

# News analysis

## Hungary: F1 crashes through the barriers

For reasons we can only guess at, the Hungarian government has helped Formula One (F1) drive a hole the size of a race track in the side of its tobacco promotion ban. The ramifications are likely to be felt worldwide, as the development provides a case history showing how to circumvent the legislation required in all countries that ratify the World Health Organization's Framework Convention on Tobacco Control (WHO FCTC).

Until recently, Hungarian tobacco control was an extraordinary success story. Despite the dominating and malign presence of transnational tobacco companies that arrived with the market economy, the country had forged ahead, turning to the courts when necessary for enforcement, to arrive as a regional model. From 2001, Hungary enjoyed a comprehensive ban on both direct and indirect tobacco advertising, with a few limited exemptions—point of sale advertising was one, and “worldwide international sporting events”, organised on at least three continents, was another.

The “three continents” line was a giveaway—only F1 motor racing fitted the bill. But what seemed like an irritating exception that would end this year as a result of Hungary joining the European Union (EU) in 2004, the exemption seems to be here to stay. Hungarian colleagues are looking at a nightmare come true, as the fabric of hard wrought tobacco control begins to unravel. It is depressing enough that the chief perpetrator of the disaster was the government itself. To add insult to injury, the major player was an economics minister who originally qualified in medicine.

Here is what happened. As the 1 August witching hour approached for F1 tobacco sponsorship in the EU, Hungary's economics ministry was hard at work to get round the EU regulation—in the country that had proudly been 11th in the world to implement the

WHO FCTC. F1 races had taken place in Hungary since 1986, in August of each year. So as a stop gap measure, a sneaky little amendment was made to the calendar, to fix the Grand Prix race for 31 July. Phew, squeaked through by just one day! Even if that made it legal, the race continued to be called the Marlboro Grand Prix, its countless mentions in news media therefore breaking several laws.

But how to get round the health minister? The pre-2005 exemption could be granted by the minister of economic affairs, but he had to ask the opinion of his opposite number in the health ministry. The current health minister, mindful of increasing public opinion supporting health over tobacco, wrote back to say he could not agree to allowing tobacco sponsorship of the Grand Prix this year. The route the economics ministry took was to re-classify the event: as a spokeswoman for the ministry put it, “We're saying that it isn't a sports event but an event of outstanding economic significance.”

Many questions arise not only about how this year's Grand Prix went ahead as it did, but how it now seems set to continue for years to come. Legislative drafts were urgently rushed through parliament, apparently ignoring compulsory consultation—no one from the health ministry was consulted over the final version of the bill, yet a senior official from the economic ministry presented the draft bill to the health committee as if it had already been agreed by the health ministry. Furthermore, the government failed to consult the National Smoke-free Association, the country's leading tobacco control non-governmental organisation, as it was required to do.

How did such short cuts get taken, and how did an amendment to the new bill, tabled by three members of parliament of whom one was a medical doctor and chairman of the parliamentary health committee, get into the final bill? Its effect was to ensure that F1 tobacco promotion can run until 2011, the end date of the contract between the F1 association FOA and the government.

Above all, what motivated the economics minister? Not economics, it would seem. For among the few silver linings to the dark clouds over health was some important publicity about just what a rotten decision it was—in economic terms. If this annoyed the economics minister, he could hardly



Although tobacco advertisements are banned in Hungary, the Marlboro cigarette brand was promoted by signs like this during July, as well as in much other publicity, by its name being part of the official title of the Hungarian Formula One Grand Prix.

blame the health lobby: the article was the front page lead in the July edition of *Manager Magazin*, a serious business journal. It bluntly asked, “Is this circus worth it for us?” and cited some two decades of deficits, describing how, since 2002 (the first year of the present government) the 70% state owned race organiser Hungaroring Sport Ltd has been receiving truly colossal subsidies. This year they are estimated at 2.5–3 billion Forints (around US\$11.6–15.2 million). Despite these massive hand-outs, an accompanying chart showed only one year, 2003, as “profitable”. Hungaroring's boss said *Manager Magazin* had got its calculations wrong: if excise tax on fuel bought by foreigners who visit Hungary for the race is added into the equation, the race becomes slightly profitable, or at least breaks even.

