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Ministry of Health
College of Medicine Building
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Attn.: Director, Epidemiology and Disease Control Division

March 15, 2018

Re: Response to the Ministry of Health's Public Consultation on Proposal to Introduce Standardised Packaging of Tobacco Products in Singapore

We refer to the press release by the Ministry of Health (MoH) on 5 February 2018 of its "Public Consultation on Standardised Packaging and Enlarged Graphic Health Warnings for Tobacco Products" which announce, among other things, that the Ministry of Health will be seeking the public's views up until 16 March 2018 on the potential adoption of standardised packaging (also known as "plain packaging") in Singapore. This follows on from a similar exercise undertaken by the MoH in early 2016.

While the Institute for Market Economics (Bulgaria) has no direct interest in the regulation of tobacco products in a foreign (non EU) country, we write to share our views and concerns with respect to plain packaging and the unintended negative consequences that would inevitably result from the implementation of such a regulation, as we believe that the general trend in the world for more and more harmful regulation that has no direct effect on smoking itself is dangerous and may affect both European policies and the regulatory framework in Bulgaria.

The Importance of Brand Names

Plain packaging, by prohibiting the visual elements that allow consumers to differentiate products, would hamper brand recognition. The benefits of branding, though, are well understood. From the consumer's point of view, the function of a brand name is to convey information about a producer's reputation. Consumers rely on brand names because they know that the producers to whom they belong have an incentive to maintain the quality of their products in order to preserve the value of their brands. In other words, brands simplify choices[1].

[1] "You Choose", *The Economist*, December 16, 2010, at http://www.economist.com/node/17723028

For these reasons, consumers are usually willing to pay more for brand name products than for generic products. They pay more for used cars with brands associated with higher quality[2]. Similarly, they pay a premium for brand-name prescription drugs as opposed to generic drugs, for brand-name clothes, etc. Because of this consumer attachment, brand names are worth a lot to producers.

Brands – well known and instantly recognizable names attached to certain products – are a fundamental component of advertising, but one that definitely has its specifics. Branding alone is not persuasive, thus it has no significant impact on the consumption of a product. Branding is aimed at directing consumer choice of similar competing products, meaning that the basic idea is to capture the largest possible market share. Brands are important and valuable to businesses not because they "create" consumption, but because they help companies differentiate their products and compete[3].

A Crucial Issue

Government policies and regulations regarding tobacco products have always been controversial, but lately it's the plain packaging that is standing out as the most crucial, and therefore ardently discussed, issue. While other restrictive policies are more or less related to the act of smoking, like increasing the price of cigarettes (through taxation with excise duties) or giving information (health warnings), plain packaging is a completely different story. Plain packaging has far less to do with cigarettes themselves, and is predominantly aimed at variety and choice – it's the sole idea of branding (thus particular businesses) that is being attacked here and not smoking.

If one reviews recent literature or even media coverage of smoking policies, plain packaging is sure to be quickly noticed. It may seem far less interesting an issue, than for instance the ban of smoking in public places (as recently enforced in Bulgaria), but plain packaging is a question of serious disputes and campaigns. Independent papers on the smoking industry directly call plain packaging to be "**the key threat to the industry**"[4].

Concerns about plain packaging are rife and widespread in the international community

In December 2011, the Australian government passed the *Tobacco Plain Packaging Act 2011*. This Act, which became effective in December 2012, mandates that the design of tobacco products and their packaging be standardized and that trademarks can no longer be used.

This Australian plain packaging measure has drawn a strong reaction from the international community and is being challenged by Indonesia, Honduras, the Dominican Republic and Cuba (the Claimants) at the World Trade Organization (WTO) that has set up a Panel to deal with this Dispute. These countries argue that, among others, Australia's plain packaging requirement is inconsistent with the WTO's Trade Related Intellectual Property Rights and Technical Barriers to Trade Agreements.

In addition, many business associations, chambers of commerce, intellectual property associations and law societies have and continue to raise concerns on the existing plain packaging legislation in Australia as well as on the introduction of similar legislation or proposals to do so by several countries - including the UK, Ireland, France and New Zealand - well before the legality of the Australian legislation has been assessed by the WTO Dispute Settlement Body, thereby demonstrating a lack of consideration for the WTO Dispute Settlement Process.

