

# Worldwide news and comment

## WORLD: ADVOCATES END PMI'S INVOLVEMENT IN INTERNATIONAL EVENTS

On May 20–21, heads of state and dignitaries from Southeast and South Asia gathered virtually to discuss the post-COVID 'Future of Asia' at Nikkei's flagship annual event. The conference was tobacco industry-free, thanks to a concerted effort by health and tobacco control advocates.

Philip Morris Japan (PMJ) had been named as a main sponsor, with Jacek Olzack, the new CEO of Philip Morris International (PMI), scheduled to speak on 'Sustainable Growth and Transformation in Asia' alongside officials from Asian Development Bank and Organisation for Economic Co-operation and Development (OECD).

Tobacco industry watchdog STOP alerted advocates to PMJ and PMI's involvement, spurring many, including regional agencies and local advocates, to reach out to confirmed speakers, asking them to withdraw from the event. STOP organised an open letter to Nikkei, emphasising the potential violation of TAPS bans in many Asian countries and that Presidents, Prime Ministers and other government ministers were being led into potential violations of their country's commitments to the WHO FCTC.

This outreach bore fruit: dignitaries including a World Bank representative, New Zealand's Minister for Trade and Export Growth and Pakistan's Prime Minister informed Nikkei that they were withdrawing from the event.

On May 17, a brief statement on the conference website noted that Olzack's appearance was cancelled. PMJ's logo was quietly removed from the list of sponsors. Speakers intending to withdraw were reassured that Nikkei had ended PMI's participation and returned PMJ's sponsorship funding.

A week later, the president of Philip Morris France (PMF) was withdrawn as a speaker at the 10th Edition of the Inclusion and CSR Dialogues, an event organised by French authorities under the patronage of

President Emmanuel Macron, after strong advocacy outreach led by Comité National Contre le Tabagisme with the support of Smoke Free Partnership, Alliance contre le tabac and STOP. Government ministers informed the organisers that they would not attend if PMF participated.

A month earlier in the U.S., an event on post-COVID Science Diplomacy, organised by Foreign Policy, had to be cancelled due to a lack of speakers. Many science diplomacy experts had refused to participate in the event, citing PMI's sponsorship and executive participation. Speakers who had confirmed, including an Austrian diplomat and a representative from OECD, pulled out after advocate outreach alerted them to PMI's involvement in the event.

What do these three events tell us? First, PMI is paying to position itself alongside and gain access to policymakers and other influential stakeholders. In seeking these opportunities, the company is actively working to subvert the WHO FCTC. And with examples from Asia, Europe and the U.S., this tactic is being used globally. Second, hearteningly, many speakers from a wide range of professions and countries are unwilling to share a platform with and lend their credibility to a tobacco company.

Third, event organisers need to look beyond tobacco industry money and speaker pitches to consider the potential implications of industry sponsorship and participation, including the withdrawal of credible expert speakers of far greater interest to their audiences. Policymakers need to ensure that they don't commit to industry-linked speaking engagements. And government event organisers need to be appraised of their country's commitments to the WHO FCTC.

Finally, there is real power and the potential to make a difference when the global tobacco control community comes together to share knowledge and take collaborative action.

This article, with links and author information, is also published on the Tobacco Control website at <https://blogs.bmj.com/tc/2021/06/06/world-advocates-end-philip-morris-internationals-involvement-in-international-events/>.

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## GERMANY: RISK ASSESSMENT GOVERNMENT OFFICIAL JOINS TOBACCO INDUSTRY ASSOCIATION

The revolving door from government to the tobacco industry and its allies is

a familiar story to long-time tobacco industry watchers. The benefit to the industry is obvious: former government officials bring with them knowledge of the inner workings of policy making and key decision-makers. As the WHO Framework Convention on Tobacco Control Article 5.3 increasingly prevents the tobacco industry from having a seat at the policy making table, employing former policy makers and other government officials to carry the industry message and gather intelligence is a useful alternative avenue for facilitating industry policy influence.

In Germany, PhD chemist Frank Henkler-Stephanie worked for the German Federal Institute for Risk Assessment (BfR) for more than a decade. The BfR is an agency within the portfolio of the Federal Ministry of Food and Agriculture responsible for all scientific aspects of consumer protection. During his employment, Dr Henkler-Stephanie was involved in the authorisation of tobacco products, tobacco heaters, e-cigarettes and other nicotine products.

From May 1st 2021 he will be a senior director for harm reduction at the German Association of the Tobacco Industry and New Products (BVTE). According to the association he will be responsible for risk reduction for innovative products. As part of this role, it is anticipated that he will contribute to advocating for BVTE's interests to policy makers. Among the members of BVTE are British American Tobacco, Reemtsma and Japan Tobacco.

Germany's Forum Rauchfrei expressed serious concern about the appointment, stating 'Mr Henkler-Stephanie must surely know that from now on he will be the puppet of an association, the members of which are co-responsible for 120 000 yearly deaths in Germany. With Mr. Henkler-Stephanie the BVTE has bought a lobbyist to make itself look like a legitimate stakeholder and to have a door-opener for administrative and political decision makers'.

