



Response to the Health Promotion Board's Public Consultation on Tobacco Control

27 June 2013

Japan Tobacco International, a member of the Japan Tobacco Group of Companies, is a leading international tobacco manufacturer. It markets world-renowned brands such as Camel, Winston and Mevius (Mild Seven). JTI's brand portfolio in Singapore includes Mevius, Salem, Camel, Winston, LD and More.

With headquarters in Geneva, Switzerland, and about 25,000 employees worldwide, JTI has operations in more than 120 countries. Its core revenue in the fiscal year ended December 31, 2012, was USD 11.8 billion. For more information, visit www.jti.com.

1. INTRODUCTION

1.1 JT International Tobacco Services (Singapore) Pte Ltd (*JTI*) welcomes the opportunity to respond to the Public Consultation on Tobacco Control (*the Consultation*), being considered by the Health Promotion Board (*HPB*), the Health Sciences Authority (*HSA*) and the National Environment Agency (*NEA*).

1.2 Tobacco products carry risks to health, and JTI believes that appropriate and proportionate regulation of our industry is both necessary and right. JTI shares a common goal with regulators: minors should not smoke and should not be able to obtain tobacco products. Everyone should be appropriately informed about the health risks of smoking. These core principles are central to our Code of Conduct, Global Marketing Standard, operational policies and the way JTI does business.

1.3 JTI fundamentally disagrees with the proposal to ban the display of tobacco products at retail premises. There is no reliable evidence that a display ban will further reduce smoking rates in Singapore and, as discussed below, display bans have not done so elsewhere in the world. But, its introduction would have serious negative impacts on competition, retailers, consumers' informed choice and illicit trade.

1.4 No provision of the World Health Organization (*WHO*)'s Framework Convention on Tobacco Control (*FCTC*) requires or even mentions a tobacco display ban.¹ Its introduction would infringe JTI's fundamental rights, as protected in national and international law and bilateral investment treaties (*BITs*).

1.5 JTI's views are informed by the independent opinions of leading experts, whose views on display bans are referred to in this response (*the Response*), being Professor Cave, Professors Steinberg, Dhar and Nowlis, Dr Lilico and Dr Keegan. Their reports are attached to the Response (see Schedule 1).

1.6 Given the serious concerns identified in the Response, JTI strongly believes that the display ban referred to in the Consultation should not be pursued further.

Outline of JTI's Response

1.7 The Response addresses the following:

- (a) **Part 2:** inconsistency of the Consultation with Better Regulation principles
- (b) **Part 3:** role of display and packaging
- (c) **Part 4:** absence of reliable evidence in support of a display ban
- (d) **Part 5:** unintended consequences of a display ban
- (e) **Part 6:** unjustifiable infringement of JTI's fundamental rights by a display ban
- (f) **Part 7:** alternative solutions to a display ban
- (g) **Part 8:** further outdoor smoking bans
- (h) **Part 9:** conclusion

2. INCONSISTENCY OF THE CONSULTATION WITH BETTER REGULATION PRINCIPLES

2.1 JTI supports legislative measures on tobacco control that meet internationally accepted principles of Better Regulation, as defined by the Organization for Economic Co-operation and Development (*OECD*), which can be summarized as openness, participation, accountability, effectiveness, coherence and proportionality. The principles promote high-quality regulation which is consistent, promotes innovation and is compatible with competition, trade and investment principles. As a member of the Asia-Pacific Economic Cooperation (*APEC*), Singapore shares key core values in implementing regulatory reform to those held by the OECD, including transparency, non-discrimination and accountability.² The APEC Principles also support “open and competitive markets” as key drivers of economic efficiency and consumer welfare, and promote competition and market openness.³

2.2 Consistent with these principles, Professor Cave (an expert in Better Regulation)⁴ has identified the following ‘checklist’ of core Better Regulation requirements that would need to be met for regulatory interventions, such as a display ban:

- (a) *“Clarity of objectives – the nature and scale of the problem which the regulation seeks to address must be clearly defined and the objectives of the regulation must be clearly stated and legitimate;*
- (b) *Targeting and proportionality – regulation should be focussed on the particular problem identified and be no more intrusive than is required and proportionate to the goal;*
- (c) *Evidence-based assessment – the evidence base for the policy must be both the best available and reliable; there must be evidence to support the proposal over alternative options; impact assessments must be conducted and must be as accurate and complete as is reasonably practicable;*
- (d) *Incremental value – regulators must review and evaluate existing legislation (including whether it is being effectively enforced) and other options before regulating further; and*
- (e) *Enforceability – regulation must be capable of being complied with and enforced effectively”.*

2.3 These are the benchmarks against which JTI has examined the Consultation. JTI has sought to point out in the Response areas in which the Consultation falls short of these fundamental principles:

- (a) ***Confusion as to the objective of the proposed measures*** – the Consultation’s objective as stated under the heading “*Aim*” in the Consultation is “*to further reduce smoking rates in Singapore*” (***the Objective***)⁵. The Objective is therefore to change the rates of smoking prevalence and consumption in Singapore.

