

For the Attention of Martin Dockrell  
Public Health England  
Wellington House  
133-155 Waterloo Road  
London  
SE1 8UG

One Eton Street  
Richmond Upon Thames  
London TW9 1EF  
United Kingdom

[www.bat.com](http://www.bat.com)

30 July 2020

Dear Mr Dockrell

### **POSSIBLE BREACHES OF THE TOBACCO AND RELATED PRODUCT REGULATIONS 2016**

We respectfully refer to our letter of 17 July 2020 in which British American Tobacco UK Limited (“**BAT**”) provided independent sensory analysis from SGS to supplement the evidence we have provided in our previous letters supporting the view that the new cigarette products launched by Gallaher Limited, the UK subsidiary of Japan Tobacco International (“**JTI**”), are in breach of the law.

We are aware, based on media reports, that you commenced your investigation on or around 11 June 2020 and we provided information to you and Trading Standards about these new cigarette products on 3 June 2020. These new cigarette products have now been on the market for eight weeks and we are deeply concerned that manufacturers, retailers and consumers still do not have the clarity needed about their legal status. This is particularly concerning as we believe we have provided you with compelling independent evidence clearly showing there is a very high likelihood that JTI’s new cigarette products have a characterising flavour in breach of section 15(1) of the Tobacco and Related Products Regulations 2016 (“**TRPR**”).

As you know, section 53 of the TRPR requires that a breach of section 15(1) of the TRPR be treated as a safety regulation within the meaning of the Consumer Protection Act (“**CPA**”). Under section 14 of the CPA, Public Health England and/or Trading Standards (as the competent authorities) have the right to issue a suspension notice where there are reasonable grounds for suspecting that any safety provision has been contravened. We firmly believe that the evidence we have provided to date more than meets the legal test of “reasonable grounds” that a safety regulation has been contravened and we respectfully reiterate our requests that Public Health England and/or Trading Standards take immediate action to suspend the sales of JTI’s new cigarette products, irrespective of the status of your investigation.

As highlighted in our letter of 17 July 2020, JTI are making significant profit from products which are highly likely to be in breach of section 15(1) of the TRPR. According to Nielsen marketing tracking data, the sales performance of JTI’s new cigarette products (set out below in Table 1) shows that in the ten weeks to 18 July 2020, they sold 331.28mn sticks, or 16.56mn packs, which we estimate will have generated approximately £14.82mn in net turnover. This means that in the four weeks since the last data that we provided to you, JTI has more than doubled its already significant profits on the back of products which are highly likely to be in contravention of laws explicitly intended to prohibit the sale of tobacco products with a characterising flavour and protect consumers.

HOUSE	BRAND	WK29	To date Sales	(£)20s pack	Approx NTO
		WE 18.07.20	(W21-W29)	Price	(£) Translation
		Share (%)	Volume (mn)	CPTO	NTO
BENSON & HEDGES	BENSON & HEDGES NEW BLUE DUAL	0.40	15.87	7.1	0.71
BENSON & HEDGES	BENSON & HEDGES NEW SUPERKINGS GREEN	0.47	16.32	7.3	0.73
BENSON & HEDGES	BENSON & HEDGES NEW DUAL	0.33	14.08	6.3	0.63
SOVEREIGN	SOVEREIGN KING SIZE NEW DUAL	1.45	52.64	23.6	2.36
STERLING	STERLING NEW SUPERKINGS GREEN	0.77	29.78	13.3	1.33
STERLING	STERLING KING SIZE DUAL NEW	4.75	185.71	83.1	8.31
BERKELEY	BERKELEY NEW SUPERKINGS GREEN	0.22	9.34	4.2	0.42
MAYFAIR	MAYFAIR NEW GREEN	0.20	7.53	3.4	0.34
<b>TOTAL SHARE JTI POST-MB SKUS</b>		<b>8.59</b>	<b>331.28</b>	<b>148.25</b>	<b>14.82</b>

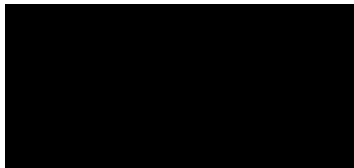
Table 1: Financial and volume data for the period 10 weeks to 18 July, Nielsen Tracking

In Denmark, we are aware that the Danish Safety Technology Authority (“DTSA”) has completed its investigation and informed JTI’s Danish subsidiary of its preliminary decision that it considers the Danish products to be in breach of the relevant Danish legislation (which as in the UK, is based on the EU Tobacco Products Directive).

Based on the foregoing we place on record our assertion that Public Health England and/or Trading Standards have an obligation, as well as the clear legal basis, to act expeditiously to prevent the continued breach of the TRPR, pending the outcome of your investigation. In the absence of any action by Public Health England and/or Trading Standards, JTI will continue making significant profits from these illegal products and this may ultimately lead to other manufacturers placing similar products on the market.

We respectfully request a written response to this letter stating what action Public Health England and/or Trading Standards has taken to date and when you expect your investigation to be concluded.

Yours sincerely




**BAT UK & Ireland**