Dr Henkler-Stephanie is not the first 'door opener' at BVTE. The organisation's general manager, Jan Mücke, is the former parliamentary manager of the German Bundestag's liberal party group, and until 2013 was the parliamentary state secretary in the Federal Ministry of Transport, Building and Housing. He is also general manager of the German Cigarette Association (DZV). In this function he succeeded Marianne Tritz, who is a former member of the German Bundestag for Germany's Green Party Bündnis 90/Die Grünen.

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## CHINA: ELECTRONIC CIGARETTE REGULATIONS BY, OR FOR, THE STATE?

On March 22, 2021, the Ministry of Industry and Information Technology of China and the State Tobacco Monopoly Administration issued a joint statement that indicated: 'Electronic cigarettes (e-cigarettes) shall be managed with reference to the regulations of traditional cigarettes.' This statement, once enacted in law, would imply that e-cigarettes can be sold solely by the China National Tobacco Company (CNTC) - a state-owned corporation.

Under China's Tobacco Patent Law, all business operations related to cigarettes, including manufacture, wholesale, retail, import and export, must be conducted by or in partnership with CNTC, effectively creating a monopoly. As a result, China consistently receives 6%–10% of its budgetary revenues from tobacco companies affiliated with CNTC. This amounts to approximately US\$27 billion, greater than the GDP of around 50 of the world's smallest national economies.

In China, both tobacco production and tobacco control are responsibilities of the same government bodies. These conflicting roles as both the regulator and benefactor of tobacco create additional challenges for the effective management of e-cigarettes. Incorporating e-cigarettes into existing tobacco control laws draws two arguments. On the one hand, government administrators insist that the currently unregulated e-cigarette market (including lack of production standards and quality supervision) should be managed, and it is conducive to the integration of tobacco control laws and regulations. On the other hand, many believe the regulation will result in the acquisition of private e-cigarette companies, and allow CNTC to monopolise the entire e-cigarette market. Such a monopoly would see CNTC have the same financial interest to promote e-cigarettes as it currently does for traditional cigarettes.

E-cigarettes and traditional cigarettes are in a competitive relationship. Combustible cigarette sales in China fell by 2.4% in 2015, the first decline in 20 years. Since then, overall production has continuously declined. By contrast, e-cigarettes are a booming sector. China produces more than 95% of the world's e-cigarettes. The export market of 218 countries and regions is estimated to be worth 49.4 billion yuan (US\$7.559 billion) to China. Within China itself, e-cigarettes are a small proportion of the overall tobacco and nicotine product market. However, this is expanding; in 2020 sales increased by 30% compared with 2019.

The Beijing Tobacco Control Association acknowledges difficulty in restraining the tobacco industry if CNTC also monopolises e-cigarettes.

Evidence suggests that e-cigarettes are harmful to health and are not safe, especially among young people. Regulation and surveillance of e-cigarettes are consistent with requirements of the WHO Framework Convention on Tobacco Control (FCTC), as is extending to e-cigarettes tobacco control restrictions on advertising, marketing, and consumption. China has already taken steps to do this. In 2019, strict regulations were imposed on e-cigarette advertising and sales, including prohibiting their sale to adolescents, withdrawing internet advertising and closing e-cigarette internet sales websites. Beijing, Shenzhen, and Chengdu have also revised their tobacco control regulations to include e-cigarettes.

The tobacco industry in China plays a dual role analogous to being both referee and athlete, without a separation of the powers. Although e-cigarettes need standardised management, the State Tobacco Monopoly Agency's move to introduce a law that directly affects its financial interests is fundamentally flawed. The United Kingdom, European Union countries and Japan regulate e-cigarettes as either pharmaceutical products or regulated consumer products. China's policy would be more credible if e-cigarettes were regulated and inspected by the National Medical Products Administration or the National Administration for Market Regulation.

A bigger issue is that China is the largest producer and consumer of tobacco products in the world. It is home to approximately 300 million smokers, and 740 million non-smokers are regularly exposed to secondhand smoke, of whom over 100 000 die each year. Debates about e-cigarettes cannot ignore this larger context. The country ratified the FCTC in 2005, but there is strong resistance to its proper implementation. In particular, the lack of separation between government and the business enterprise of tobacco production and sales is a serious impediment to effective tobacco control in China. Resolving this larger problem would mean current challenges with e-cigarettes could also be easily resolved.

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## USA: FDA FINALLY RECOGNIZES NEED TO REMOVE MENTHOL FROM TOBACCO PRODUCTS

On April 29, 2021, the United States Food and Drug Administration (FDA) took a powerful step towards banning menthol in combustible tobacco products and saving lives. This action was initiated when a Citizen's Petition, led by the Public Health Law Centre, the African American Tobacco Control Leadership Council (AATCLC), and other civil society organisations, was filed in 2013. Unfortunately, the FDA failed to respond to that petition, so with the goal of spurring the FDA to take action, the AATCLC and Action on Smoking and Health (ASH) filed a lawsuit against the FDA in June 2020. The suit was joined by the American Medical Association (AMA) and the National Medical Association (NMA).

