

NOTE OF MEETING – PHILIP MORRIS INTERNATIONAL AND DH

Impact Assessment for Standardised Packaging of Tobacco Products

Wellington House
Wednesday, 30 January 2013

Attendees:

For Philip Morris International

- Martin Inkster
- Brett Cooper
- Eoin Dardis

For DH

- [REDACTED] (DH tobacco programme official)
- [REDACTED] (DH economist)
- [REDACTED] (DH economist)
- [REDACTED] (DH legal services)
- [REDACTED] (DH economist)

Introduction

The Department of Health (DH) confirmed that the aim of the meeting was to gather information which could help improve the Impact Assessment (IA) on standardised packaging, particularly to make sure that the estimated costs to business were as robust as possible. According to Article 5.3 of the Framework Convention on Tobacco Control (FCTC), meetings between DH and tobacco companies such as Philip Morris International (PMI) are not ruled out, but contact must be as transparent as possible.

DH thanked PMI for their carefully considered response to the consultation. PMI representatives said that they appreciated the opportunity to contribute to the consultation and declared their enthusiasm to be a part of the consultation process, welcomed increased communication with DH and agreed that it should be transparent and constructive.

DH noted that, at that stage, no advice had been given to ministers regarding standardised packaging nor have ministers made any decisions. DH could give no indication about the timetable for Ministerial decisions. As a frame of reference were standardised packaging to be adopted, the Australian regulations could be taken as a high water mark for possible action.

Freedom of information (FOI) and confidentiality

DH explained the situation regarding FOI and confidentiality set out in DH letter to PMI of 22 Jan 2013.

DH recognised that some information requested, such as profit margins, may be commercially sensitive. Where DH is informed by PMI that information provided is to be treated as confidential and a suitable explanation is provided, such information will be treated as confidential and it would be DH's intention not to release such information, for example in response to FOI requests.

PMI noted that they would need to consult with their legal department where uncertainty existed as to whether they could provide information discussed during the meeting. In some cases, PMI would

be unable to provide information but, where possible, information could be provided after the meeting.

DH noted that it may not be necessary to know absolute values of details such as costs and profit margins, but only how they may be affected by standardised packaging. For instance, any data such as the increase in the costs of production would be useful even when current production costs cannot be provided.

PMI said that they have made efforts to gather further information since the consultation had finished. Reports provided by PMI to DH are listed later in this note.

Manufacturing and supply chains

PMI said that they do not undertake all elements of the production process themselves. For instance the majority of the manufacture of their tobacco pack "blanks" is carried out in Portugal and the Czech Republic. The factories in these countries provide intermediate goods not only to PMI's UK operations but also to other operations within Europe.

PMI said that the supply chain for the manufacture of packaging is complex, with the majority of the manufacture of tobacco pack blanks taking place outside the UK. Inputs into the process of manufacture may be sourced from the UK (such as inks and dyes), but PMI was not in a position to confirm what inputs might come from the UK.

PMI said that a component that might seem to be a single item, such as the cellophane wrapping around cigarette packs, might in fact be produced by two separate manufacturers. PMI suggested that the manufacturer which prints on the cellophane could be more adversely affected than the firm which produces the cellophane itself.

PMI suggested that the DH speak with packaging companies and others in the supply chain to answer specific questions regarding the IA and the effect on industry in the UK. DH confirmed that many businesses in the supply chain had provided consultation responses. PMI suggested that each of these businesses should be contacted to discuss specific impacts on their businesses, not just from the potential for elements of their business to be removed, but also from any potential increase in the illicit trade in tobacco products, if any were to arise from standardised packaging.

PMI referred to several expert studies, which they had commissioned, which suggested that an increase in illicit trade would be highly likely and left copies of these reports with DH (as listed later in this note) and said they would also provide them by email. PMI said they would endeavour to make these reports publicly available where they had not already done so.

UK market

PMI has a relatively small operation in the UK. However, they do have trademarks registered in the UK with the IPO.

The majority of PMI's market share in the UK is accounted for by Marlboro, but they also sell other brands.

There is a wide range of packs in the cigarette market as a whole in the UK. Two key factors in pack design are colour and shape of pack. PMI has suggested there are 27 pack designs in the market as a whole in terms of size and shape. Soft packs are a small part of the UK market as a whole.

PMI referred to anecdotal evidence from the firms that supply them about the potential impacts on their businesses if standardised packaging were to be introduced. PMI reiterated that, in their view, DH should contact each of the businesses that provided a submission to the consultation in order to develop an accurate impact assessment.

Effects of standardised packaging

PMI believe that standardised packaging would accelerate down trading to cheaper brands and illicit cigarettes and said that distinctive packaging helps consumers discriminate between the higher and lower price brands. Whilst PMI fears down trading among its consumers, for instance from Marlboro to Chesterfield, their greater concern is people moving into consuming more illicit tobacco.

PMI said that they would provide reports via email on standardised packaging and the illicit market. PMI provided these reports in hard copy at the meeting for DH, including the SKIM report and Transcrime reports that PMI commissioned that both suggest that an increase in the illicit trade in tobacco would be likely if standardised packaging were introduced.

PMI said that there is limited evidence from Australia as to what the effect of standardised packaging so far, largely due to the short period of time since its introduction. PMI noted that, with many other factors to consider, eight weeks (at the time of the meeting) was too soon to draw from sales data whether fluctuations may be due to the introduction of standardised packaging. It is hard to distinguish the impact of the policy from an inherent market trend. PMI said that they did not know whether prices will be discounted as a result of standardised packaging.

