

New tobacco bill will entrench illicit trade in SA

Proposed legislation will not reduce smoking; ignores global best practice on tobacco harm reduction

Thursday, 6 July 2023 — British American Tobacco (BAT) South Africa today called the Tobacco Products and Electronic Delivery Systems Control Bill, currently under consideration by Parliament, the biggest missed opportunity in decades to improve tobacco regulation and save lives in South Africa, saying it would accelerate the destruction of the legal tobacco value chain and permanently entrench a dominant illicit trade, without reducing smoking.

“The 2020 tobacco sales ban, which South Africa’s courts declared unconstitutional, demonstrated the effects of prohibition as consumers were forced to experiment with brands they had never heard of before. Illicit trade skyrocketed,” said Johnny Moloto from BAT South Africa.

Bill ensures an almost fully illicit market in South Africa’s future

“The market has still not recovered and the illicit trade now accounts for up to 70% of cigarettes sold in South Africa. That means up to 70% of all tobacco products are already sold outside the scope of the government’s existing tobacco control measures.

“It is beyond comprehension that the Department of Health wants to introduce measures like plain packaging and retail display bans that will simply incentivise remaining smokers of legal cigarettes to migrate to illicit products. These smokers will forever be beyond the reach of the government’s tobacco control measures, effectively handing the illicit market another gift-wrapped opportunity to grow.

“BAT South Africa supports the need for regulation and is committed to reducing the health impacts of its business by giving smokers a viable opportunity to migrate from cigarettes to less risky¹ products,” he said. “This Bill will entrench smoking rates and foreclose the opportunity for tobacco harm reduction.”

Moloto said brands played an important role in consumer choice and many consumers remained willing to pay more for trusted brands for the quality confidence they provided. Removing unique brand identifiers through plain packaging would make price the primary consumer consideration, causing a shift to cheaper, predominantly illicit, options, and this would make smoking more affordable and likely increase consumption.

¹ Based on the weight of evidence and assuming a complete switch from cigarette smoking. These products are not risk-free and are addictive.

“As with the 2020 tobacco ban, the Bill ignores the realities of the South African market, which is dominated by the informal trade, where loose cigarette sales are the order of the day. While the legal industry will have no option but to comply with plain packaging and retail display bans, informal traders will be faced with an impossible choice, between complying and losing business to competitors who don’t comply,” Moloto said.

“Their only other option to survive will be to make themselves guilty of an offence punishable by 10 years in jail **plus** a fine, by continuing to sell illicit branded products and loose sticks. Considering the huge challenges faced by the law enforcement authorities with violent and organised crime, and very limited resources, it’s simply not feasible for these measures to be properly enforced.

“If this Bill is implemented in its current form, we estimate the legal industry will shrink further from the current 30% of the market. This is potentially the final straw for BAT’s operations in South Africa. We have tried everything to engage the Government on illicit trade. As just one example, we welcomed SARS’s installation of surveillance cameras at our factories. In contrast, other members of the tobacco industry are challenging this sensible measure in court. You have to ask what they have to hide when they do that.

“The Bill has never been less appropriate for achieving its objectives than it is in today’s market.”

‘Egregious’ missed opportunity for tobacco harm reduction and lessons from other countries

Moloto said the most egregious missed opportunity from a health perspective is the Bill’s failure to distinguish between less harmful new categories of nicotine products and traditional combustible cigarettes. “This Bill does not acknowledge the potential of tobacco harm reduction as a public health strategy, despite other governments around the world doing so,” he stated.

“Tobacco and nicotine products should be regulated differently based on their relative risk profiles as reflected in scientific literature, and many other governments recognise this.

“For example, in the United Kingdom, the government recently launched a ‘Swap to Stop’² programme where one million UK smokers will be encouraged to swap cigarettes for vapes to improve the health of the nation and cut smoking rates. An independent study estimated that an additional 50,000 to 70,000 smokers in England stopped smoking successfully using e-cigarettes, who would have continued smoking without them³.

“In the United States, the Food & Drug Administration has, as part of its Premarket Tobacco Products Applications and Modified Risk Tobacco Products processes, deemed a wide range of products, from heat-not-burn, to vapes, to smokeless nicotine pouches, as fulfilling the criteria of being ‘appropriate for the protection of public health’.

“Separately, Sweden has progressively and systematically made smokeless and less harmful alternatives to cigarette smoking accessible, affordable, and acceptable to their population over the past five decades.

² www.gov.uk/government/news/smokers-urged-to-swap-cigarettes-for-vapes-in-world-first-scheme

³ Beard, E., West, R., Michie, S., & Brown, J. (2020.) Association of prevalence of electronic cigarette use with smoking cessation and cigarette consumption in England: a time-series analysis between 2006 and 2017. *Addiction* (Abingdon, England), 115(5), 961–974. doi.org/10.1111/add.14851

“As a result, they have slashed their smoking rates from 15% in 2008 to 5.6%⁴ in 2023. Sweden now has a cancer incidence 41% lower than the rest of its European counterparts⁵, corresponding to a 38% lower level of total cancer deaths. It has achieved a 39.6% lower rate of death from all tobacco-related diseases⁶, compared to the EU average. Sweden is one of just three countries⁷ with the lowest number of deaths attributed to lung cancer,” Moloto explained.

“The Bill completely ignores this evidence of the benefits of tobacco harm reduction, and the measures it introduces will instead push ex-smokers who have successfully migrated to less risky products back to cigarettes.”

Moloto said this showed why a complete, unbiased review of all the evidence was needed so South Africa could benefit from global best practice.

“Now that Parliament’s Portfolio Committee on Health has advertised for public comments, we really hope the Committee will carefully consider **all** submissions and follow peer-reviewed science,” he concluded.

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⁴ The Public Health Agency of Sweden. Use of tobacco and nicotine products (self-reported) by age, gender and year. 2022. Available: http://fohm-app.folkhalsomyndigheten.se/Folkhalsodata/pxweb/sv/A_Folkhalsodata/A_Folkhalsodata_B_HLV_aLevvanor_aagLevvanortobak/hlvitobaald.px

⁵ Ramström, L. 2020. Institute for Tobacco Studies. Death rates per 100,000 attributable to tobacco – Sweden and the rest of the EU in 2019. Compiled from The Global Burden of Disease Study. Available: www.researchgate.net/publication/345643346_Tobacco-related_mortality_SwedenEU_easier_readable_charts

⁶ Data extracted from Global Burden of Disease Database, 2019. Available: <https://vizhub.healthdata.org/gbd-compare>

⁷ Eurostat, Cancer Statistics – Specific Cancers, 2019. Available: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Cancer_statistics_-_specific_cancers#Lung_cancer