

National Retail Group Limited

Dated 18 October 2023

To

Ministry of Health  
New Zealand

### **Post meeting follow-up**

1. National Retail Group wishes to introduce low nicotine smoked tobacco at the earliest opportunity. We are targeting, depending on policy decisions, the first quarter of 2024.
2. This meeting poses to the Ministry a series of questions that may assist the Ministry in framing its understanding of consumers and the market in general.
3. We are aware is took vaping 14-years, but especially the last six, to overtake smoking. For much of that time it was unregulated so every marketing channel was open to it. Yet, on 1 April 2025, the smoking market will be upended but those who matter, smokers, are mostly oblivious.

### **The New Zealand smoker as a consumer**

4. The excellent New Zealand Health Survey tells us that some 211,000 daily smokers are in the lowest two quintiles of society; with 142,000 in the lowest quintile. Smokers are conservative in that they know what they want and are resistant to try the unknown because they cannot afford the risk.

### **Impediments to low nicotine being introduced early**

5. This is before we get to the unknown knowns, being how consumers will react to an unknown product that delivers substantially less nicotine than what they know:
  - i) As we understand it, nicotine of 0.80mg/gram of tobacco is based on uncombusted tobacco. This implies a smoker will likely consume something like 0.27mg of nicotine (assuming two thirds burns off in the process of smoking)
  - ii) Having read some of the tobacco returns off the Ministry website as research, this suggests smoked tobacco would four to five times that level of nicotine.
6. Price is the biggest roadblock we face. We know there are 30 cigarette products cheaper than a provisional price we have.
7. XXII is not the cheapest product but nor is it the most expensive either. NRG believes we have one go at this to avoid an adverse consumer response. Word of mouth, the only marketing option open to us, can be a force for good or for ill. This is where we face other impediments:

Low nicotine tobacco is subject to the same plain packaging as conventional high nicotine tobacco.

- i) Low nicotine tobacco is subject to the same health warning and pictures as for conventional high nicotine tobacco.

- ii) In the U.S, the FDA realises this conundrum by permitting the following marketing claims:
  - a. "95% less nicotine"
  - b. "Helps reduce your nicotine consumption"
  - c. "...greatly reduces your nicotine consumption"
- 8. While it is a niche product, herbal smoked cigarettes are subject to no health warning whatsoever and can be sold in branded packaging as a counterpoint to the treatment of low nicotine tobacco. Indeed, low nicotine cigarettes are a regulated product whereas herbal *smoked* cigarettes are a notifiable product.

**Questions that may help shape the Ministry's thinking:**

- 9. Does the Ministry understand what will happen on 30 June 2024 when smokers no longer have wide access to conventional cigarettes with 600 outlets from 1 July 2024? Or what will happen on 1 April 2025, when 195 odd products go down to one brand they have never heard of, or doesn't deliver the 'hit' smokers are used to?

This is why there is need to get products(s) into market early. It stops shock and the risk of the black market taking off. As you know this is estimated to be 8.4% of the legal trade. That's hundreds of millions in lost excise/GST.

- 10. Has the Ministry conducted any consumer insights research among smokers to:
  - a. see if they are aware of a fundamental change to smoking?
  - b. know about low nicotine tobacco
  - c. understand the limited product range and end of RYO?

What we are talking about here is independent non-academic qualitative and quantitative market research; as is used by companies looking to develop or introduce products.

- 11. If the answer to 10 is no, how does the Ministry suggest smokers will learn about the brand, what low nicotine is and why that matters to them?

**Packaging and health warning**

- 12. While we know smoking (whether cannabis, herbal or tobacco) all create the same cancer risk, will the Act and Regulations be amended to change the packaging to something else? Perhaps with a different image and more positive, FDA health warnings?
- 13. As we cannot advertise and no can retailer can discuss low-nicotine, we are completely reliant on look and packaging. Smokers do compare and just as word of mouth can be negative it can also be quite positive too, consequently, is there scope to have:
  - a. modified plain packaging
  - b. modified health warning and
  - c. modified images to go with the above two and if yes, when could that be implemented?
- 14. If the answer is no, how does the Ministry suggest smokers will learn about the brand, what low nicotine is and why that matters?

