



Consultations Coordinator
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13 November 2012

Dear Mr

Consultation on the standardised packaging of tobacco products

1. Thank you for your letter dated 31 August 2012 replying to our letter of 3 July 2012 which set out JTI's concerns regarding the process undertaken in respect of the Department of Health's consultation on standardised (also known as 'plain') packaging for tobacco products (the **Consultation**).
2. Your letter refers to extracts from the Code of Practice on Consultation (the **Code**) and the Consultation Principles document (the **Principles**), and suggests that the points raised by JTI are concerns in respect of the policy content of the Consultation, rather than the consultation process.
3. JTI disagrees with you in this regard. JTI remains of the view that there were, as we explained in our letter, serious flaws in the consultation process itself. By way of illustration of this fact and reflecting our letter of 3 July 2012, we have set out below certain of the key ways in which the Consultation fails to satisfy the Government's own guidelines in respect of the way in which a consultation process should be conducted:
 - (a) Paragraphs (g), (h) and (i) of our letter identified the following shortcomings in the consultation process, including (i) the failure by the Department of Health to properly evaluate the effectiveness of existing regulation; (ii) the failure by the Department of Health to consider whether there are more proportionate alternatives to plain packaging; and (iii) the inadequate consideration in the Impact Assessment accompanying the Consultation of unintended consequences, such as the impact of plain packaging would have on illicit trade in tobacco products, price and competition, innovation, brand equity and intellectual property. This was in breach of criterion 1.2 of the Code, which states that "*it is important that*

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*consultation takes place when the Government is ready to put sufficient information into the public domain to enable and effective and informed dialogue on the issues being consulted on". Further, in breach of the Principles, the issues described in paragraphs (g), (h) and (i) of our letter meant that the Department of Health was not in a position to make "sufficient information available to stakeholders to enable them to make informed comments". See paragraphs 2.49 – 2.51 and Schedule 1 of JTI's Consultation response (**JTI's Response**) for further detail.*


- (b) As per paragraphs (c) and (d) of our letter, JTI's view is that the Consultation relies on a flawed and incomplete evidence base (see paragraphs 2.7 to 2.19 of JTI's response for further detail). Moreover, the Consultation and Impact Assessment recognise that any plain packaging proposal needs to be justified by reference to the impact on actual smoking behaviour. However, the Department of Health has failed to provide any evidence on smoking behaviour. This is particularly concerning given that it has been clear since December 2008 that it was evidence on smoking behaviour that the Department of Health recognised needed to be "developed" if plain packaging could be taken forward.

Failure to obtain such key evidence renders the Consultation both premature and deficient, failing to satisfy both the Principles (which state that *"every effort should be made to make available the Government's evidence base at an early stage to enable contestability and challenge"*) and Criterion 1.2 of the Code.

- (c) As set out in JTI's Response, the plain packaging measure outlined in the Consultation is an imprecise proposal (see Schedule 1 to JTI's Response for further detail). The Impact Assessment only provides a general description as to what plain packs might look like, adding that *"details would be set out by the Government in the future"*. Without knowing what "precisely" a plain pack would look like, or the materials from which they are to be constructed, JTI is unable to formulate informed responses to the questions posed by the Consultation. The absence of such clarity and key information therefore means that the Criteria outlined in 3.2 (*"consultation exercises should be clear about the scope of the exercise"*) and 3.5 (*the subject matter, any assumptions the Government has made, and the questions in the consultation should all be as clear as possible"*) of the Code are not satisfied.

- (d) As set out in paragraph (j) of our letter, it is JTI's view that there is a lack of clarity as to whether consultation with other Government stakeholders on whom plain packaging would have a detrimental effect has taken place. The Consultation is far from clear about this process, breaching Criterion 3.1 of the Code ("*consultation exercises should be clear about the consultation process, i.e. what has taken place in the development of the policy prior to the consultation exercise, how the consultation exercise will be run and, as far as possible, what can be expected after the consultation has formally closed*").
- (e) Criterion 3.3 of the Code states that "*estimates of the costs and benefits of the policy options under consideration should normally form an integral part of consultation exercises, setting out the Government's current understanding of these costs and benefits*". While the Code recognises that an Impact Assessment should form an "integral part" of a consultation, the Impact Assessment published with the Consultation fails to undertake a rigorous and comprehensive analysis of the proposed measure based on accurate, objective and complete information. In respect of the costs analysis undertaken in the Impact Assessment, the Impact Assessment either fails to take into consideration a number of significant costs, or adopts an analysis in relation to particular costs which is fundamentally flawed (see Schedule 1 of JTI's Response for further detail).
6. Finally, although JTI welcomes your commitment to "*share any lessons learned from this consultation exercise...within the department and more widely*", our view is that, as a result of their recent appointment, there is now an even greater need for any "lessons learned" from the Consultation to be shared with the new Secretary of State for Health and Minister for Public Health.

Yours sincerely



Martin Southgate

Managing Director, JTI UK

