



**TOBACCO
TRANSFORMATION
INDEX**

Marketing Study

Phase 1: Proposed Marketing Code

June 2022

Contents

1.	Introduction.....	3
	Report Objectives	3
	Nicotine Product Context	4
2.	Scope	6
	Marketing Scope	6
	Geographic Scope.....	6
3.	Summary	8
4.	Recommendations	9
5.	Methodology.....	10
6.	Expert Consultations.....	11
7.	Assessment of company codes	14
	Company Summary	15
	Lessons.....	18
8.	Assessment of marketing activities	19
9.	Assessment of existing standards, legislation and conventions	31
10.	Assessment of other industries’ codes and marketing practices	40
11.	Proposed Marketing Code	46
	Executive summary	46
	Proposed Code	47
	Standards.....	48
12.	Appendix.....	61
	Acronyms	61
	Definitions.....	61
	Product Scope	63
	Reference List	66
	List of Sources.....	69
	Expert Consultations	72

1. Introduction

Report Objectives

The Tobacco Transformation Index (“Index”), launched in September 2020, ranks the 15 largest tobacco companies on their relative progress toward harm reduction. One of the Index’s core objectives is to assess company activity concerning “Preventing access and marketing of reduced-risk alternatives¹ to all non-smokers and non-users of high-risk products, especially youth”. The Index contains indicators which assess companies on a range of marketing-related factors, including marketing policy, compliance, and expenditure.

[Stakeholder engagement](#) sessions were held before and after the publication of the first Index in 2020, and again in the summer of 2021. Marketing was a recurring theme. Stakeholders highlighted the need to further assess companies for their marketing practices, not only policies. Particular reference was made to the value of identifying and highlighting the efforts companies are making to ensure reduced-risk products do not appeal to youth and non-smokers.

This study, built upon multiple layers of research, proposes a marketing code containing standards for reduced-risk nicotine and tobacco companies to ensure products are advertised and promoted to existing nicotine and tobacco users in a responsible way. The objective of this report is to invite stakeholder feedback on the proposed marketing code and its suitability.

The research does not attempt to quantify the relative performance of companies. Examples cited are anecdotal, used as inputs to inform the development of the proposed code. It is envisaged that further research will take place following the publication of this report, with the objective of establishing a methodology to assess companies’ performance against the proposed code in the future.

This study finds that a transparent global marketing code can guide companies in acting responsibly and hold them to account. To establish best practices, an audit was conducted of current marketing codes for nicotine and tobacco companies and companies in industries with comparable regulatory and use complexities. The information gathered was further analyzed against the legislation in 13 key countries². Marketing activity was also audited in these 13 countries, through point-of-sale and online audits. The commonalities in standards and potential best practice were interrogated through a review of academic research and expert consultations. The research culminated in defining best practice organized by four broad categories:

- 1) **Existence, Positioning and Visibility;**
- 2) **Principles;**
- 3) **Code Specifics;**
- 4) **Monitoring and Compliance.**

A base principle underpinning the study is that **high-risk tobacco products, which cause over 8 million deaths a year, cannot be marketed responsibly**. In this regard, in terms of high-risk products, the study finds that a comprehensive ban of all high-risk tobacco product advertising, promotion and sponsorship is necessary to achieving harm reduction.

¹ See Appendix for full list of product definitions, including those for “reduced-risk” and “high-risk” products

² Egypt, Germany, Indonesia, Japan, Pakistan, Philippines, Russia, South Africa, South Korea, Ukraine, UK, USA, Vietnam

Currently, there is no global marketing code attributable to reduced-risk products. While many countries have applied their own regulations, not all have, and inconsistencies abound. In the infancy of vaping's development, for example, a lack of standards led to instances of brands directly targeting youth. This had the negative impact of recruiting youth, while also undermining the potential contribution that reduced-risk products can make toward harm reduction. Numerous countries responded with reduced-risk product bans.

This study proposes that, in this context, responsible marketing should be permitted, but only if it is done in accordance with a specific and transparent code. Paramount is that all marketing targets existing nicotine and tobacco users and, in particular, is not targeted at youth³.

Based on research conducted by this study, we conclude that **responsible marketing** of reduced-risk nicotine and tobacco products can:

- Allow current smokers to become aware of the alternatives that are available;
- Allow existing nicotine and tobacco consumers to become aware of the reduced-harm alternatives available; and
- Support existing reduced-risk product consumers from relapsing to high-risk categories.

The 15 companies assessed as part of the Tobacco Transformation Index originate and operate in a wide range of countries with different administrative, regulatory and enforcement systems. The Index is evolving, and it is anticipated that future research will be conducted into the specific regulatory and enforcement regimes in which companies operate.

Nicotine Product Context

This report was written and is being published at a time when there is little consensus among the tobacco industry and public health stakeholders, on the role of nicotine. While many believe that nicotine products have the potential to contribute to significant public health gains compared to the status quo, there remains a wide range of views on the topic. The spectrum of views ranges from those who believe nicotine is, while addictive, no more harmful than a range of other widely-available consumer products, to those who believe a more cautious approach should be taken.

As such, **there is little consensus regarding the marketing of reduced-risk nicotine products.** One view is that marketing of such products should be heavily restricted and only be tolerated to the extent that it helps encourage current smokers to switch to reduced-risk products. The other view is that nicotine products should be marketed with limited restrictions to maximize the potential public health gains compared to the status quo. It is acknowledged that these two views are potentially irreconcilable.

This report offers a proposed code based on objective research findings and does not seek to align itself to any one specific stance. The draft code proposed here is intended to spur discussion across a wide range of stakeholders, with the goal of eventually establishing a marketing code for reduced-risk products that maximizes tobacco harm reduction for existing users, while also avoiding the uptake of these products by new, particularly younger users. To acknowledge this lack of consensus, alternatives have been suggested to specific standards within the proposed code found in this report.

³ See *Appendix – Definitions* section of this report for definition of “youth” and other terms

Figure 1: Proposed Marketing Code Timeline and Next Steps

Proposed Marketing Code: Timeline and Next Steps



2. Scope

Marketing Scope

An important part of the research process was defining⁴ “marketing” (of any product). Establishing this definition was key to further analysis. In part, this exercise can be seen as a technical issue, not necessarily nicotine- and tobacco-specific. Expert consultations directed the research team to the International Chamber of Commerce (ICC) Advertising and Communications Code, which defines advertising and marketing communications as follows:

*“Advertising” or “advertisement” means any form of marketing communications carried by the media, usually in return for payment or other valuable consideration.*⁵

*“Marketing communications” includes advertising as well as other techniques, such as promotions, sponsorships as well as direct marketing and digital marketing communications, and should be interpreted broadly to mean any communications produced directly by or on behalf of marketers intended primarily to promote products or to influence consumer behaviour.*⁶

The World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) uses similar language in its definitions, but importantly also references **indirect** activities:

*“Tobacco advertising and promotion” means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.*⁷

*“Tobacco sponsorship” means any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;*⁸

The historic damage caused by high-risk tobacco product marketing requires robust standards. For this reason, the study utilizes the more comprehensive definitions as set out by the FCTC. The term “indirect” can be important in ensuring the inclusion of factors such as labeling and pricing, which can attract consumers. Further details of the specific activities and the rationales for their inclusion in the scope of the proposed code are elaborated on in later sections of the report.

Geographic Scope

Marketing often transcends international borders, especially with the prominence of online communication and social media. An international approach was therefore adopted by this research, looking at leading players with wide geographic footprints and analyzing online campaigns across countries. This strategy was further supplemented by in-country research in 13 key markets, where in-store visits, online searches, and reviews of legislative procedures provide examples to support comprehensive lessons. The countries selected for the research were chosen to ensure coverage across a range of geographies and market types. While the 13 countries became the focus of analysis, activities in other countries were also highlighted through centralized desk research. The in-country audits should be seen as a point-in-time snapshot of

⁴ See Appendix for full list of definitions for terms used in this report

⁵ International Chamber of Commerce (ICC), ICC Advertising and Marketing Communications Code (2018).

⁶ Ibid.

⁷ World Health Organization (WHO), (2003), FCTC WHO Framework Convention on Tobacco Control, Switzerland.

⁸ Ibid.

marketing activity, designed to source examples in the formulation of standards. It was not the aim of this research to conduct a systematic audit of comprehensive reduced-risk product marketing activity, but rather to gather real-time examples to leverage for the report, including examples of marketing which may potentially be non-compliant with companies' own marketing codes.

In-country audits were conducted in 13 countries

June to September 2021

Countries
Egypt
Germany
Indonesia
Japan
Pakistan
Philippines
Russia ⁹
South Africa
South Korea
Ukraine ¹⁰
UK
USA
Vietnam

⁹ In-country research conducted during June-September 2021, before the Russian invasion of Ukraine

¹⁰ In-country research conducted during June-September 2021, before the Russian invasion of Ukraine

3. Summary

There is evidence that some reduced-risk product manufacturers are currently marketing in a way which may appeal to youth and non-smokers

Through in-country research, a number of marketing initiatives which had the potential to appeal to youth and non-smokers alike, were observed. For example, some promotional material overtly used young-looking models, appealed to youth culture, or made use of sexualized images. These findings emphasized the need for clear and specific marketing standards for reduced-risk products.

There are no existing global marketing standards aimed at manufacturers of reduced-risk products

There is no set of global marketing standards for reduced-risk products, which nicotine and tobacco companies can follow to ensure they are acting responsibly. The FTC is focused on high-risk products, and it gives guidance for country legislation, but doesn't address nicotine and tobacco companies directly.

Legislation is varied, lacking and unsophisticated with regard to reduced-risk products

Country legislation for the marketing of reduced-risk products varies considerably between countries. In some, the majority of reduced-risk product categories are unregulated, while in others high-risk product regulations have been transferred to reduced-risk products in their entirety, with no consideration made for the concept of harm reduction.

Litigation issues demonstrate that lack of specificity and gray areas persist

The effectiveness of national bodies responsible for enforcing reduced-risk product marketing standards varies considerably between countries, with poor practices in certain markets seemingly going unpunished. Enforcement variability relates to countries having different levels of resources and different sets of challenges and priorities. In countries where enforcement is more rigorous, examples of litigation illustrate that gray areas exist, and it is difficult for standards to be clear-cut in certain areas. This situation highlights the need for marketing standards to be as specific as possible, but there is also an acknowledgment that companies must commit to being responsible and taking a cautionary position if in doubt.

Only a limited number of companies have marketing codes, addressing this is the starting point

Of the 15 tobacco companies assessed as part of the Tobacco Transformation Index, only 6 have defined tobacco marketing codes. For reduced-risk products, only one had a separate dedicated code, which was made available externally for the first time during the finalization of this report. Research indicates that having a separate code, in this case for reduced-risk product categories, is necessary for the products to be marketed responsibly.

The market for reduced-risk products on a global basis is fragmented and the majority of pure-play reduced-risk players do not have marketing codes. Certain market leaders have, however, developed marketing codes with increasing levels of granularity.

4. Recommendations

Underlying principles are important to ensure consistency of approach

This study finds that responsible marketing practices should be at the core of a company's operations. For this reason, to be effective, a company's marketing code should be signed off by the leadership and be part of a its and leadership's performance targets. This approach enables the standards to become part of a company's culture.

Standards should pay particular attention to the role of online marketing, especially through social media

Sales and marketing activity has the ability to reach consumers through a wide variety of platforms. This capability has been accentuated through the advent of online communications, sales channels, and particularly social media. Given the variety and reach of these consumer touchpoints, this study finds it necessary that standards are comprehensive in addressing social media channels.

Marketing standards should be supported through monitoring and evaluation mechanisms

Marketing standards can help companies to act more responsibly. It is important though, that implementation is monitored. This research supports the view that external auditors are best placed to independently monitor implementation, and the reporting of violations can help both the company and the wider industry improve performance. The evolution of the Tobacco Transformation Index intends to develop and implement a methodology to assess companies on an on-going basis against the standards established.

5. Methodology

Reduced-risk products are a relatively new category and, as such, it is not uncommon to see inconsistent marketing regulations, with some countries having no specific legislation at all. In such a context, it is not surprising that company approaches vary considerably, and there is a clear need for robust standards for companies to follow. Given there are no established criteria, it was deemed necessary in this research to take a multi-pronged approach, gaining best practices from related standards and topic experts.

In total five stages of overlapping research were developed to create the proposed code*:

- **Expert consultations** – consultations were conducted with a range of experts leveraging their experience and technical knowledge, which informed the proposed code development. Experts included: former tobacco industry employees; employees in industries with comparable regulatory and use complexities; and academics specializing in marketing ethics, responsible marketing, and marketing best practice.
- **Assessment of company codes** – analysis of nicotine and tobacco manufacturers' current marketing codes.
- **Analysis of marketing activity** – point-in-time research of in-market activity, illustrating issues and particularly gray areas. In-country examples were segmented into four categories, which helped to organize the structure of the proposed marketing code.
- **Review of existing standards, country-level legislation, and litigation** – there are no direct standards aimed at reduced-risk nicotine and tobacco companies, although recommendations such as those found in the FCTC which target government policy on high-risk tobacco products, can highlight areas and specifics to address. This consideration also informs national legislation, which can point to best practice. On the other hand, litigation to enforce regulations highlights poor practices and areas for increased enforcement.
- **Assessment of industries with comparable regulatory and use complexities** – several of the challenges faced in reduced-risk nicotine and tobacco product marketing are shared with other industries, notably: breast-milk substitutes; alcoholic drinks; gambling; and pharmaceuticals. Lessons from these industries can help shape reduced-risk nicotine and tobacco marketing standards. This is particularly relevant in the case of breast-milk substitutes, given the longevity of standards, with the International Code of Marketing of Breast-milk Substitutes (WHO BMS) having been established in 1981.¹¹

*The proposed code is based on the above research inputs. The Tobacco Transformation Index is evolving, and it is anticipated that the proposed code will be reviewed in the future in accordance with appropriate stakeholder engagement and feedback.

¹¹ World Health Organization (WHO), (1981), International Code of Marketing of Breast-milk Substitutes, Geneva.

6. Expert Consultations

In order to establish important themes that would form the basis of standards, independent expert consultation was utilized. To this end, 12 consultations were carried out during the initial stages of the research, with experts from a range of relevant specialisms and backgrounds:

- Academics with specializations including marketing ethics.
- Association and NGO employees/former employees with experience in drafting standards.
- Employees from other industries, notably senior marketers of alcoholic drinks, breast-milk substitutes, gambling, and pharmaceuticals.
- Former nicotine and tobacco company employees, with direct knowledge of industry operations, but also with distance from which to offer an objective viewpoint.

Such a diverse group was bound to offer differing opinions. However, a commonality of themes emerged, as explored in this section, and where opinion converged strengthened the case for specific standards.

Lack of clarity on marketing differences for reduced-risk and high-risk products

Experts highlighted that global tobacco company marketing codes were established for high-risk products, and more flexibility was afforded to local teams with regard to reduced-risk products. While flexibility can be a good thing, it was argued that it could create a lack of clarity. Therefore, experts agreed that there is a need for global standards targeting reduced-risk products.

