JT's response to the Public Consultation on Proposed Tobacco Control Measures in Singapore

15 March 2018

Japan Tobacco Inc. is a leading international tobacco company with operations in more than 120 countries. With close to 60,000 employees, it manufactures and sells some of the world's best-known brands including Winston, Camel, Mevius, LD and Natural American Spirit. The JT Group is committed to investing in Reduced-Risk Products (RRP) and currently markets Ploom TECH, its tobacco vapor product, and various e-cigarette products under the Logic brand. The Group is also present in the pharmaceutical and processed food businesses. For more information, visit https://www.jt.com/.

1. INTRODUCTION

1.1 Japan Tobacco Inc. ***(JT)*** sets out its response to the Public Consultation on Proposed Tobacco Control Measures in Singapore ***(the Consultation)***, more specifically on the Proposal to introduce standardized packaging together with enlarged graphic health warnings ***(the SP Proposal)***, being held by the Ministry of Health ***(MoH)***.

1.2 JT makes this response in support of, and in addition to, the detailed submission to the Consultation by its subsidiary, Japan Tobacco International **(*JTI*)**, dated 15 March 2018. JT does not repeat here, but agrees with, JTI's submission to the Consultation.

1.3 JT has invested heavily in expanding its international business outside Japan in markets like Singapore, with the international tobacco business serving as the profit growth engine of the Japan Tobacco Group ***(the Group***). Through its Singapore subsidiary, the Group continues to grow within the Singaporean market, particularly since it converted to a Direct Selling Operations model in 2009. Between 2009 and 2017, the Group has continually stepped up its investments in Singapore.[1]

1.4 JT remains strongly opposed to the standardised or "plain" packaging of tobacco products for all of the reasons outlined in JTI's submission and JT's March 2016 Response to the Public Consultation on Potential Tobacco Control Policies in Singapore ***(JT's 2016 response).***

1.5 From the specific perspective of an overseas shareholder that has invested significantly in the Singapore economy, JT wishes to reiterate that the SP Proposal will:

- infringe legal rights, depriving JT (and other members of the Group) of its most valuable assets – its brands and trademarks;
- make Singapore less attractive place for investment by international businesses like JT and undermine investor certainty in Singapore; and
- have serious consequences, including increasing opportunities for illegal trade in tobacco products, negative effects on competition and the broader Singapore economy.

1.6 JT is disappointed **that the Consultation significantly undermines the serious negative consequences that the measure risks having, if implemented in Singapore.**

1.7 JT remains convinced that there are better alternatives to the SP Proposal, which could reinforce the tobacco control framework in Singapore and achieve real health benefits.

[1] The investment made by the Group in Singapore from 2009 - 2017 includes: (a) the development and training of its 113 employees, estimated at over 1 million Singapore dollars; (b) the payment of corporate, tobacco excise and goods and services taxes, estimated at over 1.5 billion of Singapore dollars; (c) the payment of annual salaries and other benefits for its employees, estimated at over 80 million of Singapore dollars; (d) providing business for a number of vendors, professional service providers and supplier companies in Singapore, estimated at over 50 million of Singapore dollars.

2. THE SP PROPOSAL AND ITS UNINTENDED CONSEQUENCES

The SP Proposal will deprive manufacturers' key assets and damage brand equity

2.1 **The SP Proposal imposes an unlawful ban on branding, as it eradicates branding and erodes brand equity.**

2.2 The JT Group has invested very substantially in its brands (such as Winston, Camel, Mevius and LD), which are worth billions of Singapore dollars.

2.3 JT remains concerned that this measure would infringe fundamental principles of intellectual property by depriving JT and other manufacturers of their rights to communicate their products' quality and authenticity to adult smokers.

The SP Proposal risks having potential legal implications and creating investment uncertainty

2.4 Intellectual property is recognized as a key growth and economic driver for Singapore.[2] However, the SP Proposal will disprove this claim as it demonstrates a fundamental disregard for the protection of intellectual property rights, protected by national and international law, and the investments JT and others have made to establish and develop that property.

