

ANNEX A: Sources of Information

Annex I: An agreement that allows NTE to be consult and participate in policy development



የኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፐብሊክ
የሚኒስትሮች ምክር ቤት ጽ/ቤት
THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
OFFICE OF THE COUNCIL OF MINISTERS

ቀን 19 DEC 2017
Date
ቁጥር M/320-748/1
Ref.No.

To Ministry of Public Enterprises

Addis Ababa

Subject:- Government undertaking related to the sale of its shares in National Tobacco Enterprises Share Company.

As part of the Government's sale of all of its shares in National Tobacco Enterprises Share Company ('NTE') the Government has committed to certain undertaking in consideration of the purchase of such shares and to enable continued investment in the manufacturing, agricultural, distribution and sales operations of NTE

NTE is committed to support the Government's fight against the significant trade of Illegal Tobacco Products in the Country and, to the extent that fighting illegal trade is a priority of Public interest, the Government should use its best efforts to consider and support NTE's recommendations and investment in this regard.

Therefore and in accordance with Government undertaking, all relevant administrations are expected to:

1. Conclude a memorandum of understanding with NTE, with the objective of reducing the illegal trade of Tobacco products, which is very significant in Ethiopia. In this regard the Government's anti-illegal trade task force and NTE should collaborate closely to define an action plan and a list of measures to best ensure such objective can be achieved.

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ገላ

2. During law making process consulting and participating relevant stakeholders and the public is a necessary precondition in Ethiopia. To this end all branches of Government and administrations, whose mission and efforts may be directly or indirectly impacted by any proposed modification or preparation of Tobacco Taxation, regulation or legislations should be consulted. NTE should be consulted in a transparent manner during modification or preparation of Tobacco Taxation, regulation or legislations.
3. Take all measures necessary to ensure that NTE' retains its monopoly rights until December 2025, as per the Contract of sale signed on 15 July 2016 and proclamation No. 181/1999 to issue business license in respect of the purchase, preparation, manufacture, sale, import, and export of tobacco and tobacco products.
4. Facilitate as much as possible the availability of foreign currency as may be reasonably required by NTE, to implement its business plan.

Hence, based on the above Ethiopian Governments Specific undertakings with regard to the sale of its shares in National Tobacco Enterprises Share Company, the Ministry of Public Enterprises can negotiate and transfer by sale the Ethiopian Government's shares in NTE.

- Ministry of Trade
- Ministry of Finance and Economic Cooperation
- Ministry of Health
- Federal Attorney General
- National Bank of Ethiopia

Addis Ababa



Sincerely yours,

ALEMAYEHU TEGENU
Minister of Cabinet Affairs



Annex 2: Letter of NTE Compliant to Customs Commission addressing efforts of FDA and CSO

NTE

National Tobacco Enterprise (Ethiopia) Share Company

ለጉምሩክ ኮሚሽን

አዲስ አበባ

ታሪክ 08 ቀን 2013 ዓ/ም

ቁጥር 21/ሀ/ጥ-ሀ/21/1

ጉዞ:- ድርጅታችን ላይ አያደረሰ ስላለው ያለተገባ ተፅዕኖ ስለማለወቅ

ብሔራዊ ትምባሆ ድርጅት (ኢትዮጵያ) አ.ማ በአዋጅ ቁጥር 37/85 እና 181/92 የሞኖኖራ መብት ተሰጠባት የተቆመ የመንግስት የልማት ድርጅት የነበረ ሲሆን ለአክሲዮን ሽያጭ ወደ ግል ድርጅት ለማስተላለፍ በሚደረገው የአክሲዮን ዝውውር ካለው የሞኖኖራ መብት ጭምር ውል የፈፀመ ሲሆን የሞኖኖራ መብትም አ.ኤ.አ እስከ ህዳር 2025 እንደሚቆይ በመንግስትና በጃፓን ቶባኮ ኢንተርናሽናል / JT international S.A/ አ.አ.አ በጁላይ 15/2016 የተፈረመው ውል ያስረዳል፡፡ ይህንኑ ተከትሎም አገራችን በገባችው የአክሲዮን ሽያጭ ውል መሠረት መፈፀም እንዲቻል፡-

