Corporate lobbying

RBC GAM European Equity team
In 2016, the European Commission published a proposal for an agreement between the three pillars of the European Union (the Commission, the Parliament, and the Council).1 In 2019, after nearly three years of negotiation, talks between the three parties collapsed.

The issue that was debated for so long, and that was so fraught with difficulties, was lobbying.

Often rather opaque, it is in most respects a core component of the democratic system. It also forms one of its biggest potential weaknesses.

At its best, lobbying is a vital source of expertise to lawmakers and often society as a whole. A conduit for everything from technicalities to a particular zeitgeist, lobbying can help shape policy and pierce the often insular bubble of political institutions.

At its worst, lobbying can undermine the very foundations of democratic society as it removes the implicit trust between the public and its elected officials. The merest whiff of undue influence – or worse, corruption – can wreak havoc not only on those politicians involved, but also those corporations represented by the lobbyists.

History informs

It may seem slightly odd to reach back several hundred years to discuss modern corporate lobbying, but a brief examination of one of the most powerful companies in history offers some interesting insights into the dangers of unrestrained corporate influence, and perhaps reveals the ‘ground zero’ for the reputation of corporate lobbying efforts.

“A state in the disguise of a merchant” is how Edmund Burke described the East India Company (EIC) in the late 19th century.2 One of the earliest joint stock corporations, in some respects the EIC presented the first concerted corporate lobbying effort, and certainly the first notable corporate lobbying scandal. At the height of its power the company had a private security force twice the size of the British Army, and controlled the lives and livelihoods of 200 million people. What is illuminating, however, is the route by which the EIC managed to obtain its position, straddling governments and continents and, at points, seemingly being above the law.

Its position stemmed predominantly from the company having set up a lobby group in order to convince Charles II’s government to enact legislation to see off the threat of the Dutch in the East Indies. The company used two methods to achieve this. The first was to obtain seats in Parliament for company officers and supporters who then made their way onto royal councils that implemented trade and economic policy. Between 1660 and 1679, at least 20 MPs were also EIC company officers. Including relatives, and what we would now consider lobbyists, at one point the EIC may have held 10% of MP seats in the House of Commons.3 During his committee’s impeachment efforts against certain company officers near the end of the 18th century, Burke would denounce this ‘revolving door’ of officers and politicians: “Today the Commons of Great Britain prosecutes the delinquents of India. Tomorrow these delinquents of India may be the Commons of Great Britain.”4

Their second method of securing influence was to loan large amounts of money to the monarch himself, which would then be converted into gifts as the loans matured. These years of concerted lobbying resulted in a charter granting the EIC sole control over trade in large swaths of Asia, and the ability to “make peace or war” in the area of its charter, although with the restriction that it could only be with non-Christians.

It was only the bursting of the East India bubble and the subsequent - and unprecedented - government bailout that finally brought down the company.

Fast forward four hundred years, and whilst it is unlikely that any modern corporation could achieve the dominance and physical presence of the EIC, the concentration of corporate power that exists today means the same fundamental issue remains. In the convoluted relationship between corporation and state there will always be friction, as the latter regulates and the former resists; this friction spawns a pervasive fear in modern liberal democracies that corporations can overtly influence or, at worst, corrupt legislatures.

1The proposal concerned the creation of a mandatory register for lobbyists.
Modern corporate lobbying

On the face of it, modern corporate lobbying is a far cry from the unbridled power and sway of the 18th and 19th centuries. That being said, the potential for problems caused by corporate lobbying remains. Much of this comes down to murky regulation on the part of policymakers, as well as the wildly varying levels of scrutiny evident even across well developed markets.

For example, a direct comparison between the lobbying systems in the United States and the European Union is difficult, and perhaps misrepresentative. While the scale of the U.S. lobbying universe is certainly larger, regulation differs greatly between the two, not least due to the dual nature of state and federal regulation apparent in the U.S.

In the U.S., lobby spending has grown significantly since the 1970s, after the preceding decade saw Congress embark on a regulatory spree, with business often side-lined during the process. In fact, at the time lobbying was often seen as ineffectual, if not rather looked down upon.

