



Packaging of tobacco products

Response to European Commission consultation – the possible revision of the Tobacco Products Directive 2001/37/EC.

SUMMARY

The British Brands Group considers that the removal of brand imagery from tobacco packs poses significant and damaging risks for consumers, competition and the proper functioning of the tobacco market, while not necessarily achieving the desired policy goals. It may also breach international treaties and obligations. Clear evidence is required to inform policy and shed light on its likely impact.

- 1 The British Brands Group welcomes the opportunity to comment on DG Sanco's paper "Possible revision of the Tobacco Products Directive 2001/37/EC.
- 2 The British Brands Group is a trade organisation that provides the voice for brand manufacturers in the UK. Our members range in size and supply a variety of branded goods in a wide range of product categories, of which tobacco is but one. Many supply packaged products, where the packaging plays a crucial role in allowing them to communicate with consumers and compete vigorously in the marketplace.
- 3 As the Group focuses on brands and branding, we confine our comments to these aspects alone. In terms of this consultation, this means plain packaging (Section 3, Option 3) and to a lesser extent the size of health warnings (Section 3, Option 2a). We consider that policy should be evidence-based, proportionate and focused on objectives which are measurable and reviewed. We do not express a view on the optimum approach to tobacco control but instead seek to shed light on the role and importance of branding, and the potential consequences of regulation that inhibits it.
- 4 Branding on packaging covers all aspects of pack design (pack shape, labeling, colours, typeface, illustrations and other features) that distinguish one product from another. Brand imagery is used holistically (ie. not element by element) by consumers to identify, understand and trust their preferred product, based on their previous knowledge and experience.

5 THE EVIDENCE

We note that the stated effects of tobacco packaging in the consultation document, ie. to promote, attract or detract from health warnings, are not verified or quantified.

Furthermore, the list is incomplete, with important roles such as product identification, product differentiation and consumer information omitted. This significantly underplays the role of packaging, and specifically the functions of branding on packaging.

- 6 To illustrate the importance of evidence, branding on packaging may play a **significant** role in assuring quality and providing incentives for suppliers to add value to consumers but may play a **limited**, if any, role in attracting new users or promoting increased use. To remove branding without evidence is taking a leap in the dark with likely unforeseen consequences, potentially running counter to policy goals.

- 7 Last year the UK looked at plain packaging but did not take action. In its consultation document the Department of Health stated, “*the research evidence into this initiative is speculative*”, a view that was later reinforced by the Secretary of State for Health in the House of Commons, “*there is no evidence base that it actually reduces the number of young people smoking*”. This situation has not changed, with a review by LECG this year of past studies finding the following:

From our review of the studies, we conclude that they do not provide a reliable answer on the existence of a causal link between branded cigarette packaging and youth initiation to smoking. The reason is that they have limitations both in terms of the data analysis and data collection methods. These limitations are so fundamental that conclusions concerning the relationship between cigarette packaging and youth smoking are likely to be misleading.¹

8 ROLE OF PACKAGING

In general, branding on pack fulfils many important functions:

Attract and promote The consultation document focuses only on this role. Packaging may fulfil this function in some markets but the extent to which it does so here is unknown. Packaging of tobacco products is already highly regulated and the presence of large graphic health warnings is likely to inhibit significantly – and possibly destroy – the potential for pack designs to attract and promote;

Inform Pack designs convey complex information to consumers – on the main characteristics of the product, its quality, heritage, values and, most importantly, whether or not that product is their preferred choice;

Differentiate Consumers’ ability to distinguish one product from another drives effective competition in markets and provides the incentive for companies to invest in quality, added value and reputation. Trade marks play a fundamental role here;

¹ Review of the studies on plain packaging, LECG, January 2010 (commissioned by Philip Morris International)

- Protect security** Modern packaging may incorporate holograms, invisible markings and other devices which safeguard the product against counterfeiting and unlawful parallel trade
- 9 Brand imagery therefore helps consumers make informed purchasing decisions and contributes strongly to markets working well. All functions need to be considered when formulating policy.
- 10 **POTENTIAL IMPLICATIONS OF PLAIN PACKAGING**
Were the positive functions of branding on packaging to cease or be less effective (eg. through larger regulatory warnings as presented in Section 3, Option 2a), there may be important implications:
- 11 **Less information** Consumers would find it harder to choose between product variants from the same manufacturer, different products of different competitors and between legitimate and counterfeit products. This would be detrimental to consumers;
- 12 **Lower quality** In a market where one product will be forced to look like another, there is no incentive for suppliers to invest in premium quality and added value products. Indeed, there may be strong commercial pressures to reduce such investment, as product advantages would be difficult to communicate;
- 13 **Lower prices** A market without branding is essentially a market of generics, with products competing on price not quality. Stronger price competition and reduced incentives to invest in quality would drive prices down, potentially increasing sales and usage – undermining the health objective and acting contrary to the policy goals;
- 14 **Higher barriers to entry** A requirement for products to be in plain packaging would pose a significant barrier for new market entrants, unless their proposition focused on lower prices. A proposition based on quality or added value could not be conveyed to consumers;
- 15 **More illicit trade** A number of factors may conspire to increase illicit trade:
- generic, plain packaging removes complexity for counterfeiters, making it easier to copy;
 - were prices in the EU to be artificially high (eg. were duty to be used to compensate for lower prices through increased price competition), the sector would attract more counterfeiting and unlawful parallel trade;
 - were consumers to show a marked preference for branded packs, this would encourage unlawful parallel trade.

- 16 Illicit trade is already a significant feature in the European Union – for example, a joint report by HM Revenue & Customs and the Department of Health estimated the illicit market share in the UK to be 13%, representing an annual loss to HM Treasury of around £1.7 billion (24 November 2009). Any further rise would damage consumers, tax revenues and legitimate manufacturers and retailers. It would also increase access to tobacco products for those under age, contrary to the policy goal;
- 17 **Harder enforcement** An increase in illicit trade would increase the burden on already over-stretched customs, and enforcement agencies.
- 18 **Damage to IP** Brand imagery on packaging comprises intellectual property rights, notably trade marks. Millions have already been invested over many years by legitimate tobacco manufacturers in reputation through quality and differentiated market positioning. This investment is underpinned by – and encapsulated in – trade marks, making these potentially the most valuable of corporate assets. These IP rights are granted by the state and protected by international agreements, notably TRIPs.
- 19 Interference with or the removal of such rights may breach international agreements and obligations and be open to challenge. This was highlighted by Economisuisse, the Swiss business federation, which stated, ““*[R]equiring generic packaging of products . . . amount[s] to an indirect expropriation of intellectual property and constitute[s] a clear breach of international law.*”²
- 20 We urge that the **full** implications of removing brand imagery from packaging, on consumers and on markets (both legitimate and illicit), are taken into account and quantified, prior to any policy being formulated that may limit the function of branding on packaging. Without such analysis, policy will not pass the basic tests of being evidence-based and proportionate, may fail to achieve its objectives and may well give rise to effects contrary to its goals.

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² Intellectual Property violations resulting from excessive packaging restrictions, position paper. Economisuisse, November 2009