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Tobacco giant Philip Morris ordered to pay millions in compensation to Australia

Philip Morris had unsuccessfully tried to have the country's plain-packaging laws overturned.



By [Karthick Arvinth](#)

July 10, 2017 09:18 BST



Austr

alia introduced plain packaging for cigarettes in 2012Reuters

An international court has ordered the world's largest cigarette company to pay millions of dollars in compensation to the Australian government over its failed bid to overturn the country's plain-packaging laws.

Philip Morris International fought a five-year legal battle with Australia to have the laws scrapped or to have the government pay billions of dollars in damages, **arguing that its trademarks were being infringed.**

The world-first laws were upheld by the World Trade Organization (WTO), paving the way for them to be adopted in other countries.

The rules, which were introduced by Australia in 2012, barred displays of all tobacco company logos and bright colours on cigarette packets, replacing them with drab colours and grim health warnings.

The Permanent Court of Arbitration, based in Singapore, ruled over the weekend that Philip Morris was liable to pay Australia's legal costs in defending the laws, along with an undisclosed percentage of the arbitration costs.

The US tobacco giant had argued that the amount claimed by the government was unreasonable for a "legal team that consisted primarily of public servants".

It pointed out that Canada and the US had never claimed more than \$4.5m and \$3m, respectively, in costs and fees in comparable cases.

The exact amount that Philip Morris is liable to pay to the Australian government has not been disclosed, but the Sydney Morning Herald newspaper reported that the compensation amount could be as high as A\$50m (£30m).

"The tribunal does not consider that any of these costs claimed by the respondent were unreasonable and should not have been incurred," the court said in its ruling.

"In making this assessment, the tribunal also takes into consideration the significant stakes involved in this dispute in respect of Australia's economic, legal and political framework, and in particular the relevance of the outcome in respect of Australia's policies in matters of public health."

Philip Morris: Tobacco giant ordered to compensate Australia

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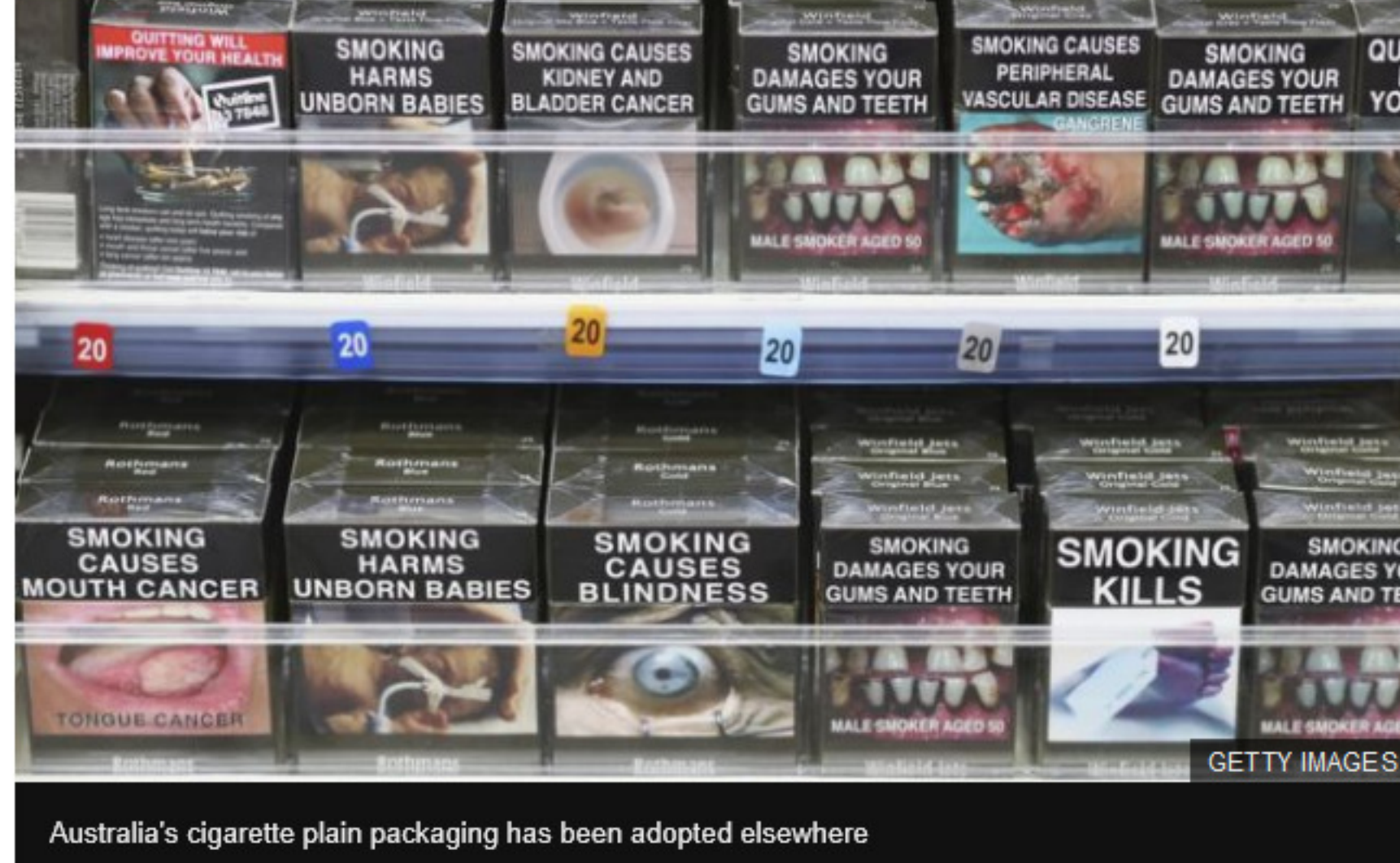
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Australia's cigarette plain packaging has been adopted elsewhere

