

A TOBACCO INDUSTRY INTERFERENCE REPORT



**Assessment Report on the Tobacco Industry
Interference in the Regulation of Novel
Tobacco Products in Kenya**

August 2022

**“ NICOTINE AS THE PRIMARY
CONSTITUENT IN NICOTINE
POUCHES HAS BEEN PROVEN
TO HAVE VARIOUS ADVERSE
EFFECTS ON HUMAN HEALTH ”**

**- SAMUEL OCHIENG
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ASSESSMENT REPORT ON TOBACCO INDUSTRY INTERFERENCE IN THE REGULATION OF NOVEL TOBACCO PRODUCTS IN KENYA

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INTRODUCTION

In Kenya, as in the world over, there has been a steep ascendance in the prevalence of oral nicotine products in the tobacco products market. We have seen the entry of oral nicotine pouches in the Kenyan market in a bid by the tobacco firms to re-invent and diversify their product line to entice all age-groups and various cadres of the population towards consumption of either one of their products.

Oral nicotine pouches were introduced to the Kenyan market in late 2019 just before the on-set of the novel corona virus pandemic. A key point of the tobacco industry supporting the introduction of these products is the assertion that they are less harmful than other conventional tobacco products (cigarettes) and that they would help to wean tobacco addicts off products such as cigarettes as a part of Harm Reduction Therapy (HRT).

The government of Kenya through the Ministry of Health, and support from Tobacco Control stakeholders, sought to enforce the regulation of these products via the existing Tobacco Control regimes, that is, Tobacco Control Act (2007), and the Tobacco Control Regulations (2014).

Discontent with the stringent measures these novel products would be exposed to, the tobacco industry employed various manoeuvres in an attempt to circumvent these regulatory provisions. The following is thus an assessment of how the industry sought to impede the regulation of these novel products.

This report is the culmination of concerted efforts between three tobacco control stakeholder entities within the civil society bolstered by invaluable insight from the Ministry of Health, the National Parents' Association, media, victim/user groups, academia and research entities, youth group representatives and other key health stakeholders in the civil society.



**“ LYFT WAS REGISTERED ILLEGALLY
BUT THOSE WHO REGISTERED IT
CONTINUE TO CONNIVE AND
FIND WAYS OF GOING AROUND
THE LAW TO HAVE THEM SOLD TO
OUR YOUNG PEOPLE ”**

**- JOEL GITALI,
CHAIR OF THE KENYA
TOBACCO CONTROL ALLIANCE**

Overall Objective

This paper sought to articulate to a relevant degree of accuracy, the reasons for the present situation on oral nicotine pouches, the path trodden to get to this point with regard to regulation for the same and tobacco industry actions affecting the former. It traces the genesis of oral nicotine pouches, their introduction into foreign markets, their entry into Kenya and the interactions between the tobacco industry and the regulators and tobacco control stakeholders.

Purpose of the Assessment

It analyses the interference of the tobacco industry in the regulation of oral nicotine pouches in the Kenyan market. This was examined in four different aspects;

- (a) The irregular registration of LYFT as a pharmaceutical product;
- (b) The tobacco industry's promotional/corporate social responsibility activities for its products during the covid-19 pandemic;
- (c) The campaign by BAT for a tax relief on its manufacturing plant set up for the production of the firm's oral nicotine pouches;
- (d) The industry's spirited efforts to push for lesser excise taxes on these products.

Methodology

Material utilized in the compilation of this report comprised of data from primary and secondary sources. Insights on the current state of nicotine pouches were

gathered from in-person interviews with representatives of various stakeholder entities in the tobacco control sector. Also analysed was information and data gathered from Government documents, public notices, government websites and those of tobacco firms i.e. BAT, media output, Tobacco Industry documents, tobacco control published reports, research on nicotine and oral nicotine pouches, case law, existing tobacco control laws at the national level and relevant international conventions and treaties particularly the Framework Convention on Tobacco Control, its implementation guidelines as set out by the World Health Assembly.

