as a tool for

competition over market share and not for market expansion. It follows, then, that by impairing the ability of all firms in the industry to advertise their product, the government would be reducing the scope of their market competition (an outcome incompatible with the public interest). But the size of the market need not be affected.

Anti-advertising, on the other hand—advertising against smoking—reduces the size of the market. This is because, if all other things remain the same, consumers making their decision as to whether to buy cigarettes will take into consideration the new unfavorable information and may choose to alter their consumption patterns. In particular, those who smoke less than a pack a day (the “marginal smokers”) may be “talked into” quitting by the anti-smoking commercials.

During the seven years from 1964 through 1970, unfavorable information was transmitted to the public first by media coverage of the controversy (1964 through 1967) and then by media coverage *and* direct anti-smoking commercials under the Fairness Doctrine (1968 through 1970). Over the entire period, per capita consumption of cigarettes for the population fourteen years old and over went down by an average of 1.6 percent a year. Over the last three years, with the “anti” ads, it went down by an average of 2.6 percent a year. This, of course, was unpleasing to the industry. In order to maintain their shares in a shrinking market, cigarette manufacturers engaged in fierce advertising competition. As a matter of fact, the industry as a whole increased its average annual spending on advertising by over \$60 million (by 50 percent) from 1956–63 to 1964–71.

---

**Since advertising does not necessarily contribute to market expansion . . . and anti-advertising does contract market size, it would obviously be in the industry’s interest to bring about the elimination of both. . . .**

---

High expenditures, low sales, and consequent decreased profit is something every industry tries to avoid. Since advertising does not necessarily contribute to market expansion for

the cigarette industry and anti-advertising does contract market size, it would obviously be in the industry's interest to bring about the elimination of both forms of advertising. This was accomplished by the prohibition act of 1970.

### The Effects of Prohibiting Advertising

Apart from reducing the level of competition among firms, the prohibition benefited the industry in other interesting ways.

First, it ended the application of the Fairness Doctrine to cigarettes. In essence the Fairness Doctrine requires that when a station allows its facilities to be used for the presentation of one side of a controversial issue, it must see that the other side is presented as well. The doctrine—which has its roots in a 1929 decision of the Federal Radio Commission—was intended to guarantee fair presentation of opposing political views. Its 1968 application to cigarette advertising established what many saw as an alarming precedent for numerous industries whose products might be called into question by consumer groups. However, since the justification for applying the doctrine to cigarette advertising was grounded in the fact that smoking (a controversial issue) was being encouraged by advertisements, the FCC could not require "equal time" in the absence of cigarette commercials. (One thing the FTC is reported to be considering now is a tobacco-industry-supported fund to pay the costs of anti-smoking ads, which gets around this problem.) Ending anti-smoking commercials removed the major factor contributing to decreased cigarette consumption. It is not surprising, then, to find that total sales of cigarettes showed an average annual increase of 2.5 percent in the five years following the advertising ban, the greatest increase being 4.4 percent in 1973.

Second, the prohibition saved the industry money. Despite increased advertising outlays in the unregulated print media, the industry's overall advertising expenditures were \$80 million lower in 1971 than in 1970, and in the next five years were still significantly lower than their average for 1964–71. The savings presumably were incorporated in the funds used for general diversification.

Third, with TV and broadcast advertising banned, the six major firms acquired an almost lasting control over the market. Without na-

tional advertising it is difficult in the extreme for new firms to enter the cigarette market. Erection of barriers to entry is generally believed to be a major objective for an industry in negotiating regulation. (Another objective is of course acquisition of direct subsidies, which tobacco growers receive through the agricultural tobacco support plan, but this is beyond our present topic.)

Finally, the ban and the controversy that preceded it helped the industry by substantially reducing cigarette production costs. As a result of alterations in consumer taste in favor of "safer" cigarettes, all firms are currently offering low-tar and low-nicotine cigarettes. Even before the ban on advertising, it had been estimated (by *Advertising Age*, December 1, 1969) that such brands contained 50 percent less tobacco than previously popular cigarettes, so that it could be predicted the "safer" cigarettes would be more profitable to the manufacturers. With the industry heavily promoting these cigarettes through the unregulated print media, the market share of these brands (those with fifteen milligrams of tar and under) increased from less than 1 percent in the late 1960s to about 16 percent in 1976—and is still increasing—at the expense, of course, of the older brands. The FTC requires that information about tar and nicotine content be placed in all cigarette advertisements, but this regulation, which emphasizes only two known components of the product (ignoring many others that may be detrimental), may actually create a false sense of safety among smokers. Recent findings on carbon monoxide in low-tar and low-nicotine brands cast doubts on the reasonableness of this requirement—but that is another story.