Tobacco giant Philip Morris has been ordered to pay the Australian government millions of dollars after unsuccessfully suing the nation over its world-first plain-packaging laws.

In 2012, Australia legislated that cigarettes must be sold in unappealing packets with graphic health warnings.

Philip Morris had tried to **force the laws** to be overturned, but a court dismissed its claim in 2015.

The tobacco giant has now been ordered to pay the government's legal costs.

The exact sum was redacted from the international Permanent Court of Arbitration (PCA) **decision**, but the Sydney Morning Herald **reported** it was as high as A\$50m (£30m; \$38m).

In May, Bloomberg reported that the World Trade Organization (WTO) had decided Australia's laws were a legitimate **public health measure** - making them more likely to be adopted overseas.

Big tobacco's protest

After plain packaging was introduced, Philip Morris, Imperial Tobacco and Japan Tobacco launched a constitutional challenge in Australia's highest court.

When that bid failed, Philip Morris went to the PCA to claim the legislation breached Australia's Bilateral Investment Treaty with Hong Kong.

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It sought an end to plain packaging, or billions of dollars in compensation.

The court dismissed the company's case, calling it "an abuse of rights".

Philip Morris then argued the government's claim for legal costs was unreasonable, saying it was well above claims made by Canada (\$4.5m) and the US (\$3m) in comparable cases.

However, the court ruled the costs were reasonable because they did "not go beyond what is usual in other investment cases". It also acknowledged the "significant stakes involved" regarding public health.



Under the new law, brand names will appear in the same position, font, size and colour on packets

The document, marked 8 March 2017, was only made publicly available on the weekend.

Since Australia's laws were introduced, similar policies have been announced in other countries **including the UK**.

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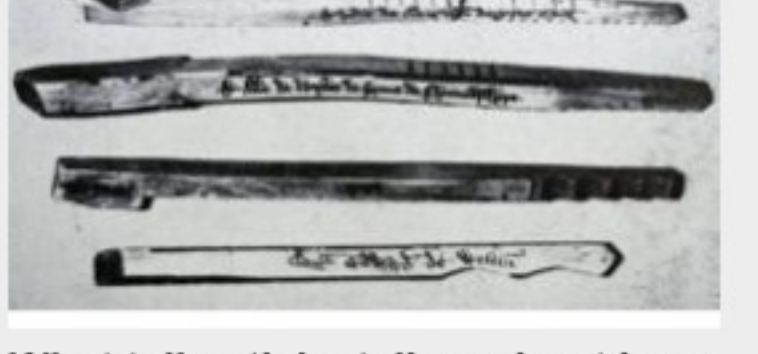
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Dealing with illicit tobacco – ASH Scotland Viewpoint

July 2017



Introduction

Despite an overall downwards trend, the volume of illicit tobacco still matters because it:

- deprives the public purse of revenue
- bypasses important regulations, such as on under-age sales and Reduced Ignition Propensity (RIP) cigarettes
- may fail to warn smokers about the health harms of smoking (as all legal packs must, thanks to graphic warning labels and standardised packaging)
- puts responsible, law-abiding retailers at a disadvantage.