Oral Nicotine Pouches

With the increasing comprehension of the risks posed by conventional tobacco products, tobacco control stakeholders all over the world have responded by incorporating stiffer measures in the tobacco products markets to curb the prevalence and consumption of these conventional products especially the cigarette market. As cigarettes (which is the tobacco firms largest profit maker) begun to diminish, the tobacco firms moved to re-define their products and followed this up with substantial investment in the research, manufacturing/production and marketing infrastructure for novel nicotine and tobacco products. These activities by the tobacco industry have been progressively moved from developed nations to low and middle-income countries (LMICs). All this has been orchestrated to protect the industry's long-term future from a profits perspective.

Oral Nicotine Pouches were thus an element of the industry's pivot towards novel tobacco and nicotine products under their newly minted slogan hailing most of these products as "Nicotine Harm Reduction Therapy" (NRT).

Sample of Nicotine pouches



What are Oral Nicotine Pouches?

These are white pre-portioned permeable pouches containing either dehydrated tobacco derived nicotine or synthetic nicotine, but no tobacco leaf, dust, or stem. They do however contain flavoring, sweeteners and plant-based fibers. They are similar in appearance and use to snus but do not contain tobacco. Consumers place these pouches between the lip and gum sucking on the contents using saliva to dissolve the contents of the pouch into the oral mucosa, whereupon nicotine is absorbed into the blood stream through the mucous membranes. Nicotine pouches last longer in the mouth compared to snus and thus are able to deliver higher amounts of nicotine to the consumer's system.

Origin and Prevalence

The origin of nicotine pouches as a product manufactured for consumers by the Transnational Tobacco companies along the campaign of tobacco harm reduction arose from exploration of the Swedish experience¹ whereby studies Attributed Sweden's lower incidences of smoking-related mortality to its population's higher consumption of snus², a moist oral smokeless tobacco product (over 25%) compared to its numbers for consumption of combustible cigarettes³. Sweden's overall tobacco use was similar to that of other European countries with the variation that in other nations cigarette smoking was more prevalent (approximately 20% of tobacco users) as compared to the average daily snus use among tobacco users (about 5%)⁴. Snus is a traditional Scandinavian tobacco product regulated as a food product under the Swedish Food Act since the 1970s which stipulates upper limits on certain toxicants (Swedish Food Agency 2016).

Sweden's tobacco use & other European countries

20%

Average daily snus use among tobacco users

5%

1. Gartner, C.E., et al., 2007. Assessment of Swedish snus for tobacco harm reduction: an epidemiological modelling study. *Lancet* (London, England), 369 (9578), 2010–2014. [Crossref], [PubMed], [Web of Science ®], [Google Scholar]
2. Ferlay, J., et al., 2013. Cancer incidence and mortality patterns in Europe: Estimates for 40 countries in 2012. *European Journal of Cancer* (Oxford, England : 1990), 49 (6), 1374–1403. [Crossref], [PubMed], [Web of Science ®], [Google Scholar]
3. David Azzopardi, Chuan Liu & James Murphy (2021) Chemical characterization of tobacco-free "modern" oral nicotine pouches and their position on the toxicant and risk continuums, *Drug and Chemical Toxicology*, DOI: 10.1080/01480545.2021.1925691
4. Clarke, E., et al., 2019. Snus: a compelling harm reduction alternative to cigarettes. *Harm Reduction Journal*, 16 (1), 62. [Crossref], [PubMed], [Web of Science ®]



Sample of Snus

Consumption of Swedish snus has been shown to cause reduced health risks in contrast cigarette use, mainly owing to the lack of direct lung exposure to toxicants coupled with the absence of tobacco consumption, that results in lower smoke levels. In spite of snus being perceived as less harmful, uncertainties about the long term impacts remain⁵. Studies have shown associations between snus use and pancreatic cancer⁶, type 2 diabetes⁷, fatal heart attacks⁸, heightened blood pressure⁹, and preterm births and stillbirths¹⁰.

