



Japan Tobacco Inc.'s response to the UK Department of Health's consultation on standardised packaging of tobacco products

5 July 2012

Japan Tobacco Inc. is a leading international tobacco product company. Its products are sold in over 120 countries and its internationally recognized cigarette brands include Winston, Camel, Mild Seven and Benson & Hedges. With diversified operations, it is also actively present in pharmaceuticals and foods. The company's revenue was ¥2.034 trillion (£15.485billion) in the fiscal year ended March 31, 2012.¹

¹ Translated at the rate of ¥131.34 per £ 1 , as of March 30, 2012

1. Introduction

1.1 Japan Tobacco Inc. (**JT**) sets out its response to the UK Department of Health's (**DH**) consultation on the standardised packaging of tobacco products (the **Consultation**) below.

1.2 JT is the world's third largest global tobacco manufacturer on a market share basis,² selling internationally well-recognized cigarette brands in over 120 countries, including the UK, through its international tobacco business Japan Tobacco International (**JTI**). JTI has separately submitted a detailed response document to the Consultation dated 3 July 2012 (**JTI's Response**). Where appropriate, JT refers below to JTI's Response.³

1.3 JT acquired all the non-US tobacco business of RJR Nabisco Inc. in 1999 in a deal valued at US\$7.83 billion (approximately £4.85 billion at the exchange rate at the time)⁴ to build its strong international brand portfolio on the basis of the Camel and Winston brands. Following this, in 2007, JT acquired the Gallaher group, a leading UK tobacco manufacturer, for £9.4 billion. This strengthened JT's brand portfolio by adding the Benson & Hedges, Silk Cut, Mayfair, Sovereign, Sterling and Berkeley cigarette brands, as well as a number of other tobacco products including roll-your-own tobacco (**RYO**), also known as hand-rolled tobacco (such as Amber Leaf), cigars (such as Hamlet) and pipe tobacco (such as Condor). The Japan Tobacco group of companies (the **JT Group**) manufactures product for the UK market at sites in the UK (in Northern Ireland) and outside it (for example, in Germany).

1.4 As a result of these major acquisitions in 1999 and 2007, JT has invested heavily in expanding its international business outside Japan in markets like the UK, with this international tobacco business serving as the profit growth engine of the JT Group.

1.5 Through its UK subsidiary, Gallaher Limited (**Gallaher**), the JT Group has a long-standing, significant presence in the UK market. It employs over 1,800 people in the UK. It operates a manufacturing site at Lisnafillan, Northern Ireland, employing over 900 people, as well as sites in Weybridge, Crewe and Manchester. The UK is one of the JT Group's key markets.

1.6 The JT Group's UK market share for cigarettes and RYO were 38.8% and 37.1% respectively in 2011. It holds the No. 2 position on a market share basis in the UK.

² For further information about JT, please see <http://www.jt.com/about/outline/history/index.html>.

³ In particular, JT does not provide a separate answer to the questions set out in Appendix B of the Consultation, and refers to and relies upon JTI's Response in this regard.

⁴ Currency conversion performed using historic exchange rate data for May 1999 from <http://www.x-rates.com/d/GBP/USD/hist1999.html>.

1.7 Plain packaging would require all tobacco packs to be “standardised”.⁵ The Consultation fails to set out the precise specifications of ‘plain packaging’ were it to be introduced. It does not illustrate what its envisaged packs would in fact look like but, at a minimum, some key features include: (a) no branding other than the use of a brand name in a specified size/font (banning the use of logos, and only prescribed color/s to be permitted on the outside or inside of packs); and (b) packs to be of a standard shape and opening and possibly manufactured from particular materials.

1.8 Plain packaging unjustifiably infringes fundamental legal rights to property, expression and trade which are protected by UK, EU and international law. It would deprive the JT Group of its most valuable assets – its brands and trademarks.

1.9 Minors should not smoke and should not be able to obtain tobacco products. Therefore, JT supports the DH’s policy objective of seeking to prevent minors from smoking. However, JT is strongly opposed to plain packaging as it will not achieve this objective (JT notes that this is also the independent opinion of leading experts, see Section 2 below).

1.10 As discussed further below, there is no evidence that plain packaging will work. The DH has not put forward any evidence that addresses the impact of plain packaging on actual smoking behavior. Instead, the ‘evidence’ it does have is unreliable and unconvincing. The DH acknowledges this, and instead proposes an indefensible ‘expert panel’ to fill the obvious gaps in its evidence base.⁶ This is made worse by the fact that the DH has not even obtained the opinions of these individuals yet.