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[2] Automobile Leasing Guide, 2009, *Perceived Quality Study*, Summer 2009, p. 5, at https://www.alg.com/pdf/perceived_quality_study.pdf

[3] See The Influence of Advertising on Consumption, Regulation Series, Montreal Economic Institute, June 2011, at http://www.iedm.org/files/note0611_en.pdf

[4] Global Tobacco, *Tobacco growth model remains potent; Plain packaging update*, Barenberg Capital Markets Equity Research, 8 June 2012

Given these concerns over the legality of plain packaging, the European Union (EU) rejected proposals for EU-wide plain packaging within the revised Tobacco Product Directive (TPD2). In fact, a large number of EU Member States have questioned the legality of the measure under the EU's internal market provisions5 and a number of other countries that had considered the introduction of plain packaging eventually decided not to progress with it, citing the lack of evidence and the negative unintended consequences as reasons for not proceeding with this policy.

Despite this, a small number of EU Member States are unlawfully seeking to introduce plain packaging and ban branding. These decisions, including the specific article in the TPD2 upon which some EU Member States believe they can rely on to introduce this measure, are being challenged in the courts.

The data from Australia shows that plain packaging has not worked

Plain packaging has been in place in Australia since December 2012, and no official Government evidence has been advanced to demonstrate that plain packaging has actually had an impact on smoking behavior. In fact, the actual evidence reinforces the fact that plain packaging has not worked:

- Since its introduction, plain packaging has not altered the pre-existing rate of decline in smoking prevalence.[6]
- Plain packaging and larger graphic health warnings have had no impact on the smoking behaviour of minors or adults.[7,8]
- Conversely, illegal trade appears to have benefitted as the share of illegal trade of total consumption has grown from 11.5% in 2012 to 14.3% in the first half of 2015.[9,10]

Instead expert analysis[11] and the data from Australia confirm that plain packaging has had serious economic effects in terms of competition and price. In particular:

- It has led to acceleration in down-trading indicating that adult smokers are increasingly looking for cheaper alternatives. Price has become the most important aspect of competition in Australian tobacco market.[12]
- It has limited opportunities to differentiate between products and tended towards commoditization.

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[5] 10 Member States issued detailed opinions in response to Ireland's PP notification under the EU Technical Standards Directive (TSD). 11 Member States issued detailed opinions in the context of the UK PP notification. 10 detailed opinions were issued in response to France notification and 8 detailed opinions in response to Hungary's notification.

[6] See results from the 2014-15 National Health Survey, available via: http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4364.0.55.001~2014-15~Main%20Features~Smoking~24

[7] See "The (Possible) Effect of Plain Packaging on the Smoking Prevalence of Minors in Australia: A Trend Analysis", University of Zurich, Department of Economics, Working Paper No. 149, May 2014, available via: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2414430, and "The "Possible" Effect of Plain Packaging on Smoking Prevalence in Australia: A Trend Analysis", Working Paper No. 165, June 2014, available via: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2460704.

[8] See "An analysis of smoking prevalence in Australia", London Economics, November 2013, page 1. Commissioned by Philip Morris International. Available at: http://londoneconomics.co.uk/wp-content/uploads/2013/11/London-Economics-Report-Australian-Prevalence-Final-Report-25-11-2013.pdf

[9] See KPMG 2015 Half Year Report "Illicit tobacco in Australia", October 2015. Pages 6 and 30. Commissioned by British American Tobacco Australia Limited, Philip Morris Limited and Imperial Tobacco Australia Limited. Available via: http://kpmg.co.uk/creategraphics/2015/10_2015/LTM_H1_2015_Report/index.html#6 this is the 5th report published by KPMG examining the size of the illegal tobacco market in Australia. Illegal trade includes counterfeit, contraband and unbranded tobacco products.

[10] See KPMG 2015 Half Year Report "Illicit tobacco in Australia", October 2015. Pages 6 and 30. Commissioned by British American Tobacco Australia Limited, Philip Morris Limited and Imperial Tobacco Australia Limited. Available via: http://kpmg.co.uk/creategraphics/2015/10_2015/LTM_H1_2015_Report/index.html#6 this is the 5th report published by KPMG examining the size of the illegal tobacco market in Australia. Illegal trade includes counterfeit, contraband and unbranded tobacco products.

[11] See "Economic Analysis of a Display Ban and/or Plain Packs Requirement in the UK, A Report from Europe Economics", Dr. A. Lilico, Sept. 2008; and "Economic Analysis of a Plain Packs Requirement in the UK, A Report from Europe Economics", Dr. A. Lilico, June 2012 (commissioned by JTI). Available at http://www.jti.com/how-we-do-business/resources/.