Subsequently there ensued a growing acknowledgement of the Swedish experience and the studies therefrom. As an example, the US Food and Drug Administration in the 2000s and early 2010s came to consider consumption of smokeless tobacco products as a tobacco harm reduction strategy. With

⁵ N (2)

⁶ J. Luo, W. Ye, K. Zendehele, et al., *Oral use of Swedish moist snuff (snus) and risk for cancer of the mouth, lung, and*

⁷ A. Roosaar, A.L. Johansson, G. Sandborgh-Englund, et al., *A long-term follow-up study on the natural course of snus-induced lesions among Swedish snus users. International Journal of Cancer*, 2006. 119(2), p. 392-397;

⁸ P.G. Persson, S. Carlsson, L. Svanstrom, et al., *Cigarette smoking, oral moist snuff use and glucose intolerance. Journal of internal medicine*, 2000. 248(2), p. 103-110

⁹ A.K. Wikstrom, S. Cnattingius, M.R. Galanti, et al., *Effect of Swedish snuff (snus) on preterm birth. BJOG: An International Journal of Obstetrics & Gynaecology*, 2010. 117(8), p. 1005-1010

¹⁰ Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR), *Health Effects of Smokeless Tobacco Products*. 2008, European Commission: Brussels

these developments, the Transnational Tobacco Companies (TTCs) resorted to investing in snus in the early 2000s and more recently in the 2010s turned towards oral nicotine pouches. Given the paucity of research findings on specific harmful effects of nicotine pouches due to relative brief stint in the tobacco and nicotine products market, TTCs have laboriously exploited this lacuna in their advocacy for the uptake of these products as less harmful and thus better for consumers.

There has however been a confirmation of various health effects from the use of these products as reported by consumers. These included headaches, nausea, sore mouth, gum irritation and disease, dizziness, increased risk of relapse to tobacco products and nicotine addiction¹¹. Nicotine as the primary constituent in nicotine pouches has been proven to have various adverse effects on human health. These include increased risk of fatality when suffering from cardiovascular disease, effects on reproduction, increased cancer risks, impairment of adolescent brains, reduced cognitive ability and increased risk of heart attack among others.

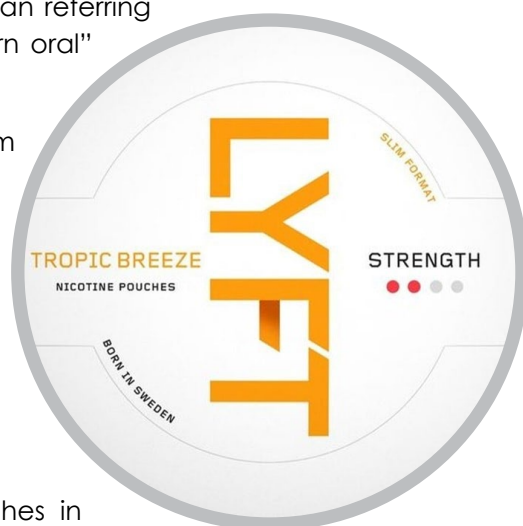
TTCs have recently sought out opportunities to market these products in countries with an existing market for snus or conversely in those where tobacco snus is currently banned. The following are the main investments by TTCs in oral nicotine pouches;

1. In 2019, BAT introduced nicotine pouches to its portfolio, marketing them as Lyft in the UK and Velo in the US. In November 2020, BAT acquired the US-based nicotine pouch company Dryft Sciences, via its subsidiary Reynolds American, whose pouches subsequently sold under the Velo brand. It also moved to introduce these in Italy, Sweden and Tanzania, later embarking on the promotion of these products in Low- and Middle-Income countries (LMICs).
2. Japan Tobacco International also introduced its Nordic Spirit brand of nicotine pouches in Europe by 2020. This became a major product in the smokeless tobacco product market in the UK.
3. In May 2018, Imperial Brands launched a version of its snus brand Skruf without tobacco leaf, called Skruf Super White, in Sweden and Norway. The product was later rebranded zoneX for the UK market in August 2019. In December

¹¹ Michael McEwan, David Azzopardi, Nathan Gale, Oscar M. Camacho, George Hardie, Sharon Goodall - Nicotine Pharmacokinetics of Modern oral nicotine pouches; <https://www.renaissancerecovery.com/nicotine-pouches/>

2020, it published an article on its Imperial Science website exploring what it described as “The Tobacco-Free Nicotine Pouch Opportunity” .