Legislation vs non-legislative standards

The relative benefits of legislation versus non-legislative standards were central to the expert discussions. It was the opinion of some experts that non-legislative regulation, when implemented properly with companies vested in it, can be effective, as it happens at source and can be enacted relatively quickly. On the other hand, legislation can be cumbersome and take years to draft. Additionally, in a non-legislative regulatory environment, better performing companies can create an example for others and improve the standards of the industry.

While there are potential positive aspects of non-legislative regulation, the experiences of experts from other industries diverged. Some experts highlighted the positive outcomes. Others outlined the contradiction between companies pushing to maximize profitability in an aggressively commercial environment, versus non-legislative regulation. Some experts mentioned the push for profitability was accentuated at the local level, where efforts to hit targets did not always align with global codes. As a result, experts suggested that attention needs to be focused on what motivation there is for companies to conform. Indeed, some experts felt that companies should not be forced to conform to industry standards, as it may conflict with commercial objectives, while independent monitoring is not practical.

The need for third party auditing to ensure proper implementation

The majority of consulted experts argued that any standards need to be supported by pre-defined punitive measures for transgressions. To support this argument, experts highlighted how companies act differently across territories. A couple of experts specifically referred to differences between the United Kingdom and South Africa, with one citing a case study from the weight-management/dietary products category, where a brand launched in both markets. The company in question used the same advert in the two markets, and in both cases the regulatory bodies took the manufacturer to task about targeting young girls. In the case of the United Kingdom, the authority was successful in having the weight-management brand change its marketing approach. In contrast, in South Africa, the weight-management company ignored objections from the regulatory body, as it did not recognize the legitimacy of the regulatory body. Such examples are important in clarifying the position of proposed standards. Standards should provide guidelines for

companies to act responsibly. However, standards should not be regarded as self-regulation, as in order to be effective there needs to be an element of accountability and enforcement.

Marketing standards should be specific, but principles and interpretation are also important

Experts generally agreed that, from an implementation perspective, standards should be specific. At the same time, however, there was widespread acknowledgment that specifics cannot account for all scenarios and mechanisms, and if they tried to, they would become bogged down in detail that would negate impact. As such, experts stated that while specifics have a place, they need to work alongside guidance for context and tone. Guidance can include statements stipulating that marketing should not have youth or sex appeal, which will cover many cases, but not all, and judgement comes into play. Experts agreed that companies should foster a culture prevalent throughout the organization of challenging what is responsible., aligned with company and CEO targets/performance. Inevitably, an element of audit will be required.

In terms of specifics, experts advised that best practice is to take a stricter line where cases are not clear cut. For example, experts highlighted that not all cartoons are intended to appeal to youth, and therefore a ban on cartoons is limiting. However, considering the historical transgressions by manufacturers of high-risk products, such as the use of cartoon mascots in cigarette advertisements, it is advisable for reduced-risk product manufacturers to avoid cartoons altogether in their marketing to avoid youth appeal. In fact, one expert believed no imagery should be allowed at all, while another suggested reduced-risk products could be limited to “informational” marketing materials rather than “emotional”.

Alongside the underlying debate of specific standards versus context, several areas were highlighted:

- **Location** – Experts highlighted that specifics such as stipulating cigarettes should not be sold within a certain distance from a school are a good starting point. The position of marketing materials in stores and at the point-of-sale was also discussed in much detail.
- **Halo effect** – This concept involves the use of a brand image without illustrating the specific product type, which might be banned, for example. This condition was particularly referenced in the context of the breast-milk substitute category, where brands circumvented restrictions on specific age groups being targeted by only using logos and images. Given that the products were often synonymous with infant formula, experts argued that they achieve their objectives by bending the rules. Therefore, it is important that standards are set with this type of activity in mind.
- **Celebrity endorsement** – Experts highlighted that the choice of celebrity is extremely important, especially so as not to associate reduced-risk products with celebrities who may have particular appeal or resonance in youth culture.
- **Lifestyle promotion** – Some experts felt that creating an aspirational image, whether through models or activities, should be prohibited. Canada’s Tobacco and Vaping Products Act 1997 was cited as ruling against this activity, referring to it as “slice of life advertising”. Related to lifestyle promotion is the age of models used. Experts observed it is apparent that laws and age limits introduced by companies for other industries varied from country to country, highlighting the need for global standards.

Permission Marketing

One expert referenced the concept of “permission marketing”, examined in Seth Godin’s book.¹² This approach advocates that consumers should be asked permission by companies before they see their marketing. Permission marketing is particularly relevant in the context of reduced-risk nicotine and tobacco products, where any sort of marketing should exclusively position reduced-risk products as an alternative to high-risk products, rather than trying to recruit new consumers. Experts suggested that this strategy could be very difficult to achieve through traditional marketing formats, such as billboards and magazine advertisements, but becomes a more relevant option in online channels.

Online channels and particularly social media were cited by several experts as the worst projectors of inappropriate material. Online platforms are seen as problematic by the experts, as they are regarded as limitless and difficult to police, while usage is weighted toward a younger audience. This situation is particularly observed through the role of influencers, where often it is not clear that what they are posting is an advertisement. Experts highlighted the dangers. If consumers are unaware that what they are seeing is an advertisement, research indicates, they do not process it as such from a cognitive point of view. Therefore, consumers are less likely to challenge related assertions. Experts agreed that this issue is apparent across all sectors, not just tobacco. The response from regulators is to enforce notifications by influencers, of what is and is not an advertisement, although enforcement is difficult.

Experts suggested that despite issues with online channels, they do have the capability to facilitate permission-based marketing. Access to sites and advertisements can be limited to specific user IDs and established through verification processes, which could regulate who sees and, indeed, purchases. Experts drew parallels with the gambling industry, where online betting has become a significant challenge. IDs can, however, now be used to regulate limits on which individuals bet, and how much they bet, thus mitigating the extremes of addictive gambling to some extent.

The role of marketing in educating consumers

Several experts highlighted examples of how marketing can incorporate educational materials. In its simplest form, education can be an adaptation of warning messages commonly seen on high-risk products. This approach is seen in the breast-milk substitute sector, where the WHO BMS stipulates the incorporation of a statement on the superiority of breast-feeding. One expert suggested that an equivalent would be that all reduced-risk marketing, from packing to advertorials, include the message “The best approach is not to consume any nicotine or tobacco products at all”.

Corporate Social Responsibility (CSR) initiatives

Experts offered different opinions on CSR initiatives from nicotine and tobacco companies. Several experts expressed the view that making a corporate virtue of charitable work is questionable, especially if branded.

¹² Seth Godin, (1999), Permission Marketing.

7. Assessment of company codes

Regulations against high-risk tobacco marketing are now commonplace and have curtailed related activities, although specifics vary considerably between countries. In addition, some nicotine and tobacco companies have introduced their own internal codes.

A starting point for this research is to assess current nicotine and tobacco company practices. The situation becomes particularly acute regarding reduced-risk products, for which regulations and practices are less established. JUUL's historic marketing activity, preceding the initiation of various lawsuits against the company in the US starting in 2019, are a warning that standards are lacking.

As part of the 2020 Tobacco Transformation Index, companies were evaluated on their marketing policies, specifically regarding codes in place and compliance, as well as expenditure. The 2020 Index did not evaluate actual marketing practices against any code. The marketing ranking of companies differed from the overall Index ranking, but a clear distinction exists between the multinational publicly listed companies and the regional, private, and state-owned entities:

Overall Ranking

2020 Tobacco Transformation Index

Company	Ranking
Swedish Match AB	1
Philip Morris International Inc (PMI)	2
British American Tobacco Plc (BAT)	3
Altria Group Inc	4
Imperial Brands Plc	5
Japan Tobacco Inc (JTI)	6
KT&G Corp	7
ITC Ltd	8
Swisher International Group Inc	9
Tobacco Authority of Thailand (TOAT)	10
Vietnam National Tobacco Corp (Vinataba)	11
Gudang Garam Tbk PT	12
Djarum PT	13
Eastern Co SAE	13
China National Tobacco Corp (CNTC)	15

Marketing Ranking

2020 Tobacco Transformation Index

Company	Ranking
Philip Morris International Inc (PMI)	1
Altria Group Inc	2
British American Tobacco Plc (BAT)	3
Imperial Brands Plc	4
Swedish Match AB	4
Japan Tobacco Inc (JTI)	6
KT&G Corp	7
Swisher International Group Inc	8
Tobacco Authority of Thailand (TOAT)	9
Vietnam National Tobacco Corp (Vinataba)	9
China National Tobacco Corp (CNTC)	11
ITC Ltd	11
Djarum PT	13
Gudang Garam Tbk PT	14
Eastern Co SAE	15

Company Summary

Multinational and public companies have responsible marketing codes, but greater clarity is needed

Further research confirmed the finding of the 2020 Tobacco Transformation Index, that Altria Group, British American Tobacco (BAT), Imperial Brands, Japan Tobacco (JTI), Philip Morris International (PMI), and Swedish Match have marketing codes. The granularity and transparency of these codes, however, varies, and these differences can point to areas of focus for marketing best practices. We provide a brief overview of each of the companies' marketing codes below.

Altria

Altria ranked second in the 2020 Tobacco Transformation Index in terms of the Marketing category, in part because of its marketing and youth access prevention policies. Altria's compliance was found lacking in terms of monitoring and disclosing marketing policy violations. Altria cited ten audits of marketing compliance risk areas that took place over the previous three years, reporting that zero cases of marketing policy non-compliance were found. However, full details of specific investigations were not released, nor was any evidence discovered that these were corroborated by an external auditor. External audits provide a greater degree of transparency around marketing policy non-compliance, compared with internal audits.

British American Tobacco

Research found that companies with single document marketing codes tended to offer more granularity. Some companies, such as BAT, publish broad top-line marketing "principles", but without granularity, making it difficult to discern. With BAT, further details can be found in other locations, on corporate websites or in other documents such as sustainability reports. For example, BAT discusses principles related to social media in its 2021 ESG report¹³, but this spread of information dilutes its impact, in our view. Lack of consistency draws into question coherency of company codes and ease of use for employees and others.

Imperial Brands

In 2014, Imperial Brands, by contrast, published a six-page "International Marketing Standards" document with 43 precise marketing protocols, such as:

*"No Tobacco Product brand advertising will be placed on outdoor signs or billboards which are closer than 100 meters to the main entrance of schools used predominantly by those under 18 years of age (or higher minimum age where specified locally). This does not include outdoor signs at the point of sale."*¹⁴

Documenting standards offers transparency and clarity in terms of accountability and guidance for employees, regardless of the merits of individual standards. On this point, Imperial's communication of its marketing standards has limitations. As part of the 2020 Index research, the company's International Marketing Standards were found on its main corporate website. However, the link was no longer active when revisiting it in 2021 (during research for this report). The document can be found, but only on Imperial's Turkish country website. Therefore, it is difficult to ascertain whether the document is still valid, or whether it is a case of the country website not having been updated in line with a change of standards. That said, if responsible marketing is central to a company's activities, it should be given priority in corporate communications. For example, the version of the International Marketing Standards on Imperial's Turkish website states that Imperial received CEC approval on 11/09/09. This further draws into question whether the document is up to date and valid, highlighting the necessity for practices to be continually reviewed to ensure consistency.

¹³ British American Tobacco Plc (2022), ESG Report 2021, page 87

¹⁴ Imperial Tobacco Group, (2009), Imperial Tobacco Group International Standard for the Marketing of Tobacco Products

Japan Tobacco

Communication across geographies is important for any codes to be effective, and experts agreed that there is value in having the same codes for all markets, even if that means going beyond local laws in certain markets. This approach helps reduce confusion and inherently means companies will adhere to stricter standards, rather than doing the minimum. In relation to this, JTI, for example, states:

“The JT Group complies with all national laws and regulations concerning the advertising and promotion of its products. In addition, the JT Group applies these Global Marketing Principles when applicable laws and regulations are less strict, do not deal with the particular issue or do not exist.”¹⁵

While this statement is good in terms of covering geographies where there is no regulation, it does not necessarily go beyond the minimum in most countries, and the principles do not necessarily prevent the company from implementing undesirable tactics. The results can be seen in JTI’s principles regarding sampling:

“The JT Group distributes solicited product samples only where this is permitted by law and to adult consumers of tobacco products whose age has been verified.”¹⁶

This type of wording – “where *this is permitted by law*” – is commonplace across the six publicly listed multinational companies, and to a certain extent implies they do not fully implement geographic consistency. As detailed in subsequent sections of this report, input from expert consultation led to the recommendation that marketing standards should be global in nature, removing this element of inconsistency across countries.

Philip Morris International

PMI led the marketing ranking in the 2020 Index, given the specifics it detailed in its marketing code and reporting. In 2021, PMI reported that it updated its marketing codes, and it now has separate codes for combustible products (broadly aligning with “high-risk products”) and non-combustible alternatives (broadly aligning with “reduced-risk products”). PMI has stated the nature of the two classifications needs different approaches, especially given the dynamic and changeable nature of the reduced-risk product market. PMI released the documents externally in 2022, around a year after they became effective internally. According to PMI, it utilized 2021 to train internal staff on the new standards, before releasing them publicly.

While robust internal training is imperative for marketing standards to be effective, experts consulted during the course of this research broadly agreed that external visibility is also important, so that marketing standards can be challenged and companies held accountable.

Swedish Match

Swedish Match lists its marketing standards in its Code of Conduct, containing its core principles. However, the Code itself does not comprise specific guidance and procedures on areas such as individual media channels or company interaction with consumers. Expert consultations led to the conclusion that, for marketing codes to be effective, they need to be as specific and detailed as possible.

Other companies fall short of meaningful marketing standards

The majority of companies that were reviewed did not have defined marketing codes. Regional and state-owned companies by and large claim to act in accordance with local regulations, which the 2020 Index

¹⁵ Japan Tobacco Group, Our Global Tobacco Marketing Principles.

¹⁶ Ibid.

regarded as inadequate, especially in jurisdictions where legislation (and/or enforcement) is not as stringent.

KT&G has developed its documentation further than the others, dedicating two pages in its annual report to “*Responsible Marketing and Labelling*”. It is a step in the right direction, but the details it offers on its monitoring practices are top line, while its codes essentially state they follow regulations:

“KT&G abides by the National Health Promotion Act and Tobacco Business Act that were amended based on the FCTC of WHO, and overseas operations also strive to perform marketing activities in accordance with the local tobacco-related regulations.”¹⁷

Pure play reduced-risk market leaders develop codes

The market of companies solely focused on reduced-risk products, without legacy high-risk tobacco brands, remains fragmented. JUUL Labs Inc (JUUL) and RELX Technology Co Ltd (RELX) have, however, emerged as the leading players that have established an international presence. In 2021, JUUL Labs Inc had a 23% value share of the global closed-system e-vapor products market, and RELX Technology Co Ltd had a 14% share of the same category.¹⁸ These players have developed their own marketing codes.

