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Head to Head

Should we use regulation to demand improved public health outcomes from industry? Yes

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Preventable chronic diseases are a major threat to health worldwide. **Stephen Sugarman** argues that setting targets for companies will produce innovative solutions, but **Stig Pramming** (doi:10.1136/bmj.a1761) believes collaboration is the best way to improve health

Current approaches to some of our most pressing public health problems—voluntary cooperation with business and requiring companies to change how they operate—are not moving us effectively or efficiently in the socially desired direction. Let's instead call for businesses themselves to figure out how to improve public health outcomes through a promising new regulatory approach: performance based regulation. This will enable the most innovative and nimble aspects of private enterprises to be called in. Through performance based regulation, the government tells businesses what outcomes it wants from them and leaves them to work out the best ways of attaining those regulatory targets.

Fresh thinking

Old fashioned public health regulation of business orders companies to do things like put graphic pictures of illness on cigarette packs, include calorie counts on fast food menus, install air bags in cars, and train pub workers not to sell drinks to people who are likely to drink and drive. All of these measures are input controls designed to achieve improved public health outcomes. Although they might be good ideas, they may not be the best ways to bring about the social objective.

Performance based regulation focuses directly on outcomes. For example, government would tell junk food sellers that they must ensure that fewer schoolchildren become obese, car manufactures that they must reduce the number of fatal road crashes, and tobacco companies that they must reduce society's smoking prevalence. Sellers of products that in many countries are responsible for a huge share of deaths, illness, and injury will be faced with legal obligations that will align their profit motive with public health. If they do not achieve their public health goals, they will have substantial charges imposed on them. Those charges are perhaps best understood as taxes that internalise the public health costs of non-compliant producers into the price of their products.

Businesses might decide to use the methods described earlier to achieve their harm reduction goals. But they might use other means instead. Perhaps car companies will install breathalysers in all new vehicles. Tobacco companies might choose to subsidise smoking cessation programmes or simply raise the price of cigarettes. Junk food companies may embark on campaigns to assure that preschools provide healthy food and vigorous exercise for 3 and 4 year olds. They are also likely to invent new interventions that are currently undreamt of.

Compulsion is necessary

Voluntary agreements with industry are insufficient. Firms are not going to sacrifice profits if they are not required to do so. They are not going to promise and deliver substantial public health gains that they don't already provide in response to market demands. For example, a recent agreement in the United States with the leading sweetened beverage makers, touted in the press as a voluntary decision to remove unhealthy products from school cafeterias and vending machines,[1] turns out to be much less promising on careful study. For schools serving teenagers, firms can substitute high energy "sports" drink for colas, and they can introduce new "light juices" that have nearly as many calories as those products they promise to remove.[2]

To be sure, it might be possible to achieve tougher "voluntary" agreements when firms realise that they risk stringent governmental controls unless they agree to change their ways. But even then, agreements that order specific changes in business practices may fail to achieve their goals given the skill of corporate leaders and their lawyers. Consider, for example, the so called master settlement agreement entered into between US state attorneys general and the cigarette companies. Lawsuits had sought changes in tobacco advertising as well as reimbursement for the costs of tobacco related disease borne by state healthcare systems. The litigation settlement did force tobacco firms to abandon practices such as billboard advertising and advertising in magazines aimed at children.[3] But this merely shifted the industry's marketing budget to other strategies such as point of sale promotions in retail establishments and high tech advertising through the internet.[4]

It is like the fight against global warming. Some firms will reduce carbon emissions because they have figured out a way to make "green" pay. Others will put all of their investment in research on new technologies. Yet the firms most responsible for the problem will continue to pump greenhouse gases into the environment until they are required to do otherwise.

Many nations are moving towards dealing with global warming through performance based regulation. Governments are beginning to tell power plants, car manufacturers, and the like that their activities and products must have reduced carbon footprints, and the regulated companies will figure out the best way to do that. This seems an effective way to harness business creativity in pursuit of the public good.

Public health leaders who now distrust industry should accept that public health needs business as an ally. But public health leaders who promote self regulation by business should accept that voluntary cooperation will never achieve enough. Performance based regulation occupies the middle ground—a third way. Let society set legally enforceable goals and then let enterprises loose to accomplish them.

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