However, the HPB's Press Release (dated 1 June 2013) explains that the aim of the display ban measure is "*to decrease the exposure of smokers and non-smokers to the advertising effects of tobacco products and ultimately denormalise tobacco use*".⁶ This demonstrates confusion as to the objectives of the proposed measures and raises a number of issues.

- First, tobacco packaging, and its display, is not promotional advertising. Advertising is already prohibited in Singapore under the Tobacco (Control of Advertisements and Sale) Act and the HSA stated in its letter dated 16 October 2009 (enclosed in Schedule 1) to the Tobacco Association of Singapore that this prohibits "tobacco products displays which are promotional in nature". However, displaying tobacco product packaging serves an entirely different purpose and merely seeks to inform consumers of the tobacco products that are available for sale at points of sale and their price. The Consultation is therefore proceeding on a flawed premise when equating product display to advertising. The role of tobacco product packaging and their display is addressed in Part 3 of the Response.
 - Secondly, "denormalisation of tobacco use" is not a legitimate objective for introduction of any tobacco control measure. It is not legitimate to deliberately seek to discriminate against, stigmatise or ostracise existing adult smokers, or to treat the purchase or use of tobacco, as "abnormal", "unacceptable" or "tainted" especially since it is a legal product that is legitimately sold and traded in Singapore. As a policy objective, it runs counter to the hallmarks of a democratic society (notably pluralism, tolerance and broadmindedness), lacks any evidential foundation and is ultimately an arbitrary objective. JTI considers that "denormalisation" adds nothing to underlying public health rationale.
- (b) ***Absences of regulatory impact assessment (RIA)*** – Better Regulation principles require an accurate and complete RIA to be carried out for a balanced evaluation of costs and benefits of the proposed measure. JTI understands that no RIA has been carried out in respect of the measures proposed in the Consultation. This significantly impairs the HPB, HSA and NEA's ability to scrutinise the evidence and impacts of the proposed measures.
- (c) ***Lack of clarity regarding the evidence base*** – the evidence base must be clear and reliable, and JTI believes that there must be clear evidence to support any measure. Whilst the evidence base is discussed below, it is important to point out one issue raised by the Consultation. In relation to the display ban, the Consultation largely relies upon the "local survey" described in paragraph 2 of Section 1.⁷ The "local survey" has not been made publicly available, despite a number of requests made by the Tobacco Association of Singapore, of which JTI is a member (see the latest letter of request dated 13 June 2013 in Schedule 1). JTI is therefore unable to evaluate the scope, the methodology and the results of the "local survey", and so is unable in particular to examine whether

that “local survey” contains any reliable evidence on changing smoking behaviour, which is the Objective of the proposal (nothing in the Consultation indicates that there are any such results). As such, a full evidence-based response to the Consultation is currently impossible. The request for additional information on the “local survey” remains outstanding, and JTI reserves the right to supplement the Response once the details of this “local survey” become available.

- (d) ***Excessive layering of regulation*** – regulators must review and evaluate existing legislation (including whether it is being effectively enforced) and other options before regulating further. The tobacco sector in Singapore is already highly regulated. The Consultation identifies several recent measures that have only been in force for a few months. For example, the Tobacco (Control of Advertisements and Sale) (Labelling) Regulations 2012 only came into effect on 1 March 2013. The continual layering of regulatory measures, without appropriate evaluation as to their effectiveness, is contrary to the OECD’s Better Regulation principles. It is particularly inconsistent with these principles to propose a display ban when existing restrictions on the display of tobacco do not appear to have been evaluated.
- (e) ***The importance of government stakeholders*** – a Better Regulation requirement of critical importance is the need to determine the views of other government stakeholders best placed to comment on the likely impact of the proposed display ban on non-health policy related aspects, and any unintended consequences which this measure may have. The Consultation has not confirmed whether discussions with all other relevant governmental stakeholders have taken place. For instance, the Ministry of Trade and Industry, the Ministry of Finance, Singapore Customs, the Immigration and Checkpoints Authority, the Singapore Police Force and the Competition Commission of Singapore should be consulted, given the display ban’s economic impact (see Part 5 of the Response). It is unclear whether such consultations have taken place.

2.4 The approach of the HPB, HSA and NEA, and the Consultation, suffers therefore from a number of procedural flaws. JTI considers that no further steps should be undertaken towards adopting the measures identified in the Consultation until a more thorough analysis, including a RIA, has been carried out and a more detailed consultation has been undertaken, notably on the evidence of whether the proposed measures will achieve the Objective.

3. ROLE OF DISPLAY AND PACKAGING

3.1 The HPB’s Press Release fundamentally mischaracterises the role and importance of product display and the role of packaging - neither of these constitutes advertising. The Consultation proceeds on a false premise.

