STOP. A GLOBAL TOBACCO INDUSTRY WATCHDOG

Issue Brief

Global

Big Tobacco's Investments in and Acquisitions of Pharmaceutical Companies

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The tobacco transnationals' corporate acquisitions of pharmaceutical companies do not make the tobacco industry sustainable. They do, however, complicate tobacco control implementation.

The tobacco industry is a US$ 760 billion industry causing at least US$ 4 trillion in economic harms every year. Its acquisition of any company should not detract from the fact that it annually causes 8 million deaths, leads to serious damage to the planet and violates human rights.

Governments must prepare tighter regulations to ensure effective implementation of the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC). Governments should require information from the tobacco industry to preempt new tactics (Article 5.3 on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry), strengthen implementation of tobacco advertising and sponsorship bans (Article 13) and accelerate work to deal with the liability of the tobacco industry including compensation (Article 19) to ensure that the tobacco industry pays for the harms it causes, instead of further profiting from them (see Annex 3).[1]

The large transnational tobacco companies have been acquiring brands of novel and emerging nicotine, non-nicotine or tobacco products (NENNTPs)[2] in the past several years, to compensate for the decreasing cigarette market, in light of stricter tobacco control regulations.[3] The recent acquisitions of pharmaceutical and related companies have caused controversy and alarm, with medical societies and advocates raising concerns with regulators and shareholders.[4,5] The acquisitions are problematic because, among other things, they enable tobacco companies to market themselves as allies of health[6] despite the massive health damage they cause, misleading and confusing the public. This brief elaborates on these issues.

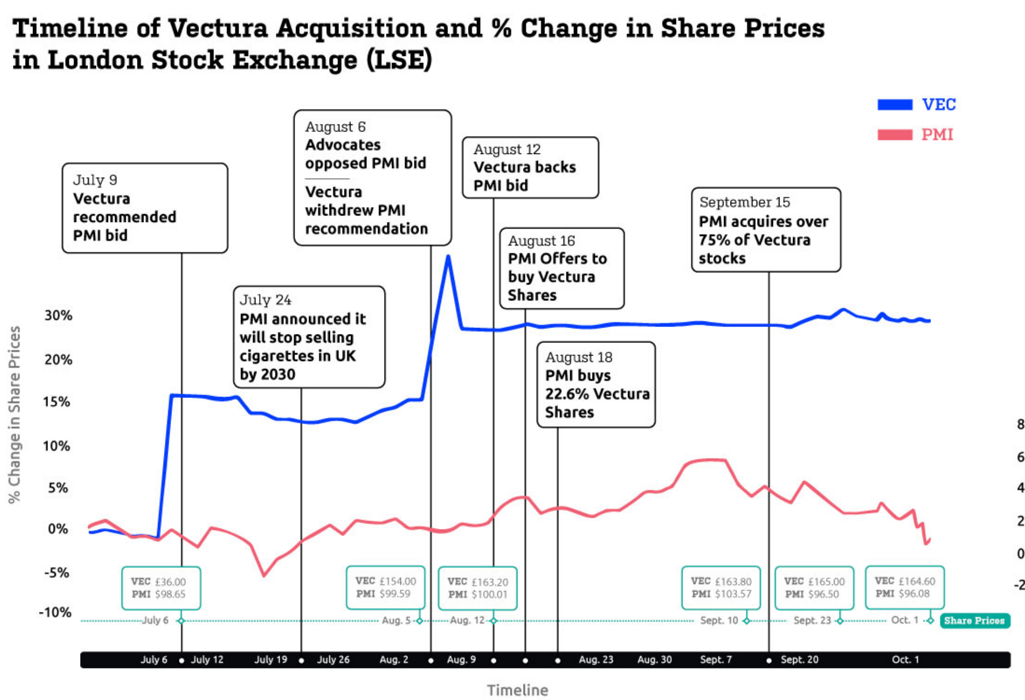
Background

I. **Tobacco’s acquisitions are aimed at increasing its portfolio of recreational drugs and drug delivery devices, part of a strategy to increase profits.**

1. The history of acquisitions of the major tobacco companies such as Philip Morris International (PMI) and British American Tobacco (BAT) outside the tobacco/nicotine sector (see Annex 2) reveals their penchant for acquiring technology that could advance the sale of recreational products. These acquisitions are made in line with the aim of expanding their portfolio of profitable products as well as gaining credibility to attain a seat at the policy table.[7]

2. BAT had the option to commercialize a nicotine inhaler (Voke), originally developed by Kind Consumer, which had been approved for medical use in the U.K. (2014), but did not pursue it due to a shift in focus towards the recreational/ consumer market (as opposed to health products).[8,9]

