

RECOVERING FROM THE COVID-19 SALES BAN

In the midst of the COVID-19 pandemic, South Africa was faced with a second challenge when the **sale of tobacco products was banned by the government**. The ban has since been overturned but the effects are still being felt across the country.



A group of people protest against the sales ban on tobacco products

It is maybe not a common occurrence for the tobacco industry to find itself on the right side of judicial rulings but, in December 2020, South Africa's Western Cape High Court ruled that a four-and-a-half month national ban on sales of tobacco products, justified to prevent the spread of COVID-19, had been unconstitutional. The ban, the only one implemented worldwide, led to a 20 per cent spike in sales of illicit tobacco products, according to market researcher Euromonitor International, and a loss of an estimated ZAR 3.5 billion

(USD 212 million) in tax revenues. Tobacco product sales volumes in South Africa are forecast to drop by 40 per cent in 2020, according to Euromonitor International data, but alongside a robust black market sales increase.

The ban was part of one of the world's toughest lockdown responses to COVID-19. On 27 March 2020, Regulation 45, implemented by the Department of Cooperative Governance and Traditional Affairs (CoGTA) and the National Coronavirus Command Council, banned sales of all

tobacco-related products, including cigarettes, vapes, e-cigarettes, and associated paraphernalia such as rolling papers and filters. Initially, the ban was put in place for two weeks as the government imposed a nationwide stay-at-home 'lockdown', justified to prevent potentially overwhelming the healthcare system amid the pandemic. Alcohol sales were also banned.

But the ban was extended as the lockdown continued, and was only lifted on 18 August following heavy lobbying and legal challenges by the tobacco industry. The Western Cape High Court has now judged that this lobbying was correct. It ruled¹ that "the (government) respondents have not shown that Regulation 45 was necessary nor that it fulfilled and/or furthered the objectives" of the National Disaster Management Act, which has been invoked by the government to fight COVID-19.

There is only speculation as to the motivation behind the ban, with South African media putting the blame on CoGTA minister Nkosazana Dlamini-Zuma, a medical doctor and staunch tobacco opponent, as well as the ex-wife of former President Jacob Zuma (although regarded as an ally of the current President Cyril Ramaphosa).

"It is very difficult to say what drove the ban. It was initially driven by some good intention as the government wanted people to buy food and not anything else for health reasons. Our major gripe was that as evidence came to the fore that smoking and COVID-19 are not linked, we felt it was no longer sustainable for the ban to stay," said Sinenhlanhla Mnguni, chairman of the Fair-Trade Independent Tobacco Association (FITA). ▶

ILLICIT SALES EXPLODE

The ban caused a surge in sales of illicit and smuggled tobacco products as the country's 7 million smokers sought alternative sources. "We didn't trade for four-and-half months. The illicit economy took over the market. You could find all these locally manufactured brands, which have always been suspect in terms of selling products at cheap rates. With the ban, it was their time to shine, and on almost every street corner you could find a [cigarette] dealer," said Bongani Mshibe, director of corporate affairs and communications for southern and eastern Africa at Japan Tobacco International (JTI). According to estimates by Euromonitor, the government lost some ZAR 3.5 billion (USD 212 million) in tax revenues due to the ban and, according to JTI, retailers lost ZAR 65 million (USD 4.25 million) per day in tobacco revenues. The South African Revenue Service (SARS) generated around ZAR 15 billion (USD 994 million) in tobacco related revenues in 2019, according to FITA.

A Research Unit on the Economics of Excisable Products (REEP) survey conducted at the University of Cape Town showed that that 90 per cent of South African smokers continued to buy cigarettes during the lockdown ban.

"We engaged with the government when the regulations were published, warning about the existing high level of illicit, and that a ban on legal sales would exacerbate the situation and reverse all the hard work done to counter illicit trade over the past few years," said Mshibe.

According to Euromonitor International, illicit sales had been growing at 2 per cent a year in 2018 and 2019, with less than 5.5 billion sticks sold (compared to 15 billion legal sticks). "The drastic measures saw it increase by 20 per cent. We estimate over 6.5 billion illicit sticks were sold," said Jacques Olivier, senior analyst, drinks and tobacco, sub-Saharan Africa, at Euromonitor International.

Prices for illicit products were three to five times higher than before the ban. "The price of all brands, not just bigger brands, substantially went up, from ZAR 40 (USD 2.62) to ZAR 200 (USD 13.12). Almost all brands from all players were available, depending on how hard one looked or how much one was



The ban was lifted in August following a number of legal challenges from the tobacco industry

willing to pay," said Thomas Verryn, senior research manager, sub-Saharan Africa, at Euromonitor International.

Messaging groups for illicit sales were created on WhatsApp and Telegram to connect with consumers. In addition, local brands were typically more available on the black market, such as Gold-Leaf Tobacco, Carnilinx, Best Tobacco Co and Amalgamated Tobacco Manufacturing Ltd brands, said Euromonitor.

On top of that, cigarettes were smuggled across South Africa's borders with Namibia, Botswana and Zimbabwe, as well as from Mozambique, where brands with packaging in Portuguese are available, said Euromonitor. Chinese brands such as 666 were also on the market, according to JTI's own research.

The ban took a hard toll on the vaping sector, with 48 electronic vapour products (EVP) businesses in 155 locations negatively impacted, and 34 locations permanently closing, according to the Vapour Products Association of South Africa (VPASA). It estimates over ZAR 100 million (USD 6.5 million) in revenues were lost during the ban. "Unlike tobacco products, vaping products were much less readily accessible on the illegal market," said Asanda Gcoyi, CEO of the VPASA.

NEW OUTLOOK

Once the ban was lifted in August, tobacco brands scrambled to distribute products for retailers to restock. In the months since, it has become apparent that the ban, along with an economic downturn, has led to changes in consumer behaviour.

"The whole market has been turned upside down," said Adam van Wyngaarden, founder and CEO of Smokey Treats Ltd, which produces 'eco-conscious' cigarette brand Woodland Craft. "We were expecting to take a knock on sales," he said, although ultimately, this has not happened – in fact, sales are now back to normal for his brand. This is despite the fact that some smokers will have quit, because as Wyngaarden suggests, some consumers now "want better quality tobacco after trying other cigarettes, and want locally produced products".

Euromonitor estimates between 5 and 10 per cent of smokers quit during the ban. Post-ban, sales were initially slow, which was attributed to smokers still having stashes bought on the black market, but then picked up in September and October, with sales of premium cigarettes growing by 13.6 per cent, according to an AC Nielsen report. Woodland grew by 72 per cent, to be "pretty much back where we were before the ban; but it doesn't seem that all premium brands have recovered," said van Wyngaarden.

Market leader BAT lost nearly 40 per cent market share during the ban on sales. "Leading brands such as Peter Stuyvesant, Pall Mall and Dunhill are expected to be the biggest losers owing to their strong positions historically," said Olivier. Overall, licit sales of cigarettes are expected to drop by over 40 per cent in volume terms for the year 2020, he predicted.

Looking ahead, the outlook for the South African tobacco sector is uncertain. The decline in smoking prevalence, the increase in taxation pencilled in for the coming year (especially for vape products) and the gain in market share for illicit sales are all having their effect.

Paul Cochrane, in South Africa



1. See: <https://www.iol.co.za/news/politics/court-rules-ban-on-cigarette-sales-unconstitutional-to-avoid-a-repeat-90da82a7-f176-4392-b5d1-1e7f97c0d7f9>