The importance of product display at point of sale

3.2 Tobacco is a legal product, and manufacturers compete among themselves for their share of the legal tobacco market. Adults who choose to smoke are entitled to be treated fairly, and have the right to choose the product they prefer.

3.3 The display of products enables adult smokers to identify, obtain information about and choose tobacco products, easily and without confusion. Consumers must be able to identify and distinguish products.

3.4 Moreover, product displays are a platform for genuine competition between tobacco products manufacturers. It is understandable and entirely legitimate that JTI should wish to facilitate consumers' navigation between different products so that they can easily select an alternative product, when they are ready to "brand switch". Brand switching by even a marginal number of consumers is important to commercial success.

The fundamental role of packaging and its display

3.5 The HPB Press Release refers (incorrectly) to "*the advertising effect of tobacco products*". The notion that the packaging of tobacco products itself, or its simple display, constitutes a form of promotional advertising (as implied in the "main aims" set out in the Press Release) is false.

3.6 The packaging of tobacco products and advertising are treated separately in national and international law. For instance, Part II of the Tobacco (Control of Advertisements and Sale) Act deals with advertisements and its Part III deals with packaging. The HSA itself has dealt separately with promotional aspects of display, and the display of tobacco packaging (again, see its letter dated 16 October 2009 to the Tobacco Association). There is no basis for a departure from the existing position.

3.7 Further, the FCTC deals with the issue of advertising and packaging separately.⁸ Article 13 of the FCTC sets out the requirements relating to tobacco advertising, promotion and sponsorship. By contrast, Article 11 of the FCTC sets out its requirements relating to the packaging and labelling of tobacco products. A clear dividing line is therefore drawn between these requirements in the FCTC.⁹

3.8 Additionally, there are good public policy reasons for treating differently the advertising and promotion of tobacco products and the labelling and design of the pack itself:

- (a) expert evidence demonstrates that product packaging is one element of the much broader field of integrated marketing communications (also known as "IMC") and is not "promotional marketing or advertising" as generally understood in academic writing or practice;¹⁰ and
- (b) tobacco packaging performs a fundamental role in respect of those consumers who have already made the decision to purchase a tobacco product. In

essence, distinctive packaging makes a product readily recognisable and allows existing adult smokers to find easily their preferred product.

3.9 JTI accepts that one of the roles of tobacco product packaging is to reaffirm brand equity and identity. Indeed, packaging is generally one of the last remaining, and therefore an essential, means by which JTI's products identify and differentiate themselves from those of other manufacturers. However, JTI does not accept the contention that the packaging of tobacco products itself, or its simple display, constitutes a form of promotional advertising. It would therefore be illegitimate and unjustified to introduce regulation on the basis of an exaggerated definition of "advertising".

4. ABSENCE OF EVIDENCE IN SUPPORT OF A DISPLAY BAN

4.1 The Consultation has not put forward any reliable evidence that demonstrates that the display ban will achieve the Objective. The burden lies on HPB, HSA and NEA to justify the introduction of a display ban in light of the Objective (to further reduce smoking rates in Singapore). JTI demonstrates below why:

- display bans are not based on, or consistent with, a credible and scientifically rigorous understanding of smoking behaviour; and
- there is no reliable evidence to justify a display ban, based on either available consumer survey evidence or on statistical evidence from those jurisdictions that have adopted a display ban.

Display bans are not based on, or consistent with, a credible and scientifically rigorous understanding of smoking behaviour

4.2 The need for, and likely effectiveness of, tobacco regulation can only be properly and coherently assessed if it is informed by the best contemporary science on the smoking behaviour of adults and minors. In December 2010, JTI responded to the European Commission's Consultation on possible changes to the Tobacco Products Directive, which also addressed display bans.¹¹ Leading experts (notably Professors Steinberg,¹² Dhar and Nowlis¹³) prepared reports, which accompanied JTI's submission, and which gave their independent opinions, on the basis of contemporary scientific thinking, on how the smoking behaviour of adults and minors should best be understood. In JTI's opinion, it flows from these experts' findings that:

- (a) **measures to reduce smoking among minors will only be effective if they control minors' ability to obtain tobacco products and remove cigarettes from the social networks of teenagers.** Access-based solutions take due account of the fact that minors are *naturally* more prone to risk-taking behaviour than adults. As Professor Steinberg explains, decision-making during adolescence is characterised by a heightened emphasis on rewards over risks; a tendency to focus on the immediate, rather than longer term, consequences of a decision; a susceptibility to peer influence; and weak self-regulation. Minors are well aware of the risks of smoking, but may choose to experiment anyway. These factors, together, explain why a psychological profile characterised by sensation-seeking, peer and family influence (i.e.

peers and family members who smoke) and the availability of cigarettes are the main risk factors for smoking.

