



Tel +32(0)2/627 88 80
Fax +32(0)2/627 68 81

Rue de la Loi 200/ Wetsstraat 200
1049 Bruxelles/Brussel

6 November 2019

Dear
Dear

Traceability System for Tobacco Product – Fees for Unique Identifier Codes

We wanted to bring to your attention an issue in relation to the operation of the ID Issuers for the traceability system for tobacco products in several Member States. As you will recall, under the Commission's Implementing Regulation (IR), each Member State must appoint an ID issuer who will be responsible for issuing the various unique identifier codes (UIs) required under the EU's track and trace (T&T) system, including the tobacco unit level UIs.

British American Tobacco is concerned that ID issuers are seeking to charge excessively high fees for these unit level UIs. The range of fees imposed by the ID issuers in different Member States range from €0.3 per 1000 unit level UIs to €9.5 per 1000 unit level UIs.

This disparity in pricing demonstrates that certain ID Issuers are taking the opportunity to derive disproportionate profits from the operation of the traceability system. In many Member States, the fees being charged are completely out of line with the Commission's 2017 Impact Assessment associated with the IR – in that Impact Assessment the Commission estimated a total EU annualised cost of €14m for the generation of UIs (including a fair margin) for ID issuers¹, which we estimate very roughly as coming to about €0.40 per 1000 unit level UIs.

The foregoing gives rise to serious concerns, since all appointed single ID issuers are in effect monopolists having a dominant position under EU and national competition laws. Pursuant to such competition laws, the single ID issuers are prohibited from charging excessive prices, and any excessive fees charged for UID codes must be considered an infringement of those laws.

Furthermore Article 3(9) of the IR is clear that the fees charged must be non-discriminatory and proportionate to the number of unique identifiers generated. To the extent that the fees charged are excessive, that ID Issuer will be infringing the IR, as well as the mentioned competition laws.

¹ Impact Assessment, SWD(2017) 455 final (15 December 2017), page 41.



**BRITISH AMERICAN
TOBACCO**

We also note that some ID Issuers are seeking to impose higher prices depending on the delivery time, which according to the IR, is simply not relevant in determining price.

Moreover, the burden on prices is likely to increase substantially in future, as there is no mechanism in place for regulating future adjustments.

We have committed a great deal of resources to successfully implementing the traceability system and want to ensure that both the system, and the authority of the legislation imposed by the Commission is not undermined by the actions of various ID Issuers.

We would kindly request the Commission to urgently look into this matter and consider any measures available to it to ensure that there is sufficient competition between national ID issuers and to prevent a conflict with the freedom of movement of services.

We believe that this could be achieved in a number of ways; for example, by allowing manufacturers to select ID issuers appointed by other Member States (cf. COM decision of 2 May 2019) or requiring Member States to appoint two or more ID issuers. Alternatively, the Commission could consider any options to achieve mandatory controls on fees, inclusive of a mechanism to regulate future increases, and/or mandatory annual public tendering.

As this matter is presently manifesting itself, we would very much appreciate your early feedback. Please let us know in case you require further information.

Yours sincerely,

Vice President, Head of EU Affairs

Tel. +32 (0)2 627 88 83

Mob. 

Email: 