4. In 2019 Altria acquired an 80% share in oral nicotine pouch *On!* from Swiss tobacco company Burger Sohne. It set up a new subsidiary Helix Innovations, through which it would manufacture and market the product. By the end of 2019, after acquiring pre-market authorization (PMTA) from the FDA, *On!* was on sale across over 40,000 US stores, and Helix was increasing manufacturing capacity. Per the firm, the number of stores selling *On!* had nearly doubled by the end of 2020 .
5. In May 2021, Philip Morris International acquired Danish snus manufacturer AG Snus, which produces nicotine pouches. Later in July of the same year, it acquired Fertin Pharma, a company specializing in nicotine replacement therapy (NRT) type products. The firm began referring to gums and nicotine pouches as “modern oral” products similar to other TTCs.
6. Swedish Match, another tobacco firm specializes in snus and oral nicotine products, does not sell cigarettes. It has sold its nicotine pouch Zyn in Sweden, other European countries and the US since 2015 .



Introduction to Kenya

BAT begun marketing its Lyft nicotine pouches in Kenya towards the back-end of 2019. It was hailed by the firm's subsidiary BAT-Kenya as a healthier modern oral nicotine product designed to significantly boost switching from combustible tobacco products to novel smokeless tobacco products. The product was promoted at social engagements, entertainment concerts and festivals where packages of it were handed out as free tokens to youth and promotional messages either from

12 Mishra A, Chaturvedi P, Datta S, Sinukumar S, Joshi P, Garg A. Harmful effects of nicotine. *Indian J Med Paediatrics Oncol.* 2015 Jan-Mar;36(1):24-31. doi: 10.4103/0971-5851.151771. PMID: 25810571; PMCID: PMC4363846.

13 <https://tobaccotactics.org/wiki/nicotine-pouches/>

14 *Ibid*

15 *Ibid*

16 *Ibid*

influencers or directly from the firm were replete on social media platforms . Kenya as was the case in other LMICs, was marked as a prime market for promoting use of nicotine pouches because electronic devices were less popular, affordable, or available due to regulatory, financial or other restrictions. After announcing their intention to sell nicotine pouches in Kenya, BAT launched Lyft in the country in around July 2019.

Regulation

The Tobacco Control Act, 2007 defines a tobacco product as “ a product composed, in whole or in part, of tobacco, including tobacco leaves and any extract of tobacco leaves intended for use by smoking, inhalation, chewing, sniffing or sucking and includes cigarette papers, tubes and filter.” This definition when interpreted in alignment with the objective(s) of the Act (and the FCTC tobacco products definition) covers oral nicotine pouches as these may contain tobacco extract i.e. nicotine extract. The pouches which are sucked when placed between the gum and lip also align to the methods of consumption encapsulated within the said definition.

Further, the constituents and emissions of oral nicotine pouches fall within the definitions of constituents and emissions as articulated under the 2013 edition guidelines for implementation of the Framework Convention on Tobacco Control (FCTC) as adopted by the Conference of the Parties to the convention with respect to implementation of articles 9 and 10.

The WHO identifies novel tobacco products as those that employ new or unconventional technology; have been on the market for a limited period of time or are newly introduced in a given country; and/or those which are marketed with claims of reduced risks. These include;

1. Novel Tobacco Related Products (TRPs); These include new categories of TRPs with a mechanism for delivery that differs from established tobacco products, resulting in significant differences in product content, design, and emissions.
2. Novel technologies; those integrated within the design of existing tobacco products with significant changes to product toxicity, addictiveness, or attractiveness.
3. New or modified tobacco products; These include tobacco products employing technologies and designs that could be considered equivalent to that of other established tobacco products; and/or any minor modification to an existing tobacco product.

It is thus settled from the foregoing that oral nicotine pouches fall squarely within the ambit of tobacco products and are rightly governed by the above stated Act and the regulations thereunder.