Wrangling about profit or loss seems fairly pointless when such a huge amount of taxpayers' money has been hurled at the race; but the subsidy seems little short of obscene when it is considered that in 2004, less than 100 million Forints (US\$508 000) was spent on control, not even a 20th of the F1 subsidy. Hungary is a small country—just 10 million people—but it has a large

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burden of premature deaths caused by tobacco, about 28 000 each year. How on earth does the government, not least the doctor in charge of the ministry of economic affairs, justify this imbalance, and the determined undermining of the country's tobacco control legislation?

## India: PM's bravery awards surrender

It must have been humiliating enough for the boss of Godfrey Phillips, Indian subsidiary of Philip Morris and makers of Red & White cigarettes, to be forced to say that the company's Red & White Bravery Awards had "nothing to do with our products" (see *Tobacco Control* 2003;12:120), but worse was to come. In July, the company was forced to tell the Punjab and Haryana High Court that it would be dropping the name of the cigarette brand from its awards scheme.

The intriguingly named Burning Brain Society, a voluntary civil society organisation, had filed public interest litigation to try to stop one of the world's most inappropriate forms of tobacco promotion (see also *Tobacco Control* 2003;12:120). It also sought to stop other indirect tobacco advertising, and force the recalcitrant state government of Haryana to implement India's tobacco control legislation.

Interestingly, while the state government denied authorising any of its officials to attend the functions of any tobacco company, the involvement of its top brass at the Red & White awards ceremonies—one of the cleverest aspects of the promotion—was widely

publicised in the press, and expressly admitted by the tobacco company in its written statement to court. Beside this extraordinary denial, the government's failure to file the 90 word legal notification necessary to enforce the tobacco control law seems hardly worthy of mention. Busy officials in every country are overburdened with work, after all. However, in 2005 the home secretary, principal secretary, and other senior officials found time to participate in tobacco sponsored functions, just as the chain smoking chief secretary had been a special guest of honour at the awards ceremony the previous year.

## Thailand: new moves in tobacco control

In November 2004, Thailand became the 36th country to ratify the WHO FCTC. Less than a month later, Thais were warned that smoking among young people is becoming a growing problem that has far reaching consequences. King Bhumipol Adulyadet, in his regular birthday address and audience stated, "...youth smoke more than in the past, especially women....smoking causes damage to many parts of the body: ears, eyes, brain and heart....-smoking can shorten your life a lot."

The king is highly revered by Thais, and his address has resulted in a number of new actions and tobacco control policies. The actions include banning smoking in public parks, making the possession by minors of tobacco products illegal, and the introduction of new picture pack warnings covering the

upper 50% of both large faces of cigarette packs (see *Tobacco Control* 2005;14:149). In addition, the point of purchase advertising ban is to be enforced in such a way that the many displays at supermarkets and retail shops will be removed.

Other anticipated policy moves include raising the tax on tobacco from 75% to 80%, and making nicotine gum and patches available over the counter, not just by prescription. In February, a national tobacco control conference was held in Bangkok with over 700 participants, and a national centre for tobacco control is being established through a US\$2.4 million project of the Thai Health Promotion Foundation, which receives its funds directly from an extra 2% tax on the tobacco and alcohol industries.

In addition to the new measures, Thailand is working cooperatively with other Asian countries in developing policy and funding mechanisms necessary for progress on compliance with provisions of the FCTC. At the Sixth Global Conference on Health Promotion held in Bangkok in August, sponsored by WHO, health promotion experts from more than 100 countries learned first hand about Thailand's health promotion efforts, including its tobacco control programmes.

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## Australia: games with a model ad ban

Tobacco control often meets fiendish opponents in dark alleys waiting to crush any policy which might affect tobacco sales. We've torn up the Marquis of Queensbury rulebook for countless bare knuckle engagements with the tobacco industry, its acolytes in the bar and hospitality industries, motorsport, and any variety of desperate causes which fear letting go the tobacco sponsorship dollar. But no textbook of tobacco control advocacy could ever have prepared us for the unexpected opponents who stormed the postboxes of the Australian Health Department with their submissions to its recent enquiry into the operation of the Tobacco Advertising Prohibition Act.

From their basements, dens, and backyard sheds they came, wiping the glue from their fingers and putting aside their fine bristled paint brushes to take up their pens to protest the heinous injustice wrought upon the noble pursuit of collecting historical model cars by Australia's total ban on tobacco advertising. Of 400 submissions received by



Publicity like this in India should be prevented in future years after cigarette makers Godfrey Phillips, a subsidiary of Philip Morris, told a court it would stop using the name of its Red & White cigarette brand, also pictured, in association with its bravery awards scheme.





