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Date
11 June 2018

By email and by hand

Dear Sirs,

Scientific Information and Studies relating to electronic cigarettes and heated tobacco products

We act for British-American Tobacco Company (Hong Kong) Limited ("**BATHK**").

We write in connection with agenda item IV of the meeting of the Legislative Council's Panel on Health Services ("**Panel**") on 19 June 2018 (the "**Meeting**"), namely to discuss the legislative proposal to regulate electronic cigarettes ("**e-cigarettes**") and other new tobacco products.

We previously submitted a letter to the Panel dated 16 May 2018 ("**May Submission**") to provide some relevant scientific information and studies on e-cigarettes and heated tobacco products ("**THPs**"), including those manufactured and/or marketed by BATHK related entities. We set out below a brief executive summary of the May Submission to assist the Panel's consideration of the agenda item at the Meeting. We should be grateful if you could kindly table a copy of this letter and re-table a copy of the May Submission for the Panel members' references.

In addition, we understand from the Panel's meeting on 21 May 2018 that the Panel's research team will be preparing reports on the regulation and health effects of THPs and e-cigarettes. We believe the executive summary below and the May Submission would be helpful for this purpose and should be grateful if a copy of the same can be provided to the research team to assist their preparation of the reports.

For ease of reference, references to paragraph numbers in the executive summary are references to paragraph numbers in the May Submission.

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Executive Summary of the May Submission

1. THPS

Potential harm reduction of THPs

- 1.1 In contrast with traditional cigarettes which burn and generate toxicants in the tobacco smoke, THPs heat, rather than burn, tobacco at a much lower temperature. Instead of smoke, that heating process produces an aerosol which is composed mainly of water, humectant, nicotine and flavourings. This is fundamentally different to tobacco smoke emitted from a lit cigarette (see paragraphs 2.1 to 2.2 of the May Submission).
- 1.2 Scientists widely agree that it is primarily the toxicants found in cigarette smoke (largely released through the combustion of tobacco) that cause smoking related disease – not the nicotine itself. The use of THPs thus offers the potential for significant harm reduction when compared to smoking traditional cigarettes (see paragraphs 1.3 and 2.4 of the May Submission).
- 1.3 The scientific research British American Tobacco p.l.c ("**BAT**") has undertaken to date on *glo*, which is one of BAT's THPs, shows that it emits approximately 90-95% less toxicants than the smoke of a reference cigarette in terms of the nine harmful toxicants the World Health Organisation recommends to reduce in cigarette smoke. Further research on the *glo* product also shows that there are reduced biological impacts and reduced second hand emissions through the use of *glo* (see paragraph 2.5 of the May Submission).
- 1.4 The reduced risk potential of THPs has also been recognised by public health authorities. For example (see paragraph 2.7 of the May Submission):
 - 1.4.1 Public Health England concluded that "[c]ompared with cigarette smoke, heated tobacco products are likely to expose users and bystanders to lower levels of particulate matter and harmful and potentially harmful compounds";
 - 1.4.2 the US Food and Drug Administration hopes that "we can all see the potential benefits to addicted cigarette smokers, in a properly regulated marketplace, of products capable of delivering nicotine without having to set tobacco on fire"; and
 - 1.4.3 the UK Committee on Toxicity of Chemicals in Food, Consumer Products and the Environment found that there was a reduction in the number of harmful and potentially harmful compounds (some more than 90%) in the aerosols generated by some THPs on the UK market, as compared to conventional cigarettes.

Appropriate approach to regulation of THPs

- 1.5 Given that the sticks of THPs do not produce smoke when used as intended with THP devices, and in light of their harm reduction potential, BATHK respectfully submits that they should be classified differently from traditional cigarettes. The Government should align its treatment of the THPs with that of "other tobacco products" under the Dutiable Commodities Ordinance (Cap. 109) (see paragraph 2.9 of the May Submission).

2. E-CIGARETTES

Harm reduction of e-cigarettes

- 2.1 Unlike traditional cigarettes, e-cigarettes contain no tobacco at all, do not rely on combustion, and hence, no smoke or tobacco tar is formed when the e-liquid is "vaped".



2.2 An increasing number of health experts agree that vaping e-cigarettes is less harmful than smoking tobacco and that switching cigarette smokers to e-cigarette use could reduce the level of toxic and cancer causing substance in their body, and reduce premature deaths. These experts include Public Health England, the Scottish National Health Service, Action on Smoking and Health Scotland, Cancer Research UK, the UK Centre for Tobacco and Alcohol Studies and the UK Royal College of Physicians (see paragraph 3.2 of the May Submission).

2.3 There is also evidence that vaping may be an effective way for people to quit smoking. This is supported by the reports of Public Health England, the UK National Health Service, Cancer Research UK and the UK Royal College of Physicians (see paragraph 3.3 of the May Submission).

Appropriate approach to regulation of e-cigarettes

2.4 In view of the harm reduction potential of e-cigarettes, and the evidence that vaping may be an effective way for people to quit smoking, BATHK respectfully submits that a proportionate approach to regulation of e-cigarettes would be more appropriate and should be based on the following principles (see paragraph 3.6 of the May Submission):

2.4.1 e-cigarettes should be classified as consumer, not medicinal, products so that they are readily accessible by adult consumers as an alternative to tobacco products;

2.4.2 high product standards should be developed to reassure consumers and regulators on quality and safety of e-cigarettes;

2.4.3 advertising and promotional activities should only be directed at adults and manufacturers should be permitted to make comparative claims;

2.4.4 there should be freedom to collaborate and communicate on the benefits of e-cigarettes to consumers, freedom to distribute e-cigarettes in retail (including online) channels and freedom to product improvement and innovation; and

2.4.5 e-cigarettes should not be subject to excise as they do not contain tobacco.

2.5 A balanced approach to regulation of e-cigarettes has also received support from an increasing number of international public health bodies and experts. Some governments and other public health bodies, including the UK Government, the New Zealand Ministry of Health, the National Centre for Smoking Cessation and Training and Cancer Research UK, have also actively supported e-cigarettes as part of their tobacco harm reduction activities (see paragraph 3.5 of the May Submission).

3. CONCLUSION

3.1 In view of the above, BATHK respectfully invites the Panel and the Government to study the science and evidence relating to THPs and e-cigarettes before introducing any proposed regulations. In this connection, BATHK is committed to working together with the Panel and the Government to establish the appropriate regulatory regimes that reflect the risk profile of these products. Please feel free to contact us should you have any queries.

Yours faithfully,

Herbert Smith Freehills