

Outflanking the enemy

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Can governments make people thin?

IN 1202, King John of England proclaimed the first food law, the Assize of Bread, which prohibited its adulteration with ground peas. Food has long been regulated because, says the Harvard Business School's Ray Goldberg, it is a "quasi-public utility": people think it is the government's job to provide a safe and stable supply.

In the United States, where around 5,000 people a year die of food poisoning, compared with 600 in Britain, food safety was the hot regulatory issue in the 1990s. Incidents such as the deaths of four American children in 1993 who ate contaminated hamburgers at Jack in the Box restaurants helped keep it in the headlines. Eric Schlosser's "Fast Food Nation" raised awareness of the issue, too, by explaining in gruesome detail how much faecal matter there is in hamburgers and how consolidation of the food industry has helped to spread disease (the larger abattoirs and factories are, the wider contaminated material can spread).

America has now adopted more rigorous European-style inspection systems, and the incidence of food poisoning is falling. That's partly why food safety has declined in importance as an issue. The other reason is that obesity has loomed larger as a public health issue which rivals smoking in importance.

A combination of government campaigns to educate people, tax and restrictions on tobacco companies has cut smoking in the rich world. Telling people to eat better seems to have had little effect so far—though the figures on American weight loss suggest that may be changing. But even if people are beginning to hear the message on obesity, the change is likely to be too slow to ward off the same combination of lawsuits and regulation that hurt the tobacco companies.

Some of the food companies are more vulnerable to lawyers and governments than others. An analysts' report from J.P. Morgan in April this year named big companies most likely to suffer (Hershey, Cadbury, Coca-Cola, PepsiCo) and those least likely (Danone, Nestlé, Unilever).

Moves towards healthier products—taking out trans fats, adding salads—are reckoned to be aimed as much at lawyers, regulators and stockmarket analysts as at consumers. Many companies have recently appointed advisory boards of top nutritionists—just the people who have been complaining about them in the press of late. Cynics wonder whether that is designed as much to silence them as to benefit from their wisdom.

For the moment, the threat from lawyers is in abeyance. A case brought against McDonald's by two fat teenagers was dismissed for the second time in September. But the food companies' tormentors won a marginal victory when Kraft was sued because of the trans fat content of its Oreo cookies; Kraft promised to reduce the content; the suit was dropped. And nobody is confident that the threat has gone

Alamy



Taxman's temptation

away. The tobacco parallel looks too close—particularly, no doubt, to Kraft, which used to be owned by Philip Morris.

And the likelihood of more regulation looms, as governments' worries about the health consequences of diets sharpen. But not all regulatory activity will harm companies. For instance, in order to inform consumers better about what's healthy, America's Food and Drug Administration (FDA) is making use of companies' desire to boast of their products' health benefits. It has liberalised the rules on making health claims, and is adopting a four-tier system telling consumers how good the science is behind any particular health claim. Calcium's ability to protect against osteoporosis, for instance, is reckoned very solid; omega-3's ability to ward off heart disease is reckoned pretty good, but second-level. Shakier claims will have to be advertised as such. The aim, says Mark McClellan, head of the FDA, is to "help consumers through the science". Companies like that. Consumers should, too.

Companies find other aspects of regulatory activism less appealing. Earlier this year the FDA announced that from 2006 consumers must be informed of the levels of trans fats in food. Trans fats have had so much publicity in America that such information is bound to turn consumers off the products that include them. This announcement—the first time in a decade that the government had forced companies to put new information on labels—came with an uncharacteristic warning from a business-friendly administration. "This is the beginning of a lot more rules and regulations," said Tommy Thompson, America's health secretary.

In Europe, David Byrne, the European Union's health and consumer protection commissioner, has proposed dividing food into good and bad: health claims could be made only for good food and not for bad (fatty, sugary and salty) food. "This prevents them from being marketed as 'good food', which they are not," says Mr Byrne. To which Nestlé's Peter Brabeck quotes Paracelsus, a 16th-century pharmacologist: "All things are poisonous and nothing is without poison. It is only the dose that makes things poisonous."

Mr Byrne's idea risks curbing innovation. Companies are less likely to invest in finding out what's good for consumers if the regulators restrict their ability to use that knowledge. European consumers would not benefit from such restrictions. They would, however, benefit from better information. American labels are more useful than European ones. They reveal what proportion of the recommended daily intake of, say, salt is included in, say, a can of tomato juice (80%, as it happens, in the brew served on American Airlines planes). They are getting better still, with the trans fat addition. Europe should adopt similar rules. That would probably hurt some companies. Never mind.

There are also moves afoot to restrict companies' ability to sell to children. Those who support such moves argue that once people are fat, it is hard for them to get thin; and tastes are established early. Banning advertising to children probably wouldn't make much difference—Sweden has never allowed it, and its offspring are as porky as those in neighbouring countries. Kicking vending machines out of schools (see article) might.

The touchiest subject of all is a "fat tax". At present, thin people subsidise fat people. According to a study by America's Centres for Disease Control and RTI International, a consultancy, obese people cost Medicare an extra \$1,486 each, Medicaid an extra \$864 each and private insurers an extra \$423 each. So, the argument goes, just as governments tax cigarettes both to discourage smoking and to pay for its consequences, they should tax the things that make people fat.

Supporters of a "fat tax", such as Tim Lang at Britain's City University and Michael Jacobson at America's Centre for Science in the Public Interest, are regarded as extremists by the food industry. But fat is already taxed, albeit in a small way. According to an article in the *American Journal of Public Health* in 2000, 19 states and cities in America, including New York and California, levy special taxes on snack foods, sweets or soft drinks. Australia's "general sales tax", introduced a couple of years ago, is levied on snacks and convenience foods, but not on groceries. The fat tax is already here, and is likely to grow.

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Mr Thompson wants the private sector, not the state, to use the price mechanism to discourage fatness. At present, America's health insurers don't charge fat people more because they fear lawsuits. Mr Thompson is arguing for them to "give people credits on their health insurance costs for being healthier"—to charge fat people more for their insurance, in other words. America's discrimination laws might have to change to allow them to do that. Given the size of America's waistline, getting public approval for the move might prove to be difficult.

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