



November 28, 2016

VIA ELECTRONIC SUBMISSION

<https://ftcpublic.commentworks.com/ftc/electroniccigarettespra2/>

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Re: Electronic Cigarettes: Paperwork Comment, FTC File No. P114504

To Whom It May Concern:

Fontem US, Inc. (“Fontem”) respectfully submits these comments to help the Commission with its proposed information requests to marketers of electronic cigarettes outlined in the Commission’s Federal Register Notice of November 2, 2016 (Fed. Reg. 76348). As the marketer of leading e-cigarette brand “blu” and likely recipient of the Commission’s data requests, we appreciate the opportunity to stay involved in this process and share our perspective on the proposal.

Scope and timing of the data collection

In response to its October 2015 Notice, the Commission received strong support for collecting reliable information from a broad range of market participants. Collecting representative data in this way would support and greatly improve the result of many of the data uses identified by commenters, such as informing evidence-based policymaking and regulatory action.

Fontem’s comments specifically noted that excluding vape shops and other retailers from the proposed data collection would lead to non-representative data that would be hard to synthesize in a meaningful way. The Commission agreed that seeking data from a broad cross-section of the overall market would provide a better perspective of the e-cigarette market. But the Commission was not able to identify online sellers and vape shops from which to collect meaningful data.



Fontem believes that the Commission could identify significant market participants by utilizing publicly available state licensing records and other information that is readily available through online search engines. Any remaining data gaps that currently prevent the Commission from identifying market participants will soon be filled by regulations promulgated by the Food and Drug Administration (“FDA”). In particular, FDA regulations require pre-market tobacco applications for all e-cigarette products derived from tobacco. These FDA regulations will therefore identify market participants across the industry from which the Commission could request representative, useful information. While there may not be complete “overlap” between the regulations, as observed by the Commission, data being generated in response to the FDA regulations could be used to make information sought by the Commission much more representative and therefore more useful. Fontem respectfully suggests that the Commission’s information requests should be postponed for a short period of time until the FDA has collected information to make the Commission’s data collection more useful.

Postponing the data collection until the FDA regulations are fully implemented will also improve data utility in other ways. The Commission proposed to use data from 2015 as a baseline to compare against future years. But under the FDA’s own analysis, its regulations will impose costs that will reduce the number of manufacturers and products on the market by 2018. This makes the Commission’s current proposal premature, as data collected from 2015, at great expense, will quickly become irrelevant to a market that has been transformed by the FDA regulations. In fact, industry practices are already changing in important ways to comply with FDA regulations. For example, FDA regulations have imposed product warning and advertising rules that impact the communication of product information to consumers.

Smoking cessation

Fontem also suggested that the Commission collect data on a variety of products containing nicotine so that the data can be used to evaluate trends and products relevant to reducing or ceasing smoking. While the Commission claims that such information falls beyond the scope of the proposed information collection, this begs the question of why the Commission seeks information in the first place. Fontem maintains that collecting data on a variety of products containing nicotine that consumers use for many purposes, including to stop smoking, will be useful to the Commission, policymakers and public health researchers. This perspective is supported by the wide range of uses that other commenters hope to make with the data collected by the Commission.



While the Commission notes that the FDA has jurisdiction over approving products for smoking cessation, this fact does not make the data that could be collected by the Commission any less valuable.

Flavor

Fontem supports the Commission's proposal to streamline reporting into three categories of flavors, which will ease the burden on industry and increase the usefulness of information collected.

Blister Packs and Couponing

Fontem supports the Commission's decision to require reporting on the total number of refill units, as Fontem recommended, rather than on the number of blister packs sold. Providing the information in this form will provide a more accurate picture of e-cigarette sales. Fontem also appreciates that the Commission has accepted our recommendation to collect information on price promotions, including couponing.

Sincerely yours,

/s/ Anthony Rose