



**BRITISH AMERICAN
TOBACCO**
AUSTRALASIA

[RESTRICTION OF PUBLICATION OF PART CLAIMED, Pages 2-3]
PUBLIC REGISTER VERSION

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Dear Ms Staltari

Collective Bargaining Notification (CB1000472) lodged by TSG Franchise Management Pty Ltd

I refer to the Collective Bargaining Notification lodged by TSG Franchise Management Pty Ltd (**TSG**).

While British American Tobacco Australia Ltd (**BATA**) does not consider that the notification will result in any public benefit, BATA does not object to the proposed collective bargaining by TSG on behalf of TSG franchisees on the basis that the notification does not extend to any collective boycott conduct.

BATA however disagrees with TSG's characterisation of the negotiations between BATA and TSG, as well as (so far as BATA can determine from the redacted submission) its description of BATA's proposed trading terms offered to TSG. BATA further denies that it has engaged in any anti-competitive conduct.

BATA notes that parts of this letter include information regarding BATA's trading terms that is confidential and commercially sensitive to BATA. It would cause detriment to BATA if this information was disclosed to BATA's competitors or resellers. BATA requests that these sections of the letter not be placed on the public register. The confidential sections are marked in red text in this letter.

BATA negotiations with TSG and its franchisees

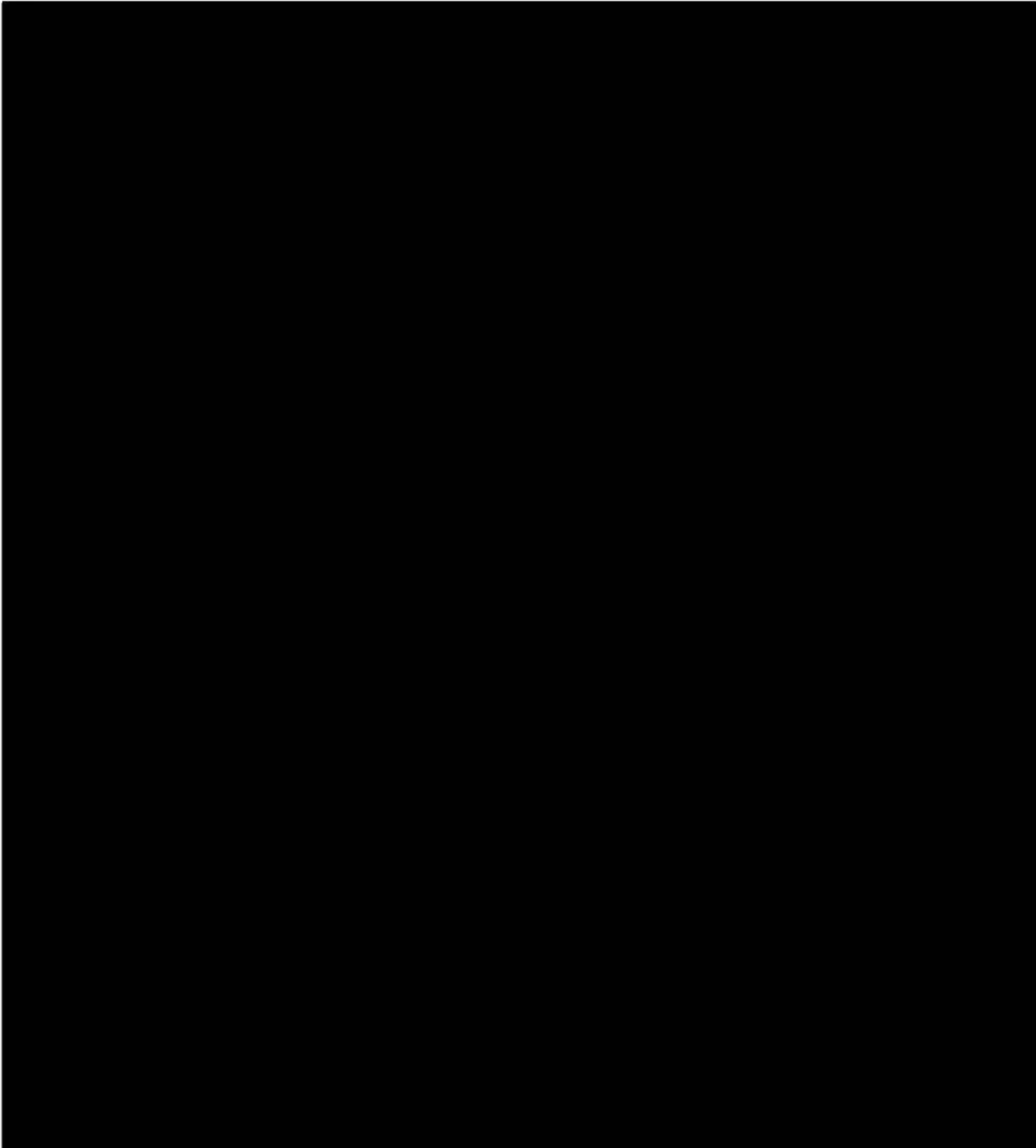
BATA has been in negotiations with TSG for new trading terms, covering BATA's terms of supply to TSG and to its franchisees, since July 2018. In those negotiations, TSG has been effectively representing its franchisees as well as itself. However, BATA and TSG have not been able to reach agreement on those terms.