In response, the formation of lobbying groups such as the Business Roundtable sparked a turn towards more concerted lobbying efforts. In conjunction with the need to ensure the voice of business was being heard by legislators, it mirrored a change in mind-set from the business community, who started to see government not as something to be tolerated, but as a partner that could bring about opportunity. Power would eventually swing so far towards the lobbyists that eventually, in an effort to curtail it, Congress received a major budget increase that allowed policymakers to hire the necessary staff in order to reduce their reliance upon lobbyists for expert opinion and

Exhibit 1: Historical U.S. lobbying results

![Graph showing historical U.S. lobbying results](Source: Centre for Responsive Politics. Data as at December, 2019.)

Exhibit 2: EU transparency registrants

![Graph showing EU transparency registrants](Source: EU Transparency Register. Data as at December, 2019.)
feedback from industry.

The E.U., by virtue of being significantly ‘younger’ than the United States, has a far less entrenched lobbying culture. This hasn’t held back either the number of lobbyists in Brussels, or the absolute figure spent on lobbying activities: spending was estimated to be between €1.7bn and €2.1bn in 2019, with over 25,000 individual lobbyists, of which around 70% work for companies and business associations. The convoluted nature of the E.U. bodies of power and the decision-making process interwoven between them makes finding exact data complex.

The major difference between the two jurisdictions, however, is the nature of regulation. Historically, the U.S. has not restricted lobbying but instead has chosen to regulate through the Lobbying Disclosure Act of 1995 and the Honest Leadership and Open Government Act of 2007. Whilst the primary objective of these directives was to increase the disclosure of lobbying activities, gradually they have become stronger in terms of directing and regulating the behaviour of participants.

The E.U. tends to be more minimalistic in its standards, and these standards vary at different levels of the institution (i.e., at the Council, Commission, and Parliamentary levels.) The European Transparency Initiative of 2008 attempted to increase transparency between lobbying groups and the E.U., but is voluntary and unbinding in nature. The E.U. Transparency Register, established in 2011, remains the primary method by which lobbying is regulated in the E.U. It also remains voluntary, even if incentives exist in the form of access passes to certain buildings and alerts to consultations in the areas of their concern.

There are numerous issues with voluntary registers acting as regulation; most obviously, perhaps, by virtue of the paradox whereby to urge groups and individuals to sign up, the regulation associated with them cannot be too strenuous. If the regulation is overly onerous it encourages ‘shadow lobbying,’ a practice where unregistered lobbying groups attempt to bypass the system entirely, thereby increasing the opacity of the system even more. If it is overly lenient then the registers themselves become obsolete.

Finally, a key difference between the U.S. and the E.U. lies in the relationship between companies, lobby groups, and the funding of politicians. In the U.S. corporations are able to fund both parties and individuals (even if there are technical limits) through Political Action Committees (PACS), while in the E.U. such activities are almost non-existent. Even if this difference is a result of the election process of politicians in the two jurisdictions, in the U.S. it demonstrates an inveterate relationship between lobbyists and politicians, resulting in a significantly stronger position of power for lobbyists. One only has to consider the sway that the National Rifle Association has had over political discourse in the U.S. in the last fifty years to see how individual politicians have had to temper their positions on certain issues for fear of generating election problems for themselves.

One could pose the question: is this is set to continue? With a certain ‘volatility’ in national elections appearing over the last few years, with both socialist and populist candidates becoming more common and potentially electable, the days of lobbying groups attaching themselves to party groups and individuals may be set to change.

---

Exhibit 3: Declared EU lobbying meetings 2014-2019


---

1Lobbycontrol.de, EU-Lobbyreport. Data as at 2019.
If all of this appears convoluted, and occasionally incomprehensible, that is because it often is. The issue is that we live in a time when trust in governments, and even in democracy itself, is scraping all-time lows, so this opacity is fuel on the fire of public mistrust.⁶

A prime example of this is the ‘revolving door’ whereby government officials leaving their posts are quickly swept up by lobbying groups. Although slightly less prevalent now, in the U.S. between 1998 and 2004, 50% of departing Senators became lobbyists.⁷ With such famous figures as the former Deputy Prime Minister of the U.K., Nick Clegg, joining Facebook in 2018, or perhaps more famously, former U.S. Vice President Dick Cheney’s movements in and out of government and the defence industries in the 1990s, it is difficult to dispel fears that scarce public resources can be directed towards those entities that have the deepest pockets.

