



JT's response to the UK Department of Health's consultation on the introduction of regulations for standardised packaging of tobacco products

7 August 2014

Japan Tobacco Inc. (**JT**) is a leading international tobacco product company. Its products are sold in over 120 countries and its internationally recognized brands include Winston, Camel, Mevius and Benson & Hedges. With diversified operations, JT is also actively present in the pharmaceutical, beverage and processed food sectors. The company's revenue was JPY 2.400 trillion (GBP 14,009 million*) in the fiscal year ended 31 March 2014. JT is listed on the first section of the Tokyo Stock Exchange. (*Translated at the rate of GBP 171.31 per JPY 1, as of March 31, 2014)

1. EXECUTIVE SUMMARY AND INTRODUCTION

1.1 JT sets out in this document its response to the UK Department of Health's (*DH*) latest consultation on the plain packaging of tobacco products.

1.2 JT makes this response in support of, and in addition to, the detailed response to the Consultation submitted by its subsidiary, Japan Tobacco International (*JTI*), dated 6 August 2014. JT does not repeat here, but agrees with, JTI's response to the Consultation.

1.3 JT submitted a response to the DH's 2012 consultation on plain packaging of tobacco products. That response was dated 5 July 2012.

1.4 JT is strongly opposed to the plain packaging of tobacco products for all of the reasons contained in JTI's response.

1.5 From the specific perspective of an overseas shareholder that has invested significantly in the UK economy in recent years, JT wishes to reiterate that plain packaging will both:

- infringe legal rights, depriving JT (and other members of the Japan Tobacco Group (the *Group*) of companies) of its most valuable assets; and
- have serious unintended consequences, which have not been adequately assessed or valued in the 2014 IA which forms part of the Consultation. These consequences include increasing opportunities for the criminals behind the illicit trade in tobacco products, and negatively affecting consumers, retailers, competition in the market and the broader UK economy.

1.6 Banning branding through the introduction of plain packaging would make the UK a less attractive place for investment by international businesses like JT and also undermine investor certainty in the UK. This is at odds with the British Prime Minister's recent efforts to promote Britain as an attractive place for foreign investors to do business. Indeed, in his speech at the 2014 World Economic Forum, the Prime Minister stated that: *"Rather than trying to pull up the drawbridge and shut ourselves off from globalisation, we have chosen to embrace foreign investment."*¹

¹ World Economic Forum (Davos) 2014: speech by David Cameron, 24 January 2014. Available at: <https://www.gov.uk/government/speeches/world-economic-forum-davos-2014-speech-by-david-cameron--2>.

2. PLAIN PACKAGING UNDERMINES JT'S INVESTMENTS IN THE UK

JT as an investor in the UK

2.1 JT is the world's third largest global tobacco manufacturer.²

2.2 JT acquired all of 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)³ to build its strong international brand portfolio. In 2007, JT acquired the Gallaher group, a leading UK tobacco manufacturer, for £9.4 billion (at the time the largest overseas acquisition ever made by a Japanese company). Since then, JT has continued to invest extensively to strengthen the brand equity of its UK domestic, and international brands, to take market share from competitors including in the UK.

2.3 JT's strategy, by acquiring the Gallaher group in the UK, was to make the most of our assets through a long-term focus on building brand equity on our flagship brands. This acquisition strengthened JT's brand portfolio by adding the *Benson & Hedges*, *Silk Cut*, *Mayfair*, *Sobranie*, *Glamour* and *LD* cigarette brands, as well as a number of other tobacco products including roll-your-own tobacco (*RYO*), also known as hand-rolling tobacco (such as Amber Leaf), cigars (such as Hamlet) and pipe tobacco (such as Condor).

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

2.5 Through its UK subsidiary, the Group continues a long-standing, significant presence in the UK market. It employs over 1,800 people in the UK. It is estimated that between 2007 and 2013 the Group invested approximately £189 million in its Lisnafillan, Northern Ireland, manufacturing site. The Group manufactures product for the UK market in the UK, and outside it, in Germany, Romania and Poland.