## **Tobacco Excise Tax**

15. This is central to creating a price point to get smokers to try, to ideally transition or to fashion something else like dual using so every second cigarette is low nicotine *to break addiction by reducing nicotine intake*. Given this, the role of excise done by Customs becomes critical:
  - a. Could XXII be granted a different excise rate until 1 April 2025? If Excise was reduced, for instance by 50%, we could potentially retail at just over \$20 a pack (GST exclusive); this makes it the cheapest nicotine smoked product and uses price as a marketing tool over conventional cigarette
  - b. Similarly for the dairies that will lose smoked tobacco, could the Ministry engage Customs on the excise treatment of smokeless heated tobacco vaping? If this was cut to zero, that would help dairies who must to quit cigarettes next July. As you will know from Te Whatu Ora, dairies are highly compliant sellers and a lower excise might encourage smokers who do not have ready access to a car or the internet, to instead convert onto what we describe as being a solid vape.

## **Internet sales (the 600<sup>th</sup> license?)**

16. We know 599 of 600 licenses are being released. May we inquire as to whether NRG could apply for the 600<sup>th</sup> in respect of internet sales for low nicotine tobacco? Does this mean we would need to have physical store? We realise a form of geo fencing would be required but this would enable us to supply directly to customers noting a lack of credit card or internet access is an issue with them.

## **The regulatory timeline and requirements**

17. Does NRG need to register now as a distributor or await 1 July 2024 and apply for the CCA Licence/Import Permit with an MoH business number?
18. How do we register and will the fee apply to each product, or is the fee only for products like XXII that may be sold after 1 April 2025?
19. Does this mean XXII products may be imported and sold under the process that applies to conventional cigarettes?
20. Are we correct to believe that current Regulation 63 applies until the end of March 2025 with new Regulation 8 applying from 1 April 2025?
21. New Regulation 8 refers to applications for smoked tobacco products being accepted from 21 September 2023. We have checked the website and HARP and find no application form.
  - a. What is envisaged by the form, when will it be accessible and what information do you need to support it?
22. We know the nicotine levels of 'XXII Red' are to be verified using ISO/IEC 17025 with gas chromatography. Will MoH replicate this testing to ensure compliance with nicotine levels?

23. As clarification, will the temporary approvals, presumably for cigars etc, be required to use the ISO labs and gas chromatography required for low nicotine tobacco beyond?

**A request: a trial with heavier smokers**

24. As you know, the Act does not allow us to sell below cost being the tobacco excise tax, GST, freight etc. We are prepared to import and sell to the Ministry at absolute cost, i.e., no importers' margin, in order to verify low nicotine tobacco with actual smokers.
25. We suggest a shipment of 100,000 sticks for the purposes of a three-month trial conducted with by a market research company off the Whole of Government contractor list. We recommend market research rather than academic approaches as there needs to be genuine consumer insights, they do not have the skills to get at. This is not to demean them, just that qualitative and quantitative is used in the private sector to inform investment. This is a public investment into policy while Auckland or Otago University (or both) could be given access to the data:
- a. 100,000 sticks should be sufficient to supply 114 daily smokers for three-months or 52 heavy smokers (21 cigarettes a day), also for three months.
  - b. Manufacturer margin and freight has to be confirmed but we know the current excise and GST would price this at just under \$144,000.
  - c. We would try to see if XXII could supply this at absolute cost too.
26. We submit that such a trial would act as an acid test and enable the Ministry, us and academics to gain consumer insights in real time. We are talking about completely new type of smoked tobacco product that will from 1 April 2025 either be the only one sold or one of few sold from nearly 200 current products. How should we formalise this?

**In summary**

27. NRG is very keen to get starting as soon as possible but see merits in additional academic analysis. We have one shot to do this right, when XXII might well become the only product available.
28. The price point is key. Is there scope to reduce the tobacco excise on low nicotine tobacco and cut it completely on smokeless tobacco? This creates a less addictive but smoked product compared to a less harmful vaped product. If both are priced accordingly it changes the tobacco market completely.
29. Is there scope for a different form of Plain Packaging for low nicotine tobacco, involving a different colour, different sets of images and a different FDA style health warning?

We appreciate your time and hope answers to these questions will shape the next steps.

Kind Regards

Sandeep Aggarwal  
Managing Director  
National Retail Group Limited