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By email

Dear Sir or Madam

British American Tobacco Australia Limited & Ors application for authorisation A91550 —interested party consultation

The Australian Competition and Consumer Commission (the ACCC) has received an application for authorisation from British American Tobacco Australia Limited, Imperial Tobacco Australia Limited, and Philip Morris Limited (the Applicants). The ACCC invites you to comment on the application. Attached is a summary of the authorisation process including how to make a submission to the ACCC.

The Applicants seek authorisation for an arrangement between them whereby they intend to work together to identify, issue warning notices and, if warning notices are not heeded, suspend or cease supply of their tobacco products to retailers and wholesalers who sell illicit tobacco products. Further detail regarding the proposed arrangements is set out at Attachment A.

A full copy of the application for authorisation is available on the ACCC's website www.accc.gov.au/AuthorisationsRegister.

Request for submission

The ACCC invites you to make a submission on the likely public benefits and effect on competition, or any other public detriment, from the proposed arrangements.

If you intend to provide a submission in relation to the application for authorisation, please do so by **21 September 2016**. Submissions should be emailed to adjudication@accc.gov.au with the subject A91550 – British American Tobacco Australia Limited & Ors – submission'.

Submissions will be placed on the ACCC's public register subject to any request for exclusion (guidelines are attached).

Timetable

The ACCC will progress its assessment of the application in a timely manner. An indicative timetable is set out below for your information

25 August 2016	Lodgement of application and supporting submission.
31 August 2016	Public consultation process begins.
21 September 2016	Closing date for submissions from interested parties.
October 2016	Applicant responds to issues raised in the public consultation process.

November 2016	Draft determination.
December 2016/January 2017	Public consultation on draft determination including any conference if called.
January/February 2017	Final determination.

Please advise if you do not wish to make a submission at this time, but would like to be informed of the progress of the application at the draft and final determination stages. If you are able to please provide a nominated contact email address for future correspondence.

You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding the application.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Hannah Ransom on (02) 6243 1255 or adjudication@accc.gov.au.

Yours sincerely



Gavin Jones
Director
Adjudication Branch

Attachment A

Proposed arrangements

Each of the Applicants propose to individually identify an indefinite number of illegal tobacco suppliers and take action to encourage those suppliers (whether they be retailers or wholesalers) to cease acquiring and/or supplying illicit tobacco products.

In particular, the Applicants intend to achieve this by two different approaches, which are summarised below as the '*Covert purchase model*' and the '*Agency cooperation model*'.

Covert purchase model

1. The Applicants will individually engage their own private investigators to make covert (mystery shopper) purchases of tobacco products from retailers and wholesalers around Australia
2. The private investigators will be provided with a list of items which indicate whether a particular tobacco product purchased by them is or might be illicit tobacco
3. If the private investigators identify purchased product(s) as constituting suspected illicit tobacco, they will provide a written report to the Applicant(s):
 - a. identifying the name and street address of the retail store or wholesaler from which the potentially illicit tobacco product(s) was purchased
 - b. stating the date and time of the purchase
 - c. specifying the price at which the purchase was made (as evidenced by a receipt, if one is provided)
 - d. detailing the basis for their suspicion that the product(s) constitutes illicit tobacco, and
 - e. attaching physical packaging evidence or other physical evidence, if any, in support of their belief that the product(s) purchased constitutes illicit tobacco.
4. Following receipt of the report and the corresponding tobacco product(s) acquired through covert purchases, the Applicants will perform, or arrange for the performance of, examination and testing of the acquired tobacco product(s) to determine whether the product acquired through covert purchase is illicit tobacco
5. If the Applicants agree that the product(s) sold by the retailer/wholesaler (and acquired through one or more covert purchases) constitutes an illicit tobacco product, the Applicants will:
 - a. cause a letter to be served upon (or delivered by some other method that enables proof of delivery to be established), the retailer:
 - i. advising of the fact that the retailer/wholesaler made a sale (with details of that sale) of suspected illicit tobacco product
 - ii. identifying the reasons why the purchased tobacco is considered illicit
 - iii. seeking a written undertaking from the retailer/wholesaler that they will cease and desist from selling illicit tobacco from a specified date, and
 - iv. advising that, should the retailer/wholesaler fail to provide the undertaking or to comply with it, the Applicants will cease to supply their products to the retailer/wholesaler until further notice
 - b. at their election, the Applicants may jointly decide not to make further sales of their legal tobacco products to that retailer or wholesaler for an agreed period where the retailer or wholesaler:

- i. fails to provide the written undertaking referred to in paragraph 5(a)(iii), or
- ii. having provided the written undertaking, subsequently breaches the undertaking as evidenced by a further covert purchase of illicit tobacco product from that retailer or wholesaler (the Applicants would cause the steps in paragraphs 3 and 4 to be performed with respect to the retailer/wholesaler after the undertaking had been given to determine compliance with the undertaking).

Agency cooperation approach

Upon one or more of the Applicants being advised of a successful prosecution of a retailer or wholesaler for the sale of illicit tobacco product, the Applicants may jointly decide not to make further sales of their tobacco products to that retailer or wholesaler (as applicable) for an agreed period and advise the retailer or wholesaler (as applicable) of the reasons for that decision in writing.