In particular, Professor Steinberg's view is that the impact of changes in the display of cigarette packages on smoking by minors is likely to be very small at best.¹⁴ He also concludes that *"it is unlikely that impulse purchasing in retail stores plays any role in adolescents' acquisition of cigarettes: whereas adolescents' decisions to try smoking may be impulsive, their decisions to purchase cigarettes are likely to be far less so"*.¹⁵ Many minors do not obtain cigarettes from stores themselves. Minors who purchase cigarettes in retail stores need to decide in advance where they will do their shopping, so that they can select a vendor who will sell to underage individuals, arm themselves with a fake ID, or prepare a response to a sales clerk who asks for proof of age,¹⁶ and

- (b) **measures directed at adult smoking behaviour** need to target adults' decision-making at the point of consumption in order to be effective, taking due account of the analysis that adults employ when making decisions about risk. They would also need to be more individualised and to be positively framed, in the light of the triggers to smoking behaviour. Professors Dhar and Nowlis therefore dismiss the likely effectiveness of interventions that reflect the so-called "traditional model" of consumer decision-making, which is based on the notion that rational consumers will shift their smoking behaviour in accordance with the evaluation of information on the health risks of smoking.

In the opinion of Professors Dhar and Nowlis, the suggestion that displays somehow impact on adult consumers' purchasing behaviour and adult impulse purchasing is flawed when considering the framework for consumer behaviour. Smoking is a habit and adult smokers will have various established routines around their smoking behaviour including with regard to their purchasing behaviour. They state: *"if smokers habitually buy cigarettes, and this is a regular act, which they do in a repetitive fashion without prolonged deliberation, then banning cigarette displays is also very unlikely to cause a reduction in smoking. Instead, these smokers are likely to simply shop in a particular store and automatically buy their regular brand, regardless of any displays, and not on impulse, but as a habitual response"*.¹⁷

Further, they conclude that there is no credible evidence provided to show that displays encourage smokers to buy cigarettes when they would not otherwise have done so. While smokers may make unplanned purchases (i.e. buying a pack earlier than they otherwise would have or in a different store to where they intended to buy), this is not the same as choosing to purchase a product when such a choice would not have been made at all (i.e. even in the future) but for the display. It is clear that key triggers to smoking occur at the point of consumption and not at point of sale.¹⁸

Professors Dhar and Nowlis further consider that *"the suggestion that a ban on displays would assist those smokers wishing to quit is flawed on the basis that it does not take into account the way in which adult smokers decide to quit*

smoking and implement that decision. Implementing the decision to quit smoking comes as a result of a value system choice and an evaluation of costs and benefits in the context of the individual's specific goals and motivations at that given time. A decision to quit smoking which is properly implemented in such a way is unlikely to be displaced simply by seeing a pack in-store".¹⁹ Consistent with the framework set out in their report, Professors Dhar and Nowlis state that difficulties in implementing a decision to quit, or prompts to have a cigarette, would tend to come about as a result of point of consumption cues as opposed to point of purchase cues. In light of the above, Professors Dhar and Nowlis conclude that display bans are unlikely to have any effect on adults' smoking behaviour.

4.3 It follows, that the display ban is not based on, or consistent with, a credible and scientifically rigorous understanding of smoking behaviour. The display ban is not an appropriate means to achieve public policy objectives.

There is no reliable evidence for a display ban

4.4 There is no reliable evidence on which to justify a ban on tobacco product display. Banning the display of tobacco packs at point of sale will not achieve the Objective. Expert evidence, commissioned by JTI, confirms this view.

4.5 First, expert review of available and **relevant consumer survey studies** on the likely impact of a prohibition on the display of tobacco products concludes that there "*is no reliable evidence to suggest that a ban on retail display will lead to a reduction in youth smoking uptake or an improved environment for those trying to quit smoking*" and that there "*is nothing in the consumer surveys that demonstrates that [a ban] will serve to protect children and young people. Studies that attempt to make this connection ultimately fail to support the position when carefully evaluated*".²⁰ The methodologies of the existing studies are flawed and they fail to account properly for the smoking behaviour of adults and minors.

4.6 As to the "local survey" referred to in the Consultation, none of the survey results reported in the Consultation demonstrate any impact of display bans on smoking behaviour. The results, as reported, do not appear to provide evidence to justify a display ban achieving the Objective. JTI will comment on the "local survey" once it receives the requested information on that study.