1.11 Plain packaging has unintended negative impacts such as infringing fundamental legal rights, reducing investor certainty in the UK, impeding fair competition in the market, causing broader economic detriments and increasing opportunities for the criminals behind the illicit trade of tobacco products. Given these impacts and the absence of an evidence-base of the requisite standard, there is no justification for the UK taking forward plain packaging and JT strongly encourages the DH to consider the less restrictive alternative solutions described in Section 4 below.

⁵ The Consultation refers to both “*standardised*” and “*plain*” packaging. Whilst the Consultation does not elaborate the precise packaging requirements that the DH may propose, ‘plain packaging’ is the internationally accepted terminology. JT refers to ‘plain packaging’ throughout this response.

⁶ In the Consultation’s Impact Assessment the DH proposes using the “*best guess*” and “*subjective*” views of a panel of individuals with a vested interest in the outcome. The panel will “*best guess*” the quantitative impact of plain packaging. Without explaining why it was not inviting, in a transparent manner, independent experts to come forward, the DH is selecting individuals for whom impartiality, and having no “*economic or personal stake in potential findings*”, was “*impractical*”.

2. Plain packaging undermines JT's significant investment in the UK over recent years

JT's international investment amounts to billions of pounds

2.1 JT invested £9.4 billion in acquiring the Gallaher group of companies in 2007 (at the time the largest overseas acquisition ever made by a Japanese company) and, since then, it has continued to invest extensively in enhancing its international brands to take market share from competitors in the UK.

2.2 JT's ongoing commitment to the UK economy is reflected by the fact that, since its acquisition of the Gallaher Group in 2007, it has made significant further investments in the UK. Between 2007 and 2014, JT Group will have invested over £180 million in its Lisnafillan manufacturing site in Northern Ireland. Further, in 2012 alone, JT Group plans to allocate approximately £75 million to (a) development and training of its employees in Northern Ireland; (b) annual salaries into the Northern Irish local economy; (c) spending on UK suppliers of packaging materials; and (d) providing business for over 100 Northern Ireland companies.

Plain packaging damages brand equity

2.3 JT has continuously made efforts to enhance its brand equity because central to JT's business are its brands, including the JT Group's premium brands in the UK, like Benson & Hedges Gold and Silk Cut. The JT Group has invested very substantially in its brands, and this is reflected in the strong brand equity of its brands in the UK. The JT Group's brands are worth billions of pounds.

2.4 JT believes that plain packaging eradicates branding and will erode brand equity most notably in leading, premium brands in the UK.

2.5 Product packaging is a key tool to enhance JT's brand equity. If the UK introduces plain packaging, JT considers this will lead to further downtrading from premium products to value for money products as consumers will not be as able to distinguish and identify the products. If this occurs, JT's premium brands, which are central to its brand portfolio, would be significantly damaged.

2.6 The UK tobacco market is highly competitive. Manufacturers compete and innovate in order to increase market share amongst existing adult smokers. Packaging is one of the essential components of brand competition. Plain packaging will severely damage this competition and therefore investment in brand equity.

Plain packaging will worsen the illicit trade in tobacco products

2.7 The illicit trade in tobacco products is already an extremely serious problem in the UK. The DH recognizes this, noting that 10% of the market for cigarettes, and 46% of the market for RYO, is illicit. Furthermore, the UK Government currently loses up to £3.1 billion in revenue a year as a result of the illicit trade in tobacco products. However, the Consultation fails to analyze properly the effects of plain packaging on illicit trade.

2.8 JT considers that plain packaging will worsen the illicit trade in tobacco products, as it will open new opportunities for illicit traders. Plain packs are cheaper and easier to counterfeit than branded packs. Once one plain pack is counterfeited, the illicit trader can reproduce the packaging of each brand on the market with minimum effort. Plain packaging will also make it harder for smokers to identify counterfeit packs.

2.9 An increase in illicit trade as a result of plain packaging will cause significant losses to legitimate businesses, and further undermine JT's brand equity.

No reliable evidence that plain packaging will work

2.10 In 2008, following a previous consultation on plain packaging, the UK Government concluded that there was no evidence that plain packaging would reduce the number of minors smoking in the UK.

2.11 At that time, the then UK Secretary of State for Health stated "*there is no evidence base that [plain packaging] actually reduces the number of young people smoking*"⁷ and then Minister of State for Public Health stated that "*no studies have been undertaken to show that plain packaging of tobacco would cut smoking uptake among young people or enable those people who want to quit to do so. Given the impact that plain packaging would have on intellectual property rights, we would undoubtedly need strong and convincing evidence of the benefits to health, as well as its workability, before this could be promoted and accepted at an international level – especially as no country in the world has introduced plain packaging*".⁸

2.12 UK Better Regulation principles require a "*robust and compelling*" case to be made in support of a proposal.⁹ The DH must therefore show that reliable evidence has been made available since 2008 which demonstrates that plain packaging will achieve the

⁷ Statement by Alan Johnson, UK Secretary of State for Health, during a Parliamentary Question Session. See Hansard – Commons Debates (16 December, 2008), Volume 485, Column 945.