PMI said that they believe that a potential negative effect of standardised packaging is that transactions might take longer which could be frustrating to consumers and vendors. This may cause a loss of sales if people are frustrated for instance with having to queue longer. PMI suggested that these potential impacts would be most likely to have an impact on smaller businesses with fewer staff and fewer checkouts. There was also a concern from PMI that small businesses could be more vulnerable to shoplifters as a result of standardised packaging.

PMI suggested that retailers would find their profit margins reduced as a result of down trading if standardised packaging were introduced. Price lists are available for the Recommended Retail Price and for retailers to give some insight into issues of margins and PMI said that they would provide these if possible. Small retail groups may also have information on this.

PMI noted that there were several reports on the possible impact on retailers, including the Rural Shops Alliance report (of a survey funded by BAT) and reports completed for the Alliance of Australian Retailers (funded by PMI, Imperial Tobacco and BAT). PMI advised they would include information available on the impact on retailers in a submission on the questions sent by the DH to PMI in January 2012. DH would welcome this submission.

PMI asked what evidence DH had about the impact of plain packaging on smoking initiation and cessation rates since its introduction in Australia. DH agreed with PMI that it was, as yet, too early to tell.

PMI raised some questions about how potential health benefits of plain packaging would be estimated. DH confirmed that benefits would be estimated in the IA on the basis that had been explained in the consultation document. PMI enquired as to how the DH measured the health benefits of existing regulations. PMI asked how the DH would measure the potential impact and health benefits of plain packaging as distinct from, and in addition to, regular excise increases and

the partial introduction of the Point of Sale Display Ban. The DH said that it can be difficult to measure the specific impacts of one particular tobacco control policy sitting within a broader tobacco control strategy, and that individual policies can work in synergy with each other. PMI noted that this raised questions over the ability to demonstrate the “over and above” health benefits of plain packaging that PMI believe would need to be proven for the policy to go ahead.

Market research

PMI said that the majority of their research budget is spent on analysing sales. In the UK PMI promotes global brands that follow global directions set by the company. However, elements of pack design may be unique to the UK, possibly as a result of its legislative requirements etc. Packs are not designed in the UK. PMI said that all tobacco companies review their cigarette packaging periodically.

Illicit Trade

PMI referred to the Star Report and the 6 monthly Empty Pack Surveys which were shared with HMRC and HMT among others. PMI referred to their concerns that if plain packaging increased the illicit trade, this would reduce excise collected by HMRC, among other consequences. PMI suggested that this could include undermining stated health objectives and damaging legitimate businesses.

DH invited PMI to share their information about the illicit trade.

Cross Departmental Officials Working Group

PMI enquired about the status of the Cross Departmental Working Group and where this proposal currently sat in relation to this group and other departments. DH confirmed that this group was simply an informal network of officials from various departments which had not met recently, but with which DH would continue to liaise as appropriate.

Tobacco Products Directive (TPD)

PMI stated that it had concerns over the impact of the proposed revision of the TPD and asked what the Government’s current position was on this. DH said that the UK Government’s position on the proposed TPD was being developed. PMI was invited to share its concerns with the Department which would go on file to maximise transparency. PMI asked if the Government had plans to complete a specific Impact Assessment on the TPD proposal. The DH stated the European Commission had already produced a detailed IA for the TPD and there would be an IA if and when any finalised TPD needed to be transposed into domestic UK law. PMI stated that this would be too late as the proposal would already be agreed.

PMI said that they believe a specific impact assessment should be completed on the TPD proposal to ensure UK decision makers in Government had a clear picture of what the impact would be on the UK prior to making a decision on the UK position in Brussels. PMI asked what DH’s thinking was on reduced harm products, particularly in relation to the TPD and future UK regulatory developments. DH stated that it was aware of PMI’s interest and explained that the TPD refers to nicotine containing products, and not tobacco containing products. Again, DH invited PMI to submit comments.

At the end of the meeting, PMI provided copies of a number of reports they had commissioned, including:

- Empty Pack Survey – Q2 2012
- SKIM Report – Impact of Standardised packaging on the illicit trade – November 2012

- Transcrime: *“Study on the risks of illicit trade in tobacco products as unintended consequences of the introduction of plain packaging in the UK”*.
- Transcrime: The fact book on illicit trade in tobacco products
- Rupert Darwall report – *“Selecting the Evidence to Fit the Policy. An Evaluation of the Department of Health’s Consultation on Standardised Tobacco Packaging”*. PMI highlighted that they had significant concerns that the consultation was flawed in many aspects. The report from Rupert Darwall supports that view.

PMI also referred the DH to its response to the consultation on standardised packaging within which there were many references to expert reports and studies on the topic of plain packaging that PMI had commissioned.

The meeting concluded with PMI and DH agreeing that PMI would provide DH with its views on:

1. Answers to the DH impact assessment questions where possible, including information about the potential impact on retailers
2. A submission of views on the draft proposal for a revised Tobacco Products Directive

DH agreed to give full consideration to these points in the development of the UK DH position on both standardised tobacco packaging and the TPD. Both the DH and PMI agreed to keep an open dialogue for future engagement on tobacco regulation where appropriate.


Health Improvement Analytical Team