1. የኢትዮጵያን መንግስት በመወከል የአክሲዮን ሽያጭ ውሉን የፈረመውና አክሲዮኑን በውሉ መሰረት ያስተላለፈው የፕራይቪታይዜሽን ኤጀንሲ ህዳር 9 ቀን 2009 ዓ.ም በቁጥር መልዱ /15/202/1/05 በተባሉ ደብዳቤ መንግስት በብሔራዊ ትምባሆ ድርጅት /ኢትዮጵያ/ አ.ማ ካለው የአክሲዮን ድርሻ 40% ለመሸጥ ጨረታ አውጥቶ የጃፓን ቶባኮ ኢንተርናሽናል / JT international S.A/ በ510 ሚሊዮን ዶላር ጨረታውን አሸንፎ ገንዘቡን ለመንግስት ገቢ ያደረገ መሆኑን በመግልፅ አስፈላጊውን ትብብር እንዲያሰርግ በአፌድሪ ንግድ ሚኒስቴር ከውሉ አንዱ ኮፒ ጋር አስተላለፋል፡፡
2. የኢፌዴሪ የንግድ ሚኒስቴር በበኩሉ መንግስት ቀሪውን 31% ለዚሁ የጃፓን ቶባኮ ኢንተርናሽናል / JT international S.A/ ሲያስተላልፍ የአክሲዮኑን ዝውውር ድርጅቱ ካለው የሞኖኖራ መብት ጭምር ውል የፈፀመና በሚኒስቴር መስሪያ ቤቱ መብቱ ቀደም ብሎ ከመንግስት አካላት ጋር የተደረገው ውል እንዲቀጥል ተደርጎል፡፡ ከዚህም በተጨማሪ የተላለፈውን የአክሲዮን ድርሻ የሞኖኖራ መብት እስከ ውሉ መጨረሻ ድረስ የሚቀጥል መሆኑን በዚህ መሠረት ማረጋገጥ መሰረት የብሔራዊ ትምባሆ ድርጅት ቀደም ብሎ በአዋጅ ቁጥር 181/92 የነበረውን የሞኖኖራ መብት የንግድ ምዝገባ አዋጅ ቁጥር 980/2008 ከመውጣቱ በፊት የአክሲዮኑ ዝውውር ውል በሚከናወንበት ጊዜ የሞኖኖራ መብቱ እንዲቀጥል ውል የተደረገ በመሆኑ አስከውሉ ማብቂያ ማለትም አ.ኤ.አ ህዳር 2025 ድረስ የሞኖኖራ መብቱ እንዲቀጥልና ለሌሎች ግለሰቦችም ሆነ ድርጅቶች ከትምባሆ ምርት ጋር የተያያዘ የማምረት፣ ወደ ሃገር የማስገባት፣ ወደውጪ ሃገር የመላክን፣ የማከፋፈልና የመሸጥ የንግድ ምዝገባና ፈቃድ አገልግሎት የሚሰጠው ከድርጅታችን ጋር

የውል ስምምነት ሲኖር ብቻ መሆኑ ተግልጿል። ይህም ህዳር 10/2010 በደብዳቤ ቁጥር 01-66-26-26/1999 ለፕራቬታይዜሽንና የመንግስት ልማት ድርጅት ተቆጣጣሪ ባለስልጣን ተገልጿል፤ ደብዳቤውም በአባሪነት ተያይዟል።

3. የኢ.ፌ.ዲ.ሪ ሚኒስትሮች ምክር ቤት ጽ/ቤት እንደዚሁ እ.አ.አ በታህሣሥ 19/2017 በቁጥር 11320-748/1 ስለማስተላለፍ የተፃፈው ደብዳቤ ብሔራዊ የትምባሆ ድርጅት ላይ የአክሲዮን ድርሻ መንግስት የገባው የአክሲዮን ማስተላለፍ ውል መሠረት፡-