The sort of model car—without Marlboro logo—sold on the Biante website.

the government, 331 were from model car enthusiasts bemoaning their inability to buy or trade model cars displaying tobacco advertising livery from the golden age of tobacco sponsored motor racing in Australia.

A Google search on “tobacco advertising Australia model cars livery” turned up details of the enthusiasts’ battle plans, replete with a naked attempt to win the affection of Australia’s seven state and federal health ministers by sending them “a batch of 1:18<sup>th</sup> HDT A9X hatchbacks fully decorated with all logos including Marlboro.” With each car worth a reported \$A168, a “batch” is likely to fall well outside government guidelines for the non-declaration of gifts (lower limit \$A300). We expect the gifts were simply too tempting for some politicians, and can sense the stench of forthcoming political resignations in the corridors of parliaments.

Trevor Young, the director of Biante Model Cars ([www.biante.com](http://www.biante.com)), whose club boasts 35 000 members, sent the models to the politicians. Trevor’s sense is that model car collecting is a pursuit so noble that it should be understood to be above the reach of laws designed for ordinary mortals: as he wrote to the health minister in April 2003, “our replicas which are marketed solely by specialist model stores, should not be considered as toys for the masses.”

If Trevor’s impassioned pleas fell on deaf ears at the health ministry, so did those from health agencies about a rather more serious issue, systematic breaches of the law by the tobacco industry. Despite receiving voluminous complaints about tobacco companies’ use of stealth, buzz and viral marketing, the health minister declared the Act in need of no reform.

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## UK: judge says advocacy links taint witnesses

For any campaign for social change, especially if it faces opposition from those with vested interests in preserving the status quo, an obvious strategy is to recruit well known, well respected people who can show support for the cause. Those who are not only highly regarded in society, but are known experts in the subject of the campaign are typically invited to be members of the board, or to take some other, often more visible role. Sometimes such people themselves are founders of new campaigns. Amnesty International, for example, was founded by a lawyer who was passionate about human rights.

In the case of the largest preventable cause of disease, disability, and premature death in the UK, Action on Smoking and Health (ASH) was founded by one of the oldest and most prestigious professional organisations in the country, the Royal College of Physicians of London. The fellows of this illustrious body, highly respected experts in their field, would be just the sort of people one might expect to see adjusting their half moon, gold framed spectacles as they took the stand as expert witnesses in a courtroom, or sat at an ASH board meeting giving important medical guidance and backing to the organisation’s work.

However, a senior judge in Scotland has now made clear that when it comes to appearing in cases against the tobacco industry, especially a company that continues to contend that smoking has still not been proved to cause lung cancer, the testimony of medical expert witnesses seems to be devalued if they have an association with ASH. The judge, Lord Nimmo Smith, made his

remarks when delivering his verdict in a long running product liability lawsuit brought by Margaret McTear, whose husband died of lung cancer after many years of smoking cigarettes made and marketed by Imperial Tobacco Ltd (ITL).

No less an expert than Sir Richard Doll had spent a significant time in the witness box to confirm that smoking causes lung cancer. Interestingly, the judge made a point of mentioning that Sir Richard had been the only witness not to take up his offer to be seated while giving evidence, an observation presumably intended as a mark of respect—Sir Richard was 90 at the time. But he had less respect for Sir Richard’s show of impartiality, noting his (and other expert witness’s) association with ASH. Informal, senior legal opinion in Scotland suggests that on the question of association with campaigning organisations, this particular judge is not alone, and that, unfortunately, is the way of lawyers.

While Sir Richard Doll was president of ASH and often lent his name or presence to specific campaigns on tobacco, he had not always been so active in this way. A former ASH employee recalls Sir Richard being reluctant to be too openly associated with ASH in any advocacy role, for the very reason that he feared this might weaken the perceived weight of his



**UK: Camel York event** The difficulties of trying to enforce a total ban on tobacco brand promotion were illustrated by the Camel logos clearly visible at a youth friendly musical event held in the centre of York earlier this year. The complex history of ownership and management of the Camel brand, and minor exemptions in tobacco control law with regard to brand stretching, make examples such as this difficult to control. Lawyers for trading standards officers, the enforcement agencies, have been unwilling to proceed in more striking cases, such as the Benson & Hedges logos in a men’s magazine reported last year (see *Tobacco Control* 2004;13:325).

findings. His job, he said, was researching the problem and providing the evidence, whereas that of ASH was to put it over to the government and the public. It seems his fears were well justified. However, in the many cases where he acted as an expert witness in US tobacco litigation cases in the last decade or so of his life, his association with ASH in his home country does not seem to have caused adverse comment.