4.7 Secondly, the **available data from other jurisdictions demonstrates that a display ban will not achieve the Objective**. Whilst the Consultation mentions that 13 countries have passed laws to ban the display of tobacco products at retail premises (see paragraph 2 of Section 1²¹), it is striking that the Consultation makes no attempt to evaluate whether the introduction of those laws has had any impact on smoking prevalence or consumption. The simple fact that other countries have introduced similar laws is not, of itself, sufficient to justify the introduction of a display ban in Singapore: the HPB, HSA and NEA must demonstrate that the introduction of a display ban would achieve the Objective, namely to change smoking behaviour in Singapore. Indeed, expert analysis of smoking data for young people in Iceland, Thailand and various Canadian provinces, which have adopted display bans for sufficient time to enable statistical analysis, indicates that such bans have had no

discernible impact in accelerating the already existing decline in smoking.²² Indeed, in Canada, the display ban is strongly and materially correlated with increasing smoking prevalence amongst 15-19 year olds.²³

5. UNINTENDED CONSEQUENCES OF A DISPLAY BAN

5.1 In addition to being ineffective in achieving the main aim of the measures proposed in the Consultation, a display ban would have serious and widespread negative impacts. However, the Consultation has not considered the range of negative and undesirable consequences which would result from the adoption of a display ban.

5.2 Evidence clearly shows that a display ban would cause **serious and unnecessary damage to competition** in the market.²⁴ There is no indication in the Consultation that the Competition Commission of Singapore has been consulted, in its role as guardian of competition, regarding the negative effect of a display ban on competition. Customers will request and purchase only those brands familiar to them. It follows that:

- (a) a display ban freezes and damages competition in the market and results in downward pressure on product prices towards an eventual commoditisation of tobacco products;
- (b) innovation will be materially impaired;
- (c) barriers to new market entrants will be increased; and
- (d) customer choice and “brand switching” will be reduced.

5.3 **Consumers and retailers will be confused**, as they will not be able to differentiate effectively between brands at point of sale.

5.4 **Small retailers will face loss of business** (through diversion to larger retailers), and increased operational costs.²⁵ The sale of tobacco products is an important revenue stream for retailers.

5.5 Contraband and counterfeit tobacco products could become easier to distribute and sell. Given that sales of tobacco products will be forced out of sight of consumers, there is a significant risk that they will not be able to make a distinction between legitimate and illicit tobacco products, especially if retailers were to engage in unscrupulous practices such as mixing genuine tobacco products with counterfeit ones. A retail display ban would therefore facilitate the commission of such illegal acts, and even make it more difficult for the authorities to reinforce public appreciation that smuggling, piracy and counterfeiting are crimes. This jeopardises the objectives of the FCTC regarding the elimination of all forms of illicit trade, the incidence of which currently stands at approximately 26% in Singapore.²⁶

6. UNJUSTIFIABLE INFRINGEMENT OF JTI'S FUNDAMENTAL RIGHTS BY A DISPLAY BAN

6.1 In addition, the display ban proposal will unjustifiably infringe JTI's fundamental rights as a commercial entity.²⁷

6.2 The display ban proposal engages a number of JTI's fundamental rights which are protected under various legal instruments and Singapore law, including the right to free speech, right to trade and intellectual property rights. In particular:

- (a) the display ban denies JTI its right to trade and to communicate with existing adult smokers about the attributes of its products, including its trademarks, and, as a corollary, denies those individuals their right to receive information; and
- (b) prohibiting commercial expression at point of sale impairs the very essence of free speech and JTI's rights to engage in commerce.

Economic Partnership Agreements and BITs

6.3 Singapore and Japan entered into the New-Age Economic Partnership Agreement (*JSEPA*) in 2002. *JSEPA* was subsequently updated in 2007 by a Protocol. *JSEPA* provides a "*legal framework for an economic partnership*" in light of the "*warm relations and strong economic and political ties*" between Japan and Singapore. In particular, pursuant to Articles 103 and 104 of *JSEPA*, both countries have undertaken to take appropriate measures to "*facilitate trade and investment flows*" between the two countries and the "*efficient functioning*" of their markets. The countries have also agreed to cooperate in order to control anti-competitive activities.

6.4 As described above, evidence demonstrates that a ban on the display of tobacco products would cause serious and unnecessary damage to competition in the market, namely by undermining the ability of tobacco products to compete fairly. The effect of such a ban would be anti-competitive and, therefore, inconsistent with Singapore's obligations pursuant to *JSEPA*.

6.5 Further, Singapore currently is party to a number of BITs, under which a right of recourse may arise on the basis that Singapore has breached one or more of the substantive protections contained in the BITs, including, for example, a requirement to treat qualifying investments fairly and equitably.

7. ALTERNATIVE SOLUTIONS TO A DISPLAY BAN

7.1 There are less restrictive, more targeted and proportionate alternative solutions which have been adopted by other jurisdictions with the goal of reducing smoking rates and address the key methods by which minors access tobacco products. There already exists a framework in the Tobacco (Control of Advertisements and Sale) Act and its licensing regulations for the criminalisation of proxy purchasing by minors and the "negative licensing" of retailers who sell tobacco to minors, and the following solutions build on that framework and are likely to be effective when evaluated against Better Regulation principles:

- (a) more effective, targeted enforcement of the current regulatory regime;
- (b) reinforcing retail access prevention measures, such as the ‘No ID No Sale’ programme; and
- (c) renewing targeted public information campaigns to quickly and effectively raise the awareness of tobacco control measures, such as the proxy-purchasing offence and negative licensing regime.