Instances of Tobacco Industry Interference in the Regulation of Oral Nicotine Products

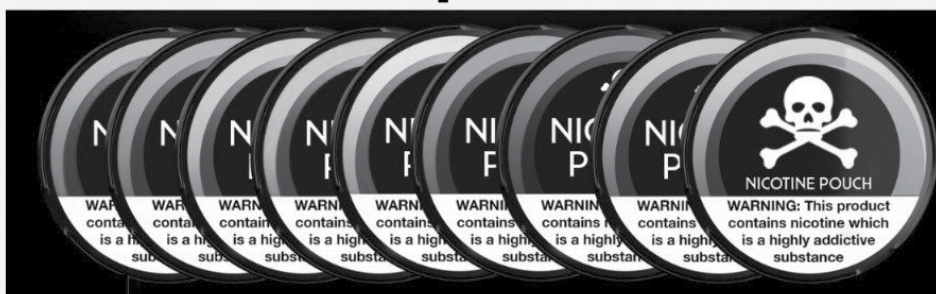
(a) The irregular registration of LYFT as a pharmaceutical product;

As noted above, Lyft was released for sale in the country by BAT-Kenya at the end of 2019. At the time of release, BAT cited a growing shift by tobacco product consumers from use of conventional products to novel and smokeless tobacco products. This followed approval by the Pharmacy and Poisons Board for the said oral nicotine products to be sold as pharmaceutical products per the Pharmacy & Poisons Board Act.

This ensued based on the application for Lyft to be registered as such in spite of BAT-Kenya being cognizant of the fact that this was not a pharmaceutical product or a poison. The laws and regulations discussed above at both a global and national level were firmly entrenched at the point of registration of the said product hence BAT and its subsidiaries would be hard placed to feign ignorance on the matter. Anyone of ordinary prudence would discern that the firm conveniently sidestepped the correct registration procedure to suit their business interests.

DON'T BELIEVE THE LIES

There is **no sufficient** evidence to show
oral nicotine pouches are safe



Following the registration of the product, BAT flooded the market making Lyft easily accessible by most persons irrespective of age, gender, economic or social status. Despite registration as a pharmaceutical product, it was marketed by influencers on most social media platforms. It was sold in supermarkets, convenient stores and fuel stations shops. The pouches were also placed in automated vending machines at different points in the major cities and towns in the country. Users could also make purchases from retailers online and have the merchandise delivered to their doorstep.

Following the quick uptake of the product by a substantial portion of the Kenyan demographic, particularly among the youth, concerns arose among the various health stakeholders such as parents and teachers' associations, civil society organizations seized with monitoring various health aspects among the populace including ug anti-drug abuse campaigns, cancer networks, tobacco control organizations, non-communicable disease prevention advocates and various policy and legislative outfits. Persons were confounded over the manner in which products licensed for sale as pharmaceuticals by the Pharmacy and Poisons Board could be accessible to the public with such rampant ease.

This instigated the regulatory authority responsible (Ministry of Health) to direct attention to the situation. The ministry's surveillance revealed the pouches were sold in blatant violation of the law which required that pharmaceutical products be sold only at licensed premises by registered pharmacists per the relevant Act. In October 2020, responding to the discovery, the cabinet secretary for health declared the licensing of the product and the manner of its sale and distribution to have contravened the law hence illegal. He formally wrote to the Pharmacy and Poisons Board demanding a comprehensive report on the criteria used and the circumstances leading to the registration of Lyft as medicinal product. He accused the Board of contravening provisions of the stated Act. Following this, sales of the product were proscribed until further notice by the minister.

In the ensuing period there was laboured enforcement of the minister's directive leading continued illegal sales of the product by unscrupulous retailers leading to raised alerts by various groups regarding access by minors . Largely however, the product was taken off mainstream retail outlets forcing BAT-Kenya to resort to negotiations with the Health ministry towards re-introduction of the product in the market.

In February 2021, the Kenyan government announced its intent and decision to designate oral nicotine pouches as tobacco products in line with global and national regulatory provisions thereby subjecting Lyft to the regulations

applicable to all other tobacco products in the country. Advertising, Promotion and Sponsorships restrictions were thus immediately imposed on the product. Despite the tobacco firm's plea for a reprieve to sell off its initial stock that was non-compliant to TAPS citing potential loss of revenue and taxes due to the state, the ministry was unrelenting. BAT thus suspended sales to allow time for compliance with the regulatory demands. The company later announced its creation of a Kshs. 1 billion fund to market the product upon its re-introduction to the market .