- 3.1 ሀገወጥ ንግድን ለመቀነስ ይቻል ዘንድ ብሔራዊ የትምባሆ ድርጅት ከፌዴራል የፀረ ሀገወጥ ንግድ ግብረ ሃይል ጋር በትብብር መስራት አዲሽል፤
- 3.2 ሀገ በሚወጣበት ጊዜ አስፈላጊው የምክክርና የመሳተፍ ቅድመ ሁኔታ እንዲመቻችለት፤ እነ በቀጥታም ሆነ በተዘዋዋሪ ሁኔታ ብሔራዊ የትምባሆ ድርጅት ላይ ተፅዕኖ ሊያሳድሩ የሚችሉ የታክስና የኢ.ፌ.ዲ.ሪ ህጎች ላይ እንዲሳተፍ፤
- 3.3 ብሔራዊ የትምባሆ ድርጅትን በአዋጅ ቁጥር 181/1999 መሰረት ያለው የጥምር ሙብት እ.አ.አ. ታህሣሥ 2025 ድረስ ተኩብሮ እንዲቆይ፤
- 3.4 ኢንቨስትመንቱን ለማከናወን የሚያስችለው የውጪ ምንዛሪ እንዲመቻችለት ለፕራቬታይዜሽን ባለስልጣን፤ ለንግድ ሚኒስቴር፤ ለገንዘብ ሚኒስቴር፤ ለጤና ጥበቃ ሚኒስቴር፤ ለጠቅላይ አቃቤ ህግና ለብሔራዊ ባንክ መመሪያ ማስተላለፍ ይታወሳል። የደብዳቤው አንድ ኮፒ ከዚህ አቤቱታ ጋር ተያይዞ ቀርቧል።

ድርጅታችንም በአክሲዮን ማስተላለፍ ውል እና የተቆቆመበትን ዓላማ ለማሳካት ይችል በአክሲዮን ማስተላለፍ ዘንድ በተለይ በአጋራችን በእጅጉ ተስፋፍቶ የሚገኘውን የሀገ-ወጥ ንግድ ለመቀነስ ያስችለው ዘንድ ከኢ.ፌ.ዲ.ሪ የጉምሩክ ኮሚሽን ጋር የመግባቢያ ሰነድ በመፈራረም በአዋጅ ቁጥር 1156/2011 እንቀፅ 51(1) መሠረት በሀገ ጭምር የተፈቀደ ነው።

ይሁንና ድርጅታችን የራሱን ሙብትና ጥቅም ለማስጠበቅ ለማስከበር ያስችለው ዘንድ ወደሀገር ውስጥ ሀገወጥ ንግድ ለመከላከልና ለመቆጣጠር በሀገ ሥልጣን ከተሰጠው የጉምሩክ ኮሚሽን ጋር በትብብር መስራታችንን በኢትዮጵያ የምግብና የመድሃኒት አስተዳደር በኩል በተቆጣጣሪ የመንግስት አካላት ላይ ጣልቃ እንደመግባት በመቆጠሩ ሀገወጥ ንግድ ለመከላከል ምናደርገው ጥረት ከፍተኛ ተፅዕኖ አየተደረገብን ይገኛል።

የምግብና መድሃኒት ቁጥጥር ባለስልጣን ይህንን የጣለቃ ገብነት ድርጊት ያለያያዘው ከምግብና መድሃኒት አስተዳደር አዋጅ ቁጥር 1156 እንቀፅ 51 /1/ መሰረት በማድረግ ነው።