JUUL’s global website includes a link which lists marketing guidelines, although lacking in detail, as seen in the two highlighted below:

- 1) *JUUL products are not intended for former smokers or never smokers.*¹⁹
- 2) *Our campaigns depict appropriately-aged individuals.*²⁰

While on the face of it, these statements are acceptable, there is a lack of specifics as to how they are achieved. The JUUL website does suggest such codes are included in a wider set of “company guidelines”, which may offer more specifics. However, a link to the full set of “company guidelines” referred to cannot be found on the JUUL website, making them unverifiable and limiting transparency.

“Juul Labs conducts all of its marketing in accordance with a strict set of company guidelines. These guidelines include assuring that our marketing is clear on the following points...”²¹

By comparison, RELX publishes its “RELX Marketing Guidelines for International Markets” document which can be downloaded. The guidelines contain a number of specifics, for example, stating that the phrase “*For existing adult smokers and vapers only*”, must appear on all of the following: *Packaging for starter kits, Packaging for devices, Packaging for pods, Point of sale materials such as tester stations and merchandising units, Electronic point of sale display units, Billboards and electronic billboards, Cinema and television commercials, Radio commercials, A health warning needs to be delivered verbally at the end of the commercial, Branded websites, Trade brochures and trade communications, Brand staging material at sponsored events, and Postings on official RELX social media channels.*²²

¹⁷ KT&G Group, (2019), 2019 KT&G Report.

¹⁸ Euromonitor International Passport’s Tobacco database, May 2022, covering all channels through which nicotine and tobacco products are sold

¹⁹ <https://www.juullabs.com/combating-underage-use/limiting-appeal/marketing/>

²⁰ Ibid.

²¹ Ibid.

²² RELX, RELX Marketing Guidelines for International Markets.

Lessons

Codes are a necessary initial step, but are not sufficient to guarantee actions

While the creation of marketing codes is a crucial first step, our research indicates that this is not sufficient. This study finds that marketing codes should be audited by independent parties, in order to ensure compliance and maximize effectiveness.

Companies that sell both high-risk and reduced-risk products must have separate marketing codes.

Findings from this research support the view that high-risk products cannot be marketed responsibly, given the harm they cause. Reduced-risk products can, however, play an important role in harm reduction if they are marketed responsibly. The relevance of marketing codes that do not make specific provisions for reduced-risk products is, therefore, very limited. It is possible that specific codes for high-risk products, and how they are implemented, can inform the development of standards for reduced-risk products, but to be meaningfully implemented reduced risk products need separate standards.

The 2020 Index showed that PMI was the most transparent company in terms of self-reporting of marketing violations, followed by BAT. In 2019, PMI publicly disclosed for the first time numbers of reported Marketing Code and GCP violations. It revealed that seven cases of misconduct were substantiated in 2018 and 12 in the first three quarters of 2019. The report notes: “Three of the cases involved supplying a device used with our smoke-free products to a minor as a result of failure to verify age, and one involved sending promotional communications to a minor as a result of failure to verify age. The employee who failed to verify the consumer’s age in each instance was terminated.” PMI’s 2019 Integrated Report updated the number of substantiated violations for the whole of 2019 to 42.²³ PMI attributes the increase to improved monitoring procedures, but this calls into question whether additional violations continue to escape notice, and therefore if further improvements to monitoring are still required. It also raises concerns about the performance of other companies that do not have comparable monitoring mechanisms in place.

Ultimately, self-reporting relies on employees speaking up, and while this has value and should be encouraged, it cannot take the place of independent, third party auditing of a company’s compliance with its marketing code.

The expert consultation process led to broad consensus that transparency is imperative. To ensure transparency, marketing standards should include explicit guidance in terms of monitoring and reporting on marketing activities. All too often, such processes are wrapped up in wider compliance and audit initiatives, and therefore lack the focus of being marketing-specific, while processes could be bolstered further through the use of independent third parties.

²³ Philip Morris International (PMI), (2020), PMI Integrated Report 2019.

8. Assessment of marketing activities

Understanding current marketing activities is imperative in defining best practices, highlighting gaps and identifying potential gray areas. To assess company marketing activities, in-country research was undertaken in the 13 countries, capturing activities in 15-20 stores in each country, in public spaces, at corporate-sponsored events, and across all media platforms, including digital and social media.

This research reflects a point-in-time audit capturing examples which could be leveraged to inform standards. This research is not intended to comprise a comprehensive audit of marketing activity in the selected markets. Some of the photographs and screenshots taken during research are shown in this report for illustrative purposes only. Examples are drawn from all manufacturer and retailer marketing activity encountered, going beyond the 15 companies ranked by the Tobacco Transformation Index. It is acknowledged that not all marketing activity at the point-of-sale is created (or approved) by the brand-owner (manufacturer) but rather by the retailer. The in-country audit was supplemented by centralized research, which also leveraged information available in other markets. The results of this highlighted a number of issues, which a marketing code should address and clarify.

Examples analyzed in this section are categorized in four key areas:

- **Youth Targeting**
- **Lifestyle-Enhancing**
- **Price**
- **Location and Positioning.**

While there is some degree of crossover between categories, the organization of examples allows for greater clarity and focus when creating the proposed marketing code included later in this report.

Youth targeting

JUUL has been the subject of high-profile litigation in the US over claims that it intentionally marketed its products to youth²⁴. During this research, examples were found (both overt and debatable) from a range of brands of marketing which seemed to be targeting youth. It is obvious that overt targeting needs to be tackled, but gray areas are equally important, as companies need independent guidelines to help them act responsibly.

Direct versus indirect youth associations

In South Africa, e-liquids remain unregulated, with no restrictions on marketing. Desk research revealed examples of marketing which could have youth appeal, with perhaps the most overt being Downtown Vapoury organizing a promotional event around National Youth Day, with the accompanying Facebook post as seen in Figure 2.

Downtown Vapoury sells its own brands, but is predominantly a retailer, and the portfolio it offers further undermines the image of reduced-risk products. The colors and packaging design is potentially a gray area and difficult to set standards for, as one person's perception of youthful designs may well differ from another's. The image of Looting Anarchy (Figure 3) is an example, but perhaps the greater issue is the brand name itself. The naming could potentially conjure images of rebellion, often associated with youth culture. Companies will benefit from a universal and robust set of standards, which will help protect them and

²⁴ <https://www.bbc.co.uk/news/business-57640905>

consumers from the potentially problematic activities of others. The role of Downtown as a retailer also questions the position of brand owners. The examples highlighted below are the more extreme available, identified through its website and social media accounts. Downtown also sells better known brands, such as Geekvape (Shenzhen Geekvape Technology Co Ltd) and Vuse/Twisp (BAT). While retailers and manufacturers are separate entities, this research finds that manufacturers should audit retail partners to ensure they are not acting in a manner that the company itself would not act.

Figure 2 – Downtown Vapoury Youth Day Promotion



*Downtown Vapoury, e-vapor retailer and brand owner.
Source: Company Facebook page, accessed September 2021 (South Africa)*

Figure 3 – Anarchy Vapes, stocked online at Downtown Vapoury



*Anarchy, owned by Anarchy Vape (US)
E-vapor product stocked by Downtown Vapoury.
Source: downtownvapoury.co.za, accessed February 2022 (South Africa)*

While the marketing activities above have obvious youth appeal connotations, those for Vuse (BAT) in South Africa, as represented in Figure 4, are less clear cut. The example is a pop-up advertisement for users who visit certain sites in South Africa, such as News 24 or the online shopping platform Takealot. Technically, for Vuse, it could be argued that the color pallet, although modern, is neutral, while the model is over the legal age for consumption and possibly over 25. The counterargument is, however, that the dress and image of the model has youth appeal, as does the use of the term “cool”. A set of marketing standards needs to be as prescriptive as possible, but it cannot account for all specific color types and promotional tools, and experts

warned during the consultations of the difficulties in trying to do so. The onus in the standards must, therefore, be put on companies to take a cautionary line.

Figure 4 – Vuse online pop-up advertisements



Vuse, e-vapor. Owned by BAT (UK)

Online pop-up advertisements.

Sources: News 24, Takealot, accessed September 2021 (South Africa)

Appearance of people used in advertisements

Models, actors, sportspeople, and celebrities will be used to try and portray an attractive image of a brand/product that an audience will aspire to and try to mimic. As such, using young representatives must be avoided, and it is noted that some nicotine and tobacco companies have marketing codes which stipulate a minimum age of 25. While this is in excess of minimum age for tobacco consumption, it is debatable how effective the approach can be, as many celebrities aged over 25 may still primarily appeal to youth. Additionally, it is the image and activity being displayed which are the key elements that drive appeal. There are many examples, particularly online, which are potentially problematic. Fich Lab, a manufacturer of closed-system e-vapor devices and cartridges, is one example of a company pushing the boundaries, with undeniably youth-orientated content, as seen in Figure 5, taken from its own website.

Figure 5 – Fich Labs “How to Use Fich” online video

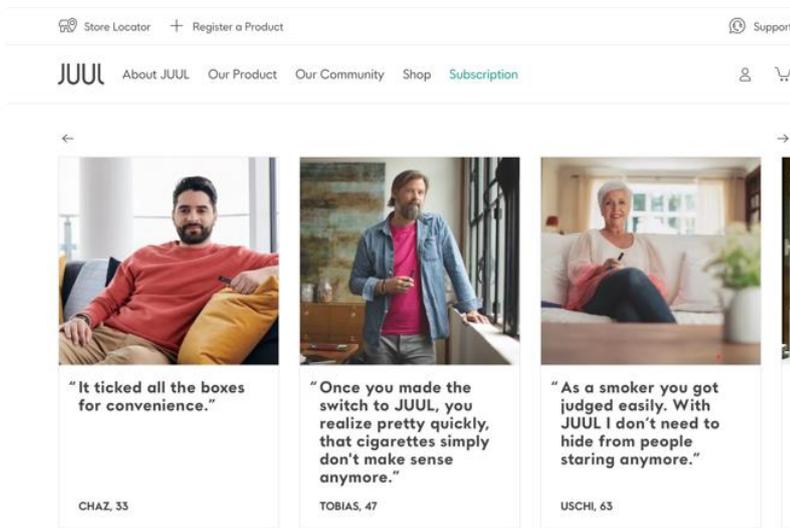


Fich Labs, e-vapor products

Source: “How to Use” video on brand’s website (UK), fichlabs.co.uk/pages/about-fich, accessed February 2022

Since JUUL became the subject of a range of high-profile lawsuits²⁵ in various US states starting in 2019, the company has adopted a significantly different approach to its marketing. Looking at its UK website in 2022 (Figure 6), a different perception of the company emerges (compared to the one developed in the years preceding the lawsuits), where examples of user cases are clearly not targeted at youth. It is also pertinent that JUUL’s country-specific websites are not accessible from other countries. Such restrictions can help prevent inappropriate cross-border marketing and sales, which might breach local restrictions, or be inappropriate, given translation issues and differing cultural references.

Figure 6 – JUUL labs UK user case studies



JUUL, e-vapor products, owned by JUUL Labs (USA)

Source: JUUL website (UK), juul.co.uk, accessed February 2022

The people shown in Figure 6 by JUUL are clearly over 25 (with their ages specifically stated), and it is perhaps indicative of a company distancing itself from previous indiscretions.

Images such as those in Figures 7 and 8 have the potential to do significant damage to the positive impact reduced-risk products can have on harm reduction and supporting a framework which admonishes such

²⁵ <https://www.bbc.co.uk/news/business-57640905>

material can help prevent it. The tagline for Figure 8 is particularly problematic: “Bad Girls are into Boys, but Good Girls should be into Vapes.”

Figure 7 – Facebook post for Vietnamese e-vapor products retailer



Source: Nguyen Gia Vape, Facebook page (Vietnam), accessed September 2021

Figure 8 – Instagram post for Vietnamese e-vapor products retailer



Source: VapeVL Instagram page, accessed September 2021, (Vietnam)

Presenting reduced-risk nicotine and tobacco products as desirable and lifestyle-enhancing

This study finds that marketing of reduced-risk products should focus on highlighting and informing current smokers, so that they might switch away from more harmful products. If marketing projects positive images that imply the consumption of reduced-risk products directly leads to social success and other desirable qualities, it could have the undesirable consequence of attracting non-smokers and youth.

Projecting positive imagery and success is perhaps most ostentatiously done through the use of celebrities. Celebrity endorsement has become commonplace for reduced-risk products across markets. In Figures 9, 10 and 11 below we see examples from leading reduced-risk products IQOS (PMI) and Glo (BAT) in Germany, with IQOS sponsoring the media industry’s Bambi awards in November 2019, while Glo was using celebrities in a number of endorsements at the time of audits. For Glo in Figure 10, we see an Instagram post featuring British fashion designer Gareth Pugh, while Figure 11 is a screenshot of a YouTube video of travel influencer Yvonne Pfeffer and Bill Kaulitz, the lead singer of the band Tokio Hotel. Making reduced-risk products

appealing to current smokers has the potential to lead to significant public health gains, but the context is also important when considering how to mitigate against the risk of appealing to non-smokers too. Using celebrities which are likely to have a large following among youth is therefore something to avoid. While the celebrities themselves are over the legal age, it could certainly be argued that their profiles and the settings they in are in appeal to youth through cultural references commonly found in youth culture.

Figure 9 – IQOS at Bambi media awards Germany



IQOS, heated tobacco, PMI
 Source/Credit: [Getty Images](https://www.gettyimages.com) (Germany), 2019

Figure 10 – Glo brand ambassador fashion designer Gareth Pugh



Glo, heated tobacco, BAT
 Source: [instagram.com/glo_germany](https://www.instagram.com/glo_germany) (Germany), December 2020

Figure 11 – Glo and influencers



Glo, heated tobacco, BAT
 Source: YouTube, October 2020 (Germany)

Celebrities are not the only way of projecting aspirational and successful qualities, and when images rely on a matter of perception the impact becomes even more difficult to assess. Figure 12 below is an example of in-store marketing in South Africa for vaping, with the black and white stylistic imagery presenting an aspirational figure.

Figure 12 – In-store marketing in South Africa



Source: In-store audit at VapeXstacy retailer (Ballito, South Africa), September 2021

Lower reduced-risk pricing versus high-risk can have a role in harm reduction if positioned responsibly

Advertising low prices of reduced-risk could have the effect of helping a current smoker to transition away from a more harmful product. A manufacturer’s ability to offer affordably-priced products may be limited by legislation/taxation regimes in certain markets. A review of guidelines from other industries, however, suggests that price promotions should not be without restrictions, to ensure that such price-focused advertisements are not attracting non-smokers. Closed off advertisements, as seen on websites such as that for Vuse (BAT) on its own site in South Africa (Figure 13), have the potential to age-verify visitors and ensure they appeal to a target audience of existing users. IQOS’s (PMI) advertisement in the Philippines, on the e-wallet app G Cash, shown in Figure 14, illustrates a different dynamic. It offers a discount of PHP1,500, while stating “Make the switch and get real tobacco taste with no smoke, no ash and less smell”, so it is using language to encourage the switch away from high-risk products rather than targeting non-smokers, and therefore from a certain perspective this can be seen as a positive. The key, though, in using a third-party app is that appropriate age verification mechanisms should be in place.