⁸ <http://www.publications.parliament.uk/pa/cm200809/cmpublic/health/090625/pm/90625s09.htm>.

⁹ <http://www.bis.gov.uk/policies/bre/principles-of-regulation>.

Government's objectives, and so which allows it to make out the necessary "*robust and compelling*" case. It has failed to do so. The detailed reasons why this is the case are set out in JTI's Response at Sections 2, 3 and Schedules 1 and 2, but JT notes the following two points, among others:

- (a) despite recognizing that its objectives relate to smoking behavior, the DH has no behavioral evidence to rely on. Instead, the 'evidence' that the DH has put forward is unsound. The systematic review commissioned by the DH to consider the evidence as to what people say they will do in a plain packaging environment is unsound. The review ignores its own finding that "*there are also a number of limitations with the plain packaging studies found*".¹⁰ Indeed, expert analysis confirms that there is no reliable evidence that plain packaging will change actual smoking behavior.¹¹
- (b) the evidence base is so weak that the Impact Assessment accompanying the Consultation, produced to justify the proposal, can only say that "*there are plausible scenarios under which plain packaging could be effective as a tobacco control measure*" (emphasis added) and that there is a "*possible impact*" on consumption.¹² The DH does not put forward any reliable evidence that plain packaging would achieve its policy objectives.

2.13 JT is particularly concerned that such a drastic measure, which deprives JT of its most valuable assets, is being considered, given the lack of any reliable evidence to support it.

3. Plain packaging would damage the credibility of the UK as a place to do business

3.1 The UK is meant to be 'open for business' and growth is meant to be the UK Government's top priority.¹³ Plain packaging disproves this claim and undermines this priority. This is the case not only because of the negative effects on retailers and others in the supply chain, but also because plain packaging demonstrates a fundamental disregard for the protection of intellectual property, and the investments JT and others have made to establish and develop that property.

¹⁰ See page 88 of "*Plain Tobacco Packaging, a Systematic Review*", Public Health Research Consortium, Crawford Moodie, Martine Stead, Linda Bauld, Ann McNeill, Kathryn Angus, Kate Hinds, Irene Kwan, James Thomas, Gerard Hastings, Alison O'Mara-Eves, Spring 2012.

¹¹ See the expert reports set out at <http://www.jti.com/how-we-do-business/resources/>, and paragraphs 3.15 to 3.36 of JTI's Response.

¹² Paragraph 95 of the IA.

¹³ According to <http://www.bis.gov.uk/about>, "[g]rowth is the Government's top priority and every part of Government is focused on it".

3.2 JT believes that plain packaging will damage the reputation and credibility of the UK as a place to do business and lead to a deterioration of investment in it for the following additional reasons:

- (a) if a law is introduced which is disproportionate, ineffective in meeting its objectives and lacking the necessary evidence to justify it, the extent of regulatory burdens for the tobacco sector (as well as other industries) will increase while investor confidence in the UK will decrease; and
- (b) domestic and foreign investors will be increasingly concerned that similar measures that have the effect of undermining the protection of intellectual property rights will be adopted in other industry contexts.

3.3 JT believes that plain packaging for tobacco products would cause other international companies to hesitate before investing in the UK. Were plain packaging to be introduced despite all the points above, it would lay down a precedent for a whole range of consumer products – the risk of which is demonstrated by recent consideration (by the UK Parliament’s Health Select Committee) of plain packaging for alcohol.¹⁴

4. Option 1 is the only appropriate outcome of the Consultation

4.1 JT believes that Option 1 (the status quo) is the only sensible outcome to the Consultation as neither Options 2 nor 3 are appropriate. For the reasons mentioned in Section 2 above, there is no reliable evidence to justify Option 2, or any other change to current tobacco packaging (Option 3). JT believes that targeted, effective and proportionate alternative solutions are available to prevent minors from smoking. These solutions are likely to be effective when evaluated against the UK’s Better Regulation principles, and address those sources identified as key to minors’ access to tobacco products:

- Ensuring better enforcement – including more penalties and prosecutions – to tackle the illicit trade in tobacco products. Greater enforcement is likely to be fiscally positive over the long term, as increased tax revenues more than compensate for increased enforcement costs.
- Giving greater resources and manpower – and priority – to effective and targeted enforcement of the current regulatory regime, including negative licensing and

¹⁴ See

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/health-committee/news/12-03-26-alcohol-torcfe/>.

updating, as well as enforcing, the under-utilized pre-existing laws on the confiscation of cigarettes from minors.