[12] See KPMG 2015 Half Year Report "Illicit tobacco in Australia", October 2015. Page 11

- It has led to a reduction of manufacturer and retailer margins; as a result there was and will be less incentive for investment and innovation, in turn negatively impacting related service industries (e.g. pack designers, pack manufacturers and ink suppliers).
- It also created barriers for new market entries and prevented the introduction of new brands.

Plain packaging for tobacco products would set a precedent for a similar measure to be applied across a whole range of other consumer products

This precedent is even stressed by the representatives of the World Health Organization (WHO):"We are also watched by sugar and alcohol products manufacturers, who see the tobacco control movement as a precursor to threats they now face from public health campaigns. These industries fear a united international community acting on behalf of consumers. In the coming days, I hope their fears will be fully justified as we take further steps to end the tobacco epidemic".[13]

Plain packaging would infringe intellectual property rights

Plain packaging represents an extraordinary deprivation of companies' most valuable assets – its brands and trademarks – and as a consequence an infringement of these companies' intellectual property rights. Any mandating of plain packaging for tobacco manufacturers sets a dangerous precedent for all trademark owners in that it opens the door to extend this violation of intellectual property rights across a whole range of other consumer products and to other industries.

Plain packaging would increase illegal trade

The spread of plain packaging to other consumer good categories and industries would make counterfeit and contraband products easier to make, distribute and sell which would result in a significant increase in demand for illegal products and have a negative impact on legitimate owners. As such, the implementation of any plain packaging regulation in Singapore would only add to and further exacerbate the existing significant problem of contraband tobacco products in the country, while potentially also causing an increase in the levels of counterfeit tobacco products, as plain packaging would only make it easier for criminal groups to manufacture imitation products.

Plain packaging would have a serious and widespread negative impact on consumers and retailers

Packaging conveys guarantees of origin, quality and investment. Packaging is also essential to trade in that it allows consumers and retailers to identify and distinguish products at point of sale. The implementation of plain packaging would impair these fundamental functions of packaging, thereby negatively impacting consumers as well as retailers given they would no longer be able to differentiate effectively between brands in the supply chain and at point of sale, leading to increased transaction times.

Other unnecessary burdens and increased costs for retailers referred to by Australian retailers, who have experienced plain packaging first hand, include customer frustration, inventory management delays, as well as heavier staff workloads and training requirements.

Plain packaging furthermore has had a direct negative impact on the retail tobacco sector as a result of the decline in legitimate sales revenues driven by downtrading and an increase in illegal trade, leading to

[13] See the statement by the Head of the Secretariat of the WHO Framework Convention on Tobacco Control (FCTC) during the Seventh session of the Conference of the Parties to the FCTC in November 2016 at: http://www.who.int/fctc/secretariat/head/statements/2016/cop7-head-secretariat-speech/en/.

loss of business and unemployment throughout the sector and its supply chain, especially amongst smaller, family owned and operated retail stores, which rely heavily on the revenue derived from tobacco sales.

Conclusions

The existing scientific literature does not establish a causal link between plain packaging and tobacco consumption. In the absence of proof, any implementation would at best represent merely a shot in the dark as far as public health is concerned, and unfortunately risks provoking consequences that are more negative than positive.

What the available evidence does show is that enforcing plain packaging on tobacco products would have detrimental consequences on legal producers and their brands, without reducing the consumption of tobacco. On the contrary, instead of reducing health risks, this policy would achieve exactly the opposite of its stated purpose by undermining the health objective of the tobacco regulatory policy. It would not be the first time that a seemingly well-intentioned policy produces harmful unintended consequences.

Moreover, **tobacco may be just the first victim in a global attack on branding**. Other products deemed "sinful" may well be targeted in the future: fast food, alcohol, and even soft drinks. In economics, the availability of information is important. However, once the risks of using a product are known, to what extent does the government need to interfere with the choices of individuals in order to protect them from themselves? If everybody already knows that cigarettes cause health problems – could we respect the choices of those who adopt this behaviour, even if this decision remains inscrutable to some?

In light of the detrimental consequences of plain packaging highlighted in the paragraphs above, we encourage the Government of Singapore - as a supporter of free trade and of intellectual property rights - not to implement such a far-reaching and damaging regulation.

Thank you for your attention to our concerns.

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