የጥራት ሚኒስትር
ገዢ የወጣት ጽሑፍ



National Tobacco Enterprise (Ethiopia) Share Company

በመሰረቱ ይህ የአዋጁ አንቀፅ የትምባሆ ቁጥጥርን በተመለከተ የትምባሆ ኢንዱስትሪዎች ከተቆጣጠሩ አካላት ጋር በግለፅ መገናኘት እንደሚችሉ የሚፈቅድ እንጂ እንዲህ አይነት ግንኙነት ለማድረግና በሀገሪቱ ውስጥ ግንድ ላይ በድርጅታችንና በመንግስት ላይ እየደረሰ ያለውን ጉዳት ለመቀነስ ሲባል የምናደርገውን ግንኙነት ባለስልጣኑ እንደሚለው የሚከለክል አይደለም።

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[Handwritten Signature]

ግራንት ሞዋት
ዋና ሰራ አስፈጻሚ



ግለጻ።

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Anne 2: translation from Amharic version

National Tobacco Enterprise (Ethiopia) Shared Company
To Customs Commission
Addis Ababa

Date: December 18, 2020

Number: 2/A/9-4/21.1

Subject: Informing about the negative impact on our organization

The National Tobacco Enterprise (Ethiopia) S.C. was a public enterprise licensed by Monopoly under Proclamation No. 37/85 and 181/92. The agreement to privatize NTE, signed by the government and Japan Tobacco International on July 15, 2016, also has a monopoly right until November 2025.

.....

It is also legal under Article 51 (1) of Proclamation No. 1156/2011 to sign a memorandum of understanding with the FDRE Customs Commission in order to enable our company to achieve the purpose for which it was established and to reduce the illegal trade in our country.

However, this working hard to prevent illegal trade with collaboration Customs Commission to control the illegal trade in order to protect our rights and interests is considered as interference on regulator body by the Ethiopian Food and Drug Administration. As a result the regulatory bodies are being heavily influenced Our efforts to curb illicit trade.

Therefore, in collaboration with the Commission, we are aware of the misinformation being perpetrated by the Food and Drug Authority by misinterpreting various media and print media outlets in an effort to curb the ongoing smuggling trade, which is detrimental not only to our organization but also to the nation's health and peace.

Best Regards

Grant Mowatt

Director General

CC

FDRE Prime Minister Office

FDRE Ministry of Health

General Attorney

254

NTE

To: The Ethiopian Food and Drug Authority
Addis Ababa

In view of this we have provided the attached feedback and position of the company for your kind consideration. I would like to take this opportunity to express to your good office the assurance of our highest consideration.

Yayehylrad Abate
Corporate Affairs &
Communications Director



Enclosed: 11 pages

National Tobacco Enterprise (Ethiopia) Share Company
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Addis Ababa, Ethiopia
+251 011 551 00 44

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Annex 4: Email conversation between NTE and FDA on draft tobacco control directive
Forwarded Conversation
Subject: Meeting on EFDA Draft TC Directive

From: Dereje Shimeles <dshimeles@efda.gov.et>
Date: Fri, Dec 11, 2020 at 2:41 PM
To: Abate, Yayehyirad <Yayehyirad.Abate@jti.com>, Mazengia, Tesfaye <Tsfaye.Mazengia@jti.com>
Cc: Asnakech Alemu <aalemu@efda.gov.et>, Dagim Alemayehu <dalemayehu@efda.gov.et>, Demoz Aman <deaman@efda.gov.et>, Dr. Keyredin Redi <kredi@efda.gov.et>, Esknder Ketema <eketema@efda.gov.et>

Dear Yayehyirad and Tesfaye,

Following the review of NTE's written submission and EFDA response on your company's concern on the draft TC directive, EFDA would like to request face-to-face meeting to discuss on outstanding concerns from your side.

The meeting is scheduled for next Wednesday Dec 16, at 10AM at EFDA conference room located on 3rd floor.

In the meantime, we are happy to review if you would like to submit additional written submission on EFDA's response to your first submission by the said date and time next week.

Look forward to meeting you next week.