Black Americans have been intentionally targeted with menthol cigarette marketing by the tobacco industry for decades, with the result that menthols are smoked by nearly 90% of African Americans who smoke. The FDA decision to ban menthol helps prioritise the health of Black Americans and contributes towards ending the institutionalised racism African Americans face as a result of menthol cigarettes. The FDA emphasised in their statement that it '...intends to make this proposed rule one of the Agency's highest priorities'.

Menthol advertising violates the right to health of Black Americans, and in early April 2021, ASH and a total of 97 organisations submitted a report to the UN Committee on the Elimination of all forms of Racial Discrimination (CERD), requesting that the committee review the U.S.' human rights record on this topic. The intentional and pervasive targeting of Black Americans for monetary gain is a violation of basic human rights.

Unfortunately, this is just the first step in a long process. The FDA will next propose a draft rule, which will first be open to public comments, before being finalised. At that point, based on past history it is likely the tobacco industry will begin to pursue legal actions. Because of this lengthy process, state and local advocates are encouraged to continue pursuing menthol bans at local levels, which could be implemented long before the federal policy.

While tobacco companies will attempt to insert themselves into the upcoming rulemaking process and muddy the facts around the harms of menthol, advocates are equally confident that the public

health community and research community will stand strong.

Industry interference has already begun, with groups asking the FDA to reconsider its action because a menthol ban may purportedly increase police interactions with Black Americans. Advocates have been conscious of this concern from the beginning, and do not support any action that criminalises tobacco use or possession. ASH, the AATCLC, and several of the co-petitioners, signed a Joint statement Addressing Systemic Racism in the Enforcement of Commercial Tobacco Control emphasising this point.

The FDA's favourable decision in April is one step towards preventing the deaths of 45 000 African Americans every year from tobacco-related diseases. This is an exciting example of the power of affirmative litigation which will hopefully spur other legal action against the tobacco industry.

The community will not allow the industry to undermine this important process, and there is no doubt that a ban on menthol will come to fruition soon.

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### US: LAW AGAINST FLAVOURED TOBACCO PRODUCTS UPHELD IN SAN DIEGO

Two lawsuits by R.J Reynolds tobacco company challenging San Diego County laws that took effect in 2020 prohibiting the sale of flavoured tobacco products including menthol cigarettes, and temporarily suspending e-cigarette sales, have

been dismissed by the U.S. District Court for the Southern District of California. The policies are not considered to be 'tobacco product standards' as they do not regulate additives or ingredients. This legislation was passed after the U.S. Surgeon General issued an advisory on e-cigarette use among youth, stating the growing problem was an epidemic in 2018. It also aligns with the Family Smoking Prevention and Tobacco Control Act.

Several anti-tobacco and public health groups provided an amicus brief to the court with evidence on how youth are attracted to flavoured tobacco products, the recent increase in youth smoking, how flavoured tobacco products create health disparities among African American communities, and the significant health consequences of tobacco use. Approximately 81% of 12 to 17 year-olds who had ever-used a tobacco product indicated that they had used a flavoured product. This evidence supported the court's decision to uphold the existing legislation.

"By enacting the Flavours Ordinance, San Diego County has sought to protect its residents—and particularly its young people—from the continuing and increasing scourge of flavoured tobacco products that lure millions into a lifetime of addiction, disease and death", the brief told the court.

The San Diego laws are similar to those enacted across a number of U.S. jurisdictions. Massachusetts was the first state to prohibit the sale of flavoured and menthol tobacco products across nearly all tobacco retailers on June 1 2020. Cigars, pipe tobacco, hookah tobacco, smokeless

tobacco, and electronic cigarettes were included in the legislation.

California became the second U.S. state to pass comprehensive legislation to prohibit the retail sale of menthol and flavoured tobacco products from January 1 2021. The prohibition includes pen-style electronic cigarette (e-cigarette) pods, tank-based e-cigarette systems, menthol cigarettes and chewing tobacco. In addition, 78 cities and counties in California, including Los Angeles County, have previously passed legislation to restrict flavoured tobacco products. New York and New Jersey have also prohibited flavoured e-cigarette products.

This legislation has been introduced as a result of the tobacco industry targeting flavoured tobacco products to young people and to people of colour. In 2018 the Centres for Disease Control and Prevention found that 49% of middle school students and 67% of high school students who used tobacco products in the last 30 days had used flavoured tobacco products. More than half of youth smokers ages 12–17 years smoke menthol cigarettes, which is higher than any other age group. Approximately 94% of African-American youth smokers use menthol tobacco products compared with 85% of African-American adult smokers.

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