2.5 The adoption of the SP Proposal in Singapore may infringe Singapore's obligations under the Agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership (JSEPA)[3], amongst other investment and international treaties, where our investment into Singapore may enjoy "fair and equitable treatment and full protection and security". Besides, JT considers that the SP Proposal could correspond to the "expropriation", which is a prohibited form of constraint with the absence of certain exceptional circumstances and appropriate compensation under the said JSEPA.

2.6 If adopted, **standardized packaging will damage the reputation and credibility of Singapore as a place to do business.** If a regulation is introduced which is disproportionate and lacks the necessary evidence to justify it, the extent of regulatory burdens for the tobacco sector (with a precedence set for a whole range of consumer products[4])) will increase, while investors' confidence in Singapore will decrease.

2.7 The risk that standardised packaging of tobacco products lays down a precedent for a whole range of consumer products, is demonstrated, for example, by previous consideration of such

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[2] The Intellectual Property Office of Singapore acknowledged as much in saying: *"as our nation progresses to the next phase of our social and economic development (…) we must continue to give due recognition and respect to IP creators and their original works, to encourage the development of Singapore's creative talent pool, and for the betterment of our society",* Speech by Dr. Stanley Lai, IPOS Board Chairman at the World IP Day Appreciation Event 2015.

[3] JSEPA entered into force in 2002 and subsequently updated in 2007 by a Protocol. It provides a *"legal framework for an economic partnership"* in light of the *"warm relations and strong economic and political ties"* between Japan and Singapore. Under Articles 103 and 104, both countries have undertaken to take appropriate measures to "*facilitate trade and investment flows*" between the two countries and the "*efficient functioning*" of their markets. The countries have also agreed to cooperate in order to control anti-competitive activities.

[4] See, for example, the MARS submission to the UK Department of Health's 2012 consultation on the introduction of regulations for standardized packaging of tobacco products. Available at: https://www.gov.uk/government/consultations/standardised-packaging-of-tobacco-products.

measure for alcohol (by the UK Parliament's Health Select Committee in 2012)[5] and 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"*.[6]

The SP Proposal will not be effective and will have serious consequences

2.8 As a responsible company and an investor in Singapore, JT is seriously concerned that **Singapore is following the footsteps of Australia, regardless of its negative consequences on premium brand owners, the competitive environment, legal trade and the failure in generating positive health benefits.**

2.9 Indeed, the Consultation claims that the standardised packaging regime has been successful in Australia and could be replicated in Singapore.[7] However, it ignores the recent data released by the Australian Government, which reveals that, after the implementation of standardised packaging along with larger graphic health warnings in 2012, the decline in smoking prevalence has come to a halt between 2013 and 2016: *While smoking rates have been on a long-term downward trend, for the first time in over two decades, the daily smoking rate did not significantly decline over the most recent 3 year period (2013 to 2016)".* [8]

2.10 Moreover, the official data emerging from France, which have been equally ignored in the Consultation, point into the same direction: the combination of standardised packaging and larger health warnings has not had any discernible effect on tobacco sales in France.[9] These data were earlier quoted by French MoH in the context of her statement that standardised packaging *"does not lead smokers to stop smoking"*.[10]

2.11 It is therefore not surprising that the attitudinal surveys put forward in the Consultation are unable to demonstrate that plain and "unattractive" packs have changed smoking habits in Australia or more noticeable health warnings on these packs have convinced smokers to quit.

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[5] See more on this trend via: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/583047/alcohol_public_health_burden_evidence_review.pdf and http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(17)32868-4.pdf.

[6] 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/.

[7] See at: https://www.moh.gov.sg/content/dam/moh_web/e-Consultation/PublicConsult_StandardisedPackaging_Tobacco/2018-02-05%20Public%20Consultation%20Paper%20-%20SP.pdf.

[8] See the by the National Drug Strategy Household Survey (NDSHS) at: https://www.aihw.gov.au/reports/illicit-use-of-drugs/ndshs-2016-key-findings/contents/summary.

[9] See data by the OFDT (Observatoire français des drogues et des toxicomanies) on the volumes of tobacco products distributed to retailers in France. It indicates that the number of cigarettes shipped to retailers remained largely unchanged (-0.7%) in 2017, while the amount of other tobacco products decreased by 5.1%, following excise tax increases in February and November 2017. Available at: https://www.ofdt.fr/statistiques-et-infographie/tableau-de-bord-tabac/.