8. FURTHER OUTDOOR SMOKING BANS

8.1 Section 2 of the Consultation refers to further restrictions or bans in outdoor public spaces to protect people from environmental smoke.²⁸

8.2 The Consultation refers to Smoking (Prohibition in Certain Places) Act, which “*now covers 42 categories of indoor and outdoor places as well as 5 categories of public transport*”. JTI notes that “*the latest extension was implemented on 15 January 2013, to include common areas in residential buildings, sheltered walkways and linkways, overheads pedestrian bridges, hospital outdoor compounds and any area within a 5-meter radius from bus shelters*”.

8.3 In light of the above, JTI questions the need for any further restrictions on smoking in outdoor public spaces. Any further regulation would be excessive and premature, especially in the absence of any evaluation of what the previously introduced restrictions achieved, if any.

8.4 Further, since tobacco smoke is easily dispersed and highly diluted in outdoor environments, JTI believes that smoking outdoors should not be regulated.²⁹

8.5 Proposals to restrict smoking in outdoor areas are not based on, and are not consistent with, a complete understanding of the evidence concerning the potential health effects of environmental tobacco smoke.

8.6 To date, the scientific literature on environmental tobacco smoke is extremely limited. The limited evidence that exists is often incomplete and suffers from severe methodological flaws.

8.7 The WHO and the European Union (*EU*) have mandated outdoor air quality limits. The available data indicate that the exposure of non-smokers falls well below these limits in all but the most unrealistic of scenarios. Clearly, tobacco smoke in outdoor air is both highly diluted and usually fleeting in nature through the influence of atmospheric conditions. There is no credible evidence whatsoever that it causes harm to health.

8.8 Even well-known anti-tobacco advocates have questioned the scientific basis for restrictions on smoking outdoors.³⁰

8.9 JTI agrees that tobacco smoke, either indoors or outdoors, can be annoying to non-smokers. We therefore ask all smokers to be aware of and show consideration for people with whom they come into contact, and we strongly advise against smoking

when children are present. JTI supports targeted public information campaigns to raise awareness of smokers' need to be considerate of those around them, in particular children.

9. CONCLUSION

9.1 For all the reasons stated above, JTI is opposed to the measures proposed in the Consultation and urges the Singapore Government to take no further action in respect of these regulatory proposals. The proposals are inconsistent with the OECD Better Regulation requirements, in particular:

- (a) there is no reliable evidence that a display ban or further ban in outdoor smoking will lead to additional reductions in smoking rates;
- (b) the display ban's negative effects will be widespread and profound;
- (c) the existing regulations, particularly the existing display restrictions, do not appear to have been evaluated to determine their effectiveness to achieve the Objective;
- (d) the display ban will infringe JTI's fundamental legal rights, and the Consultation has not provided any justification for taking such a step.

9.2 JTI strongly believes that there are less restrictive, more targeted and proportionate alternative solutions that should be considered to achieve the Objective.

9.3 JTI would welcome the opportunity to share with you our views in more detail and our proposals based upon our experience.

JTI
27 June 2013

SCHEDULE 1

1. Professor M. Cave “*Better Regulation and Certain Tobacco Control Measures*” (24 November 2010)
2. Professor L. Steinberg “*Adolescent Decision Making and the Prevention of Underage Smoking*” (30 November 2010)
3. Professor R. Dhar and Professor S. Nowlis “*Report on Adult Consumer Behaviour and Decision-Making of Cigarette Smokers*” (2 December 2010)
4. Dr W. Keegan “*Analysis of Consumer Survey Evidence Relevant to the UK Department of Health’s Consultation on the Future of Tobacco Control*” (2 September 2008)
5. Dr W. Keegan “*Analysis of Consumer Survey Evidence Relevant to the UK Department of Health’s Consultation on the Future of Tobacco Control – a Supplemental Report*” (18 June 2009)
6. Dr A Lilico “*Economic Analysis of a Display Ban and/or a Plain Packs Requirement in the UK*” (2 September 2008)
7. Dr A. Lilico “*The Impact of Restrictions on the Display of Tobacco Products – a Supplemental Report*” (8 October 2009)
8. Dr A. Lilico “*Economic Analysis of Restrictions on the Display of Tobacco Products – 2009 Canadian Annual Smoking Data*” (30 November 2010)
9. APEC-OECD Integrated Checklist on Regulatory Reform (2005)
10. APEC Good Practice Guide on Public Sector Governance (2011)
11. Copy of a letter dated 16 October 2009 from Health Sciences Authority to the Tobacco Association (Singapore) relating to the display guidelines at entertainment outlets
12. Copy of a letter dated 13 June 2013 from the Tobacco Association (Singapore) to the Minister of Health requesting for a copy of ‘local survey’
13. Pack Collection Study 2012 commissioned by the Tobacco Association of Singapore (October 2012)

¹ JTI notes that such a ban is only recommended in paragraph 13 of the non-binding “Guidelines for implementation of Article 13”.