- Reinforcing retail access prevention measures, such as ‘No ID, No Sale’.
- Following the Scottish example and penalizing proxy purchasing by adults.
- Following the Scottish example and penalizing the purchase or attempted purchase of tobacco products by minors.
- Targeted public information campaigns to quickly and effectively raise the awareness of tobacco control measures, such as negative licensing schemes.

5. Summary

5.1 JT is strongly opposed to plain packaging of tobacco products because:

- there is no reliable evidence to support its introduction;
- it will have serious unintended consequences – making the UK a less attractive place for investment by international businesses like JT; increasing opportunities for the criminals behind the illicit trade, negatively affecting consumers, retailers, competition in the market and the broader economy; and
- it will infringe legal rights, depriving JT of its most valuable assets.

Consultation on standardised packaging of tobacco products – response form

a. Please provide your name and contact information:

Name of respondent:

Japan Tobacco Inc. (JT)

Address of respondent:

JT Bldg., 2-2-1 Toranomom Minatoku, Tokyo, 105-8422, Japan

Contact email address:

b. Does your response relate to:

- ☒ United Kingdom
- ☐ England only
- ☐ Scotland only
- ☐ Wales only
- ☐ Northern Ireland only

c. Are you responding:

- ☐ As a member of the public
- ☐ As a health or social care professional
- ☒ On behalf of a business or as a sole trader (go to question d)
- ☐ On behalf of an organisation (go to question e)

d. If you are responding on behalf of a business, what type is it?

- ☐ Tobacco retailer (supermarket)
- ☐ Tobacco retailer (convenience store)
- ☐ Tobacco retailer (other type of shop or business)
- ☐ Specialist tobacconist
- ☐ Duty-free shop
- ☐ Wholesale tobacco seller
- ☒ Tobacco manufacturer
- ☐ Retailer not selling tobacco products

- ☐ Pharmaceutical industry
- ☐ Other (please provide details below)

If 'Other', please tell us the type of business

e. If you are responding on behalf of an organisation, what type is it?

- ☐ NHS organisation
- ☐ Health charity/NGO (working at national level)
- ☐ Local Authority
- ☐ Local Authority Trading Standards or Regulatory Services Department
- ☐ Local tobacco control alliance
- ☐ Retail representative organisation
- ☐ Other type of business representative organisation
- ☐ University or research organisation
- ☐ Other (please provide details below)

If 'Other', please tell us the type of organisation

f. Do you, or the business or organisation you represent, have any direct or indirect links to, or receive funding from the tobacco industry?

- ☐ No
- ☒ Yes (please describe below)

If 'Yes', please describe

g. If you do not wish your response to be identified in the summary report of consultation responses, please tick this box

☐

RESPONSES TO APPENDIX A QUESTIONS

Consultation questions

1. Which option do you favour?

- ☒ Do nothing about tobacco packaging (i.e., maintain the status quo for tobacco packaging)
- ☐ Require standardised packaging of tobacco products
- ☐ A different option for tobacco packaging to improve public health

If you prefer a different option for tobacco packaging, please describe it

2. If standardised tobacco packaging were to be introduced, would you agree with the approach set out in paragraphs 4.6 and 4.7 of the consultation?

- ☐ Yes
- ☒ No
- ☐ Do not know or have no view.

Please provide an explanation for the answer you provided and evidence if available.

JT does not support the approach set out in paragraphs 4.6 and 4.7 of the Consultation for the reasons set out in Sections 2 and 3 of JT's response and Sections 3 to 6 of JTI's Response.

3. Do you believe that standardised tobacco packaging would contribute to improving public health over and above existing tobacco control measures, by one or more of the following:

- Discouraging young people from taking up smoking;
- Encouraging people to give up smoking;
- Discouraging people who have quit or are trying to quit smoking from relapsing; and/or
- Reducing people's exposure to smoke from tobacco products?

- ☐ Yes
- ☒ No
- ☐ Do not know or have no view

Please provide an explanation for the answer you provided and evidence if available

Please see JTI's answer to this question at pages 103 and 104 of JTI's Response.

4. Do you believe that standardised packaging of tobacco products has the potential to:

a. Reduce the appeal of tobacco products to consumers?

