

South Korean court delivers latest blow to e-cigarette makers

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SEOUL -- E-cigarette makers in South Korea suffered a further setback after the Constitutional Court swiftly dismissed a petition by an industry body challenging the government's warnings against the devices.

The court's decision, issued just two weeks after the original filing by the Korea Electronic Cigarette Association, comes amid increasing government pressure on the once-thriving industry, both in South Korea and elsewhere in Asia. Late last year, India banned e-cigarettes entirely.

The association's petition was a formal challenge to recommendations by the Ministry of Health and Welfare, and **disputed the ministry's claim that e-cigarettes and heated tobacco products are not safer alternatives for smokers who are trying to quit conventional, or combustible, cigarettes.**

Specifically, the association took issue with the claim that small amounts of vitamin E acetate -- a thickening agent that has been linked to vaping-related lung injuries -- has been found in some products.

"The Ministry advised against using all e-cigarette products just because small amounts of vitamin E acetate were found in certain products," the group said in a statement.

"E-cigarette companies, most of which are independent businesses, are suffering from this steep drop in sales and from social stigma surrounding their products," the statement continued.

The court, however, ruled that the government's directives do not infringe on e-cigarette companies' constitutional rights, as they are only recommendations, and are not legally binding.

South Korea was once one of the world's fastest-growing markets for e-cigarettes, attracting attention from major international makers including Juul Labs. But in recent years multiple government bodies began to introduce stricter standards for marketing and consumption of such products, as well as a public relations campaign discouraging their use -- a campaign that included the addition of graphic warning images on all packages.

"There are no grounds to conclude that e-cigarettes and heat-not-burn products are less harmful than regular cigarettes," a 2018 study by South Korea's food and drug ministry stated. The government also advised consumers to avoid such products until more extensive research has been conducted into their possible health effects.



Juul Labs of the U.S. entered the South Korean market last year, but the sentiment toward e-cigarettes has cooled recently. © Getty Images

The Ministry of Health and Welfare did not respond to multiple phone calls seeking comment.

While lacking the force of law, e-cigarette purveyors argue that the government's information campaign has had real effects on their business. According to government [data](#), sales of e-cigarettes fell 14.2% in the third quarter of 2019 from the previous quarter, then declined 5.7% in the fourth quarter.

Much of that drop was related to decisions by the country's four largest convenience store chains -- CU, GS25, 7-Eleven and E-Mart 24 -- to suspend sales of flavored e-cigarettes. The government data showed that e-cigarettes sales at convenience stores fell 89.8% in the fourth quarter of last year.

The sales slide in the second half of last year was a sharp turn from how the year started. [Data](#) from South Korea's finance ministry show that sales of e-cigarettes and heat-not-burn products increased 37% in the first quarter of 2019, accounting for nearly 11% of the overall tobacco market.

Juul Labs, maker of the sleek vaping product that dominates the e-cigarette market in the U.S., made its first foray into Asia last summer when it [launched in South Korea](#). The company had high hopes for the market, but its products are among those that have been yanked from convenience store shelves. Juul did not immediately reply to an email request for comment.

Some experts who study e-cigarettes have argued that making it more difficult for consumers to access those products can backfire by indirectly compelling smokers to stick with combustible cigarettes. "Based on my study of the market, I think Korean authorities were misled by international sources with a moralistic 'abstinence-only' view on nicotine," [David T. Swenor](#), Chair of the Advisory Board at the University of Ottawa Centre for Health Law, Policy & Ethics, told the Nikkei Asian Review.

"Government agencies seemed to see new technology only in terms of a threat rather than an opportunity, and attacked these products. Those efforts, tragically, protected the cigarette market," [Swenor](#) said.

This is not the first legal tussle between South Korean regulators and e-cigarette makers. In 2018, South Korea's food and drug ministry released [a study](#) claiming that e-cigarettes contained higher levels of tar than combustible cigarettes.

The study prompted tobacco giant Philip Morris to file a [lawsuit](#) against the South Korean government, seeking the disclosure of data on the methodology the government used to conclude that its products contained high levels of tar.

South Korea's e-cigarette industry contends that international consensus on health effects is in their favor. The association pointed to a report recently released by [WHO](#), which concludes, "alternative nicotine delivery devices which are less harmful could play a crucial role in reducing this health burden."

The [World Health Organization](#) has posited that, "Smokeless tobacco products do not cause the lung diseases causally associated with use of combusted tobacco products such as in cigarettes, pipes and cigars."

The WHO also noted, however, that such products are not effective in helping smokers quit, as they contain high levels of nicotine, and that some e-cigarette companies have marketed to young people, which can "stimulate initiation of use."

The association says that despite this legal setback, they will continue to push their government to change tack. "In the future, if the government, including the Ministry of Health and Welfare, continues with this reckless kind of administration, we will continue to fight and exercise our right to protest," it said.