With best regards

Dereje

From: Abate, Yayehyirad <Yayehyirad.Abate@jti.com>
Date: Fri, Dec 11, 2020 at 4:01 PM
To: Dereje Shimeles <dshimeles@efda.gov.et>, Mazengia, Tesfaye <Tsfaye.Mazengia@jti.com>
Cc: Asnakech Alemu <aalemu@efda.gov.et>, Dagim Alemayehu <dalemayehu@efda.gov.et>, Demoz Aman <deaman@efda.gov.et>, Dr. Keyredin Redi <kredi@efda.gov.et>, Esknder Ketema <eketema@efda.gov.et>

Good afternoon Dereje, glad to hear from you. I am just returning from visiting your office. I have met Dr. Keyredin to request for a meeting on the same matter on January 12, 2021 or any time at your convenience after January 12. We sought extended time only to wait for our management team who have travelled for X-Mass holiday. I believe their presence will facilitate the discussion and help arriving at logical understanding to keep the cordial relationships between the two institution. I hope our request will get due consideration and appreciate hearing from your side the soonest.
Kind regards

Yayehyirad Abate

From: Dereje Shimeles <dshimeles@efda.gov.et>

Sent: Friday, December 11, 2020 2:41 PM

To: Abate, Yayehyirad <Yayehyirad.Abate@jti.com>; Mazengia, Tesfaye <Tesfaye.Mazengia@jti.com>

Cc: Asnakech Alemu <aalemu@efda.gov.et>; Dagim Alemayehu <dalemayehu@efda.gov.et>; Demoz Aman <deaman@efda.gov.et>; Dr. Keyredin Redi <kredi@efda.gov.et>; Esknder Ketema <eketema@efda.gov.et>

Subject: Meeting on EFDA Draft TC Directive

WARNING: This is an EXTERNAL email. Do not open attachments or click links unless you know the email address is valid!

From: Dereje Shimeles <dshimeles@efda.gov.et>

Date: Mon, Dec 14, 2020 at 1:08 PM

To: Abate, Yayehyirad <Yayehyirad.Abate@jti.com>

Cc: Asnakech Alemu <aalemu@efda.gov.et>, Dagim Alemayehu <dalemayehu@efda.gov.et>, Demoz Aman <deaman@efda.gov.et>, Dr. Keyredin Redi <kredi@efda.gov.et>, Esknder Ketema <eketema@efda.gov.et>, Mazengia, Tesfaye <Tesfaye.Mazengia@jti.com>

Dear Yayehyirad

Thank you for your email. Let me discuss what we could do about the request to wait for a month, which is quite an extended period of time given EFDA's timeline for the adoption of the directive.

I will be back to you.

Dereje

From: Abate, Yayehyirad <Yayehyirad.Abate@jti.com>

Date: Tue, Dec 15, 2020 at 9:23 AM

To: Dereje Shimeles <dshimeles@efda.gov.et>

Cc: Asnakech Alemu <aalemu@efda.gov.et>, Dagim Alemayehu <dalemayehu@efda.gov.et>, Demoz Aman <deaman@efda.gov.et>, Dr. Keyredin Redi <kredi@efda.gov.et>, Esknder Ketema <eketema@efda.gov.et>, Mazengia, Tesfaye <Tesfaye.Mazengia@jti.com>

Many thanks Dereje, looking forward to hearing from you.

Kind regards

Yayehyirad

From: Dereje Shimeles <dshimeles@efda.gov.et>

Date: Mon, Dec 21, 2020 at 5:00 PM

To: Abate, Yayehyirad <Yayehyirad.Abate@jti.com>

Cc: Asnakech Alemu <aalemu@efda.gov.et>, Dagim Alemayehu <dalemayehu@efda.gov.et>, Demoza Aman <deaman@efda.gov.et>, Dr. Keyredin Redi <kredi@efda.gov.et>, Eskender Ketema <eketema@efda.gov.et>, Mazengia, Tesfaye <Tesfaye.Mazengia@jti.com>

Dear Yayehyirad,

We have discussed your request to wait until after January 12 with Dr. Keyredin and EFDA team. While EFDA is unable to wait for an extended period of time, we are happy to arrange a face to face discussion with NTE staffs available in Addis Ababa. For NTE's staff who are away from Addis and would like to give further comment, EFDA is open to receive additional written submission including through email to Dr. Keyredin or one of us copied in this email. We are happy to review and appropriately consider additional comment.

