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Gavin Jones
Director
Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke St
Canberra ACT 2601

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

Dear Gavin,

In reference to your invitation of 31 August 2016, please find attached my submission to the interested party consultation for British American Tobacco & others application for authorisation A91550. The submission is based upon my research and does not necessarily reflect the opinion or position of the Australian National University.

The submission is based upon criminological research into organised crime, the trade in illicit tobacco and private sector cooperation with law enforcement. I have discussed this submission with Professor Rod Broadhurst, a globally recognised expert on organised crime in the Asia Pacific. Professor Broadhurst was also invited to make submission. He has advised my submission reflects his position, and he will not be making a separate response.

Thank you for the invitation and opportunity to contribute to the ACCC's work. I am happy to be contacted if clarification or more information is required.

Sincerely

A handwritten signature in black ink, appearing to read "Adam Masters", written over a white background.

Dr Adam Masters
Transnational Research Institute on Corruption

Illicit tobacco and organised crime

Trafficking of tobacco products is a global problem, estimated to cost governments up to \$US40 billion in lost revenue globally every year (von Lampe 2011, p.148). Estimates on the size of the illicit tobacco market attribute 10.7% of cigarettes consumed worldwide to illicit sources (LeGresley et al. 2008, p. 203). Available data show that the percentage of contraband consumption in Australia was trending upwards (Scollo 2008). Research in Europe indicates unlawful international transport of cigarettes and tobacco has been driven by inconsistent taxation regimes and fraud (Joossens & Raw 1998). However, many people do not perceive the serious criminality associated with illicit tobacco, for them it is essentially a supply and demand issue regarding a legal product (Gounev et al. 2012). For example, consumer attitudes in Scotland toward suppliers of contraband cigarettes considered the smugglers were ‘providing a valuable service’ (Wiltshire et al. 2001, p. 203). Evidence of similar attitudes has been found amongst individuals and groups within Australian authorities tasked with border control (ACLEI 2013, p.9).

The growth in the tobacco black market in recent years has led to seizures by border control authorities—the Australian Customs and Border Protection Service (ACBPS), the Australian Federal Police (AFP) and the Australian Taxation Office (ATO)—that have been significantly greater in volume than prohibited narcotics such as heroin and cocaine. Table 1 below shows that between 2007-08 and 2014-15, more than 1700 tonnes of illicit loose tobacco and nearly 835 million cigarettes were seized from sea cargo bound for Australia. This represents \$960 million in evaded duty. The volume alone indicates involvement of sophisticated organised criminal groups.

Table 1
Tobacco detections in Australian sea cargo and duty evaded 2007/08 – 2011/12

Year	Number of detections	Tobacco (tonnes)	Cigarettes (millions of sticks)	Duty evaded (\$ million)
2007–08	58	287	107	114
2008–09	33	180	50	70
2009–10	42	311	68	120
2010–11	55	258	82	135
2011–12	45	177	141	125
2012-13	76	183	200	151
2013-14	78	183	147	142
2014-15	91	150	40	103
Total	478	1729	835	960

(ACBPS 2012; 2013; 2014; 2015)

Regionally, organised crime generates significant revenue from counterfeit goods. Recent research by the UN Office of Drugs and Crime indicates counterfeit cigarettes and illicit tobacco products are one of the top four types of commodities faked for export/import (UNODC 2013; 2016). There is also direct evidence of links between organised crime and illicit tobacco in Australia. Ernst HUFNAGL, arrested for his involvement in one of Australia's largest frauds (McClymont 2012), was also arrested two years later while awaiting trial for his part in an attempt to smuggle 10 million cigarettes into Australia (McClymont 2005). Furthermore, the 'ndrangheta (Calabrian mafia) group responsible for the world's largest ecstasy importation seized in Melbourne had also profited from tobacco trafficking (Small & Gilling 2016, p.243). The group imported 25 tonnes of illicit tobacco in 2004.

Given that Australian cigarettes are among the most expensive in the world and there are still more than three million Australians smoking (Chapman 2008), any reasonable hypothesis indicates the strong demand for illicit cigarettes and tobacco products will continue. Recent European research has found that high taxation, stable smoking prevalence and the high-profit/low-risk associated with the trade in illicit tobacco products create an illicit market that is highly attractive to organized criminal groups (Angelini & Calderoni 2015). As we move toward de facto prohibition, there is no reason not to believe the increased revenue for tobacco in Australia will not have the same criminogenic effect that is found in Europe.

Corporate cooperation for law enforcement

Law enforcement agencies have long recognised the need to cooperate with private corporations to prevent intellectual property crime. Transnational corporations (TNCs) undertake their own investigations and civil action to protect their intellectual property (IP). In doing so, they compile their own intelligence on breaches of both civil and criminal law. This data is often unique, with government authorities either lacking the resources or focussing on different priorities to replicate this intelligence.

In some instances when TNCs are willing to cooperate with police, customs or others, they do so on a one-to-one basis. Revealing a problem with protection of intellectual property rights can be seen as giving an advantage to market competitors – even though the intelligence held by corporation “A” may indicate the same criminal group is responsible for breaching the rights of corporation “B”. The International Criminal Police Organisation (Interpol) attempted to create an intelligence brokerage for IP crime in the early 21st century. They discovered the fundamental unwillingness of corporations in some industries to cooperate with each other (interview with Interpol official, 2011).

Other examples have proven more successful. The pharmaceutical industry became active participants in IMPACT (International Medical Products Anti-Counterfeiting Taskforce). Ranging from items as simple as drip lines to faked pharmaceuticals, counterfeit medical products can exacerbate health problems for the users to the point of death (Naim 2006, pp.123-125). The active presence of organised criminal groups in counterfeiting medical products is unsurprising considering the level of profitability (Interpol 2014). IMPACT was a public-private partnership established by the World Health Organization (WHO) and Interpol that is 'a voluntary coalition of stakeholders that coordinate international activities aimed at combating counterfeit medical products for the purpose of protecting public health' (di Giorgio & Gramazio 2011, p.20). It is open to all member-states of the World Health Organization, other international government organizations, government health and regulatory agencies, representatives of patients, health providers, pharmaceutical manufacturers and wholesalers. The cooperation amongst actors in the pharmaceutical industry to produce a public good as opposed to engaging in self-centred free-market competition provides a useful precedent for consideration in light of the proposal from British American Tobacco (BAT) and others.

BAT & others proposal

The proposal by BAT and others represents a logical and coordinated means of crime prevention at the point of purchase end of the supply chain for illicit tobacco. The proposal does not represent an action which would adversely impact on consumers of legitimate tobacco products. Closure of illicit points of sale will impact on the profitability of organised crime groups and help protect government revenue losses.

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