Figure 13 – Vuse online pricing



Vuse, e-vapor products, owned by BAT.
Source: Brand website, vuse.com/za (South Africa), 2021

Figure 14 – IQOS e-wallet app promotion



*IQOS, heated tobacco, PMI
G Cash e-wallet app (Philippines)
Source: gcash.com (Philippines), accessed September 2021*

Positioning and location

Where advertisements are placed plays a key role in ensuring marketing activities target existing adult consumers, and country-level research highlighted instances of inappropriate locations with regard to in-store, roadside, events, and public access, indicating the need for standards to address these.

The location and types of in-store displays

Multipurpose retail outlets will inevitably be frequented by non-smokers, including youth. As such, expert consultations support the view that restrictions should be in place to limit exposure of those not looking for reduced-risk nicotine and tobacco products. Audits of prominent and eye-catching in-store product displays led us to conclude that displays should be located behind the sales counter only. Excluding them from locations where products for youth are stocked is therefore important. Reduced-risk products should not be located in parts of the store where youth are likely to be. Figures 15 and 16 show examples of bright and potentially eye-catching product displays which it would be better to keep out of view of youth and away from aisles/parts of the store where youth may go.

Figure 15 – IQOS POS in the Philippines



*IQOS, heated tobacco owned by PMI
Source: In-country audit, tobacconist (Manila, Philippines), September 2021*

Figure 16 – RELX POS in Indonesia



*RELX, e-vapor products owned by RELX
Source: In-country audit (Depok, Indonesia), September 2021*

Displays outside stores may reach and subsequently appeal to those who had no plans to make a purchase at that time, as well as non-users. Examples of this were common, with Figure 17 illustrating an electronic display for Uno outside a store in Pakistan, even though electronic displays in this context are illegal. In the US, Figure 18 shows window displays being used to advertise prices and promotional deals, including for *on!* nicotine pouches.

Figure 17 – Electronic display outside shop in Pakistan



*Uno, cartridges
Source: In-country audit (Islamabad, Pakistan), September 2021*

Figure 18 – Window and price displays in the USA



Source: In-country audit (Chicago, USA), multiple brands, September 2021

Roadside marketing has unrestricted reach

Billboards have the ability to attract anyone who passes, whether in a vehicle or on foot. It is impossible to mitigate this entirely, and inevitably they will be seen by non-users and youth. Some marketing codes dictate that such advertisements are not placed within certain distances of schools. This study finds that billboards for reduced-risk products, such as that seen in Figure 19, representing a roadside advert for Heets in Germany, should therefore ensure they contain a responsible message, focusing on helping smokers to transition to less harmful products.

Figure 19 – Heets billboard in Germany



Heets, heated tobacco, PMI

Source: In-country audit, (Munich, Germany), September 2021

Sponsorship at events risks appealing to a wide unintended audience

Through sponsorship of events or participants at events, brands can reach all attendees and those who watch via television or online formats. BAT's sponsorship of a Formula 1 car, with Velo and Vuse, as seen in

Figure 20, might primarily appeal to an older audience, but inevitably youth who are fans of motorsport will be exposed to it, and this is something standards need to consider. Events such as Nordic Spirit's (JTI) immersive experience evening in a London nightclub (Figure 21), are perhaps more aligned to best practice, as entrance control would be able to ensure participants are of an appropriate age. It would still be important, though, for such events to promote themselves in a way that only encourages current smokers to attend. Advanced ticketing and registration is one method that could be used.

Figure 20 – Sports sponsorship with global reach



Vuse, e-vapor products, and Velo nicotine pouches, BAT

Source: sportspromedia.com/news/mclaren-f1-velo-esports-series-british-american-tobacco-gaming, January 2021;

mclaren.com/racing/2021/abu-dhabi-grand-prix/mclaren-racing-and-vuse-reveal-one-livery-designed-emerging-uae-based-artist-abu-dhabi-gp, December 2021

Figure 21 – Adult-only events in the UK



Nordic Spirits, nicotine pouches, JTI

Source: londonsvenskar.com/have-a-look-at-nordic-spirits-immersive-soho-pop-up (London, UK), November 2020

Reduced-risk nicotine and tobacco companies must take responsibility for third parties

Reduced-risk nicotine and tobacco brand owners will not always take part in direct communications to consumers. Often this will be in the hands of retailers, but can also be through agencies, or independently generated by users or advocates of the brand with no affiliation with the manufacturer. While it is more difficult for companies to control such interactions, negative actions can still have a detrimental effect both on consumers and the wider cause of harm reduction. In Figure 22, an inappropriate image is posted on a social media site account promoting a local beach, which describes itself as an “IQOS friendly place”. While this content was likely to have been uploaded completely independently of IQOS’ owner PMI, it is in the company’s (and category’s) interest to police and prevent such activities.

Figure 22 – Third party marketing



IQOS, heated tobacco, PMI

Sources: Instagram – Shut Up Beach, Mamaia via REUTERS

<https://www.reuters.com/article/uk-philipmorris-international-iqos-insig-idINKBN20F10S>
February 2020

9. Assessment of existing standards, legislation and conventions

In establishing best practice standards for reduced-risk nicotine and tobacco marketing, it is important to assess current standards and regulations, taking lessons from how codes have developed and their effectiveness. In doing this, attention was paid to two key sources in particular: firstly, the WHO's Framework Convention on Tobacco Control (FCTC) and, secondly, national-level legislation.

The WHO FCTC came into effect in 2005, and as of 2020 had 168 signatories²⁶. FCTC sets out a framework of legislative codes and laws that countries should adopt in order “to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke.” While this is an important reference, it is focused on country legislation, not company actions, and does not directly reference reduced-risk products. Lessons can be taken, its stipulations cannot be directly transposed when formulating standards for reduced-risk products without further consideration, given the differing risk profile compared to high-risk products.

The FCTC makes specific recommendations and covers marketing activities for tobacco products through articles 11 and 13. FCTC allows for country-level variance, with different laws having been introduced across its signatories. Of the 13 focus research countries for this study, 11 are signatories, with the US and Indonesia being exceptions, but it is clear across the 11 signatories that there are very different regulations in place.

FCTC does not differentiate between the relative harm of tobacco products

A key consideration in relation to the FCTC is the products under its scope, with it defining tobacco products as follows:

“Tobacco products’ means products entirely or partly made of the leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing.”²⁷

This position is problematic, in that the definition **does not differentiate reduced-risk products**, especially tobacco-free products such as e-liquids, cartridges and nicotine pouches, and it **does not differentiate between the relative harm of different products**. For high-risk tobacco products, a comprehensive ban on all types of marketing is a valid position, but with regard to reduced-risk products, which facilitate harm reduction, **it is limiting**.

Within the FCTC, articles 11 and 13 are specifically targeted at marketing. Article 11 focuses on packaging and labeling, specifying that it should not promote tobacco or make misleading terms such as “low tar” or “light”. Article 11 also makes stipulations on warnings that should be used, with specifications regarding their size and positioning. Point iv) states that warnings “*should be 50% or more of the principal display areas but shall be no less than 30% of the principal display areas.*”²⁸

Article 13 is more far reaching in scope, but some of its broadness could negate its impact. Point 1 of the article, for example, states “*Parties recognize that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products.*” The framework, however, goes on to caveat this by stating “*A Party that is not in a position to undertake a comprehensive ban due to its*

²⁶ World Health Organization (WHO). (2020). Parties to the WHO Framework Convention on Tobacco Control. Geneva

²⁷ World Health Organization (WHO), (2003), FCTC WHO Framework Convention on Tobacco Control; Switzerland.

²⁸ World Health Organization (WHO), (2003), FCTC WHO Framework Convention on Tobacco Control; Switzerland.

constitution or constitutional principles shall apply restrictions on all tobacco advertising, promotion and sponsorship. This shall include, subject to the legal environment and technical means available to that Party, a comprehensive ban on cross-border advertising, promotion and sponsorship originating from its territory.”²⁹

Stating that implementation depends on a country’s constitution leads to significant differences in country-level regulations, highlighting the benefits of having globally consistent standards that are focused on company action and by which companies can be assessed.

The FCTC does not speak directly to companies, instead excluding them from dialogue as an untrusted party. To a certain extent, given the historical backdrop, this lack of trust is understandable, but can be seen as restrictive and limiting direct action. The situation is accentuated, as the FCTC has become central to international discourse, with other standards using the articles as a reference point. For example, the Sustainability Accounting Standards Board (SASB) in its tobacco standards assesses companies based on the “*Description of the company’s marketing policy and relevant positions on Articles 11 and 13 of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC).*”³⁰ As the articles were written from a legislative point of view rather than advocating specific company actions, such evaluation inevitably mixes perspectives and requires a level of interpretation.

National level tobacco legislation

Being a signatory of the FCTC does not necessarily equate to stringent tobacco control policies. Japan, for example, signed the FCTC in 2005, but much of its legislation is vague and dates back to 1974. For example, in Japan, article 40 of the Tobacco Business act 1974 states “a person who conducts advertisements pertaining to manufactured cigarettes shall endeavor to prevent smoking by minors and to ensure that the advertisements are not excessive, while taking into consideration the relationship between the consumption of manufactured cigarettes and their health.”³¹ A spirit of self-regulation pervades in Japan, with few forms of marketing being banned, although legislation has been updated, with, for example, a 2020 amendment now stating that print media advertising should only take place where 90% of the target readership of a publication are of adult age.

The divergence of country-level implementation of the FCTC can be illustrated by examining point-of-sale restrictions for cigarettes for the 11 countries under review in this research which have signed the FCTC. In three of the countries – Pakistan, Russia and the UK – point-of-sale marketing is banned. For two countries – South Africa and Vietnam – point-of-sale marketing is allowed but with restrictions, and for the remaining six – Egypt, Germany, Japan, the Philippines, South Korea and Ukraine – there are no restrictions.

The landscape becomes even more confused with regard to reduced-risk products. In Vietnam and Ukraine, for example, there are no limitations on the marketing of reduced-risk products, while in South Africa, restrictions only apply to heated tobacco. This contrasts with Russia, where in July 2020 the Federal Law N 15-FZ was unilaterally updated so that restrictions for tobacco products apply to all nicotine products. In 2021, several examples of violations of point-of-sale restrictions were found in Russia during the course of this research.

²⁹ Ibid.

³⁰ Sustainability Accounting Standards Board (SASB), (2008), Tobacco Sustainability Accounting Standards Board, San Francisco

³¹ elaws.e-gov.go.jp/document?lawid=359AC0000000068

In other countries, a mismatch of regulations was found for reduced-risk products, with variations across categories and marketing types. To a certain extent this is to be expected, given the relatively recent availability of the products, but the divergence of regulations, and how countries can move from unrestricted to total bans, suggests there is a vacuum in regulatory clarity. The inconsistencies further emphasize the need for global standards on how to appropriately market reduced-risk products.

Neither Indonesia nor the US are signatories to the FCTC. The US regulatory environment is mixed, as in addition to federal law, state and local governments can introduce stricter regulations.³² In relation to cigarettes, federal bans apply to radio and audio visual and event sponsorship, but allow other types of promotion, such as print and point-of-sale advertisements. While there are stipulations for all types of marketing, considering the developed nature of the market, the US regulatory environment still allows a broad spectrum of activities, and research indicated some undesirable activities, notably posters outside shops advertising price incentives.

In Indonesia, reduced-risk products are as this writing not regulated, while in high-risk products, there are restrictions, but marketing is not completely banned. The conditions are not always clear, and it is not surprising that research showed Indonesia to experience some of the most inappropriate marketing activities among the countries under review.

Investigations and rulings on perceived violations

Lack of clarity in legislation and blurred lines as to what is acceptable in terms of marketing can contribute to violations, although this is not to discount the capacity of some companies to deliberately breach rules. Regardless of the reason for potential violations, the challenges to regulations can highlight areas that standards should tackle.

Celebrities and social media

Through the Advertising Standards Authority (ASA), the UK has one of the most visible enforcement bodies, which is evident in the number of cases that have occurred. Actions in cases involving celebrities often garner the most attention, reflecting the reason for their use. One of the most high-profile rulings in recent years involved BAT and its use of Lily Allen, Rami Malek, Olivia Jade Attwood and House of Holland.

Figure 23 – Instagram post featuring Lily Allen



Vype, e-vapor product owned by BAT

Source: [dailymail.co.uk/health/article-7801601/Controversial-vaping-brand-Vype-BANNED-promoting-gadgets-public-Instagram](https://www.dailymail.co.uk/health/article-7801601/Controversial-vaping-brand-Vype-BANNED-promoting-gadgets-public-Instagram) (UK), December 2019

³² Food and Drug Administration (FDA), (2020), Advertising and promotion, US [fda.gov/tobacco-products/products-guidance-regulations/advertising-and-promotion](https://www.fda.gov/tobacco-products/products-guidance-regulations/advertising-and-promotion)

Figure 24 – Instagram post featuring Rami Malek



Vype, e-vapor product owned by BAT

Source: [dailymail.co.uk/health/article-7801601/Controversial-vaping-brand-Vype-BANNED-promoting-gadgets-public-Instagram](https://www.dailymail.co.uk/health/article-7801601/Controversial-vaping-brand-Vype-BANNED-promoting-gadgets-public-Instagram) (UK), December 2019

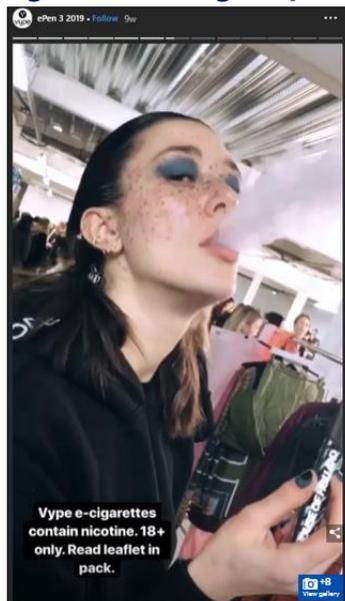
Figure 25 – Instagram post featuring Olivia Jade Attwood



Vype, e-vapor product owned by BAT

Source: [dailymail.co.uk/health/article-7801601/Controversial-vaping-brand-Vype-BANNED-promoting-gadgets-public-Instagram](https://www.dailymail.co.uk/health/article-7801601/Controversial-vaping-brand-Vype-BANNED-promoting-gadgets-public-Instagram) (UK), December 2019

Figure 26 – Instagram post featuring House of Holland model



Vype, e-vapor product owned by BAT

Source: [dailymail.co.uk/health/article-7801601/Controversial-vaping-brand-Vype-BANNED-promoting-gadgets-public-Instagram](https://www.dailymail.co.uk/health/article-7801601/Controversial-vaping-brand-Vype-BANNED-promoting-gadgets-public-Instagram) (UK), December 2019

In 2019, the ASA received complaints from three health groups – Action on Smoking and Health (ASH), Campaign for Tobacco-Free Kids, and Stopping Tobacco Organizations and Products (STOP) – centered on the indiscriminate reach of the posts (Figures 23-26) which could attract non-users, and particularly youth, considering the use of pop, film and reality television stars, and young models. In addition, it is possible that the adverts may have led to the brands being associated with success, given the reference to the Brit Awards, where Lily Allen was nominated for the best British female soloist award, and the BAFTAs (British Academy Film Awards), where Rami Malek won the leading actor award.