Please let us know as soon as possible so that we can arrange meeting with NTE's available staff for this week no later than Friday, if you choose to do so.

In the meantime, as mentioned in EFDA's response to NTE, we have considered and accepted NTE's comment on Article 19(2-4) regarding the proposed restriction on packaging Shape, width and length.

Please let us know if you have any questions

Dereje

From: Abate, Yayehyirad <Yayehyirad.Abate@jti.com>

Date: Tue, Dec 22, 2020 at 2:45 PM

To: Dereje Shimeles <dshimeles@efda.gov.et>

Cc: Asnakech Alemu <aalemu@efda.gov.et>, Dagim Alemayehu <dalemayehu@efda.gov.et>, Demoza Aman <deaman@efda.gov.et>, Dr. Keyredin Redi <kredi@efda.gov.et>, Eskender Ketema <eketema@efda.gov.et>, Mazengia, Tesfaye <Tesfaye.Mazengia@jti.com>

Good afternoon Dereje, many thanks for your mail. May I suggest to set the face to face meeting for Friday at 10.30 am? Let me know your alignment

From: Dereje Shimeles <dshimeles@efda.gov.et>

Date: Tue, Dec 22, 2020 at 4:49 PM

To: Abate, Yayehyirad <Yayehyirad.Abate@jti.com>

Cc: Asnakech Alemu <aalemu@efda.gov.et>, Dagim Alemayehu <dalemayehu@efda.gov.et>, Demoza Aman <deaman@efda.gov.et>, Dr. Keyredin Redi <kredi@efda.gov.et>, Eskender Ketema <eketema@efda.gov.et>, Mazengia, Tesfaye <Tesfaye.Mazengia@jti.com>

Dear Yayehyirad

Sure. Let's meet at said date and time

Thanks

Dereje

From: Abate, Yayehyirad <Yayehyirad.Abate@jti.com>
Date: Wed, Dec 23, 2020 at 9:39 AM
To: Dereje Shimeles <dshimeles@efda.gov.et>
Cc: Asnakech Alemu <aalemu@efda.gov.et>, Dagim Alemayehu <dalemayehu@efda.gov.et>, Demoz Aman <deaman@efda.gov.et>, Dr. Keyredin Redi <kredi@efda.gov.et>, Esknder Ketema <eketema@efda.gov.et>, Mazengia, Tesfaye <Tesfaye.Mazengia@jti.com>

Thank you so much Dereje

From: Dereje Shimeles <dshimeles@efda.gov.et>
Date: Thu, Dec 24, 2020 at 4:33 PM
To: Abate, Yayehyirad <Yayehyirad.Abate@jti.com>
Cc: Asnakech Alemu <aalemu@efda.gov.et>, Dagim Alemayehu <dalemayehu@efda.gov.et>, Demoz Aman <deaman@efda.gov.et>, Dr. Keyredin Redi <kredi@efda.gov.et>, Esknder Ketema <eketema@efda.gov.et>, Mazengia, Tesfaye <Tesfaye.Mazengia@jti.com>

Dear Yayehyirad,

Our tomorrow meeting will be held at Dr. Keyredin, Deputy Director, office, second floor. I hope that you are familiar of the office location.