The irony in the situation is that the increased level of consumption after 1971 is attributed, in part, to these "safer" cigarettes—not only because they are "safer" but also because they are so mild that smokers wind up smoking more in order to receive the same nicotine payoff. Furthermore, after 1971, younger people began to smoke in increasing numbers. This was revealed in a study conducted in 1976 for the American Cancer Society, *Teenage Boys and Girls and Cigarette Smoking*, which concluded that "most teenage boys and girls now start to smoke before they are in junior high."

The objective of the prohibition was, as expressed by Senator Frank Moss (Democrat,

Utah) in the congressional debate in 1969, "mainly . . . protecting young people who had not yet begun to smoke but were subject to powerful inducements to smoking via television advertising of cigarettes." The growing numbers of kids who began to smoke without being exposed to cigarette advertising on television points to the prohibition's serious failure to meet its objective.

### Accident or "Conspiracy"?

It is at least arguable—and I think virtually certain—that the cigarette industry has thrived not in spite of this particular public regulation but because of it. Was this development the accidental effect of the regulation or was it intended?

Clearly, the industry was aware that bans on cigarette advertising in other countries had not worked against the tobacco companies. In Italy cigarette sales increased by 3.5 percent after an advertising ban was imposed in 1962, and in Great Britain the average annual increase was 3 percent after the ban of 1965. The steady annual growth of sales for the U.S. liquor (not the beer) industry, which does not advertise its products on television, would also have been an indicator that lack of television advertisement would not necessarily harm the tobacco industry.

These points surely had not been overlooked. For example, in 1968, before the regulatory agencies and Congress took steps against cigarette commercials, Smith, Barney and Company (members of the New York Stock Exchange) sent out an investment report on the significance of a possible ban of cigarette advertising on television and radio. The report concluded that the cigarette industry had an incentive to discontinue its commercials voluntarily and that discontinuance would free large sums of money to support acquisitions and diversifications and lead to increased earnings. Had the ban taken place in 1968, it was estimated, the increase in that year's earnings per share of common stock would have ranged from roughly 25 percent (R. J. Reynolds) to over 60 percent (Liggett and Myers and P. Lorillard).

Equipped with this knowledge, Joseph F. Cullman III, chairman of the Tobacco Institute

Executive Committee (in a statement to the Senate in July 1969), offered to discontinue cigarette ads in the broadcasting media by September 1970 at the latest, when "major" contractual arrangements for air time would expire. He also said that advertising could end sooner if the broadcasting industry would agree to cancel existing contracts simultaneously at any point after December 1969. (The only condition attached was a congressional waiver from antitrust laws since such communal withdrawal might be considered a collusive act on the part of the manufacturers.) The industry *rejected* a plan offered by the National Association of Broadcasters to phase out cigarette commercials gradually over a four-year period beginning on January 1, 1970, and rejected the date proposed by the FTC (which was 1971).

In this light, it is not surprising to find strong views expressed in the House of Representatives against the prohibition bill. For example, Brock Adams (Democrat, Washington), John D. Dingell (Democrat, Michigan), and John Jackman (Democrat, Oklahoma) jointly called the bill "sweeping carte blanche protection for a particular industry." Bob Eckardt (Democrat, Texas) expressed the opinion that the bill "would cut off debate on the hazards of smoking"—which it apparently did.

---

**The industry did not, in this instance, capture the regulators—but it did, and designedly so, capture the regulation.**

---

Members of the anti-cigarette bloc in the House never numbered more than forty, which would strongly suggest that any law the Congress passed would not be what they wanted. But they hailed the Public Health Cigarette Smoking Act as a major victory, whereas they had, in fact, been defeated. If public interest was to be harmed by an increase in smoking, then public interest was not served by this public regulation. Government moved, with predictably poor results, from providing information (which it does reasonably well) to regulating by fiat. The industry did not, in this instance, capture the regulators—but it did, and designedly so, capture the regulation.

One finds a certain sympathy for the FTC. ■