3. Imperial Brands has invested in the “medical” cannabis business in the U.K. and Canada[10]; andwith the Auxly investment deal in 2019, it has committed to share its vape technologies for cannabis use.[11]



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7. Shareholders have until 15 September to decide whether to sell to PMI, which claims to have ambitions for a "smoke-free" future, but still generates three-quarters of its revenue from cigarettes. See: Rob Davies and Jillian Ambrose. US tobacco giant Philip Morris International snaps up 22.6% stake in Vectura. The Guardian, 18 August 2021. Available at: https://www.theguardian.com/business/2021/aug/18/us-tobacco-giant-philip-morris-international-snaps-up-226-stake-in-vectura
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From July to September, the share prices of Philip Morris International (PMI) continued to rise throughout the Vectura bid, reflecting a successful investment and public relations strategy. Vectura’s (VEC) prices increased slightly when the acquisition was announced (with both PMI and another investor, Carlyle, making offers), but VEC prices started to level off when PMI's acquisition became imminent. A majority of investors, several of which have excluded tobacco from their portfolio, took PMI's offer price (at a premium of 165 compared to a market price of ~163 and an acquisition cost of ~150+). By September 17, PMI acquired over 75% of VEC stocks and was required to delist VEC from the LSE in order to register the same as a private company. Vectura will become a privately owned company primarily owned by PMI.

II. Big Tobacco's corporate acquisitions create an impression that it is "sustainable" or ESG-compliant and are used to attract more investors.

1. BAT's 2020 ESG (environmental, social, and governance) report leverages the fact that it increased its portfolio of non- traditional products and refers to its subsidiary Kentucky BioPressing (KBP)'s progress in vaccine production. KBP claimed to produce an Ebola vaccine in 2014[48] and a COVID-19 vaccine in 2020.[49] BAT's acquisition of 20% in Organigram, a cannabis producer, and its subsequent research and development collaboration on next generation products, is linked to its Btomorrow (Better Tomorrow)[12] narrative to increase the sales of novel and emerging tobacco and nicotine products.

2. PMI's ESG Integrated Report 2020 tracks the growth of its "non-combustible products" andthe facilities that produce them, including exploring "botanicals and respiratory drug delivery." PMI's successive attempted acquisitions in 2021 of companies producing medicines in oral and intra-oral form includinggums (Fertin Pharma) and inhaler products (Vectura) can be seen to add to this profile. The Vectura acquisition was bolstered with a public relations (PR) narrative, "Beyond Nicotine," a commitment to secure half of therevenues from non-combustible products.

3. Japan Tobacco acquired a listed company named Torii Pharma in 1998 and has used it to support its "sustainability" and Sustainable Development Goals (SDGs) narrative, along with three food companies it owns.[13]

The Tobacco Industry is Not Socially Responsible

To this day, tobacco companies, including PMI and BAT, continue to challenge and delay lawsuits intended to hold them accountable for the harms caused by their products.[36-40] Lawsuits filed by victims have remained pending since 1995,[36,37,41,58] a harbinger of things to come as tobacco companies launch novel products.

A 2006 verdict between PMI and the U.S. Department of Justice (DOJ) found tobacco companies liable for violating the Racketeer Influenced and Corrupt Organizations (RICO) law and stated that tobacco companies "marketed and sold their lethal products with zeal, with deception, with a single-minded focus on their financial success, and without regard for the human tragedy or social costs that success exacted." Instead of complying with the corrective action required by the judgement, tobacco companies fought for over a decade (2006-2017) to delay compliance with the court order.[42]

In 2021, as part of an effort to properly guide investment decisions by reconciling the ESG ratings with the broader SDGs, the United Nations Development Programme releasedthe SDG Impact Standards for enterprises. Core elements ofthe standards include respect for human rights in line with the UNGPs (UN Guiding Principles on Business and Human Rights), and hence, compliance with the UNGPs, among others, should be incorporated as a fundamental part of a "responsible business practice."

Notably, a 2017 UNGP assessment of Philip Morris explainedthat "Tobacco is deeply harmful to human health, and therecan be no doubt that the production and marketing of tobacco is irreconcilable with the human right to health. Forthe tobacco industry, the UNGPs therefore require the cessation of the production and marketing of tobacco."[44]

Akin to criticisms regarding the misuse of ESG ratings that end up favoring tobacco companies,[43] human rights experts fear that the flawed application of UNGP standards to the tobacco industry would legitimize the industry, thereby undermining the UNGPs' credibility as the global standard foraddressing as well as preventing human rights abuses.[44]

Despite transformation narratives, tobacco companies continue to promote their cigarette business. For example, PMI invested in a new factory in Egypt,[45] BAT invested US $37 million in Bangladesh[46] and tobacco companies are continuously registering trademarks for cigarette products.[47]

ISSUE: How does this affect governments' tobacco control efforts?

