

16<sup>th</sup> September 2016



To. Australian Competition & Consumer Commission  
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adjudication@accc.gov.au

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**Dear ACCC Adjudication Team,**

Re: A91550 – British American Tobacco Australia Limited & Ors.

TSG Franchise Management Pty Ltd (“TSG”) has been in business for over 25 years & operates Australia’s largest network of Tobacconist Franchisees, with over 400 retail tobacconists spread throughout all States and the ACT.

We have read the Application dated 25<sup>th</sup> August 2016 and supporting materials submitted by British American Tobacco Australia Limited, Imperial Tobacco Australia Limited and Philip Morris Limited (“the Applicants”).

We make this submission in support of the Applicants & the authorisations they seek from the ACCC.

In our view, the assertions and factual data submitted by the Applicants in support of the Application are indisputable.

Plain packaging laws and regular excise increases on legal tobacco products has fuelled an increase in the availability and demand for illicit tobacco products, and there are no signs this trend will be reversed in the absence of increased prosecutions and harsher penalties for both suppliers, wholesalers & retailers.

Whilst the vast majority of tobacco retailers within our franchise network are law abiding citizens who work extremely hard to pay their bills and support their families whilst only selling legal tobacco products, we are witnessing an increasing number of retailers engaged in the sale of illicit tobacco.

In our view, those retailers who sell illicit tobacco do not fear prosecution & are prepared to take a risk because the financial benefits of selling illicit tobacco far outweigh any risk of prosecution or penalties flowing from a conviction.

Retailers who sell illicit tobacco are responding to consumer demand for cheaper tobacco products, whilst at the same time generating significant profit margins compared to what they achieve through the sale of legal tobacco products.

We agree with the Applicants submission that the supply of illicit tobacco products has serious impacts on a range of public interest factors, including:

- (a) significant loss of Commonwealth revenue;
- (b) a burden on the time and resources of law enforcement agencies;
- (c) a funding source for serious and organised crime;
- (d) undermining of tobacco control measures, including plain packaging, and product warning labels;
- (e) damaging the business of legitimate retailers and wholesalers of tobacco products who are forced to compete with an illegal trade;
- (f) increased fire risk associated with the unknown compliance of illicit tobacco products with the mandatory statutory requirements, and
- (g) increased biosecurity risks (introduction of pests or disease) associated with the importation of illicit chop-chop tobacco.

Whilst the Applicants are powerless to address responsibilities that sit firmly with Australia's various law enforcement agencies, as the suppliers of legal tobacco products they have the means to make a significant impact by withholding supply to retailers who sell illicit tobacco.

We at TSG support the Applicants and believe their proposed conduct will have a positive impact in reducing the sale of illicit tobacco. Any reductions in the sale of illicit tobacco will reduce the adverse impacts outlined in the Applicants submission and which we are restated in this submission.

In conclusion, TSG supports the Applicants request for authorisation to make and give effect to a deed between them that governs the process by which they will work together to identify, issue warning notices to and suspend or cease supply of their tobacco products to retailers and wholesalers who, despite written warnings or undertakings no longer to supply illicit tobacco products in Australia, continue to do so.

We welcome any request for further information or clarification should the ACCC deem it desirable,

Sincerely

*Bruno Santi*

Bruno Santi  
Chairman  
TSG Franchise Management Pty Ltd