BAT's response to the complaints was that Instagram's algorithms ensure only users who had previously expressed interest in vaping saw the posts, that the Instagram account had a restricted age profile of over 18 and that users needed to declare themselves 18 or older. Furthermore, the company claimed that it ensured that the information provided was factual in nature, conforming to the Committee of Advertising Practice (CAP) guidelines.

ASA's rulings on the different points raised were instructive regarding the issues and behaviors that standards need to cover:

- BAT's argument that its Instagram posts were factual was dismissed. ASA stated that the posts: *“went beyond factual information about their product, such as unrelated content about awards ceremonies or other events, and the imagery of Lily Allen, Olivia Jade Attwood and House of Holland branding were all significantly featured without being directly related to the product itself. Ad (c) consisted of a ‘boomerang’ video which featured looped video of a model smoking an e-cigarette and the presentation of the ad and its setting, resulted in it appearing highly stylised.”*³³ Restricting marketing to factual materials has a number of benefits in eradicating potential blurred lines and negative attributes of marketing. By implementing this, the ASA also by default ruled against the glamor visible in the posts and the association with success, which the tagline “From One Winner To Another” clearly demonstrates.
- The ASA did not rule that BAT had deliberately targeted underage consumers. ASA accepted the minimum age warnings and verifications, and that the celebrities concerned would commonly have a fanbase of legal age consumers. In the case of Lily Allen, ASA concluded this was likely to be the case as she gained prominence in the mid-2000s, and her appeal to youth would be less. While this is true, it is not definitive, and illustrates the difficulty of making subjective judgements on age.
- The CAP Code rule 22.10 states that anyone shown using e-cigarettes should not be or appear to be under 25. The ASA investigation discovered that at the time of the photograph the model in the House of Holland post was 24, and therefore ruled against BAT on this violation. BAT's answer to this was *“before the filming of ad (c), their representatives took steps to verify the age of the model depicted, who confirmed she was over 25 years old. They said they were since made aware that the model was in fact aged 24. As a result, British American Tobacco said the Instagram Story was removed from the Vype account.”*³⁴ It did not confirm what the steps of age verification were, but regardless, the onus must be on the companies to ensure they are acting responsibly. It also raises questions of what age cut-offs should be. That there was doubt illustrates the potential need for stricter age brackets.

³³ Advertising Standards Authority Ltd (ASA), (2019), ASA Ruling on British American Tobacco Ltd, United Kingdom

³⁴ Ibid.

BAT also came under regulatory scrutiny over Instagram posts in Italy, where in 2021, the Italian Competition Authority investigated whether the use of influencers to promote the heated tobacco product Glo Hyper violated the Consumer Code.³⁵ In this instance, the influencers encouraged followers to post content related to Glo. The authority did not rule against BAT, but requested that BAT implements influencer marketing guidelines, has clear contracts with influencers in the future and that influencers effectively hashtag what are marketing campaigns, so users are fully aware.

The situations highlight the need for influencer marketing guidelines and give further credence to the need for global standards, given social media is a platform that crosses borders. However, it can also be argued that, given the potential proliferation of material through channels such as Instagram, and the lack of clarity over where content originates, it is prudent that at this stage influencers are not used in the promotion of reduced-risk nicotine and tobacco products.

Image projection and combatting subjectivity

Several examples have been brought before the ASA in the UK regarding inappropriate imagery and content in e-cigarette advertisements. In the examples illustrated in Figures 27, 28 and 29, complaints were made over the sexualized content of the material, but in each case by this measure the complaints were dismissed, as it was not deemed that the images were aimed at youth and that they were not likely to cause offense. Where the ASA did take issue was with the Mirage television advert (Figure 28) in 2015³⁶ and the Must Have VIP advert (Figure 29) in 2014³⁷, as the imagery was likened to that produced by cigarettes.

No ruling was made against Fontem Venture's Blu advertisement (Figure 27) on the front page of the Evening Standard, a free newspaper widely available in London in 2016.³⁸ However, the Tobacco and Related Products Regulations 2016, which were introduced in response to the European Tobacco Products Directive, stipulates that such advertisements for these products are no longer permitted in newspapers. Some campaigners found the advert offensive, but the ruling body did not uphold the complaint, while laws post-dating it would have made it illegal. This shows how subjective and changeable the environment is, highlighting the need for unified standards, and potentially the need to err on the side of caution when dealing with issues such as sexual appeal, where tolerance levels are subjective.

Figure 27 – Blu's newspaper advert



Blu, e-cigarettes owned by Fontem Ventures (Imperial)

Source: decisionmarketing.co.uk/news/watchdog-refuses-to-stub-out-degrading-e-cig-ad (UK), June 2016

³⁵ The Italian Competition Authority, (2021), BAT – Surreptitious Advertising of Glo on Social Media, Ruling No. 29837, Italian Competition Authority, Italy

³⁶ Advertising Standards Authority Ltd (ASA), (2015), ASA Ruling on Mirage Cigarettes Ltd, UK

³⁷ Advertising Standards Authority Ltd (ASA), (2014), ASA Adjudication on Must Have Ltd, UK

³⁸ Advertising Standards Authority Ltd (ASA), (2016), ASA Ruling on Fontem Ventures BV, UK

Figure 28 – Mirage television advert



Mirage, e-cigarette owned by Mirage Cigarettes Ltd (UK)

Source: [theguardian.com/media/2015/apr/29/mirage-e-cigarette-ad-banned-advertising](https://www.theguardian.com/media/2015/apr/29/mirage-e-cigarette-ad-banned-advertising) (UK), April 2015

Figure 29 – VIP television advert



VIP, e-cigarette owned by Must have Ltd (UK)

Source: [thedrum.com/news/2014/02/26/vip-e-cigarette-ad-likely-cause-serious-offence-banned-11pm-asa](https://www.thedrum.com/news/2014/02/26/vip-e-cigarette-ad-likely-cause-serious-offence-banned-11pm-asa) (U.K), February 2014

Transparency of marketing

One of the issues highlighted by the use of influencers was the lack of awareness it gave consumers as to whether they understood they were targets of advertisements. Similar instances can also occur in traditional media, where there are suggestions that companies deliberately bypass restrictions. IQOS (PMI) has been involved in two such cases. La Prensa newspaper in Panama was fined in 2019 for publishing a news article sponsored by Philip Morris, titled “New alternatives coming for adult smokers”, in which positive assertions were made about IQOS.³⁹ A similar example was seen in Italy in 2018, with Philip Morris Italia fined EUR500,000, for “hidden advertising”, given articles published that were on unrelated topics, but still promoted the virtues of IQOS.⁴⁰

These examples raise two important issues for standards, firstly that companies respect the laws of countries and secondly, they make it clear when the content is marketing, so consumers can make an informed judgement. These issues are highlighted in the concept of the “**halo effect**”, which refers to the specifics of a product not being referenced in an advertisement, but an overarching brand logo is used such that consumers intuitively make the connection with the product type. In, 2019 the High Court of Le Mans, France, following a complaint raised by the National Committee for Tobacco Control, ruled against a planned advertorial logo placed by Philip Morris Products on a Ducati motorcycle for a grand prix event (Figure 30), with the reasons given drawing parallels to the concept of halo marketing. The logo concerned was for Winnow Mission, a PMI initiative, which it describes as “a change lab focused on reframing global conversations, sparking open debate, connecting people and supporting the realization of innovative ideas”⁴¹ – not a tobacco product. The ruling, however, declared that:

³⁹ General Directorate of Public Health of the Ministry of Health, (2020), La Prensa SA v. General Directorate of Public Health of the Ministry of Health, Panama

⁴⁰ The Italian Competition Authority, (2018), IQOS Hidden Self-Advertising Magazine, Italy

⁴¹ Philip Morris International (PMI), (2022), missionwinnow.com/en/what-is-mission-winnow-all-about

“The colors of the ‘Mission Winnow’ project and its logo clearly recall the Marlboro cigarette brand that has long been associated with motorsports.”⁴²

Furthermore, it violated Article L 3512-4 of the Civil Procedure Code, of the Public Health code which states:

“Propaganda or advertising, direct or indirect, in favor of tobacco, tobacco products, or its ingredients as defined in Article L. 3512-2, as well as any free distribution or sale of a tobacco product at a price lower than that approved in accordance with Article 572 of the General Tax Code is prohibited.”⁴³

Philip Morris argued against the complaint on the basis that the image was not for a tobacco product. This raises an element of subjectivity, but the case gives power to the argument that promotions should only be associated with specific products, where it is clear what is being offered, with accompanying health warnings.

Figure 30 – Sports sponsorship



Source: crash.net/motogp/feature/912131/1/what-mission-winnow-really-means-ducatti, January 2019

Review of litigation supports the view that product claims should be properly regulated

Reduced-risk products offer harm reduction alternatives to high-risk products. However, it is imperative that brands do not make unsubstantiated claims which could mislead consumers. The Australian Competition and Consumer Commission, in two separate cases during 2017, ruled against the e-cigarette companies Social-Lites Pty Ltd⁴⁴ and The Joystick Company Pty Ltd⁴⁵, which claimed in advertisements that their brands did not contain carcinogens and toxic substances found in cigarettes. Since these rulings, e-cigarettes have been banned in Australia as of 2021, unless provided under medical prescription. This research does not conclude that the ban was brought about on the back of such rulings, but it would be reasonable to conclude that such occurrences could contribute to a negative image of the category, which emphasizes the need for companies to act responsibly and in accordance with unified standards. Experts consulted during this research broadly agreed that if reduced-risk products are to be advertised, any claims made need to be supported by relevant national authorities, for example the Food and Drug Administration (FDA) in the US.

⁴² High Court of Le Mans, (2019), National Committee for Tobacco Control v. SA Philip Morris Products. France.

⁴³ Ibid.

⁴⁴ Federal Court of Australia, (2017), Australian Competition and Consumer Commission v. Social-Lites Pty Ltd, Australia

⁴⁵ Federal Court of Australia, (2017), Australian Competition and Consumer Commission v The Joystick Company Pty Ltd, Australia

Labeling actions in the US illustrate complexity of legal framework

In 2019, eight health organizations and a number of health practitioners filed a complaint against the FDA, which was upheld, with regard to the delay in the implementation of graphic health warnings on cigarette packaging and marketing, as mandated by the 2009 Family Smoking Prevention and Tobacco Control Act.⁴⁶ Despite the ruling stating that the FDA must make a final ruling on graphic warnings by March 2020, there had been a delay in the final implementation. The FDA did conclude its requirements by March 2020, but challenges persist, and at the time of writing its latest update stated: “[The] US District Court for the Eastern District of Texas issuing an order in the case of R.J. Reynolds Tobacco Co. et al. v. United States Food and Drug Administration et al, No. 6:20-cv-00176, to postpone the effective date of the ‘Required Warnings for Cigarette Packages and Advertisements’ final rule. At the time of writing, the new effective date of the final rule is July 2023.”⁴⁷

The combination of challenges adds to the complexity of what is responsible marketing, with the challenges regarding warnings and packaging requirements being commonplace. In the UK, for example, PMI and BAT in 2014 challenged the implementation of the European Union’s (EU) Tobacco Products Directive (TPD), which included laws on packaging and warnings.⁴⁸ The challenge was rejected, and, as such, in the UK cigarette packs should include warnings that cover 65% of both the external front and back surface of the unit packet, and any outside packaging (p10 of ruling). By contrast, the FDA’s 2020 rule requires 50% of the pack to be covered. While the risk profile of reduced-risk products is different than that of high-risk products, warning labels advising that the product contains nicotine (and/or tobacco), and that it is only intended for current adult smokers, should be in place.

Litigation highlights definitional issues and need for specific standards

In a number of countries, there are no regulations for reduced-risk product marketing, or rules have been applied directly from tobacco regulations. A lack of clear specific legislation based on transparent rationales leads to confusion, and this is highlighted further by very different litigation outcomes. In Colombia, for example, a complaint in 2019 about the marketing of IQOS was rejected, as the ruling stated:

“IQOS is an electronic device and as such it is not subject to the advertising limitations established in the Law 1335 of 2009.”⁴⁹

In the US, a different conclusion was drawn in a 2017 case where an e-cigarette manufacturer, Nicopure Labs, challenged the FDA’s classification, which deemed “*e-cigarettes to be ‘tobacco products’ subject to the set of federal laws that govern the promotion and marketing of conventional cigarettes.*”⁵⁰

⁴⁶ United District Court For The District Of Massachusetts, (2019), American Academy of Pediatrics, et al. v. US Food & Drug Administration, US

⁴⁷ Food and Drug Administration (FDA), (2022), Cigarette Labeling and Health Warning Requirements, accessed May 25, 2022, <https://www.fda.gov/tobacco-products/labeling-and-warning-statements-tobacco-products/cigarette-labeling-and-health-warning-requirements>

⁴⁸ Court of Justice of the European Union, (2016), The Queen on the Application of Philip Morris Brands SARL et al. v. Secretary of State for Health.

⁴⁹ Industry and Commerce Superintendency, (2019), Directorate of Consumer Protection Investigations of the Superintendency of Industry and Commerce (SIC) v. Coltabaco SAS et al, Bogotá

⁵⁰ United States District Court For The District Of Columbia, (2017), Nicopure Labs, LLC v. Food and Drug Administration, US

10. Assessment of other industries' codes and marketing practices

The nicotine and tobacco industry has a unique set of challenges, exacerbated by the fact that high-risk products are responsible for 8 million deaths per annum. Given this unique set of challenges, comparisons with other industries must be made with caution. However, it is useful to note best practice from other industries in terms of responsible marketing codes, and the frameworks which have inspired these best practices. Examining these industries offers a further resource for defining potential standards, although the specific nature of different industries will necessitate variations in application.