Recent acquisitions and PR narratives of tobacco companies can be seen as increasing barriers to tobacco control and WHO FCTC implementation in the following ways:

1. **Incentives:** Regulators approving such acquisitions may be incentivizing the tobacco business or giving it benefits to run its business. The tobacco industry may have created a scenariowhere it will profit more from causing diseases because it is also selling the "cure" for the same disease. Although, the current business model of providing "safer" options demonstrates the conflict of this situation.The latest purchase of Vectura heightens its immoral nature because among the users of Vectura products are patients suffering from tobacco-induced diseases such as chronic obstructive pulmonary disease (COPD).[50,51] Healthagencies that purchase products of tobacco subsidiaries, for example, Vectura, could be in violation of Article 5.3.[52, 53]

2. **So-called corporate social responsibility (CSR):** Tobacco companies could offer or appear to offer medical products produced by their acquired pharmaceutical company as part of theirso-called CSR (e.g., inhaler, vaccines). To illustrate, PMI widely promoted a PR message highlighting its role as a partner inthe progress of Medicago's vaccines and its eventual "collaboration" with the Canadiangovernment.[14] PMI has 38.5% of the shares inMedicago.[15]

3. **Revolving door/lobbying:** Health/scientific sector networks of the subsidiary or acquired company can be exploited by tobacco executives through revolving door[16] situations, where the tobacco executive can be assigned to work in the subsidiary company, or vice versa, resulting in a conflict of interest. Scientists funded by subsidiaries may be submitting policy positions that are favorable to tobacco companies. Governments will have to be more wary of disguised connections. For instance, Louis C. Camilleri worked with Kraft when it was a subsidiary of PMI, and he later went on to become CEO of PMI.[17] Furthermore, in the growing number of countries that have legalized cannabis, the cannabis industry could be invited into discussions with the government and/or given a seat at the policy table as a stakeholder, and tobacco companies would also be a part of these.

4. **Lobbying:** The tobacco industry could use its links to the acquired/subsidiary company to add to its PR narrative that it is part of the "transformation" into a "healthy" business,[18–20] to be a "partner in health" and/or to influence cross-cutting policies, such as lowering the policies and standards in the regulation of the new technologies in drug delivery/medical products and devices, in order to benefit the tobacco companies' recreational products. Notably, leveraging pharmaceutical ties has also been noted with a recent appointment of a board member to Imperial Brands, where the director was credited with a track record in pharmaceuticals.[21]

RECOMMENDATIONS: What must governments do?

In accordance with the WHO FCTC, governments must:

A. Clearly define "tobacco industry" as including all agents, subsidiaries, affiliates and all those receiving tobacco funding, including pharmaceutical companies that are acquired or partially funded by tobacco companies. This will prevent the tobacco industry from exploiting its relationships with these companies to undermine tobacco control policies This will also help governments limit interaction to those strictly necessary for regulation when it comes to the tobacco industry.

B. Require information from the tobacco industry to ensure that the government is aware of all the agents linked to the industry (Article 5.3 Guidelines).[22] Also adopt a code of conduct to guide government officials on how to avoid conflicts of interest with the tobacco industry. Two conferences have barred attendance to Vectura representatives, based on a unified alert from the scientific community as well as a strong conflicts of interest policy[51, 54-56]

C. Raise awareness about the tobacco industry's tactics and ensure that the tobacco industry is not considered or falsely labeled "sustainable." Ban all forms of corporate social responsibility (CSR) from the tobacco industry, including those from its related companies (Article 5.3, Article 13 and the corresponding Guidelines).[22]

D. Strengthen governance rules (such as implementingcodes of conduct, limiting interactions, rejecting contributions, etc.) to protect government officials from interference from the tobacco industry and its affiliates and subsidiaries. Ensure that government partners or collaborators in the pharmaceutical industry do not include those that are funded by the tobacco industry as that would create a conflict of interest and cast doubt on the integrity of the institutions/offices involved (Article 5.3 Guidelines).[22]

E. Investigate tobacco industry mergers and acquisitions. Ensure that the tobacco industry and its subsidiaries and affiliates, which are furthering its business of promoting addictive and harmful products, are not given any incentives, benefits or privileges to run its business (Article 5.3 Guidelines).[22] Otherwise, tobacco companies will secure government incentives through the subsidiaries. It also bears stressing that placing in one company the role of both the cause of the disease and the provider of treatment, could financially incentivize the entity, causing more diseases to maximize profit—tantamount to an immoral business that is prohibited or regulated in some countries.

