



PHILIP MORRIS

AUSTRALIA NEW ZEALAND PACIFIC ISLANDS

9 December 2019

Anna Pound & Louisa Wilson
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

BY EMAIL

Dear Ms Pound and Ms Wilson

Collective Bargaining Notification (CB10000472) lodged by TSG Franchise Management Pty Ltd - interested party consultation

We refer to your letter of 25 November 2019.

Philip Morris Ltd (**PML**) does not have any objections to the collective bargaining proposed by TSG Franchise Management Pty Ltd (**TSG**).

PML is a distributor and importer for Philip Morris International, Inc. and its related bodies corporate of tobacco and tobacco related products for supply in Australia.

In PML's experience, it is not uncommon for franchisors to negotiate supply terms and trading term agreements on behalf of their franchise network with tobacco companies.

The benefits of collective bargaining to franchise networks include:

1. **Increased input into contracts:** Collective negotiations will go some way to correcting the bargaining power imbalance between the TSG franchisees and British American Tobacco Australasia (**BATA**). We note TSG's comments regarding the promotion terms being insisted upon by BATA. This conduct concerns PML. Exclusionary discounts and supply conditions can hinder inter brand competition at the retail level. PML is particularly concerned to read in TSG's notification that BATA's terms/Promotions:
 - 1.1 require retailers to remove other suppliers' products from the price board (the primary form of notifying consumers which tobacco products retailers have in their stores);
 - 1.2 require retailers to either breach another supplier's terms or forego discounts offered by those other suppliers; and
 - 1.3 have the effect of increasing the retail price of products manufactured by BATA's competitors and impacting the price to consumers.

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This conduct would be of concern to all of BATA's competitors and should be of concern to the ACCC. The proposed collective bargaining may give TSG the opportunity to negotiate supply terms without exclusionary discounts and conditions, therefore avoiding a reduction of competition at the retail level and enabling more of the gains from trade to be realised.

2. **Transaction cost savings:** Collective negotiations would avoid the time and resources required by individual franchisees (many of whom are likely to be small businesses) negotiating with BATA on an individual basis.
3. **Improvements in information:** Collective negotiations would improve the information available to the TSG franchise network and reduce the risk of BATA taking advantage of information asymmetries in order to extract anticompetitive terms.

PML does not consider there to be any obvious detriments posed by TSG's collective bargaining proposal.

Should you have any further enquiries please do not hesitate to contact me.

Yours sincerely,



Tammy Chan

Managing Director AU, NZ and Pacific Islands