Breast-milk substitutes offers most established standards

The breast-milk substitutes category is indicative of how leading companies developed marketing codes, inspired by the WHO's code. In 1981, the International Code of Marketing of Breast-milk Substitutes was introduced by the WHO, in response to what was regarded as the misleading promotion of baby formula, which encouraged some parents to stop breast-feeding, leading to child health issues, notably in developing countries. The response of the WHO was unequivocal in its approach to this, with article 5.1 stating:

*"There should be no advertising or other form of promotion to the general public of products within the scope of this Code."*⁵¹

Examples of where WHO articles on breast milk substitutes may inform reduced-risk product marketing standards include article 5.3. This prohibits point-of-sale and promotional levers, such as discount coupons and loss-leaders; however, it also states:

*"This provision should not restrict the establishment of pricing policies and practices intended to provide products at lower prices on a long-term basis."*⁵²

The WHO also defines how educational materials on breast-milk substitutes should be delivered and what labeling should be incorporated on packaging, which addresses issues that are also commonly raised in relation to nicotine and tobacco products. In breast-milk substitutes, education is a controversial topic, given misinformation spread in the past, and the WHO code is clear that educational materials must stress the benefits of breast feeding, the negative consequences of using substitutes, and the difficulty of going back to breast milk once the switch has been made. The role of education is equally, if not more, controversial in the tobacco industry and many will argue that given the historic actions of traditional tobacco companies, they have no role to play in consumer education. There is, however, a counter argument that tools and materials which assist consumers switching from high-risk products to reduced-risk products could accelerate harm reduction. If such activities were sanctioned, appropriate warnings would be necessary, for example any informational materials would need to stress the potentially addictive nature of nicotine.

The WHO's International Code of Marketing of Breast-milk Substitutes is not international law, but a series of recommendations for member states. Its gravitas has, however, seen a number of leading breast-milk substitute manufacturers intertwine it in their marketing standards. As below, for example Nestlé maps out its policy and procedures versus the WHO code:

⁵¹ World Health Organization (WHO), (1981), International Code of Marketing of Breast-milk Substitutes; Geneva.

⁵² Ibid.

Figure 31 – Nestlé’s adoption of the WHO Breast-milk Substitutes code

WHO Code	Nestlé’s procedures ⁵³
<p>Article 5 The General Public and Mothers</p> <p>Article 5.1 There should be no advertising or other form of promotion to the general public of products within the scope of this Code.</p> <p>Article 5.2 Manufacturers and distributors should not provide, directly or indirectly, to pregnant women, mothers or members of their families, samples of products within the scope of this Code.</p> <p>Article 5.3 In conformity with paragraphs 1 and 2 of this Article, there should be no point-of-sale advertising, giving of samples, or any other promotion device to induce sales directly to the consumer at the retail level, such as special displays, discount coupons, premiums, special sales, loss-leaders and tie-in sales, for products within the scope of this Code. This provision should not restrict the establishment of pricing policies and practices intended to provide products at lower prices on a long-term basis.</p> <p>Article 5.4 Manufacturers and distributors should not distribute to pregnant women or mothers of infants and young children any gifts of articles or utensils which may promote the use of breast milk substitutes or bottle-feeding.</p> <p>Article 5.5 Marketing personnel, in their business capacity, should not seek direct or indirect contact of any kind with pregnant women or with mothers of infants and young children.</p>	<p>Article 5 The General Public and Mothers</p> <p>Article 5.1 There must be no advertising or other form of promotion of INFANT FORMULAS directly to mothers and to the general public through any public media or by personal contact between company representatives and the public.</p> <p>Article 5.2 No samples of INFANT FORMULAS should be given directly or indirectly to pregnant women, mothers or members of their families and to the general public.</p> <p>Article 5.3 Point of sales advertising, sampling or other activities to induce sales of INFANT FORMULAS directly to the consumer at the retail level are not permitted.</p> <p>This provision should not restrict the establishment of pricing policies and practices intended to provide products at lower prices on a long-term basis.</p> <p>Article 5.4 Gifts of articles or utensils promoting the use of INFANT FORMULA or bottle-feeding are not to be distributed to pregnant women or mothers of infants and young children.</p> <p>Article 5.5 Company personnel, may not solicit direct or indirect contact with pregnant women or mothers of infants and young children, either individually or in groups, in order to directly or indirectly promote INFANT FORMULA.</p>

Furthermore, in addition to mapping its policy and procedures against the WHO code, Nestlé also details how it ensures compliance explicitly with the code:

⁵³ Nestlé SA, (2017), The Nestlé Policy and Procedures for the Implementation of the WHO International Code of Marketing of Breast Milk Substitutes; Switzerland

Figure 32 – Nestlé compliance with WHO Breast-milk Substitutes Code⁵⁴

1. Compliance

The first and most fundamental expression of our respect for mothers, babies and society is **compliance** with the law and our Policy and Procedures.

We have put in place a set of mechanisms to ensure compliance, and to quickly detect and address any instances of non-compliance that do occur.

a. Training

- All employees in our infant nutrition business are trained on the importance of supporting and protecting breastfeeding, including the WHO Code.
- In higher-risk countries, we also provide regular training to help third parties, with whom we have a direct service relationship, to comply with our Policy and Procedures and national legislation implementing the WHO Code.

b. Verifications

- We voluntarily submit our practices for verification to ensure compliance with the Policy and Procedures, as well as all local measures implementing the WHO Code, regardless of whether or not a governmental monitoring system is in place. Our monitoring system includes:
 - **Routine internal monitoring** which is performed by our staff at country level during routine work activities (e.g. visits to retailers, reviews, etc.).
 - **Internal Audits** which are conducted each year in a number of lower and higher-risk countries in which we operate to verify our adherence to our policies, procedures and national legislations implementing the WHO Code.
 - **External verifications commissioned by Nestlé** take place each year. An internationally recognised certification agency verifies our infant formula marketing practices in two to three higher risk countries. Assurance Statements concerning these verifications are published on our [global corporate website](#).
 - **External verifications commissioned by independent stakeholders.** Our practices are externally assessed every 18 months by the audit firm selected by FTSE Russell as part of its [FTSE4Good BMS Verification Process](#). The Access to Nutrition Foundation (ATNF) also regularly assesses our marketing practices in several countries. We collaborate with external stakeholders who conduct independent verifications of our practices.

- We investigate allegations of non-compliance with the WHO Code by benchmarking them against our Policy and Procedures, and promptly take corrective action as required.

c. Contractual provisions

- We include WHO Code compliance clauses in our formal agreements with third parties involved in BMS marketing or sales activities, and in higher-risk countries where it is permitted under local legislation.

d. Disciplinary measures

- Our employees are fully aware that the ultimate sanction for non-compliance is dismissal.
- We will take disciplinary measures against our employees who deliberately violate this Policy or the local legislation implementing the WHO Code, when appropriate and where it is permitted under local legislation.
- When third parties with whom we have a direct service relationship violate the Policy and Procedures or the local legislation implementing the WHO Code, we will require them to take appropriate corrective actions where permitted under local legislation.
- Where we have no direct service relationship with a third party our ability to influence their behaviour is limited. However, we will inform them of the violation in writing and ask them to take appropriate corrective action where permitted under local legislation.

That Nestlé employs external auditors to carry out verifications is an important step which should be replicated by reduced-risk nicotine and tobacco companies. Moreover, in addition to appointing its own auditors it also has independent stakeholders, commissions external companies, and also engages with Access to Nutrition's (ATN) Breast-milk Substitute Marketing Index.

How Nestlé has defined its marketing policy and procedures in relation to the WHO's code illustrates the impact codes can have, and this level of industry engagement should be the objective of reduced-risk nicotine and tobacco standards in order to instigate change. Furthermore, ATN's evaluation and scoring of how companies perform against the WHO code offers a potential route of evolution for how reduced-risk nicotine and tobacco standards are used. It creates a means to hold companies accountable, motivating them to refine their operations and introduce best practice.

⁵⁴ Ibid.

Alcoholic drinks increasingly coming under the radar

Alcoholic drinks have not experience the same formalized level of scrutiny as seen in breast-milk substitutes, with no equivalent WHO code. The nature of alcoholic drinks, however, bears a certain degree of resemblance to high-risk tobacco products, given issues surrounding health, addiction and youth access, and the WHO has released related papers, including the *Global strategy to reduce the harmful use of alcohol*.⁵⁵ This claims that there is a growing amount of evidence that alcohol marketing is initiating youth uptake, although it concedes that this is disputed, owing to methodological difficulties. The WHO's SAFER initiative highlights that a ban on marketing is the most cost-effective solution from an administrative perspective, but also implies a potential role for industry. One proposal is that *"Bans or comprehensive restrictions on exposure to alcohol advertising can be enacted and enforced by setting up regulatory or co-regulatory frameworks, preferably with a legislative basis, and supporting them when appropriate by self-regulatory measures that contribute in particular to eliminating the marketing and advertising of alcoholic products to minors."* Additionally, it notes that *"The political declaration of the 2018 United Nations third high-level meeting of the General Assembly on the prevention and control of NCDs (noncommunicable diseases) invites the private sector to take concrete steps towards eliminating the marketing and advertising of alcoholic products to minors."*⁵⁶

The consideration of self-regulation and private sector involvement is very different to the WHO's stance in relation to tobacco, where companies are excluded from the debate. While skepticism over the motivations of nicotine and tobacco companies is understandable due to historical transgressions, if they do make genuine attempts to eradicate the most damaging elements of reduced-risk product marketing they are in the position to make a significant contribution toward harm reduction, provided appropriate checks and balances are applied.

Leading alcoholic drinks companies are very aware of potential regulation and are advocates of self-regulation. Companies such as AB InBev, Heineken, Diageo and Pernod Ricard publish detailed marketing codes, the content of which is often similar in nature to that of certain nicotine and tobacco companies. Analyzing their codes helped to inform the proposed code in this report, in terms of the need to apply stringent guidelines, particularly in relation to youth prevention. In addition, analyzing the implementation of their marketing codes has highlighted potential gray areas and contradictions which marketing standards should address.

An example of a problematic area was seen by examining AB InBev's Responsible Marketing and Communications Code, as shown in Figure 33, which goes into specific details as to what is allowed in terms of its marketing projecting certain characteristics. It can be argued, however, that even AB InBev's more detailed guidance does not go far enough. The following statement, for example, appears comprehensive *"Success in athletic events or other activities will not be portrayed as depending on the consumption of alcohol. It is, however, acceptable to show a participant enjoying one of our brands in a relaxing, celebratory or team setting after the activity has taken place."*⁵⁷ However, using Usain Bolt as seen in Figure 34, one of the most successful and recognizable athletes of this generation, to promote its brand, asks questions over the clarity of its standard.

⁵⁵ WHO, (2010), *Global strategy to reduce the harmful use of alcohol*; Switzerland.

⁵⁶ WHO, (2019), *Safer – A World Free of Alcohol Related Harms*; Switzerland.

⁵⁷ AB InBev, (2019), *Responsible Marketing and Communications Code 3.1*

Figure 33 – AB InBev’s Responsible Marketing and Communications Code⁵⁸

4. Hazardous Activities, Performance and Success

- 4.1. Our commercial communication will not suggest physical prowess, power or strength as a result of consuming alcohol beverages.
- 4.2. Our commercial communication will not depict or suggest alcohol consumption before or during activities, or in locations, that are potentially hazardous or require a high degree of alertness, judgment, precision or coordination for safety reasons (e.g., driving, operating machinery, athletic activities).
- 4.3. Success in athletic events or other activities will not be portrayed as depending on the consumption of alcohol. It is, however, acceptable to show a participant enjoying one of our brands in a relaxing, celebratory or team setting after the activity has taken place.
- 4.4. Our commercial communication will not make any claim or representation that alcohol consumption is necessary to achieve social acceptance or professional, financial, academic, sporting or social success.
- 4.5. Our commercial communication will not suggest that alcohol can enhance sexual capabilities, attractiveness or contribute to sexual success or seduction.
- 4.6. Commercial communication must not portray nudity and people featured in commercial communication will not be posed in a position or stance that is overtly sexual in nature.



Figure 34 – Associating alcoholic drinks with sports



Michelob Ultra beer, owned by AB InBev

Source: prnewswire.com/news-releases/ready-to-bolt-to-the-bar-michelob-ultra-teams-up-with-usain-bolt-to-cover-the-cost-of-post-workout-beers-at-the-bar-301338595.html, July 2021

Examples have been seen of reduced-risk product brands in tie-ups with sports teams. The announcement in July 2021 that vaping device and cartridge brand Geekvape, owned by Shenzhen Geekvape Technology Co Ltd, is to become a sponsor of the Paris St Germain (PSG) soccer team encapsulated this. PSG has some of the most famous soccer players in the world, and although Geekvape may not sponsor them individually, that it uses images of them alongside its name in celebratory poses is a clear example of associating the product with sporting success. While a large share of soccer fans are adults, soccer players, such as those of PSG, are often heroes to youth, who look to mimic them and buy associated merchandise. As such, it is questionable as to whether the images in Figure 35 are appropriate.

⁵⁸ Ibid.

Figure 35 – E-vapor products associated with sports teams



Geekvape, e-vapor products owned by Shenzhen Geekvape Technology Co Ltd (China)
Source: [geekvape.com/psg](https://www.geekvape.com/psg), accessed February 2022

11. Proposed Marketing Code

Executive summary

Commissioned research, as detailed in this report, informed the development of the proposed marketing code set forth in this section of the report. Notably, research included:

- A review of existing legislation, codes and litigation, which provided a framework for the overall categories contained within this proposed code;
- A review of tobacco companies' existing marketing codes (or lack thereof), which offered examples of the types of topics that were to be covered within this proposed code;
- A review of current reduced-risk nicotine and tobacco product marketing activity in 13 countries, which highlighted potentially problematic examples that this proposed code aims to address;
- Early-stage expert consultations that provided guidance on what a code should aim to achieve, what it should cover and examples of best practices in terms of non-legislative codes; and
- Late-stage consultations with the same experts who provided guidance for fine-tuning of the proposed code, especially in terms of structure, wording and content.

The proposed code is designed exclusively for the marketing of reduced-risk nicotine and tobacco products⁵⁹, in countries where the marketing of such products is legal. In alignment with Article 13 of the WHO's FCTC⁶⁰, **high-risk nicotine and tobacco products should not be advertised in any manner.**

The proposed code is intended to offer a guideline for reduced-risk nicotine and tobacco manufacturers, alongside and as a complement to their observance of other overarching marketing codes, such as the ICC's Advertising and Marketing Communications Code.

As the Tobacco Transformation Index evolves, it is contemplated that it could measure and rank company marketing activity relative to the proposed code.

⁵⁹ Heated tobacco, E-liquids, Cartridges, Non-tobacco nicotine pouches, NRT Products and Snus. See Appendix for full product definitions.

⁶⁰ WHO. (2003). WHO Framework Convention on Tobacco Control (FCTC). Switzerland: WHO Document Production Services.

Proposed Code

The proposed code is divided into four overarching categories: existence, positioning & visibility; principles; code specifics; and monitoring & compliance.

Categories
Existence, positioning & visibility (transparency)
Principles
Code Specifics
Monitoring & compliance

Standards under **existence, positioning, & visibility** aim to verify that companies have a marketing code, make separate provision for reduced-risk products, and that the marketing code is easily accessed and transparent to both internal and external parties, regardless of business or geographic segment. Research indicates that these criteria are not fulfilled, it is unlikely that any specific standard will be implemented effectively.

Principles reflect standards for all aspects of marketing and will therefore be implicit in other standards as well, demanding consistency of approach. So, for example, while respecting local laws is an absolute minimum, it is expected that multinational companies will have geographic consistency of application, and will in many cases implement a code that is more stringent than the regulations required in certain markets. However, all marketing activity must be legal, and in instances where local law is more stringent than the standards in this proposed code, local law must always prevail.