- ☐ Yes
- ☒ No
- ☐ Do not know or have no view

Please provide an explanation for the answer you provided and evidence if available

Please see JTI's answer to this question at pages 104 and 105 of JTI's Response.

b. Increase the effectiveness of health warnings on the packaging of tobacco products?

- ☐ Yes
- ☒ No
- ☐ Do not know or have no view

Please provide an explanation for the answer you provided and evidence if available

Please see JTI's answer to this question at page 105 of JTI's Response.

c. Reduce the ability of tobacco packaging to mislead consumers about the harmful effects of smoking?

- ☐ Yes
- ☒ No
- ☐ Do not know or have no view

Please provide an explanation for the answer you provided and evidence if available

Please provide an explanation for the answer you provided and evidence if available

Please see JTI's answer to this question at pages 105 and 106 of JTI's Response.

d. Affect the tobacco-related attitudes, beliefs, intentions and behaviours of children and young people?

- ☐ Yes
- ☒ No
- ☐ Do not know or have no view

Please provide an explanation for the answer you provided and evidence if available

Please see JTI's answer to this question at page 106 of JTI's Response.

5. Do you believe that requiring standardised tobacco packaging would have trade or competition implications?

- ☒ Yes
☐ No
☐ Do not know or have no view

Please provide an explanation for the answer you provided and evidence if available

Please see JT's answer at Section 2 of JT's response and JTI's Response to this question at pages 106 to 108 of JTI's Response.

6. Do you believe that requiring standardised tobacco packaging would have legal implications?

- ☒ Yes
☐ No
☐ Do not know or have no view

Please provide an explanation for the answer you provided and evidence if available

Please see JTI's answer to this question at pages 108 and 109 of JTI's Response.

7. Do you believe that requiring standardised tobacco packaging would have costs or benefits for manufacturers, including tobacco and packaging manufacturers?

- ☒ Yes
☐ No
☐ Do not know or have no view

Please provide an explanation for the answer you provided and evidence if available

Please see JT's response at Sections 2 and 3 and JTI's answer to this question at page 109 of JTI's Response.

8. Do you believe that requiring standardised tobacco packaging would have costs or benefits for retailers?

- ☒ Yes
☐ No
☐ Do not know or have no view

Please provide an explanation for the answer you provided and evidence if available

Please see JTI's answer to this question at pages 109 and 110 of JTI's Response.

9. Do you believe that requiring standardised tobacco packaging would increase the supply of, or demand for, illicit tobacco/non-duty paid tobacco in the United Kingdom?

- ☒ Yes
☐ No
☐ Do not know or have no view

Please provide an explanation for the answer you provided and evidence if available

Please see JT's response at Section 2 and JTI's answer to this question at pages 110 to 112 of JTI's Response.

10. Those travelling from abroad may bring tobacco bought in another country back into the United Kingdom for their own consumption, subject to UK customs regulations.

This is known as “cross-border shopping”. Do you believe that requiring standardised tobacco packaging would have an impact on cross-border shopping?

- ☒ Yes
☐ No
☐ Do not know or have no view

Please provide an explanation for the answer you provided and evidence if available

Please see JTI's answer to this question at pages 112 and 113 of JTI's Response.

11. Do you believe that requiring standardised tobacco packaging would have any other unintended consequences?

- ☒ Yes
☐ No
☐ Do not know or have no view

Please provide an explanation for the answer you provided and evidence if available

if available

Please see JTI's response at Sections 2 and 3 and JTI's answer to this question at page 113 of JTI's Response.

12. Do you believe that requiring standardised tobacco packaging should apply to cigarettes only, or to cigarettes and hand-rolling tobacco?

- ☐ Cigarettes only
- ☐ Cigarettes and hand-rolling tobacco
- ☒ Do not know or have no view

Plain packaging is not appropriate for any type of tobacco product.

13. Do you believe that requiring standardised packaging would contribute to reducing health inequalities and/or help us to fulfil our duties under the Equality Act 2010?

- ☐ Yes
- ☒ No
- ☐ Do not know or have no view

Please provide an explanation for the answer you provided and evidence if available

Please see JTI's answer to this question at page 114 of JTI's Response.

14. Please provide any comments you have on the consultation-stage impact assessment. Also, please see the specific impact assessment questions at Appendix B of the consultation document and provide further information and evidence here to answer these questions if you can.

Please see JTI's answer to this question at pages 114 and 115 of JTI's Response.

15. Please include any further comments on tobacco packaging that you wish to bring to our attention. We also welcome any further evidence about tobacco packaging that you believe to be helpful.

For further detail, please see JTI's answer to this question at page 115 of JTI's Response.