---

⁶A recent study by the OECD suggests that upwards of 60% of citizens do not have confidence in their national governments. (OECD – Government at a Glance, 2019).
⁷Public Citizen, Congressional Revolving Doors: The Journey from Congress to K Street, 2005.
Unintended consequences

The benefits of corporate lobbying are numerous and remain an important component of the democratic system. If left unchecked, however, the consequences of corporate lobbying can be damaging, not only to the competitive landscape and the reputations of the parties involved, but also to the corporations themselves.

As we have seen, the U.S. business landscape is inextricably intertwined with lobbying, both on a political and regulatory level. In some cases, companies, and the lobbying groups that represent them, have been very successful in ensuring that competitive advantages can be maintained, and that over-regulation does not unnecessarily pressure and disrupt healthily functioning industries.

However, when allowed to run rampant, short-sightedness can lead to unintended consequences for businesses that, in the long run, can damage corporate profitability and, ultimately, shareholder returns. An example of this can be found in the American food industry.

A powerful two-pronged approach by U.S. food lobbying groups over the last few decades—both at the consumer and regulatory levels—has resulted in an environment that has lagged other countries with regard to nutrition and healthy eating. Whilst historically this has proven profitable for U.S. companies in the short term by protecting margins and barriers to entry, it has recently proved to have some problematic longer-term effects.

As research concerning the long-term effects of diet on human health has become more prominent, revelations over the slight decline in life expectancy in the U.S. in the last decade, as well as the extraordinary cost to taxpayers from diet-related diseases such as diabetes (now estimated to cost $245 billion every year), have resulted in a change in consumer attitudes towards food and drink.8 In fact, for the first time ever, a recommended daily sugar limit is contained in the USDA’s dietary guidelines for 2015-2020; an anathema to some but at least an attempt to bring the U.S. in line with other developed nations.

At a regulatory level, the E.U. has been significantly further ahead of the U.S. with respect to food and additives, not to mention genetically modified organisms (GMOS), thereby forcing European companies to reassess many of their business models. Accordingly, many have spent the last few decades investing in their own nutrition businesses, accompanied by M&A, and improving the sustainability of ingredients and packaging to match the changing demands of consumers. Nestlé and Unilever are among the most obvious examples of this.

In contrast, American companies have, by and large, been comfortable to extend current product lines to drive domestic growth, or have tinkered with reducing unwanted additives in these products, in part due to their successful lobbying on the subject, especially with the Food and Drug Administration (FDA). This has left them in the uncomfortable position of playing catch-up in recent years, often by over-spending on acquisitions and attempting to dispose of long-held brands in sudden decline. This inertia, created by a reliance on lobbying to protect profits, can ultimately harm companies in the long run as it discourages innovation and long-term thinking.

One outcome of this is an increasing schism between corporations in the U.S. and the lobbying organisations that represent them. The Grocery Manufacturers Association (GMA) has been the primary lobbying organisation on behalf of many of these companies since it was founded in 1908, but has lost a significant portion of its membership in the last few years, including some of the biggest players such as Unilever, Nestlé, Mars, and Kraft Heinz. The reason behind this rift has been an unwillingness on the part of the lobbying groups to adapt and innovate, preferring instead to defend the status quo, which often results in a difference in messaging with underlying members of the organisation.

Similar friction is coming to the fore among oil and gas producers and their representative lobbying organisations, especially with regard to climate change. As pressure continues to build on these companies to make fundamental and far-reaching changes to address the issues presented by the need to reduce carbon emissions, differences between the narratives presented by companies and the lobbying efforts undertaken by organisations such as the American Petroleum Institute (API) and the American Fuel and Petrochemical Manufacturers (AFPM), are being pounced upon by activists and commentators. As momentum has continued to build, it is becoming increasingly clear to companies that their lobbying efforts—either direct or indirect—are under increasing levels of scrutiny, and the damage that can result from what may be viewed as disingenuous efforts or ‘spin’ is also increasing.

8 Bernstein, What’s your poison? Food as medicine or food as a public health problem. Data as at July 2018.
Shareholder and investor pressure

We believe that investors should be as discerning about corporate lobbying as they are about examining a corporate balance sheet or integrating ESG factors into their analysis. This shouldn’t be mistaken for simple avoidance of the risks of scandal or bad publicity. It should be because a company’s lobbying efforts can be an extremely illuminating window into whether or not management is truly enacting strategy and providing the long-term vision that we believe is required for meaningful shareholder value.