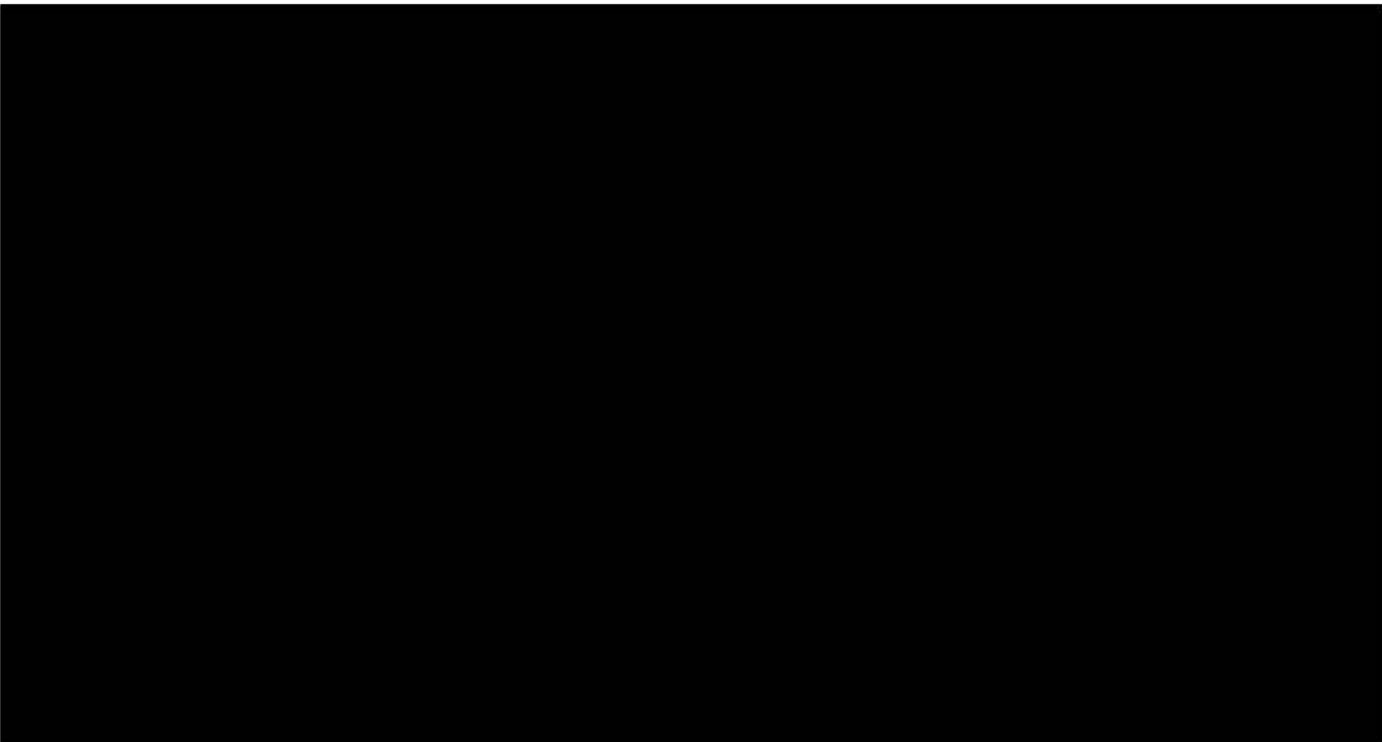
When it became apparent that BATA and TSG would not be able to reach agreement on a new a Retail Trading Agreement (**RTA**), BATA offered numerous interim agreements while we negotiated the full RTA, but they were not accepted by TSG. Accordingly, BATA then offered to and did enter into separate supply agreements with some individual TSG franchisees. BATA entered into these agreements as an interim measure as it was concerned that those franchisees not be disadvantaged by losing promotional payments BATA had been making to TSG.