The trade in illicit tobacco should be met with the full force of the law, and we propose a number of actions to tackle the problem:

- loss of the right to sell both tobacco and alcohol for any retailer caught selling illicit tobacco
- larger and better enforced penalties for offenders
- new powers for Trading Standards, including new ways to sanction retailers
- a new programme of communication with retailers about illicit tobacco, free of industry interference.

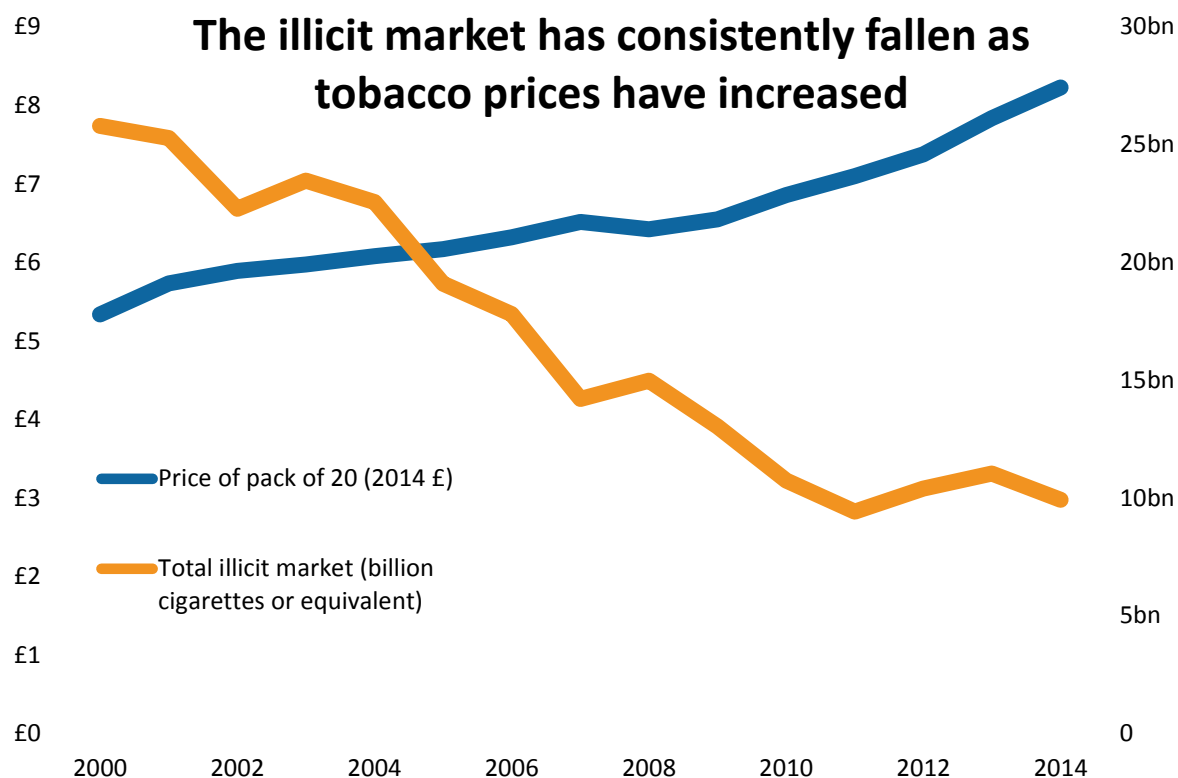


Figure 1 – HMRC’s estimate of the size of the illicit tobacco market in the UK (including both cigarettes and roll-your-own tobacco), plotted alongside to the price of a pack of 20 cigarettes (in 2014 GBP). The illicit market has consistently fallen at a time when tobacco prices have increased.

How the tobacco industry uses illicit tobacco

Big Tobacco has a long history of scaremongering about the illicit market in reaction to any proposed health measures.¹ In the past, when new rules such as tax increases, display bans and standardised packaging have been proposed, industry and industry-linked figures have argued that a larger illicit market will be the inevitable result. In fact, this is not the case. Figure 1 shows the average price of legal tobacco in the UK compared to the size of the illicit market in sticks (or equivalent for rolling tobacco). One does not lead to the other.