2.6 The investment made by the Group in the UK includes: (a) the development and training of its employees in Northern Ireland; (b) payment of annual salaries into the Northern Irish local economy; (c) spending on UK suppliers of packaging materials; (d)

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

³ Currency conversion performed using historic exchange rate data for May 1999 from: <http://www.x-rates.com/d/GBP/USD/hist1999.html>.

the construction of new manufacturing and / or R&D facilities; and (e) providing business for a large number of companies in Northern Ireland.

2.7 As the ultimate parent company of the Group, plain packaging is of grave concern to JT. Any adoption of plain packaging will seriously undermine JT's significant investment in the UK over recent years, and could put any future investment by JT in the UK in jeopardy.

Plain packaging deprives manufacturers' assets / damages brand equity

2.8 Plain packaging unjustifiably infringes fundamental legal rights to property, expression and trade which are protected by UK, EU and international law.

2.9 The 2014 IA concedes that a plain packaging measure would deprive manufacturers (and therefore their shareholders) of the value of their brands (see page 23, paragraph 85: "*tobacco manufacturers who would be **deprived** of the value of their brands...*" (emphasis added)). However, the 2014 IA fails meaningfully to analyse or quantify the true financial cost of this deprivation.

2.10 JT's brands, including the Group's premium brands in the UK, are central to JT's business and are worth billions of pounds. Moreover, JT continuously strives to enhance the equity of the brands it has developed and / or invested in. The cost-benefit analysis contained in the 2014 IA is totally flawed. It demonstrates a complete lack of understanding of the nature and value of intellectual property rights and as a result completely mischaracterises the true cost of adopting plain packaging.

2.11 Moreover, JT is frustrated that the loss of value to international investors (such as JT) appears to have been completely and deliberately ignored in the 2014 IA's analysis. The 2014 IA arbitrarily eliminates from its calculations 90% of the losses to tobacco manufacturers caused by plain packaging, because it proceeds on the flawed assumption that only "*10% of the profits of multinational tobacco companies are received by UK shareholders.*"⁴ As explained more fully in JTI's response, this approach is both methodologically unsound and commercially naive.

2.12 The 2014 IA also acknowledges that if the introduction of plain packaging led to a "*...switch, amongst smokers, from higher price to lower price cigarettes (downtrading)...there [will be] losses to multinational companies, many of whose*

⁴ Impact Assessment: Standardised packaging of tobacco products, June 2014, page 24, paragraph 90.

*shareholders are located overseas.”*⁵ If such downtrading occurs, JT’s premium brands, which are central to its brand portfolio, would be significantly damaged. This would seriously undermine JT’s significant investment in the UK in recent years.

2.13 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 undermine our investment in brand equity.

3. DAMAGING THE CREDIBILITY OF THE UK AS A PLACE TO DO BUSINESS

Plain packaging will have unintended consequences

3.1 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 showing plain packaging would work, there is no justification for the UK to take it forward.

Plain packaging contradicts other UK policies

3.2 The UK is meant to be ‘open for business’. Overseas trade and inward investment are recognised as being vital for the UK’s prosperity.⁶

3.3 In March 2013, the UK Government reiterated its commitment to “*boost the UK’s reputation as a place to do business, to broker commercial partnerships and to increase Japanese inward investment in UK companies and projects*” and to ensure that “*the UK continues to be the number one European partner of choice for Japanese inward investment and for scientific collaboration.*”⁷

3.4 In July 2013, the Japanese Government stated that: “*The UK, as a champion of free trade, is a reliable partner for Japan. More than 1,300 Japanese companies have*

⁵ *Ibid*, page 24, paragraph 89.

⁶ According to the UK Department for Business, Innovation and Skills’ website: “*Overseas trade and inward investment are vital for the UK’s prosperity. Through its trade and investment policies, the government aims to help UK businesses succeed internationally and encourage overseas companies to work with the UK*” (see <https://www.gov.uk/government/organisations/departments-for-business-innovation-skills>).

⁷ <https://www.gov.uk/government/priorities/increasing-business-with-japan>.