BATA is happy for those individual agreements to be replaced by whatever group level agreement BATA may be able to reach with TSG.

BATA's proposed trading terms

During the course of negotiations, BATA has presented to TSG more than 9 proposals as well as proposed trading terms (i.e. the commercial terms). BATA's proposed trading terms include qualitative and quantitative eligibility criteria for the payment of rebates under the RTA.





In fact, as it became apparent that BATA and TSG were unlikely to reach agreement on a new RTA, BATA sought to engage with TSG to ensure that BATA would still be able to offer promotions to TSG franchisees. Consistent with this, BATA has offered some promotions to TSG in December this year even though BATA and TSG have not been able to reach agreement on trading terms.

Allegations of anti-competitive conduct

The TSG notification states that BATA's position with respect to promotions is anti-competitive as it will reduce consumer choice of tobacco products for sale and increase the retail price of products manufactured by BATA's competitors. This is not correct.

BATA's proposed trading terms do not require TSG to reduce the number of tobacco products it offers for sale. TSG can stock as many competitor products as it wishes and still be eligible for BATA's rebates.

Further, it is a matter for TSG as to what terms it has negotiated with other suppliers and for ensuring that it meets those terms. However, so far as BATA is aware based on discussions with TSG, from January 2020 there is nothing in BATA's proposed terms that would mean that TSG cannot comply with its commitments to other suppliers.

While there are three larger tobacco suppliers in the Australian market, the market at a wholesale level (as well as at the retail level) is highly competitive. There is vigorous competition between BATA, Philip Morris and Imperial Tobacco Australia, as well as effective competition from smaller suppliers in the market such as Richlands. BATA's proposed trading terms do not in any way seek to reduce or inhibit that competition. In fact, BATA's offers which is characterised by low base terms and flexibility as to whether a store wishes to offer more promotes competition.

Claimed public benefit

In BATA's view the notification will not result in any public benefit. TSG currently effectively negotiates on behalf of its franchisees and has been doing in the negotiations with BATA over the past year. This will not change with the notification.

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For the record BATA notes that it has not sought to leverage its position in the wholesale market to reduce competition. The situation is simply that BATA and TSG have not to date been able to reach agreement on terms and in particular how much BATA is prepared to pay for what TSG is prepared to offer.

BATA continues to negotiate with TSG on behalf of its franchise group to try to reach agreement on a new RTA, as it has been doing for more than a year. Further to this, BATA has continued to meet with TSG for this purpose.

If the ACCC has any questions regarding the matters set out in this letter, please do not hesitate to contact the writer.

Kind regards



Michael Bray

Head of Litigation and Regulation

British American Tobacco Australia