F. Ensure that government investments are not placed in tobacco and tobacco-affiliated stocks, as this would incentivize the tobacco industry's overall business (Article 5.3 Guidelines).[22]

G. Take into account the harms caused (see Annex 3) by the tobacco industry and the future harms it will likely cause given its history and business model and ensure that the industry pays for the harms caused instead of allowing it to profit from the same.

H. Adopt binding policies that reflect Article 5.3 and its Guidelines, including legislation that regulates both the public and private sector and covers a variety of government sectors. For example, Uganda has a comprehensive Article 5.3 Section in its Tobacco Control law.[57]

Understanding Tobacco Investments: Exclusionary Policies, ESG, SDGs and UNPRI

ESG and SDGs

ESG investing is broadly referred to as "sustainable investing" and is sometimes linked generally with SDG-alignment; however, it is not as encompassingas the SDGs. "Environment" involves climate risksand environmental concerns. "Social" includes labor issues, human rights and consumers' and stakeholders' concerns. "Governance" refers to corporate governance and behavior including board effectiveness. Some argue that SDGs clarify what should be included in the scope of ESGs[23] and there are efforts to make ESG ratings more wholistic by considering SDG impact.[24]

ESGs mainstreamed into the United Nations (UN) through the Principles for Responsible Investment (PRI)

PRI started as an initiative of the UN to bring together a network of investors who are committed to "responsible investing," which means adhering to six principles including integrating ESGs into their investment decisions and processes, seeking ESG disclosures in the entities they invest in and reporting on their progress.[25] Since PRI was launched in 2016, it has around 4,000 signatories representing over US $120 trillion.[26] The PRI network partners with the UN Environment Programme and UN Global Compact.[25]

Tobacco in sustainable investing & ESG

Sustainable investing involves two popular strategies: exclusionary/negative screening and ESG integration.[27] Exclusionary policies would exclude certain business categories and 9.7% of funds currently apply this principle to tobacco. Tobacco is the second most excluded category next to weapons.[28] According to Tobacco Free Portfolios, 11 trillion assets are now tobacco-free. Tobacco continues to be viewed negatively despite the tobacco companies' attempts to counter this.

ESG integration is the practice of incorporating ESG information into investment decisions. To guide investors, ESG scores are attributed to companies by a variety of rating agencies, many of whose methodologies have been criticized for lack of transparency.[29] Critics argue that ESG rating agencies do not fully integrate sustainability principles into the corporate sustainability assessment process. And in some cases, tobacco companies can rate "perversely high" in ESG because of the methodologies; for instance, the low score in one aspect can be offset in another.[29] To illustrate, in some ratings, including tobacco companies' own ratings, the management and operations practices and the perceived positive impact of its portfolio of products, appear to offset the company's costs to society, which is estimated to be five times more than the benefit.[30] In such a methodology, the PMI acquisition of Vectura allows PMI to add scores to its ESG ratings for purposes of attracting responsible investors.

ANNEX 1: PHARMACEUTICALIZATION OF THE TOBACCO INDUSTRY

“When applied to tobacco, pharmaceuticalization represents the tobacco industry’s transition into a pharmaceutical-like industry through the manufacture and sale of noncombustible tobacco and nicotine products for smoking cessation or long-term nicotine maintenance without the testing and oversight required of traditional pharmaceutical products. Pharmaceuticalized tobacco products share three key elements with pharmaceuticals: (1) standardized dosage, (2) sleek medical design, and (3) implicit or explicit certification or approval by relevant health authorities.” *Source:* Hendlin YH, Elias J, Ling PM. The Pharmaceuticalization of the Tobacco Industry. Ann Intern Med [Internet]. 2017 Aug 15. Available from: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5568794/

ANNEX 2: ILLUSTRATIVE LIST OF RELEVANT CORPORATE ACQUISITIONS BY TOBACCO COMPANIES

JAPAN TOBACCO

Year	Tobacco company	Acquired company	Products/business	Effect on ownership
1993	JTI	Central Pharmaceutica lResearch Institute	Central Pharmaceutical Research Institute in Osaka	100% ownership
1998	JTI	Torii Pharma	Torii Pharma. JT concentrates on R&D, while Torii Pharmaceutical Co., Ltd. is in charge of manufacturing, sales and promotion in the Japanese domestic market (also licensed for foreign production). Sells steroid ointments, iron and allergy tablets.	100% ownership
2000	JTI	Akros Pharma[31]	U.S. subsidiary originally established to coordinate research for JTI. Focus on metabolic diseases, autoimmune/inflammatory diseases and viral infection. Alliances includes Novartis and Astra Zeneca.	Subsidiary

