



1400 EYE STREET, N.W. • SUITE 1200 • WASHINGTON, DC 20005  
PHONE (202) 296-5469 • FAX (202) 296-5427

---

February 2, 2017

Maurenn K. Ohlhausen  
Acting Chairwoman  
Federal Trade Commission  
600 Pennsylvania Avenue NW  
Washington, D.C. 20580

**Re: Possible British American Tobacco, Plc. (BAT) - Reynolds American, Inc. (RAI) Merger**

Dear Chairwoman Ohlhausen:

The Campaign for Tobacco-Free Kids is a leading force in the fight to reduce tobacco use and its deadly toll on consumers in the United States and around the world. We are writing to urge the Commission to ensure that its evaluation of the proposed merger between British American Tobacco, Plc. (BAT) and Reynolds American, Inc. (RAI) takes into account recent evidence of widespread corrupt and anti-competitive conduct by BAT in Africa.

We urge the FTC to oppose the proposed merger until such allegations have been fully investigated and full consideration given to any results from those inquiries in evaluating the legality of BAT's proposed merger with RAI. We also ask that the Commission publicly release any findings by BAT's external investigations to U.S. consumers.

**I. Background on the Proposed BAT-RAI Merger**

On October 21, 2016, BAT CEO Nicandro Durante publicly announced an offer for the 57.8% of RAI that BAT did not already own. According to media reports, RAI rejected BAT's initial buyout offer of \$47 billion as being too low.<sup>1</sup> On January 17, 2017, RAI accepted an increased offer of \$49 billion and the tobacco companies hope to close the deal in the Third Quarter of 2017.<sup>2</sup>

This merger would give BAT full ownership of a U.S. tobacco company for the first time since 2004, when R.J. Reynolds Tobacco Holdings, Inc. acquired BAT's then U.S. company, Brown and Williamson Tobacco Corporation. The combined post-merger company would create the largest tobacco company in the world by operating profit and would place the company in a leading position in the U.S.

In addition to considering the recent allegations of foreign corrupt anti-competitive conduct, the FTC should closely scrutinize this merger because of the leading role played by both BAT and RAI in perpetrating the decades-long conspiracy that has made tobacco the leading preventable cause of death in the United States.

Tobacco use claims nearly 500,000 American lives every year. Indeed, smoking kills more Americans than alcohol, AIDS, car accidents, illegal drugs, murders and suicides combined. Currently, more than 16 million people in the U.S. suffer from smoking-caused disease, including lung cancer, emphysema and heart disease. The tobacco epidemic is the direct result of deliberate misconduct by BAT, RAI and the other major tobacco companies that participated in the conspiracy. We have attached **Appendix I**, which summarizes additional domestic and foreign misconduct by these companies including findings by a U.S. federal court of their unlawful conspiracy with other U.S. tobacco companies to defraud the American people about their deadly products.

## **II. Recent Allegations of BAT's Foreign Anti-Competitive and Likely Unlawful Conduct**

During 2014-2015, four BAT insiders -- two former BAT employees and two former insiders working on behalf of BAT in South Africa -- disclosed widespread corruption and corporate espionage against rivals in Africa. Reportedly supported by leaked documents, secret recordings and court documents, the allegations of BAT's corrupt anti-competition conduct as reported in the media include:

- Bribing a former Kenyan Minister of Justice turned presidential candidate in 2013 to prevent a competitor (SICPA<sup>3</sup>) from obtaining a tax and excise stamp system tender. According to one media report, cash donations to her political campaign were made through a third party and were "falsely listed in BAT accounts as payments for management fees or as expenses incurred in anti-smuggling operations."<sup>4</sup>
- Bribing a Member of Parliament from Uganda "who sat on a committee writing a report on a rival company... to make amendments and give it to BAT in advance."<sup>5</sup>
- Attempting to remove a Kenyan competitor (Mastermind Tobacco Company<sup>6</sup>) by organizing and paying a union to disrupt Mastermind's cigarette production facility. A media report described other alleged activities BAT used to try to run the competitor out of business:

"The strategy involved bribing Kenyan tax officials to disclose its [BAT's] rival's confidential tax dealings, paying [Mastermind] company officials to disclose vital corporate secrets, and offering cash to port officials to 'lose' or impound its rival's export shipments and supplies of raw materials."<sup>7</sup>

A BAT whistleblower disclosed that he acquired the competitor's internal documents, such as marketing meeting minutes, through unlawful payments of more than \$300,000 over the course of many years.<sup>8</sup>

- Attempting to remove a competitor (Carnilinx Tobacco Company<sup>9</sup>) in South Africa by, according to one report,

"[F]alsely suggesting they were marketing and selling cigarettes unlawfully. The aim, often successful, was to get rivals' stock impounded and discourage wholesalers from dealing with rival firms."<sup>10</sup>

Non-employee whistleblowers, formerly working on behalf of BAT, disclosed that to carry out the operations to remove Carnilinx from the market, covert cash payments from BAT's London headquarters were made reportedly through "a systematic campaign of harassment and disruption," to a network of at least 171 spies in South Africa, which included corrupted police officers.<sup>11 12</sup>

We have attached a media clips package in **Appendix II** for additional information on the allegations and reports published to date.

### **III. BAT's Response to the Allegations**

BAT has denied the allegations brought against it.<sup>13</sup> However, in a U.K. employment tribunal proceeding initiated by one whistleblower for wrongful termination, BAT is reported to have described payments made to certain public officials as "unlawful bribes."<sup>14</sup>

In February 2016, BAT CEO Nicandro Durante hired the law firm Linklaters to investigate the allegations.<sup>15</sup> No report of findings by BAT's law firm has been made public to date. BAT has now reportedly dropped Linklaters as the external firm to investigate the allegations and retained a different firm, Slaughter and May.<sup>16 17</sup> The findings of BAT's self-investigations carried out by Linklaters and Slaughter and May should be made available to the FTC in any merger review and be made public to U.S. consumers.

### **IV. Government Inquiries Related to the Allegations**

To date, disclosures made by BAT whistleblowers have reportedly resulted in government inquiries in the U.K. and Kenya,<sup>18 19</sup> though the U.K. Serious Fraud Office, which is in charge of investigating corruption under the U.K. Bribery Act, has not publicly announced an official investigation. In the U.S., several Members of Congress<sup>20</sup> have urged the Department of Justice to investigate the allegations against BAT to determine whether the company has violated the Foreign Corrupt Practices Act.

\*\*\*

It is alarming that a company that may have acted with blatant disregard for the law outside U.S. borders may be entering the U.S. market as the largest tobacco company in the world. Therefore, we urge the FTC to oppose the proposed merger until BAT's alleged anti-competitive behavior has been fully investigated and resolved by all appropriate authorities, in the U.S. and abroad and to require that BAT's findings into the allegations of its corrupt anti-competition conduct are publicly disclosed to U.S. consumers.