*invested in the UK, as part of the single market of the EU, and have created 130,000 jobs, more than anywhere else in Europe.”*⁸

3.5 A January 2014 UK Government document, entitled ‘Britain Open for Business: The Next Phase’, states: “*We continue to innovate, introducing new initiatives and incentives to make the UK the most attractive business environment for foreign investors and enabling higher value investments.*”⁹ In the foreword to that document, the British Prime Minister emphasises: “*...the welcome we extend to those who invest here are critical to securing our country’s long term future... **Britain is firmly and clearly open for business once again.***”¹⁰

3.6 Plain packaging disproves this claim and undermines statements about economic growth being the UK Government’s top priority.¹¹ 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 rights, and the investments JT and others have made to establish and develop that property.

3.7 The ‘IP crime highlight report’, which was published in the UK in June 2014, identified tobacco as the second most common counterfeited item in the UK. As part of his comments on this report, the UK’s IP Minister commented: “*The government is committed to supporting these industries and making sure that intellectual property rights are understood and respected.*”¹² There is therefore a serious disconnect between statements such as this, which rightly identifies the importance of protecting intellectual property rights and expresses a commitment to respecting them, and a policy such as plain packaging, which totally undermines any such commitment.

⁸ http://www.cbi.org.uk/global-future/06_chapter03.html, at page 64.

⁹ <https://www.gov.uk/government/publications/britain-open-for-business-the-next-phase/britain-open-for-business-the-next-phase#securing-export-oriented-foreign-direct-investment>.

¹⁰ Emphasis added. See “*Britain Open for Business: The Next Phase*”, 24 January 2014, <https://www.gov.uk/government/publications/britain-open-for-business-the-next-phase/britain-open-for-business-the-next-phase#forewords>. In the same document, the Minister of State for Trade and Investment said: “*The UK has always thrived on openness. We remain committed to promoting free trade around the world, and through our support for exports we will help to deliver on the promise of Free Trade Agreements. We will also aim to secure more investment from companies that will use the UK as a base for exporting*”.

¹¹ 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”.

¹² <https://www.gov.uk/government/news/government-committed-to-tackling-ip-crime>.

3.8 Plain packaging will damage the reputation and credibility of the UK as a place to do business. 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. On 28 March 2014, a number of respected professional representatives (including MARQUES and the European Communities Trade Mark Association) issued a joint statement warning EU Member States against adopting plain packaging measures:

*“It is crucial that the Member States do not send a worrying message to the IP and business community about its commitment to respecting and protecting [intellectual property rights]...This sets a dangerous and alarming precedent for any kind of industry willing to invest in the EU.”*¹³

3.9 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. Were plain packaging to be introduced despite all the points above, it would also lay down a precedent for a whole range of consumer products. This concern was articulated in the following way by MARS in its response to the 2012 Consultation (which the DH has only very recently made available):

“Mars is concerned with both the legal and consumer knock-on effects which the introduction of plain packaging could have in the UK, in particular in the food and non-alcoholic beverage industries in which Mars operates.

*As well as depriving brand owners of their intellectual property rights without compensation, in the food and non-alcoholic beverages industries the introduction of such legislation would lead not only to consumer confusion (as to both origin and quality), but also to a significant increase of counterfeit products and hence negatively impact on consumers’ health and safety.”*¹⁴

3.10 Moreover, there are currently five countries (with many others joined as third parties) who are challenging Australia’s Tobacco Plain Packaging Act at the WTO, claiming that it infringes various international treaty obligations.

¹³ http://www.ecta.org/IMG/pdf/joint_statement_plain_packaging_ie_uk_march_2014.pdf.

¹⁴ <https://www.gov.uk/government/consultations/standardised-packaging-of-tobacco-products>. There has been additional press reporting on this story, see: <http://www.thetimes.co.uk/tto/business/industries/retailing/article4157181.ece>.

3.11 For all of these reasons, JT believes that plain packaging for tobacco products would cause other international companies to hesitate before investing in the UK.

JT

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