With best regards,

Dereje

From: Mazengia, Tesfaye <Tesfaye.Mazengia@jti.com>
Date: Wed, Dec 30, 2020 at 12:04 PM
To: Dereje Shimeles <dshimeles@efda.gov.et>, Abate, Yayehyirad <Yayehyirad.Abate@jti.com>
Cc: Asnakech Alemu <aalemu@efda.gov.et>, Dagim Alemayehu <dalemayehu@efda.gov.et>, Demoz Aman <deaman@efda.gov.et>, Dr. Keyredin Redi <kredi@efda.gov.et>, Esknder Ketema <eketema@efda.gov.et>, Mowat, Grant <Grant.Mowat@jti.com>, Hill, Christopher <Christopher.Hill@jti.com>, Goshu, Mohammed <Mohammed.Goshu@jti.com>

Dear Dereje, dear all,

Many thanks for the fruitful discussion we held at EFDA's office on the new draft directive.

We highly appreciate EFDA's reconsideration of some clauses, inter alia, (i) requiring proof or letter from NTE to safeguard NTE's monopoly right before issuing any special license on tobacco trade, (ii) usage of Company Name/Logo as far as the usage is compliant with the restrictions in relation to advertisement and promotion, (iii) interaction with Government as far as it is compliant with the caveat stipulated on the Proclamation, viz. Article 51 (1-2), (iv)

setting time frame for notification (30/60 days) in advance and approval (10 days) - (Article 13 of the draft directive).

On the remaining open point, i.e. usage of different colors or names or shapes under the same label or brand/trademark; as promised, I am resharing our position statement, overview of usage in the tobacco industry and other FMCGs.

We look forward to receive the copy of the refined version of the draft directive and please acknowledge the receipt of this email with its attachments.

Happy Holidays and all the best for 2021!

Kind regards,

Tesfaye

From: Mazengia, Tesfaye <Tesfaye.Mazengia@jti.com>

Date: Thu, Dec 31, 2020 at 9:33 AM

To: Dereje Shimeles <dshimeles@efda.gov.et>, Abate, Yayehyirad <Yayehyirad.Abate@jti.com>

Cc: Asnakech Alemu <aalemu@efda.gov.et>, Dagim Alemayehu <dalemayehu@efda.gov.et>, Demoz Aman <deaman@efda.gov.et>, Dr. Keyredin Redi <kredi@efda.gov.et>, Esknder Ketema <eketema@efda.gov.et>, Mowat, Grant <Grant.Mowat@jti.com>, Hill, Christopher <Christopher.Hill@jti.com>, Goshu, Mohammed <Mohammed.Goshu@jti.com>

Dear Dereje, all,

In continuation of the below email, this is to add one point which I left to mention below and was aligned on our last meeting [...] as NTE can conduct market survey as long as the survey is compliant with general restriction on advertisement and promotion.

Kind regards,

Tesfaye

Annex 5: PHW on Winston cigarette

NTE

National Tobacco Enterprise (Ethiopia) Share Company

Ethiopian Food and Drug Administration
Addis Ababa

June 09, 2020

Reference: 2/17/20-2/21.1

Re: NTE Tobacco Products PHW Requirement Approval

We refer to our letter dated **May 21, 2020** requesting approval for final packs for Nyala Premium, Gisilla, Winston Blue and Winston Red. We would like to take this opportunity to thank you for your email approval for Nyala, Nyala Premium and Gisilla brands.

In relation to Winston Blue and Red, as per our phone conversation on the subject matter, we hereby provide the information's you have requested;

1. We have imported the packaging and labelling materials on May 18, 2020.
2. Our production capacity of Winston is 8.5 Million per week. However, please note that we don't continuously produce with such volume, this figure is just our capacity.
3. Imported packaging and labelling materials for Winston Blue are 20 Million packs and for Winston Red also are 20 Million, in total 40 Million packs.
4. Distribution depends on the demand, however Winston is our newest international brand and it is not fast moving like Nyala.
5. Depletion of stock period, by considering our current sales volume we forecast it will approximately take 7-8 months to clear Winston Blue, i.e. – December 2020- January 2021 and 11-12 months to clear Winston Red, i.e. – May-June 2021 provided we start production in June 2020.