(b) The tobacco industry's promotional/Corporate Social Responsibility activities for its products during the COVID-19 pandemic;

In first weeks of March 2020 when the first cases of Kenyans contracting the novel corona-virus were announced, there was swift action by the government with the President declared a 21-day lockdown in Nairobi and three coastal counties of Mombasa, Kilifi and Kwale to curb the spread of COVID-19 among residents. Given the unprecedented situation and forecast magnitude of the pandemic to come, various institutions and organizations stepped up to grant donations to the government of Kenya towards its COVID-19 Emergency Response Fund set-up to combat the spread and effects of COVID-19.

Among the biggest donors to the fund was BAT-Kenya Plc with a contribution of Kshs. 10.6 million. This was received and acknowledged by the government despite the palpable irony that surrounded the firm's particular support and the industry's backing of the state's rallying efforts. It was nigh on impossible to overlook the tobacco industry's satirical, duplicitous action to offer aid. Here was a company whose principal profit-making products when consumed significantly increased victims' risk of infection, getting severe COVID leading to hospitalization and increased risk of mortality for COVID-19 patients .

Subsequent to the donations in April 2020, tobacco products were listed as part of essential goods the Business Emergency Response Centre set-up by a committee under the Ministry of Industrialization, Trade and Enterprise Development to respond to issues affecting the business sector.

The said goods were deemed key to the sustaining lives of Kenyan residents hence the need to keep manufacturers, producers and suppliers of these goods operational throughout the crisis/lockdown period. It was thus decreed that workers and logistics providers in these sectors be granted special permits, protection and transport to remain mobile during lockdowns. The cynicism in this decision with regard to tobacco products was apparent to all given the links

to increased mortality in case of COVID-19 infection. This inevitably drew sharp castigation from tobacco control advocates given it was at cross-purposes with the government's fight against the COVID-19 pandemic.

A further paradoxical development occurred with the creation of a COVID-vaccine by BAT. The same was approved by the US FDA for progress to testing in humans.

Interviewees highlighted these actions by the tobacco industry when quizzed on aspects of interference in the regulation of various tobacco products.

(c) The campaign by BAT for a tax relief on its Oral Nicotine Pouch manufacturing plant;

In June 2020, the company announced its plans to build a new plant in Nairobi to produce nicotine pouches, and for Kenya to become a regional export hub for the product. This was reported by BAT as a strategy to diversify its revenues away from the conventional tobacco products that have experienced pressure from government through increased taxes and levies and allegedly satiate the demand of a growing consumer base of tobacco products.

The firm approached the Kenya Revenue Authority (KRA) in September 2020 to request a tax-relief for the nicotine pouches to be manufactured at the plant i.e. exemption from imposed excise duty for two years. This would aid the firm to kick-off the manufacture and processing of the pouches and establish distribution networks for local sales and exports within the East African region. It also cited the large foreign direct investment and potential job creation opportunities for locals as basis for grant of the tax break. BAT further contended that the nicotine pouches were a healthier alternative to combustible conventional products hence should not be taxed as strictly.

Per the Tobacco Control Act, 2007 (Sec. 12); the cabinet secretary in charge of Finance is mandated to implement tax policies and where appropriate, price policies on tobacco and tobacco products so as to contribute to the objectives of the Act; which objectives are inter alia to control the production, manufacture, sale, labelling, advertising, promotion and sponsorship of tobacco products... Additionally, Section 32 of Tobacco Control Regulations, 2014 mandates the cabinet secretary in charge of finance matters or any other public authority not to grant any incentives, privileges, benefits or any other preferential treatment to the tobacco industry to establish or run their business.



Given the stipulated law, granting of the tax break to BAT-Kenya would have been counter to the national legal provisions on tobacco control. It was thus proper that the company's request was declined.

(d) The industry's campaign for lesser excise taxes on these products within the budget process.

The tobacco industry has an ever-present advocacy campaign to lower excise taxes for its products. As noted above, it identified nicotine pouches as a healthier alternative to combustible conventional products such as cigarettes hence the basis for lesser taxation.