² APEC-OECD Integrated Checklist on Regulatory Reform (2005) at p 34. See also APEC Good Practice Guide on Public Sector Governance (2011).

³ APEC-OECD Integrated Checklist on Regulatory Reform (2005) at p 35.

⁴ Professor Cave's report, entitled "*Better Regulation and Certain Tobacco Control Measures*", dated 24 November 2010 (**Professor Cave's Report**) is available at <http://www.jti.com/how-we-do-business/key-regulatory-submissions>. See Professor Cave's Report, paragraph 3.16.

Martin Cave is a Visiting Professor at Imperial College Business School and, from January 2012, Deputy Chair of the Competition Commission.

⁵ See at <http://www.hpb.gov.sg/tobacco-public-consult/>

⁶ See at [http://www.hpb.gov.sg/HOPPortal/content/conn/HOPUCM/path/Contribution%20Folders/uploadedFiles/HPB Online/News and Events/News/2013/PublicConsultationto.pdf](http://www.hpb.gov.sg/HOPPortal/content/conn/HOPUCM/path/Contribution%20Folders/uploadedFiles/HPB%20Online/News%20and%20Events/News/2013/PublicConsultationto.pdf).

⁷ See at http://www.hpb.gov.sg/HOPPortal/health-article/HPB050603?utm_source=vanity-url&utm_medium=offline&utm_campaign=tobacco-public-consult.

⁸ Available at: http://www.who.int/tobacco/framework/WHO_FCTC_english.pdf.

⁹ JTI notes that the non-binding "Guidelines for implementation of Articles 11" and "Guidelines for implementation of Article 13" merge these separate provisions, without any evidential basis for doing so.

¹⁰ Dr Keegan's report, entitled "Analysis of Consumer Survey Evidence Relevant to the UK Department of Health's Consultation on the Future of Tobacco Control", dated 2 September 2008 (**Dr Keegan's 2008 Report**) is available at <http://www.jti.com/how-we-do-business/key-regulatory-submissions>. See Dr Keegan's 2008 Report, page 3.

Dr Warren J. Keegan is Distinguished Professor of Marketing and International Business at the Lubin School of Business, Pace University, New York, and Visiting Professor at ESSEC, Cergy-Pontoise, France. He is Head of Keegan & Company LLC, Rye, New York, United States of America. Dr Warren Keegan was commissioned by JTI to undertake a thorough and detailed analysis of consumer survey studies on the likely impact of a ban on the display of tobacco products.

¹¹ JTI's response is available at: <http://www.jti.com/how-we-do-business/key-regulatory-submissions>.

¹² Professor Steinberg's report, entitled "*Adolescent Decision Making and the Prevention of Underage Smoking*" dated 30 November 2010 (**Professor Steinberg's Report**), is available at <http://www.jti.com/how-we-do-business/key-regulatory-submissions>.

Professor Laurence Steinberg, Distinguished University Professor and Laura H. Carnell Professor of Psychology at Temple University, Philadelphia, United States of America, is a leading authority on adolescent judgment, decision making and risk taking.

¹³ Professors Dhar and Nowlis's Report, entitled "*Report on Adult Consumer Behaviour and Decision-Making of Cigarette Smokers*" dated 2 December 2010 (**Professors Dhar and Nowlis's Report**), is available at <http://www.jti.com/how-we-do-business/key-regulatory-submissions>.

Professor Ravi Dhar is George Rogers Clark Professor of Management and Marketing and Director of the Centre for Customer Insights at the Yale School of Management, New Haven, United States of America. Professor Stephen Nowlis is August A Busch, Jr Distinguished Professor of Marketing in the Olin School of Business at Washington University in St. Louis, United States of America. Both are award-winning marketing professors at leading universities in the United States, who have published extensively on the subject of consumer behaviour and decision-making.

¹⁴ See Professor Steinberg's Report, pages 4 and 29.

¹⁵ See the reasons elaborated in Professor Steinberg's Report, page 29.

¹⁶ See Professor Steinberg's Report, pages 4 and 28.

¹⁷ See Professors Dhar and Nowlis's Report, paragraph 6.33.

¹⁸ See Professors Dhar and Nowlis's Report, paragraph 6.36.

¹⁹ See Professors Dhar and Nowlis's Report, paragraph 6.35.

²⁰ See paragraph 2.8 of Dr Keegan's report entitled "*Analysis of Consumer Survey Evidence Relevant to the Display Ban Requirement in England*", dated 28 April 2010 (**Dr Keegan's 2010 Report**). We would be happy to provide you with copies of Dr Keegan's 2010 Report.