The reduced-risk nicotine and tobacco industry is complex and characterized by a number of gray areas, and to avoid doubt, standards need to be detailed and precise. For this reason, the majority of standards are classified as **code specifics** which cover how, where, what, and to whom communications are made.

Responsible marketing codes are meaningless if they are not properly enforced. The **monitoring & compliance** standards are aimed at ensuring this takes place, covering areas of training, auditing, and reporting of any violations of standards.

Standards

- 1. Existence, positioning & visibility

Category	Sub-category
Existence, positioning and visibility	Existence
	Positioning
	Visibility

1.1 Existence

Sub-category	Topic	Reference(s)	Standard	Rationale and tensions
Existence	Code	Index ⁶¹ ; Expert Consultation	Marketing code with principles, standards and procedures.	Having marketing standards is the first step in establishing a commitment to responsible practices.
	Code	Index; Expert Consultation	Standalone marketing code separate from other documents, such as ESG reports and codes of conduct.	A specific marketing code document helps ensure standards are defined and focused, with elevated status.
	Accountability	Expert Consultation	Marketing code is reviewed, updated and signed off annually by an independent external third party. The name of the independent external third party is publicly disclosed.	Products, marketing platforms, and research are continually evolving, and codes should be reviewed to ensure they remain relevant. Standards should be updated in line with feedback and complaints. One point of tension here is the choice of auditor, as stakeholders are likely to have divergent views on who an appropriate auditor would be.

⁶¹ Tobacco Transformation Index. See Appendix for full list of acronyms used in this report.

1.2 Positioning

Sub-category	Topic	Reference(s)	Standard	Rationale and tensions
Positioning	Category	Index; Company Codes; Expert Consultation	Separate codes are provided for high-risk products and reduced-risk products ⁶² .	The differences between reduced-risk and high-risk products, specifically their respective risk profiles, mean having separate codes for the categories is appropriate.
	Channel	Index; Expert Consultation; Ligation review	Marketing codes provide guidance and procedures for all marketing channels, such as in-store, print media and social media.	Specific guidelines are important for clarity and implementation, and it is necessary to consider and account for the nuances of different channels.

1.3 Visibility

Sub-category	Topic	Reference(s)	Standard	Rationale and tensions
Visibility	Access	Index; Expert Consultation	Marketing code is clearly accessible on global and country websites to both internal employees and external parties.	Contributes (along with internal training) to every employee understanding what the standards are, to ensure implementation, while visibility externally facilitates accountability.

⁶² See Appendix for definitions of “high-risk” and “reduced-risk” products

- **2. Principles**

Category	Sub-category
Principles	Scope
	Marketing Reach
	Accountability
	Transparency

2.1 Scope

Sub-category	Topic	Reference(s)	Standard	Rationale and tensions
Scope	Product coverage	WHO BMS; Expert Consultation	Reduced-risk products do not share the same name or imagery as high-risk products.	If a reduced-risk product has the same name or imagery as a high-risk product, its marketing could promote high-risk product use.
Scope	Activity Coverage	Expert Consultation	Reduced-risk nicotine and tobacco companies do not undertake or advertise any type of branded socially conscious work.	Socially conscious work should not be used as an opportunity to market a brand, but to accomplish the intended outcome. An alternate viewpoint, however, is that all socially conscious work is positive, regardless of the company carrying it out, if the alternative is not to be carried out by anyone else.
Scope	Code Inclusion	Index	Company marketing code includes standards which detail specific real-life examples. Examples are updated regularly.	Topline statements of intentions can be meaningless without specific examples for illustration. This applies to standards and violations.
Consistency	Geographic uniformity	Index; ATN; FCTC; Company Codes; Expert Consultation	The code is applied across all geographies if the code goes beyond local laws. If local laws are more stringent than the code, local law prevails.	Companies going beyond legislation in certain jurisdictions highlights a commitment to acting responsibly, especially where legislation is not stringent, or can't be effectively enforced. However, it is acknowledged that numerous countries are at different stages in terms of tobacco control, and face different sets of challenges. An alternate viewpoint is that countries with very high cigarette prevalence are in greater need of reduced-risk

				products, to tackle high smoking prevalence rates.
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2.2 Marketing Reach

Sub-category	Topic	Reference(s)	Standard	Rationale and tensions
Marketing Reach	Youth Prevention	Index; FTC; Company Codes; Expert Consultation	Companies take responsibility for making sure that reduced-risk nicotine and tobacco product marketing does not target youth. This is especially the case with social media marketing.	If companies produce marketing material, they must proactively ensure it does not appeal to youth both in terms of content and location. Companies cannot delegate responsibility to third parties, such as retailers or media owners.
	Non-smokers	Index; Company Codes; Expert Consultation	Marketing is only intended to appeal to and target existing smokers and existing users of reduced-risk products.	Marketing is permitted if it has the objective of transitioning high-risk product users to reduced-risk products. It should not attract non-smokers to the category.

2.3 Accountability

Sub-category	Topic	Reference(s)	Standard	Rationale and tensions
Accountability	Responsibility	Expert Consultation; WHO BMS	The onus is on companies to ensure that their marketing activities are legal, decent, honest and truthful. Companies act with a sense of responsibility to the consumer and society. Where doubt occurs, companies take a cautionary approach.	While standards are specific in nature, they cannot account for every eventuality. Areas of debate will persist, and in these instances, companies apply more exacting standards.

2.4 Transparency

Sub-category	Topic	Reference(s)	Standard	Rationale and tensions
Transparency	Consumer	Expert Consultation; Litigation review	Companies inform consumers when they are marketing to them. Marketing is clearly labelled as such, and it is not disguised as non-marketing material.	With the advent of social media platforms and the use of paid influencers endorsing products, it is sometimes unclear which content is marketing and which is not.

- **3. Code Specifics**

Category	Sub-category
Code Specifics	Brand & Product Messaging
	Consumer Targeting
	Marketing Placement
	Sales and Distribution
	Transparency and Education

3.1 Brand & Product Messaging

Sub-category	Topic	Reference(s)	Standard	Rationale and tensions
Brand & Product Messaging	Characteristics	Index; Company Codes; In-country examples; Litigation review	Implying that reduced-risk nicotine and tobacco product use contributes to sporting, sexual, social or professional success is prohibited.	Creating an illusion of success and aspiration around reduced-risk nicotine and tobacco products can attract non-smokers and youth.
	Associations	Expert Consultation	Marketing does not create an association between the consumption of reduced-risk nicotine and tobacco products, and a particular usage occasion e.g., after breakfast, during a break, with a coffee, etc.	Creating an association or link with a specific consumption occasion may create habits that are then hard to break.
	Imagery	Company Codes	No advertisement features a person who is using a reduced-risk nicotine and tobacco product in an exaggerated manner.	Prohibiting exaggerated use avoids risks of glamorizing products or increasing their usage.
	Imagery	Company Codes	No advertisement suggests that use of reduced-risk nicotine or tobacco products is pervasive.	Suggesting that most people use reduced-risk nicotine and tobacco products could create peer pressure for youth.
	Imagery	Index; Company Codes; Expert Consultation; Litigation review	Individuals (including celebrities) shown in marketing are over 30 years old, and do not appear to be younger than 30 years old. Individuals (including celebrities) are not used to imply that consumption of the product leads to sporting, sexual, social or professional success. Individuals (including celebrities) shown do not have particular resonance in youth culture.	Celebrities are used to imbue brands with aspirational qualities, which could particularly appeal to youth if a celebrity has particular youth resonance.

	Product	Expert Consultation	Brand marketing does not mislead people as to the specific product it is advertising.	Companies with both high and reduced-risk products in their portfolio must ensure their product marketing does not cover their full range of products (including their high-risk products).
	Claims	National legislation	Any claims relating to verifiable facts are capable of substantiation at the time of publication. Claims are approved by relevant national bodies, in countries where applicable.	Reduced-risk product technology remains relatively new. Reduced-risk credentials can only be made if a specific product has approval to do so from a national regulatory authority (where applicable).

3.2 Consumer Targeting

Sub-category	Topic	Reference(s)	Standard	Rationale and tensions
Consumer Targeting	Non-smokers	Company Codes; National Legislation	Marketing is not placed in prominent places in media or channel which does not involve age verification, or is of general appeal, e.g., the front or back cover of a newspaper or magazine with general appeal.	Avoiding magazine cover advertisements can prevent marketing from being viewed by an unintended audience.
	Youth	Company Codes; FCTC; WHO BMS	There is no use of images, licensed characters, brand characters, animations, cartoons or language which appeal to youth.	Using plain text and muted colors can minimize attractiveness to youth. Subjectivity remains a factor, but the onus is on companies to steer toward more conservative choices.
	Youth	Company Codes; National Legislation	Individuals which are, or appear to be, under the age of 30, are not depicted in any marketing.	To mitigate the risk of youth appeal, anyone promoting nicotine products should be significantly above the legal age of consumption.
	Youth	National Legislation; Company Codes	No marketing is placed in a media or channel with over 10% of its readership/audience being youth.	To mitigate the risk of youth appeal, the vast majority of a publication's readership should be above the legal age of consumption.
	Youth	Company Codes; National Legislation; Litigation review	Hosts/hostesses and brand ambassadors at pre-arranged events are over 30 years of age (and appear over 30 years of age) and must wear culturally-appropriate clothing.	To mitigate the risk of youth appeal, anyone promoting nicotine products should be significantly above the legal age of consumption.

	Youth	National Legislation; FCTC; Company Codes	Direct consumer communication is specific and age validated. This is especially the case with social media marketing.	Any promotional events should be pre-arranged, ensuring attendees' credentials are verified and they do not attend on impulse, while virtual communication is restricted to registered users.
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3.3 Marketing Placement

Sub-category	Topic	Reference(s)	Standard	Rationale and tensions
Marketing Placement	Placement	FCTC; Company Codes; WHO BMS; National Legislation	There is no product placement in any form of audio-visual content, including but not limited to movies, television programs or video games.	Brand placements in popular entertainment channels has the potential to reach an untargeted audience, while imbuing products with aspirational qualities.
	Placement	Company Codes; National Legislation; Expert Consultation	Outdoor marketing is not within viewing distance of a school, an establishment frequented by youth, or on an access route to a school or an establishment frequented by youth.	Marketing materials should not be placed near schools, to reduce exposure to youth.
	Placement	Company Codes; WHO Alcohol Strategies; National Legislation	There is no sponsorship of non age-restricted events, such as sports, cultural and gaming events.	Marketing at sports, cultural and gaming events that are not age-restricted has the potential to reach youth. An alternate viewpoint, however, is that sponsorship of events may divert a potential smoker from ever starting smoking, in favor of adopting a reduced-risk product instead.
	Placement	WHO Alcohol; Expert Consultation	There is no "Brand stretching" and "brand sharing" (1). Brand images and logos are not used on merchandise (premiums).	Brand marketing should be product-specific and cannot stretch across various types. Similarly, brand marketing cannot be used on unrelated merchandising products, which can promote products out of context and to unintended audiences.
	POS	FCTC; WHO BMS; National Legislation; Expert Consultation	Reduced-risk point-of-sale marketing material in multipurpose retail outlets is positioned behind the counter.	Retail outlets that sell items other than reduced-risk nicotine and tobacco products will inevitably be frequented by customers who are non-smokers or youth. As such, displays should be behind counters to limit their appeal to non-users.

- (1) Brand stretching is the use of a brand image or logo on an item not directly related to the product's core purpose. This commonly occurs on items of clothing.

3.4 Sales and Distribution

Sub-category	Topic	Reference(s)	Standard	Rationale and tensions
Sales & Distribution	Direct sales	Company Codes; Expert Consultation; National Legislation	Websites offering direct sales of reduced-risk nicotine and tobacco products have a system for registering users and verifying age. Internet sales are therefore only made to registered users whose age has been verified.	By ensuring only registered users make purchases online, their age can be verified, while making it possible to check that usage levels are appropriate.
	Geographic	Company Codes; FCTC; Expert Consultation	Companies take action to ensure their products are only sold in the intended country.	Sales and marketing should be targeted at specific groups. If this crosses country borders, it can contravene local market legislation. Also, marketing may appeal to consumers with different cultural references and, in many cases, different languages, whereby warnings and safeguards can be lost in translation or simply not understood.
	Promotional	Company Codes; WHO-BMS; FCTC	There is no sampling of reduced-risk nicotine and tobacco products, unless the age and smoking status of those being offered such products can be verified. Sampling activities do not take place near schools or educational establishments.	Sampling is only allowed in very controlled environments, not in locations where the general public could be offered the product. An example of a controlled environment is a pre-arranged event where all attendees are age-verified upon entry.
	Promotional	Expert Consultation	Promotional events are pre-arranged, with registered and vetted attendees.	Promotional events require attendees to register in advance, ensuring age verification can occur, and avoiding the capture of consumers on impulse.
	Promotional	FCTC; Company Codes	There are no consumer competitions or incentive programs.	Competitions and incentive programs may spur demand beyond the target of current, legal-age smokers. An alternate viewpoint, however, is that competitions and incentive programs may be positive if they persuade

				smokers to switch to reduced-risk products.
	Transparency	Company Codes; Expert Consultation	Employees interacting with consumers make it clear they represent a reduced-risk nicotine and tobacco product company.	Consumers must be informed if they are interacting with a reduced-risk nicotine and tobacco company employee/representative.

3.5 Warnings

Sub-category	Topic	Reference(s)	Standard	Rationale and tensions
Warnings	Packaging	WHO – BMS; FCTC; National Legislation; Company Codes	Companies issue health or other warnings and messages accompanying any reduced-risk nicotine and tobacco packaging, marketing, promotion and sponsorship. The health warning highlights the health risk and potentially addictive nature of the product.	Consumers must be made aware of the potential health risks. The content of the required warnings and messages should be prescribed by the relevant authorities and should effectively communicate the potential health risks and addictiveness of any form of nicotine and tobacco use. An alternate view, however, is that health warnings should be much less prominent compared to those found on high-risk products, to encourage high-risk users who can't quit to try reduced-risk alternatives.
	Packaging	WHO BMS; Expert Consultation	All marketing states that the best health alternative to smoking is to consume no nicotine or tobacco products at all. The delivery of this message is adapted accordingly based on the media type/channel.	Reduced-risk products are not zero risk and stating this fact emphasizes that brands only attract existing smokers to reduce harm.
	Educational	WHO – BMS; Expert Consultation	Consumer information activities are non-branded, authorized by the relevant local authority and audited by an independent organization.	Reduced-risk products are relatively new, and consumers may be unaware of how to use them responsibly as part of transitioning away from high-risk products. Given the product knowledge of nicotine and tobacco companies, they can contribute to education (only where allowed legally), but safeguards must be in place for this to be done responsibly.