On 10th June 2021, the Treasury Cabinet Secretary, Hon. Ambassador Ukur Yattani read the 2021/2022 budget statement in parliament. He proposed no changes in the excise duty imposed on cigarettes and other combustible tobacco products but recommended a maiden excise duty imposition of Kshs. 5000 per kg on oral nicotine products. This was a welcome development with tobacco control stakeholders having arduously campaigned for this based on the WHO stance which holds that there is no sufficient evidence to affirm the claim that smokeless tobacco products are less harmful than combustible ones. It notes that there is no evidence to recommend that any smokeless tobacco product should be used as part of a harm reduction strategy.

In the ensuing period whereby the National Assembly Departmental Committee on Finance & National Planning of the invited input via submissions and memoranda on the proposed fiscal recommendations under the Finance Bill 2021, the Tobacco Industry sent its proposals to the said committee first in its

February 2021

The Kenyan government announced its intent and decision to designate oral nicotine pouches as tobacco products in line with global and national regulatory provisions thereby subjecting Lyft to the regulations applicable to all other tobacco products in the country.

capacity as the firm and repeatedly via other cover front groups, reiterating the same message in all versions of the proposal. That the oral nicotine products needed reprieve from heavy taxation as their sales were low at the initial stage. Lesser taxation would allegedly allow growth of the product eventually resulting in future revenue for government and allowing the firm to recoup its manufacturing cost expenses. BAT proposed Kshs. 757 per kg which was the same amount proposed by other entities.

On 23rd June 2021, the Finance & National Planning Committee after considering input from the public, tabled in its consideration report on the Finance Bill 2021, proposals to reduce the treasury recommended tax rate on the latter to Kshs. 1200 per kg. This proposal was subsequently adopted by parliament in its deliberations. This was a huge blow to the Kenyan tobacco control community and went against the legal provisions on tobacco products fiscal policy. The initial Kshs. 1200 per kg has since been raised to Kshs. 2500 per kg in the 2023/2023 fiscal budget via the Finance Bill 2022.

Additional aspects of industry interference

- (a) Bribery attempts; In early 2021, it was reported that a PR agency working for BAT-Kenya attempted to bribe a journalist investigating the company's campaign to target young non-smokers as potential new clients for its novel tobacco products. The agency employee sought to obtain details of the investigation.
- (b) Attempts to pass standards covering the manufacture, distribution and sale of oral nicotine products via a front group.
- (c) Front groups challenging enforcement of Tobacco Control regulations by Nairobi county's Tobacco Control Unit where in orders were granted for a joint consultative forum between the restaurant association and the enforcement unit to be constituted to formulate bylaws to govern regulation of tobacco products.

Insights from Various Stakeholders on Novel Tobacco Products

1. Prevalence; It was a common denominator among most interviewees that these products are still prevalent albeit to a lesser degree and have declined progressively since the directive by the Health cabinet secretary declaring the products illegally registered and subsequently banned. It was also noted that there has been an influx of a varying brand to Lyft permeating in the market illegally.
2. Accessibility by the Youth; The said products were reported by respondents to be accessible by youth especially in urban areas. This has been fostered by unconventional avenues for purchase of the products more specifically via online order and purchase on social media and other app-based platforms. Among the persons to respond to questions was a young adult who a recovering addict and attested to relative ease in securing the product.
3. Industry Justification for Sale of these Products; The argument elevating these products as less harmful and therefore healthier, featured prominently among the respondents. Further listed was the proposition that these products offer



a path to wean addicts off conventional tobacco products as an aid for quitting and thus very much a part of the Harm Reduction Therapy. Other reasons included the potential for less toxicity and harm to second-hand persons and the environment and also a path towards reducing the carbon-footprint. The tobacco industry also forcefully advocated for the introduction of these products into market citing their massive economic potential via job creation and contribution to government revenue. It posited that the proposed plant to be set-up to manufacture these pouches and export said products to other countries in the region would bring substantial investment to the country's economy.