Having said the above about our production and distribution, we wish to take this opportunity to give perspective regarding the legality of the usage of "Red" and "Blue" in light of WHO FCTC, Ethiopian laws and general industry standard.

As the EFDA knows, the 2019 Proclamation does not prohibit the use of colours in general, let alone red or blue specifically. Likewise, the Proclamation does not prohibit the use of the words that are descriptive of colours. Indeed, one would expect the general use of colours and colour names to be a means of expression, as fundamental constitutional freedom.

The restrictions to the use of colours is therefore conditioned, as is any restriction to a fundamental right. The conditions are provided under article 57.4 of the Proclamation that is derived from the FCTC rule related to descriptors and this rule has been implemented in the same way across the African continent and the European Union, among other places.

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This restriction to freedom of expression requires that the following conditions are demonstrated, cumulatively:

- The colour must create an impression that must be health related
- Assuming that impression is demonstrably health related, it must specifically procure an indication that the product at stake is less harmful than another product – for example that Winston "red" is less harmful than Winston "Blue",
- This impression must thus be created but it must also be false and misleading.

Words such as "low tar", "light" or "ultra-light" are example of descriptors, which the FCTC considers may give such false impression that the pack bearing any such descriptor, is less harmful than another pack that does not have it. In relation to other consumer products, one may argue that descriptors such as "diet" for soft drinks, or "low fat" for dairy product, may give a similar impression – be it true or false.

However, other descriptors, including colour names, words or other signs, are used across consumer products, including tobacco products, to enable consumers to distinguish the taste of a range of products under a given brand. For example, Lindt will be selling a range of dark chocolate, and will indicate the percentage of cacao in big letters and other descriptors, so that each consumer can identify and pick the taste he or she prefers, from a strong bitter chocolate at 90% cocoa, to a smoother 85%, 70% etc. Likewise, with coffee, some consumers like a strong roast, others do not. So, descriptors will be used to enable consumers to choose the intensity they prefer. Indicating the intensity of the taste of chocolate or coffee is unrelated to health, it is solely related to the experience and taste of the product. We have attached an annex showing same usage in the FMCG locally and internationally.

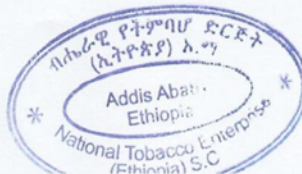
It is for that same purpose that NTE uses the colours red and blue, and the words "red" and "blue" respectively: to enabling adult smokers to distinguish the taste of its range of products under the trademark WINSTON. More broadly, the industry uses a wide range of colours and corresponding colour names and there is no particular commonality in the use of colours. For example:

- Camel WHITE; Camel BLACK; Camel YELLOW; Camel BLUE; Camel SILVER;
- Marlboro RED; Marlboro GOLD;
- Benson & Hedges GOLD; Benson & Hedges SILVER; Benson & Hedges SKY BLUE;
- Winston RED; Winston BLUE.

These colours and colour names are used on packs across the European Union and Africa, for the simple purpose of distinguishing products that have different taste intensity, across a range. As the EFDA is aware, the European Union and its

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member states, have all implemented and are compliant with the FCTC rules. This includes France and the United Kingdom, which have both implemented plain packaging. For illustration purposes, we enclosed herewith pictures of such packs from the EU, including the UK and France, as well as from other African countries, showing the use of colour names across a wide range of tobacco products.

All tobacco products manufactured and sold by NTE bear the health warnings required by law, without distinction. Thus, whichever product an adult smoker may choose to purchase, the same information is consistently provided. This is also true in the EU and across the African continent.

We trust this insight is helpful and we are happy to deliberate on the issue if needed.

Yours sincerely,



Grant Mowat
Chief Executive Officer

Enclosed;

- International experience in the usage of color names in the Tobacco Industry
- Other products experience locally and internationally



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