4. Monitoring and Compliance

Category	Sub-category
Monitoring and Compliance	Accountability
	Training
	Audit
	Reporting

4.1 Accountability

Sub-category	Topic	Reference(s)	Standard	Rationale and tensions
Accountability	Responsibility	Index; ATN; Company Codes	Companies demonstrate transparent and senior accountability for the marketing code across operating units. Senior company executives are responsible for ensuring that the marketing code is monitored, audited and complied with.	Responsibility and accountability should apply throughout the business, from the CEO down. If senior management do not promote the importance of marketing codes and drive implementation, it is unlikely to be effective.
	Responsibility	Company Codes; Expert Consultation; WHO BMS; ATN	All contracts include requirements for third parties to follow the company's marketing code.	The direct interaction of brands with consumers will often be through third parties (especially retail/trade). It is therefore imperative that third parties are aware and vested in marketing codes. Making compliance a contractual obligation can help enforce.
	Responsibility	Expert Consultation; ATN	Violations of the code by a third party result in immediate contract termination.	It is a company's responsibility to proactively ensure their products are marketed responsibly by their third party partners including retailers.
	Whistleblowing	Company Codes; ATN	Companies offer an anonymous means through which employees can raise concerns over marketing codes or potential breaches.	Transparency and stringent implementation are critical for an effective marketing code. Self-policing can help facilitate compliance.
	Whistleblowing	Index; WHO BMS; ATN; Expert Consultation	Companies outline clear procedures for monitoring and responding to complaints and/or reported violations of the marketing code.	Effective implementation of the marketing code can only occur if it is comprehensively monitored and reported.

4.2 Training

Sub-category	Topic	Reference(s)	Standard	Rationale and tensions
Training	Employees	Index; WHO BMS; Company Codes	Companies train all employees in their marketing code as part of their education, and record documented evidence. Employees are provided with refresher training on an annual basis.	A marketing code will only be effective if all employees have full awareness and knowledge. Documentation helps formalize training and ensures it takes place.

	External Parties	Index; WHO BMS; Company Codes	Companies train all third parties in their marketing code and record documented evidence. Third parties are provided with refresher training on an annual basis.	A marketing code will only be effective if all customers/retailers/other trade partners have full awareness and knowledge. Documentation helps formalize training and ensures it takes place.
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4.3 Audit

Sub-category	Topic	Reference(s)	Standard	Rationale and tensions
Audit	Code	Index; ATN; Company Codes; Expert Consultation	Companies use an independent external third party to audit the creation, reporting, monitoring and compliance of the marketing code.	Third parties can ensure an independent assessment of whether appropriate marketing codes are adopted, and properly monitored and complied with.
	Cooperation	WHO BMS; ATN; Expert Consultation	The company's code explicitly states that it will collaborate with independent external bodies in their efforts to monitor the application of the code.	It is important that reduced-risk nicotine and tobacco product manufacturers work constructively with external auditors/bodies to ensure they are following appropriate marketing standards.

4.4 Reporting

Sub-category	Topic	Reference(s)	Standard	Rationale and tensions
Reporting	Audit	Index; ATN; Expert Consultation	Companies audit compliance annually with an external independent auditor, and a statement is published communicating the level of compliance.	Publishing compliance reports demonstrates transparency and can encourage external input, which will improve marketing codes and their implementation.
	Violations	Index; ATN; Expert Consultation	Companies disclose numbers and details of all reported violations of its marketing code.	Publishing the number of violations and accompanying detail demonstrates transparency and rigor, which can help improve codes and implementation.
	Remediation	Index; ATN; Expert Consultation	Companies disclose outcomes of investigations and/or remediation of marketing violations.	Identifying steps taken to remediate violations demonstrates transparency and helps point to how improvements can be made to marketing codes.

12. Appendix

Acronyms

ATN – Access to Nutrition

BAT – British American Tobacco Plc

CNTC – China National Tobacco Corp

CSR – Corporate Social Responsibility

ESG – Environmental, Social and Governance

FCTC – Framework Convention on Tobacco Control

FDA – US Food and Drug Administration

ICC – International Chamber of Commerce

JTI – Japan Tobacco Inc

NRT – Nicotine Replacement Therapy

PMI – Philip Morris International Inc

R&D – Research and Development

TOAT – Tobacco Authority of Thailand

Index – Tobacco Transformation Index

US – United States

Vinataba – Vietnam National Tobacco Corp

WHO – World Health Organization

WHO BMS – World Health Organization (WHO). (1981). International Code of Marketing of Breast-milk Substitutes

WHO Safer – WHO Safer – A World Free of Alcohol Related Harms

Definitions

For the purposes of the marketing code contained within this report, the following definitions are applicable:

Advertising – Any form of marketing communications carried by the media (including trade literature), usually in return for payment or other valuable consideration.

Marketing – Includes advertising as well as other techniques, such as promotions, sponsorships as well as direct marketing and digital marketing communications, and should be interpreted broadly to mean any communications produced directly by or on behalf of marketers intended primarily to promote products, either directly or indirectly, or to influence consumer behavior.

Promotion – Marketing devices and techniques of any kind which are used to make products more attractive by providing some promotional item, whether in cash or in kind, or the expectation of such a benefit.

Third party – Individuals employed by nicotine and tobacco companies falling into any of the following categories: retailers, market influencers, bloggers, vloggers, affiliate networks, data analytics and ad tech companies, publishers, media owners, contractors or other parties who publish, transmit, deliver or distribute marketing communications.

Independent external third party – An organization that audits a reduced-risk nicotine and tobacco product manufacturer’s marketing code. Audits include the creation of the code, compliance with the code, and adjustments to the code based on feedback and complaints.

Youth – People under the age of 18, or people under the legal nicotine and tobacco product consumption age (where the minimum age is higher than 18).

Direct consumer communication - The communication, by whatever means, of advertising or marketing material carried out by a direct marketer itself or on its behalf, and which is directed to particular individuals using their personal contact information (including mailing address, telephone number, email address, mobile phone number, facsimile, personal social media account handle, and the like).

Marketing Code – A framework covering a range of marketing activities, by which companies ensure that they are marketing their products in a responsible way. In the case of reduced-risk nicotine and tobacco products, this means ensuring that products do not appeal to non-smokers and youth.

Principles - A set of propositions or values that act as a guide for behavior and form the basis for standards contained within the marketing code.

Standards - The individual guidelines, underpinned by principles, that make up the marketing code.

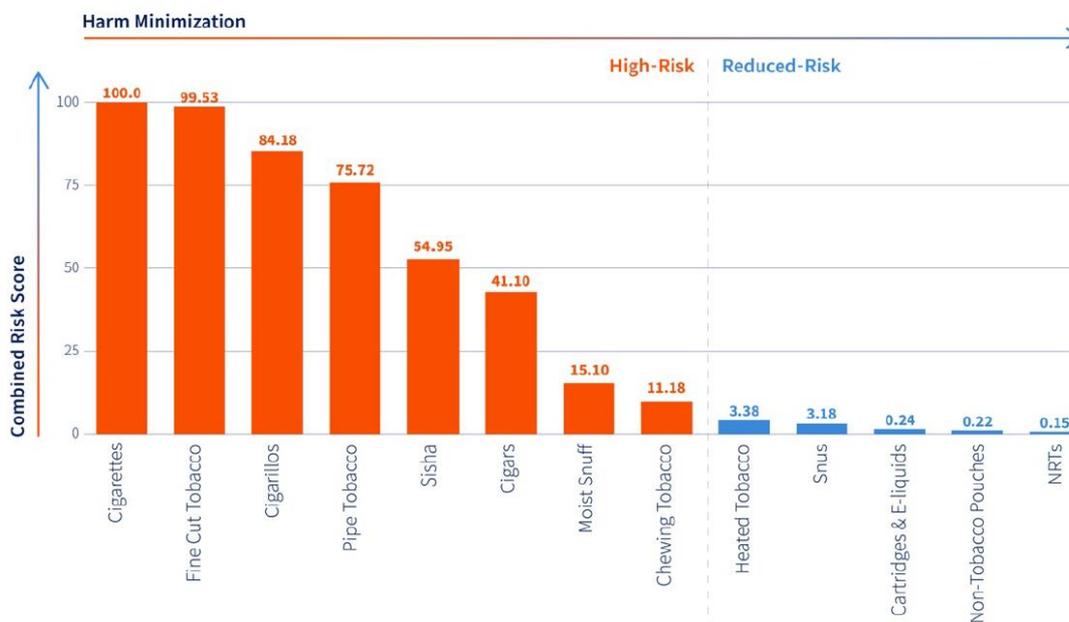
Product Scope

High-Risk Products – Combustible or other high-risk nicotine products, which include cigarettes, cigars, cigarillos, smoking tobacco, moist snuff, and bidis, as well as traditional smokeless tobacco, such as gutkha.

Reduced-risk products – Nicotine and tobacco products that are considered to be less harmful than combustible cigarettes and/or other traditional products. Products that are potentially reduced-risk include vapor products (including open and closed vaping systems and their consumables, and heated tobacco), snus, NRT products, and non-tobacco nicotine pouches.

Note: As part of the 2022 Tobacco Transformation Index methodology review process, independent research has been commissioned to assess the latest scientific literature and update the Relative Risk Assessment accordingly. The below classification is therefore subject to change. The updated Relative Risk Assessment will be published alongside the final Index methodology in September 2022.

Relative risk hierarchy of 13 nicotine products



Murkett, R., Rugh, M. & Ding, B. (2020). Nicotine Products [Relative Risk Assessment](#): A Systematic Review and Meta-Analysis.

Product	Type	Definitions	Per Stick Conversion
High-Risk Products			
Chewing Tobacco	Smokeless Tobacco	Chewing tobacco consists primarily of two types of product: Asian-style and US-style available in those specific geographic areas; and other chewing tobacco available in all other markets.	1 gram = 0.7 cigarettes
Cigarettes	Combustible Tobacco	The definition of cigarettes for the purposes of the Index is duty-paid, machine-manufactured white-stick products. This product category also includes hand-rolled kretek cigarettes present in Indonesia and other brands of cigarettes that do not use white paper. However, it excludes non-machine-manufactured products such as bidis/beedis (India) and papirosy (Russia), and other smoking products made with tobacco but that either do not resemble cigarettes as recognized in the US or Europe, or those that are not machine-manufactured.	
Cigarillos	Combustible Tobacco	Cigarillos are defined as miniature cigars, with a ring gauge of <29. Ring gauge is usually listed under a brand as Length/Ring and is a number indicating the circumference of the cigar's cross section and is enumerated in sixty-fourths of an inch (64/64 = 1 inch). Length does not matter as much in determining cigarillo vs cigars as some cigarillos can be quite long. However, six inches is the maximum length a cigarillo tends to be.	1 unit = 5.4 cigarettes
Cigars	Combustible Tobacco	Cigars are made of tobacco wrapped in leaf as opposed to paper. The product varies considerably in terms of price, quality, and size. Different terms are used to describe the various types of cigar, depending on the country. Cigars generally consist of three sections: the filler, the binder, and the wrapper. Cigars are defined as having ring gauges of 30 or more.	1 unit = 8.1 cigarettes
Fine Cut Tobacco	Combustible Tobacco	Fine cut tobacco is usually sold in plastic or foil pouches, metal tins or plastic tubs. It can also be flavored.	1 gram = 2.0 cigarettes
Moist Snuff	Smokeless Tobacco	Moist snuff is either loose or pre-portioned in miniature sized 'teabag' pouches that are placed on the gum and sucked on. Moist snuff is distinguished from snus by its processing: moist snuff is fermented, compared to snus which is pasteurized (heat-treated).	1 gram = 1.4 cigarettes
Pipe Tobacco	Combustible Tobacco	Western-style pipe tobacco includes cut tobacco sold in packaged format for smoking in pipes and available in pouches, tins, and cans.	1 gram = 3.2 cigarettes

Product	Type	Definitions	Per Stick Conversion
Shisha	Combustible Tobacco	Middle Eastern-style water pipe tobacco is also known as 'shisha', 'hookah', or 'nakhla'. Shisha tobacco is also referred to as molasses tobacco and is moist and sweetly flavored – often with fruit.	1 gram = 0.3 cigarettes
Reduced-Risk Products			
Cartridges	Vapor Products	This product category consists entirely of the sales of pre-filled pods or capsules for use with a non-cig-a-like closed system device. Currently, these are universally proprietary in nature (pods are usable exclusively with a single specific hardware device).	1 ml = 13 cigarettes
E-liquids	Vapor Products	E-liquids include nicotine and non-nicotine bottled e-liquids which are decanted by the consumer into a tank for heating and inhalation. E-liquids can have different nicotine levels and flavors.	1 ml = 13 cigarettes
Heated Tobacco	Vapor Products	Heat-not-burn devices include products, generally manufactured by major tobacco companies, which allow the consumer to heat rather than combust a tobacco product. Heated tobacco is the consumable element of heat-not-burn devices, which comes in the form of pods or in specially designated cigarette sticks.	1 unit = 1 cigarette
Non-tobacco Nicotine Pouches	Smokeless Tobacco	Non-tobacco nicotine pouches are manufactured in a similar way to snus using ingredients such as filler, flavors, stabilizers, and nicotine but do not contain tobacco.	1 unit = 1 cigarette
NRT Products	NRT Products	Nicotine-based products such as gum, lozenges, patches, and inhalators used to aid smoking cessation. It also includes nicotine-based products sold as capsules, micro-tabs, or sprays.	1 unit = 10 cigarettes (patches) 1 unit = 1 cigarette (non patches)
Snus	Smokeless Tobacco	Snus is either loose or pre-portioned in miniature sized 'teabag' pouches that are placed on the gum and sucked on. Snus is distinguished from moist snuff by its processing: snus is pasteurized (heat-treated), compared to moist snuff which is fermented.	1 gram = 1.4 cigarettes

Sources: Euromonitor International Passport's Tobacco and Consumer Health databases, and the National Cancer Institute's Dictionary of Cancer Terms.

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Expert Consultations

12 experts were consulted on a one-on-one basis as part of this research. Experts were drawn from a range of specialisms, including:

- Academics with specialisms including marketing ethics.
- Association and NGO employees/former-employees with experience in drafting standards.
- Employees from other industries, notably senior marketers of alcoholic drinks, breast-milk substitutes, gambling, and pharmaceuticals.
- Former nicotine and tobacco company employees, with direct knowledge of how the industry operates, but also with distance from it to offer a more objective viewpoint.

Among these experts, the following individuals were consulted with:

- Professor Craig Smith - INSEAD Chaired Professor of Ethics and Social Responsibility
- Professor Liselot Hudders - Associate professor in Marketing Communication & Consumer Behavior - Ghent University
- Oliver Gray – CEO, Graywise: a governance and compliance consultancy – former Director General of the European Advertising Standards Alliance

Experts were consulted before, and some also after, the drafting of the proposed standards, to gather both early-stage and late-stage input. A range of differing viewpoints were expressed during the expert consultation process (which was just one of several methodological inputs which formed the basis for the proposed standards), and a consensus view established by the report authors. The contents of this report in no way reflect the personal or professional views of any of the individuals named above.