See, also, his reports: (i) "*Analysis of Consumer Survey Evidence Relevant to the UK Department of Health's Consultation on the Future of Tobacco Control*", dated 2 September 2008 (**Dr Keegan's 2008 Report**); (ii) "*Analysis of Consumer Survey Evidence Relevant to the UK Department of Health's Consultation on the Future of Tobacco Control – a supplemental report*", dated 18 June 2009 (**Dr Keegan's 2009 Report**); and (iii) "*Supplemental Report in light of the Secretary of State for Health's Reply Evidence on the Retail Display of Tobacco*" dated 11 January 2011 (**Dr Keegan's 2011 Report**). Dr Keegan's 2008 and 2009 reports are available at <http://www.jti.com/how-we-do-business/key-regulatory-submissions>.

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- 21 See at http://www.hpb.gov.sg/HOPPortal/health-article/HPB050603?utm_source=vanity-url&utm_medium=offline&utm_campaign=tobacco-public-consult.
- 22 See, notably, the reports by Dr Andrew Lilico, (i) “Economic Analysis of a Display Ban and/or a Plain Packs Requirement in the UK”, dated 2 September 2008 (**Dr Lilico’s 2008 Report**), (ii) “The impact of restrictions on the display of tobacco products –a supplemental report”, dated 8 October 2009 (**Dr Lilico’s 2009 Report**), (iii) “Economic Analysis of a Display Ban Requirement in England”, dated 28 April 2010 (**Dr Lilico’s April 2010 Report**), (iv) “Economic Analysis of Restrictions on the Display of Tobacco Products – 2009 Canadian Annual Smoking Data”, dated 30 November 2010 (**Dr Lilico’s November 2010 Report**); and (v) “Economic Analysis of a Display Ban Requirement in England – Supplemental Report”, dated 11 January 2011 (**Dr Lilico’s 2011 Report**).
- Dr Lilico is Principal and Chairman at Europe Economics, a private sector consultancy which specialises in the application of economics and econometrics to problems arising predominantly in the fields of public policy, regulation and competition. Among others, he has advised the European Parliament and European Commission and Financial Services Authority. He is also a member of the UK Shadow Monetary Policy Committee, and a regular media commentator. His 2008, 2009 and November 2010 Reports are available at <http://www.jti.com/how-we-do-business/key-regulatory-submissions>. We would be happy to provide you with a copy of Dr Lilico’s April 2010 and 2011 Reports, should you be interested.
- 23 See Dr Lilico’s 2009 Report, available at <http://www.jti.com/how-we-do-business/key-regulatory-submissions>, paragraphs 2.46-2.48. Dr Lilico’s exercise investigated only correlation, not causality (see paragraph 2.49(c)).
- 24 See the reports submitted by Dr. Lilico, above. See, also, the judgment of the EFTA Court, on 12 September 2011, in Case E-16/10 regarding a case Philip Morris commenced against the Norwegian government regarding its display ban. The EFTA Court noted that “*The national court must, in particular, take account of the effects of the display ban on products which are new on the market compared to products bearing an established trademark. In that regard, the Court notes that, depending on the level of brand fidelity of tobacco consumers, the penetration of the market may be more difficult for new products due to the display ban which applies in addition to a total advertising ban.*” (para 49).
- 25 See the Canadian Convenience Stores Association document “*Planning Ahead: Lessons from the Canadian Convenience Store Industry*” and Issue Brief (October 2008).
- 26 “Pack Collection Study 2012” commissioned by the Tobacco Association of Singapore (October 2012).
- 27 In April 2010, JTI and other manufacturers commenced judicial review proceedings in the English High Court to challenge the display ban under the Health Act 2009, on grounds of breach of freedom of expression and of free movement of goods under the EU treaty. See also, EFTA Court judgment in Case E-16/10: the EFTA Court held that the display ban would infringe the free movement of goods if, in fact, it affects the marketing of imported products more than domestic products, and that it was for the national court to identify the aims of the legislation and whether the aims can be achieved by less restrictive means.
- 28 See at http://www.hpb.gov.sg/HOPPortal/health-article/HPB050603?utm_source=vanity-url&utm_medium=offline&utm_campaign=tobacco-public-consult.
- 29 Unless necessary in specific areas, for example chemical plants.
- 30 Jordan Raphael, in his discussion of American municipal outdoor smoking bans, indicated that outdoor smoking bans go “*beyond what is justified by the scientific findings on [environmental tobacco smoke]*” (Raphael, 2007). Researchers also caution that it is premature to draw policy conclusions from their findings: Cameron et al. (2009) and Brennan et al. (2010) “*do not advise that the present results are used to advocate for outdoor smoking restrictions at the expense of other tobacco control policies known to reduce smoking prevalence*”.