Illicit tobacco is not meaningfully better or worse for your health than legal cigarettes. Industry comments that illegal tobacco includes unpleasant or unsanitary ingredients should be challenged, as they could lead to the inference that tobacco industry cigarettes are healthier. That is not the case – we believe

¹ See ASH Scotland’s 2016 report “Dodgy Cigs” for more information:
<http://www.ashscotland.org.uk/dodgycigs>

tobacco companies are worried about their bottom line, not health, when they talk about illicit tobacco.

The historical context

Rates and volumes of illicit tobacco have declined substantially since 2001 (Figure 1). This has been achieved through robust enforcement of clear laws.

A range of agreements backed by the law came into force around that time to prevent tobacco companies from making their products available to illicit traders. Since then the illicit market has shifted from smuggling of genuine tobacco products towards counterfeit brands and “cheap whites”, which have no presence in the legal market. The total size of the market has declined substantially even as the price and regulatory framework for legal tobacco has increased.

Nonetheless, the illicit market’s decline has slowed in recent years, with around 10% of the cigarette market and 30% of the hand-rolled tobacco market illegal. There is a clear case for robust action.

What should we do about it?

The only thing that has slowed the illicit trade in the past has been robust and clear enforcement of stringent rules. This can be seen across Europe – eastern European countries with some of the lowest cigarette prices, such as Latvia, have illicit markets comparatively larger than the UK’s, thanks to lax enforcement of the law. The vast majority of retailers in the UK obey the law and don’t trade in illegal cigarettes. Those who break the law should face the consequences.

Recently, the UK Government has consulted on the levels and types of penalties appropriate for people involved in the illicit trade. We were pleased that the changes proposed are intended to make this crime less attractive and profitable for participants, as well as recover lost revenue for the exchequer. ASH Scotland’s position on this consultation can be summarised as follows:

- supporting the introduction of “multipliers”, so fines for repeat offences are higher
- supporting the creation of a new civil penalty for participating in sales of illicit tobacco
- a low lost tax revenue threshold for penalties, so that smaller-scale operators can be pursued to the full extent of the law.

We endorse the proposal of the Association of Convenience Stores (ACS)² to increase both enforcement and communication about illicit tobacco, as detailed in their response to the UK Government's recent consultation. Any communication with store owners and other stakeholders should be independent and free of tobacco company influence, due to the industry's long history of mistruth and its use of the spectre of illicit tobacco to oppose health measures.¹

We endorse the ACS's proposal that sales of illicit tobacco could result in loss of a premises' alcohol licence, and to make this process as easy as possible for trading standards to administer. This would provide an appropriate commercial incentive not to sell illicit tobacco.

We also believe that those who are caught selling illicit tobacco should lose the right to sell any tobacco for a period of time. In Scotland, this could be accomplished easily by means of the Tobacco Retail Register. Any business not listed on the register cannot legally sell tobacco, and there are already provisions in place to remove criminals from it. This would merely represent an expansion of those provisions.

Increased enforcement would require investment in trading standards, but could reasonably be expected to increase tax revenues in return. Entrusting trading standards officers with additional powers, such as the ability to sanction retailers under the Excise and Customs Management Act 1979 as suggested by the ACS, would empower them to take quick and meaningful action against criminals.

Conclusions

There is a great deal of effective action we can take to tackle the illicit market. Strong enforcement of clear, stringent laws, in partnership with trading standards and HMRC, can create a climate where selling illicit tobacco is treated as the serious crime it is.

Ultimately, like all controlled goods tobacco will always be traded illegally at some level. The best way to tackle this is to reduce overall demand for the product. Creating a world where smoking is out of fashion for the next generation will mean

² Association of Convenience Stores (2017) *ACS Submission: Sanctions to Tackle Tobacco Duty Evasion and Other Excise Duty Evasion*. Available from <https://www.acs.org.uk/wp-content/uploads/2017/05/ACS-Submission-Sanctions-to-tackle-tobacco-duty-evasion-.pdf> [accessed 19 June 2017]

that the illicit trade withers just as the legal tobacco industry does. This matters because tobacco kills whether legally or illegally sold.

Action on Smoking & Health (Scotland) (ASH Scotland) is a registered Scottish charity (SC 010412) and a company limited by guarantee (Scottish company no 141711). The registered office is 8 Frederick Street, Edinburgh EH2 2HB.