Philip Morris

Year	Tobacco company	Acquired company	Products/business (related activities)	Effect on ownership
2008	PMI	Medicago	Pharmaceutical	38% share (devalued at 1/3)
2016	PMI (US $20M)	Syqe	Medical inhaler producer (cannabis inhaler)[32]	NA
Sep. 2017			(PMI established the Foundation for a Smoke-Free World.)	
2019	PMI	Merger with Altria was proposed, but called-off later.	(Discontinued due to, among others, Juul being under regulatory scrutiny and not performing well.)[33]	NA
Feb. 2021			(PMI launched Beyond Nicotine which targets $1 billion in net revenues from "smoke-free" products by 2025, accounting for more than 50% of total revenues.)	
July 2021	PMI (US $820M)	Fertin Pharma, Denmark	Nicotine gums, also makes gums, tablets, pouch powders and other solid oral systems for pharmaceutical andnutraceutical applications	Wholly owned subsidiary
Aug. 2021	PMI	OtiTopic	Aspirhale: inhalable heart attack drug	Wholly owned
Sep. 2021	PMI (US $1.4B)	Vectura, U.K.	Contract development and manufacturing company (CDMO) producing inhalable products for the pharmaceutical industry. GSK Bayer	~ 75% owned including PM direct purchase plus purchase in the market of 22.61%[34]

ALTRIA

Year	Tobacco company	Acquired company	Products/business	Effect on ownership
Dec. 2018	Altria (US $12.8B [value 1.6B])	Juul	E-cigarettes	38% owner
Mar. 2019	Altria (US $1.8B)	Cronos	Develop innovative cannabis products incl. Peace Naturals, Happy Dance Cove	45% owner (2019: devalued/ diluted)
Jan. 2019	Altria	Lexaria Nicotine	R&D contract for enhancing reduced-risk nicotine products using Lexaria's DehydraTECHTM technology	Wholly owned

British American Tobacco

Year	Tobacco company	Acquired company	Products/business	Effect on ownership
2021	BAT (US $175M)	Organigram	Cannabis; research and product development activities of next generation adult cannabis products, with an initial focus on cannabidiol (CBD)	20% ownership
2016	BAT	Kentucky Bioprocessing (purchased along with Reynolds group)	Research and development on plant-based manufacturing technology (pipeline includes vaccines targeting COVID-19 and influenza)	Wholly owned subsidiary

Imperial Brands

Year	Tobacco company	Acquired company	Products/business	Effect on ownership
2019	Imperial Brand (US $123M)	Auxly Canada[35]	Cannabis cultivation, extraction and consumer product manufacturing	20% ownership with board seats
2018	Imperial Brand ventures (US ~$10M)	Oxford Cannabinoid UK	Medicinal cannabis: a biopharmaceutical company licensed by the U.K. Home Office that is focused on researching, developing and licensing cannabinoid-based compounds and therapies	10% ownership

ANNEX 3: HARMS CAUSED BY THE TOBACCO INDUSTRY

Source: Tobacco Industry Accountability and Liability in the Time of COVID-19. STOP, 28 July 2020. Available at: https://exposetobacco.org/resource/hold-tobacco-accountable/

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ii. Countries that have legalized cannabis: Canada, South Africa, Uruguay: For recreational and medicinal purposes. Georgia: Only consumption is legal, not cultivation or sale for recreational purposes. Netherlands: Sale through licensed sellers. Denmark, Finland, Czech Republic, Colombia, Chile, Brazil, Australia, Argentina, Barbados, Ecuador, Cyprus: Only for medicinal use. Mexico: Recreational marijuana (less than 5 gm in possession, but not sale or cultivation). Belize: Marijuana use (up to 10 gm in possession). Belgium: Marijuana use (less than 3 gm in possession, no smoking in public). See: Shailesh Menon. All the highs and lows on marijuana. The Economic Times. 13th December 2020. Available at: https://economictimes.indiatimes.com/industry/miscellaneous/all-the-highs-and-lows-on-marijuana/countries-that-have-legalised-cannabis/slideshow/79703622. cms :~:text=%E2%80%8BCountries%20that,public).

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