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22 December 2009

Tobacco Regulation Consultation
Department of Health
Room 712
Wellington House
133-155 Waterloo Road
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Sirs,

Response to the consultation on the draft tobacco product and price display regulations and the regulations prohibiting the sale of tobacco from vending machines

The member companies of the Tobacco Manufacturers' Association (TMA) are British American Tobacco United Kingdom Ltd, Gallaher Limited (a member of the JTI Group of Companies) and Imperial Tobacco UK Limited. This response is submitted on their behalf and individually they and/or their related entities may also be responding in their own right.

The TMA's view has not changed since our response to the consultation, *The Future of Tobacco Control* (FTC), in September 2008. A copy of the TMA response is attached for reference. Paragraphs 8 to 25 in particular address the issues of display and vending.

In its earlier response the TMA stressed its support for measures which are aimed at youth-smoking prevention. Such measures, however, must be evidence-based, effective and proportionate. The TMA member companies remain committed to helping to prevent young people from being able to access tobacco products, and to building on the success to date of the CitizenCard and No ID No Sale campaigns. We continue to seek meaningful engagement with the Department of Health to inform the policy-making process, and to work together to ensure sensible and effective tobacco control measures.

We are most concerned, therefore, that the prohibitions on tobacco display and vending which would result from the Health Act 2009 (the Act) and the proposed regulations (the Regulations) are unsupported by the evidence and will not achieve the Department of Health's public policy objectives. Rather, they will have considerable adverse impact on tobacco manufacturers, retailers and those who supply and operate vending machines.

The TMA has raised separately its concerns regarding the Government's failure to notify the tobacco provisions in the Health Act under Directive 98/48/EC. Those concerns remain. The TMA has serious concerns as to the legality and, in particular, the purported justification for, and proportionality of the Act with the Regulations, if passed in its present form.

Display

Together with the relevant provisions of the Act, the Regulations will effectively prohibit tobacco product displays in England. The evidence relied on in the FTC consultation (which the Department of Health itself has admitted is "*not conclusive*"), and the information and reports subsequently cited by the Department, are entirely insufficient to justify such a severe and absolute prohibition on the ability of manufacturers and retailers to communicate with their customers, and the right to compete at point of sale.

The available evidence from the only other countries where such bans have been introduced (principally Iceland and Canada) has failed to demonstrate any resulting reduction in youth-smoking. Indeed, the inadequacy of the evidence has been illustrated by recent statistics on youth smoking provided by Health Canada (Canadian Tobacco Use Monitoring Survey, 2009), and highlighted by the New Zealand government, which withdrew its plans to introduce a display ban for this very reason, and because of the significant adverse impact that such a ban was likely to have (New Zealand Press Association, 24 February, 2009).

The impact of the Act and Regulations together will be not only to diminish dramatically the already limited rights of manufacturers and retailers to communicate with their customers about their products, but will also impose considerable financial burdens on retailers, and seriously undermine the opportunity for legitimate competition between manufacturers. It will also exacerbate the issues of illicit trade. These unintended adverse consequences - all of which have been addressed in our previous submissions, and those of other affected parties, to the FTC consultation.

In the circumstances, we urge the Department of Health to reconsider its proposals, with a view to ensuring that any measures introduced in relation to tobacco display will give due and proper regard to the rights and freedoms of the TMA member companies, and the other stakeholders who may be affected.

Vending

As we made clear in our earlier submission on the FTC consultation, the TMA firmly believes that access to cigarette vending machines should be strictly controlled to avoid under-aged access. We can see no proper justification, however, for denying adults access to such machines.

The draft Regulations, which will ban all vending machines, will have a catastrophic impact on the livelihood of the hundreds of people who work in the vending business, and its suppliers.

Prior to the last-minute amendment of s22 of the Health Act 2009, the Government was proceeding on the basis that the appropriate (and proportionate) course was to introduce regulations (for a two-year trial period) which would prevent access to vending machines by under-aged persons, but would "*enable the vending machine industry to develop their own methods to achieve cost-effective and practical solutions.*"

The TMA understands that, in reliance on that previous position of the Government, many operators have already invested significant sums in the technology necessary to ensure effective safeguards against youth access to their machines. The draft Regulations, if passed, will clearly be contrary to the legitimate expectations of machine manufacturers and owners, and will amount to a significant infringement of their property rights.

In summary, it is our view that the display and vending prohibitions that would result from the Act and the Regulations are excessive and unjustified. We very much support evidence-based measures that will be effective in preventing youth access to tobacco products, but believe that the Act and the Regulations will not achieve this.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'C H D Ogden', written in a cursive style.

C H D Ogden
Chief Executive