4. Industry Strategy to undermine regulation; These included pushing a constant narrative of these products as less harmful relative to others. Using unsettled science, studies and experiments to lend credence to the narrative of harm reduction therapy. Influencing proposed fiscal policies towards attaining lesser taxes on said products to aid their prevalence and accessibility. Following the reversal of the registration of nicotine pouches as pharmaceutical products and the subsequent ban of their being sold as such, the industry sought audience with the Health ministry severally to attempt a softening of the cabinet secretary's stance. There were even media statements in protest at this development citing the same as unwarranted. Use of front groups and targeting of youth as a strategy to recruiting new customers.

Ministry of Health Position on Oral Nicotine Products

While there has been a common rhetoric from the tobacco industry and harm reductionist groups alluding to the less harmful/safer nature of these products coupled with claims that these pouches are recommended in therapy for tobacco and nicotine addicts, ministry officials were emphatic in their objection to these claims.

They indicated that in their tobacco and nicotine cessation guidelines and programs, all medicines and recommended drugs are totally unrelated to oral nicotine pouches neither do they share similar composition elements with the

latter. They reiterated the need for the public to be disabused of the notion that consumption of these oral nicotine pouches leads to or aids in reducing or stopping addiction to nicotine and tobacco products.

Recommendations

1. Improve enforcement of bans or regulatory mechanisms by the relevant regulators. It has been noted that there has been a rise in availability of pouches in the market via the brand name Velo which despite non-compliance with the ministry's directive has been found to be sold. Transparency and collaborative information gathering and sharing is key for effective regulation. This calls for a multi-sectoral approach involving the ministries of Health, Finance, Trade and Investment, Youth and Gender, Immigration authorities, relevant parastatals, police and county authorities
2. Establish stricter controls on the importation of these novel products in order to effectively curtail and curb the smuggling and/or counterfeiting of these products across country borders.
3. Advocacy for increased resources for various enforcement entities to give effect to better regulation/control and enforcement.
4. Need for enhanced laws and regulations (tobacco control laws) to curb loopholes exploited by the industry to the detriment of the regulators, stakeholders and the public.
5. Need to mobilize resources to facilitate scientific studies for better understanding of the harmful effects of these novel tobacco products including laboratory testing.
6. Deeper involvement in the budget processes and fiscal policy proposals to counter industry manoeuvres in these processes and concurrently achieve allocation of more resources towards regulation and enforcement with regard to these products



7. Advocate for stringent application or amendment of election/political financing laws to curb the influence of the tobacco industry in affecting policy and legislation
8. Integrate all tobacco control stakeholders in policy formulation and implementation covering said products for better streamlined counter-actions to industry strategies.
9. A strong sensitization campaign involving all stakeholders to spread awareness among the public on the threat of novel tobacco products; this would entail highlighting the effects of these products, their composition (flavours), targeted demographics, countering industry health and economic narratives around these products.
10. Propose integration of tobacco control elements and other drug abuse threats in the national educational curriculum.
11. Finalization of the Tobacco Control Fund regulations in order to activate the Tobacco Control Fund.

Conclusion

Our assessment of the instances of industry interference in tobacco and nicotine products control in Kenya illustrated that as the world struggled to contain the COVID-19 pandemic, the tobacco industry strategically evolved its product line to reign in its customers old and new so as to maintain its profits. It posed as an entity concerned with society's health while simultaneously pushing products which exacerbate COVID-19 effects and add financial strain to health systems.

It is manifest that its actions were motivated at the foremost by profits and marginally by concern for the public well-being. It employed its innovation and resources to ensnare new customers for its products while attempting to sidestep health policy and regulatory mechanisms.

However, the actions of most in the Health ministry and government in general coupled with relentless efforts of those in civil society, media, social organizations, parents' associations and other stakeholders to counter and limit industry influence in tobacco and nicotine products regulation provides encouragement for the cause. While more must be done to improve the current situation, foot soldiers abound to sustain the movement.

**“ THE TOBACCO INDUSTRY
CONTINUES TO PUSH
FOR THE REDUCED HARM
NARRATIVE WHEN IT COMES
TO NICOTINE POUCHES
YET THERE IS NOT ENOUGH
EVIDENCE TO SUGGEST THAT
THESE PRODUCTS CAUSE NO
HARM TO ITS CONSUMERS ”**

- CELINE AWUOR

CHIEF EXECUTIVE OFFICER

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