Sincerely,



Matthew L. Myers  
President Campaign for Tobacco-Free Kids

- 
- <sup>1</sup> Bloomberg. Manuel Baigorri, Ruth David, Dinesh Nair. BAT Said to Plan Increased Bid for Reynolds as Soon as This Week. December 5, 2016. Online: <https://www.bloomberg.com/news/articles/2016-12-05/bat-said-to-plan-increased-bid-for-reynolds-as-soon-as-this-week>.
- <sup>2</sup> New York Times. Chad Bray. Jan 17, 2017. British American Tobacco to Take Over Reynolds American in \$49 Billion Deal. Online: <https://www.nytimes.com/2017/01/17/business/dealbook/british-american-tobacco-reynolds-cigarettes-merger.html?smprod=nytcore-ipad&smid=nytcore-ipad-share&r=0>
- <sup>3</sup> SCIPA. <http://www.sicpa.com/product-brand-protection/track-trace>.
- <sup>4</sup> The Independent. British American Tobacco 'bribed' Kenyan politician Martha Karua to stop action against cigarette smuggling. 12/18/2015. Online: <http://www.independent.co.uk/news/uk/crime/british-american-tobacco-bribed-kenyan-politician-martha-karua-to-stop-action-against-cigarette-a6779236.html>.
- <sup>5</sup> The Independent. British American Tobacco accused of bribing senior politicians in order to sabotage anti-smoking laws. 12/1/2015. Online: <http://www.independent.co.uk/news/uk/crime/british-american-tobacco-accused-of-bribing-senior-politicians-to-sabotage-anti-smoking-laws-a6754961.html>.
- <sup>6</sup> Mastermind Tobacco Company Kenya. <http://www.mastermindkenya.co.ke>.
- <sup>7</sup> The Independent. British American Tobacco paid union to disrupt production at one of its chief rivals, whistleblower claims. 12/19/2015. Online: <http://www.independent.co.uk/news/uk/crime/british-american-tobacco-paid-union-to-disrupt-production-at-one-of-its-chief-rivals-whistleblower-a6780011.html>.
- <sup>8</sup> Forbes. An Exceptional Insight Into Commercial Bribery Practices At British American Tobacco. 12/1/2015. Online: <http://www.forbes.com/sites/jwebb/2015/12/01/an-exceptional-insight-into-commercial-bribery-practices-at-british-american-tobacco/>.
- <sup>9</sup> Carnilinx Tobacco Company. <http://www.carnilinx tobacco.com>.
- <sup>10</sup> The Independent. British American Tobacco accused of corporate espionage in South Africa. 2/27/2016. Online: <http://www.independent.co.uk/news/world/africa/british-american-tobacco-accused-of-corporate-espionage-in-south-africa-a6900731.html>.
- <sup>11</sup> Spinwatch.org. Michael Gillard. Revealed: BAT corruption scandal in Africa leads to London HQ. 4/8/2016 Online: <http://www.spinwatch.org/index.php/issues/spying/item/5854-revealed-bat-corruption-scandal-in-africa-leads-to-london-hq>.
- <sup>12</sup> Sunday Mail. The man who blew the whistle on BAT. 9/4/2016. Online: <http://www.sundaymail.co.zw/the-man-who-blew-the-whistle-on-bat/>
- <sup>13</sup> Daily Mail. BBC reports BAT tobacco giant paid bribes in east Africa. 11/30/2015. Online: <http://www.dailymail.co.uk/wires/afp/article-3340207/BBC-reports-BAT-tobacco-giant-paid-bribes-east-Africa.html>
- <sup>14</sup> BBC. The secret bribes of big tobacco paper trail. 11/30/2015 Online: <http://www.bbc.co.uk/news/business-34944702>.
- <sup>15</sup> The Telegraph. Ben Martin. BAT gives law firm 'open door' to probe corruption allegations. 2/25/2016. Online: <http://www.telegraph.co.uk/business/2016/02/25/bat-gives-law-firm-open-door-to-probe-corruption-allegations/>.
- <sup>16</sup> The Lawyer. Tabby Kinder. Exclusive: BAT drops Linklaters from corruption probe in favour of Slaughter and May. 12/8/2016. Online: <https://www.thelawyer.com/exclusive-bat-drops-linklaters-corruption-probe-favour-slaughter-may/>.
- <sup>17</sup> Legal Week. BAT drops Linklaters and appoints Slaughters as sole adviser for bribery probe. 12/8/2016. Online: <http://www.legalweek.com/sites/legalweek/2016/12/08/bat-drops-linklaters-and-appoints-slaughters-as-sole-adviser-for-bribery-allegations-inquiry/?slreturn=20161110105206>.
- <sup>18</sup> Business Daily Africa. David Herbling. US Senators want BAT punished for bribing top officials. 2/9/2016. Online: <http://www.businessdailyafrica.com/US-Senators-want-BAT-punished-for-bribing-top-officials/-/539546/3067864/-/item/2/-/gsslloz/-/index.html>.
- <sup>19</sup> Spinwatch.org. Michael Gillard. Revealed: BAT corruption scandal in Africa leads to London HQ. 4/8/2016 Online: <http://www.spinwatch.org/index.php/issues/spying/item/5854-revealed-bat-corruption-scandal-in-africa-leads-to-london-hq>.
- <sup>20</sup> [https://www.stopcorporateabuse.org/sites/default/files/resources/doj\\_batletter\\_2.3.16.pdf](https://www.stopcorporateabuse.org/sites/default/files/resources/doj_batletter_2.3.16.pdf).