In a related discourse on fees charged by expert witnesses, the judge specifically noted that all Mrs McTear's witnesses had acted without taking fees, whereas all the tobacco company's witnesses had charged for their services. The context of these comments suggested that the first might be an indication of the possible bias noted above, whereas the second was more likely to suggest genuine independence.

Another part of the judge's comments that tobacco control advocates will have to consider in any future cases concerned attitude. He wrote that Sir Richard Doll had made clear "by his demeanour as well as the content of his evidence with what disdain he regarded those individuals who disagreed with his conclusion that the causal connection between cigarette smoking and lung cancer was proved." This is another instance where it may come as a shock to find the degree to which given positions in the real world must be suspended in court, and Lord Nimmo Smith specifically stated that he could not bring his opinion into the courtroom, nor could he base a decision on views and medical opinions which were expressed outside court.

Presumably Sir Richard's demeanour, as perceived by the judge, stemmed from the need to go back to the beginning of time, in terms of the epidemiology of tobacco and disease, and public acceptance of it. It is interesting to speculate whether there would be any subjects on which a generally accepted fact at the centre of a comparable legal case could be taken as proved, and not regarded as an opinion requiring an expert witness to argue it in court, possibly exhibiting a questionable demeanour when doing so. The demeanour of, say, a distinguished astronomer might make an impression on a judge if the astronomer had to give evidence in a case where the defendant contended that the earth was flat.

In the judgment, a monster document running to 350 000 words which took a

year and a quarter to compose, the judge stated that to succeed, Mrs McTear not only had to prove that the defendant, ITL, had caused or substantially contributed to her husband's death, but that the burden was on her to prove even the basic premise that smoking causes lung cancer. The company had not admitted this, and it could not be assumed, he said.

Not only had the company not admitted it, but its chief executive, Gareth Davies, positively denied it in court as recently as 2003. Yet despite this, ITL could argue that Mr McTear knew the risks of smoking, even when he began smoking in 1964. This seems to suggest that a British smoker can be assumed to know that smoking is a serious risk—the judge said as much elsewhere in his verdict—but even though that publicly known risk is based on widely accepted scientific evidence, a tobacco company can still base some of its defence on a contention of the evidence.

The failure of Mrs McTear's legal team to demonstrate the smoking–lung cancer link, and the tainting of her expert witnesses by association with ASH, was only part of the story. In the early stages of the case, some tobacco control advocates expressed surprise that Mrs McTear's lawyers did not seem to be making more use of the vast experience of tobacco in the USA, which US colleagues have been generously willing to share. But the overriding problem faced by the lawyers was simple lack of funds—the case had been refused legal aid, and for any legal practice, the resources that can be applied to no win, no fee tobacco litigation have their limits.

## South Korea: fighting it on the beaches

During the summer, the South Korean government organised one of the most concentrated efforts ever seen to target people on holiday, on the basis that the relative state of relaxation and healthy, outdoor surroundings they were in would predispose smokers to try to stop smoking. Health authorities operated smoking cessation clinics on popular beaches across the country this summer, as part of an anti-smoking campaign aimed at holidaymakers. Along with the pleasures of sun and sea was the chance



One of the no smoking posters distributed by South Korea's ministry of health and welfare during the summer. The message reads, "Are you going on holiday? Leave your cigarettes at home".

to make the seaside air even fresher by getting help to stop smoking.

As an added incentive, smokers were also offered free medical check-ups. Anyone interested in stopping smoking was first asked to answer a short questionnaire, including questions designed to assess their nicotine dependence, and their exhaled carbon monoxide was measured. This was followed by a consultation with a doctor. Those who agreed to stop smoking were asked to make a pledge to do so in front of their family, and handed a free folding fan, printed with a parody of the work of a famous 18<sup>th</sup> century painter, Kim Hong-do, encouraging them to put tobacco behind them. On several beaches, leading sand sculpture artists were commissioned to build anti-smoking works.

In a further effort to reach people on holiday, to raise awareness about the dangers of smoking, health ministry officials targeted those on the move. Water bottles printed with anti-smoking messages were distributed to drivers at 450 highway fuel stations, and 45 000 booklets on how to stop smoking were distributed in trains departing from main stations in Chongnyangni and the capital, Seoul. The 28 page pamphlet was also distributed at banks, government offices, and health centres across the country.