[10] See French MoH's statement during a parliamentary debate on the Social Security Finance Bill in November 2017. Available at: http://www.assemblee-nationale.fr/15/cri/2017-2018/20180075.asp.

2.12 Conversely, Australian premium brand owners lost the value of their key assets through down trading and the price-led competition[11] to the benefit of criminals.[12]

2.13 With the pre-existing problems of illegal trade, the situation will be worse in Singapore, despite the efforts to demonstrate the opposite.

2.14 Even if the Consultation undermines the data that emerges from Australia with regard to illegal trade, the first counterfeit 'plain' packs have been uncovered in the UK, following the implementation of the measure.[13]

2.15 **Any increase in illegal trade will cause significant losses to the Singapore Government, legitimate businesses, and further undermine JT's brand equity.**

Worse, the regime that eradicates branding and erodes brand equity will put into jeopardy the Government's efforts to maintain Singapore's reputation and credibility as a place to do business.

3. THE WAY FORWARD

3.1 It is necessary and right to create a regulatory framework for tobacco control, which can tackle youth smoking and remind the population of the health risks of smoking. However, **the introduction of a measure that only adds another ineffective layer of regulation without any health benefits, creates incentives for illegal trade and unjustifiably attacks the key assets of legitimate businesses, is not the right policy to pursue.**

3.2 The introduction of a regulation shall not be based on surveys that demonstrate people's perceptions, but on a sound impact assessment and real facts that the measure works, which are non-existent in the context of the Consultation.

3.3 The SP Proposal is not and will not be effective in changing smoking behaviour in Singapore in terms of smoking initiation and quitting. It has not generated such effects in Australia and so far has not had any health benefits in the UK and France.

3.4 The adoption of a regime, which substantially diminishes the fundamental legal rights of one legitimate industry, would set a dangerous precedent for the potential loss of intellectual property rights for other industries, potentially causing the latter to adopt a cautious approach towards investing in Singapore.

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[11] For example, the KPMG 2016 Full Year Report *"Illicit Tobacco in Australia"* (see p. 11, at: https://home.kpmg.com/content/dam/kpmg/uk/pdf/2017/04/Australia-illict-tobacco-Report-2016.pdf) demonstrates that the market share of low-priced cigarettes has from 33% in 2012 to 60% in 2016 at the expense of mid-priced and premium categories of cigarettes. In addition, some brands became obsolete, creating a market concentration. For example, in 2014, two of the twenty-one premiums brands had been discontinued in Australia. See at: http://tobaccocontrol.bmj.com/content/suppl/2015/02/09/tobaccocontrol-2014-052071.DC1/tobaccocontrol-2014-052071supp_table1.pdf.

[12] It is notable, that the Australian Border Force has seized considerable volume of illegal cigarettes, many of which contain *"metal shavings and even bird droppings"* that may risk creating serious health hazards for consumers of these products. See more at: http://www.abc.net.au/news/2017-02-20/illegal-tobacco-cigarettes-smuggled-into-australia-fluffy-toys/8285470.

[13] See at: https://www.betterretailing.com/first-fake-plain-packs-discovered.

3.5 JT encourages the Singapore Government to reflect on better alternatives that could help achieving public health goals without negative consequences for businesses, policy makers and society.

3.6 A number of countries, including Japan[14], have chosen to implement public information campaigns and tailored education initiatives on smoking and health. The evidence emerging from shows that these initiatives helped reduce smoking prevalence and promote quitting. The focus of the Singapore Government should be on targeted government-led public information and education campaigns instead of progressing the SP Proposal further.

3.7 Lastly, no regulatory measure should progress in the absence of an appropriate assessment of its potential impacts on smoking consumption and prevalence and the unintended consequences it may have. Any such assessment also needs to take into account changes that may have resulted from existing measures and recent policy interventions.

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[14] See *Euromonitor International* sales volume data for Japan from 2003 to 2016. A number of anti-smoking campaigns have been held in Japan, including the one initiated by the Japanese MoH: *"In addition, smoking cessation treatments have been covered by health insurance since April 2006 and the effect of that is to be evaluated"* (see via: http://www.mhlw.go.jp/english/wp/wp-hw2/part2/p2c1s3.pdf.)