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Dear Mr Dockrell

**Our client: Imperial Tobacco Limited ('Imperial')  
Breach of Tobacco and Related Products Regulations 2016 - Japan Tobacco  
International ('JTI')**

We write further to our letter dated 1 October 2020 in relation to the above matter.

Imperial notes with disappointment that, as of the date of this letter, JTI continues to place menthol cigarettes on the UK market in breach of the Tobacco and Related Products Regulations 2016 (TRPRs).

In previous correspondence we set out our client's view – supported by the advice of David Travers QC – that Regulation (EU) 2016/779 did not and should not have prevented PHE and/or Trading Standards from investigating this matter given the very clear prima facie evidence (from experts and consumers) that the JTI Products have a clearly noticeable menthol flavour.

Those discussions have, of course, since been overtaken by events and it is our client's understanding that PHE has since begun testing 'products of interest' following the completion of the Brexit Implementation Period on 31 December 2020<sup>1</sup>. Imperial welcomes this development.

Nevertheless, our client remains concerned that the pace of regulatory enforcement in this matter fails to reflect the seriousness of JTI's breach of the law. The offending products have now been on sale to UK consumers for 37 weeks in total. This has created immense uncertainty within the industry and – in Imperial's view – the longer the situation goes on unremedied, the greater the risk is that the 'level playing field' will be compromised, thereby weakening the long-standing strong record of regulatory compliance by the tobacco industry in the UK.

Accordingly, our client requires confirmation that this urgent and pressing issue will be resolved with all due expediency.

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<sup>1</sup> See House of Commons - Written Answers - Department of Health & Social Care (27 January 2020), Jo Churchill MP

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PHE may be aware that decisive regulatory action has already been taken in other territories, for example in Hungary where authorities have banned the sale of the relevant JTI products due to the presence of menthol additives, at the same time imposing a fine of HUF 150,000,000 on JTI. PHE will no doubt be aware of the proactive stance taken by various other EU Member States on this issue, including Sweden, Finland and the Netherlands<sup>2</sup>.

### **Clarifications required**

In light of the above, Imperial would be grateful if PHE could confirm the following:

1. Whether PHE has now begun testing the JTI Products (which we assume are the 'products of interest' referred to in Jo Churchill MP's most recent update to the House of Commons) to determine whether they have a characterising flavour. If not, we would be grateful if you could confirm when such testing is expected to begin.
2. When PHE expects to report its findings to the Department for Health and Social Care, and make these findings available to the UK tobacco industry.
3. What testing methodology is being used as the basis for the investigation. Our client of course appreciates that PHE may not be in a position to disclose precise details of any ongoing study; however in the interest of regulatory transparency the wider UK tobacco industry is entitled to a legitimate expectation that UK tobacco regulators will provide guidance as to how the 'characterising flavour' test will be assessed in practice. Imperial expects that due emphasis will be placed on established methodologies such as expert sensory panels and consumer 'CATA' testing, but confirmation on this matter would be welcome.

Finally, we note that, as of 1 January 2021, UK tobacco manufactures can no longer rely on any regulatory certainty provided by the European Commission on this matter. In light of this fact, it is now incumbent on PHE, as the principal regulatory authority responsible for tobacco control in the UK, to issue clear practical guidance to all stakeholders.

Our client is, of course, very much mindful and appreciative of the extraordinary work that PHE is carrying out as part of the UK's ongoing efforts to combat the coronavirus pandemic. Nevertheless, Imperial has shown immense fortitude in tolerating a significant delay – now standing at almost 9 months – in regulatory action on this matter and it firmly believes that now is the time for PHE to issue clear guidance to the sector on this very important issue.

With that in mind, our client would appreciate a response to the queries set out above as soon as possible and in any event no later than **12 February 2020**.

Please note that in the absence of a substantive response, our client will consider its legal options and act accordingly.

We look forward to hearing from you.

Yours faithfully

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<sup>2</sup> In this regard, we understand that European Commission officials have written to representatives of the tobacco industry to say it is up to member states to investigate if some companies are still selling menthol-flavoured cigarettes since the ban came into effect (Source: [Irish Times](#), 9 December 2020) – which we note accords with Imperial's long-standing view on this matter.



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