There are a few signs that asset owners and managers are increasingly focusing on the matter, with two examples set out below:

Example A

In October 2018, Sweden’s AP7 fund and the Church of England Pensions Board wrote to the chairs of 55 European companies to push for a review of the lobbying practices being adopted by trade associations and lobbying groups.

The two parties were particularly focused on the climate change goals set out in the 2015 Paris Agreement, and fears that companies were publicly stating supportive positions while using lobbying groups and associations to push agendas that were not compliant with the Agreement’s goals.

The letter was written in consultation with the Institutional Investors Group on Climate Change (IIGCC), a body that oversees €21 trillion in assets under management.

Example B

The asset manager Schroders called upon companies in October 2018 to be transparent about the amount they spend on lobbying governments and policymakers and, most importantly, their reasons for doing so.

This came after Schroders voted against the management team of Google in 2018; they voted in favour of a motion that Google’s parent company, Alphabet, would have to produce a report on its lobbying activities, as well as provide more clarity on the company’s lobbying policy. With reports that Google had out-spent every other company in Washington in 2017 by spending more than $18 million on lobbying activities, the scale of the operation was viewed as material enough to warrant significant attention from shareholders.9

Although less high profile than other corporate activities, and even if in absolute terms not large compared with broader company outlays, the expenditure on lobbying in the aggregate is significant. When it goes wrong, it can be damaging to both finances and reputations.

As disclosure on ESG practices is becoming more mainstream, and companies are rightly being forced to increase levels of transparency, it seems only a matter of time before opacity around lobbying will no longer be accepted by shareholders. Also, with enforcement of regulations remaining difficult in most jurisdictions, shareholders can act as one of the key policing mechanisms of corporate lobbying. So what is good practice within the landscape of corporate lobbying?

In our opinion, good practice revolves around corporate integrity, transparency, and oversight. This will spread from the top to the bottom of a company, starting with the Board in its oversight capacity, ensuring that management adheres to fair and responsible practices within a set budget. Correct training procedures for those who may end up in a lobbying capacity should be accompanied by an internal recognition of an organisation’s strategy, and how lobbying should be aligned accordingly. Finally, transparency within reports and accounts should become the norm, not the exception.

Lobbying activities themselves should align with corporate purpose and the wider strategy of the company. The use of lobbying organisations, or trade and industry groups, to advance conflicting agendas is coming under growing scrutiny, and companies are increasingly having to analyse sometimes long-held memberships of these organisations.

Conclusion

While the transparency and regulation of corporate lobbying has improved over the last decade there is still significant room for improvement. Regulation remains inconsistent and often fairly light-touch across western countries, meaning loopholes are common - and commonly exploited.

However, in today’s world, through technology and increasingly aware populations, the consequences of lobbying malpractice – not just at a legal level but also a reputational and financial one – can be extremely damaging.

As ESG investing has increased meaningfully in the last few years, transparency is becoming a pre-requisite rather than an option for companies; further opacity on their lobbying activities does not seem to chime with the needs of investors. Indeed, for investors, lobbying is gradually being seen as an indicator of management’s ability, as well as a vital avenue of analysing business risk. Investors should have the right to ask companies to be transparent about their lobbying activities in order to ensure that what companies are advocating for is in line with not only the companies’ stated objectives, but whether it is conducive to what we, as shareholders, believe is in the best interests of the company in the long term.

9 Centre for Responsive Politics. Data as at December, 2019
ABOUT THE AUTHOR

Freddie Fuller

Product Specialist, RBC European Equity

Freddie is a Product Specialist in the European Equities team. Prior to joining RBC Global Asset Management in 2018, Freddie was Head of Investment Oversight for London CIV, where he helped to oversee the pooling and management of up to £35bn of London local authority pension fund assets, with a focus on investment analysis, manager selection and oversight. He spent the preceding few years assisting with the creation of the underlying investment management company, guiding it from concept to launch and has also previously worked for HSBC in London.

Freddie holds a BA (Hons) in English Literature and Language from the University of Leeds and the CFA UK Investment Management Certificate.