

19 September 2016

Attention: Ms Hannah Ransom
Adjudication Branch
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra
ACT 2601

BY EMAIL: adjudication@accc.gov.au

Dear Ms Ransom,

Re: A91550 – British American Tobacco Australia Limited & Ors - Submission

We refer to the above application for authorisation from British American Tobacco Australia Limited, Imperial Tobacco Australia Limited and Philip Morris Limited (the Applicants) to identify, issue warnings, suspend and/or cease supply of their tobacco products to retailers and wholesalers who sell illicit tobacco products.

Master Grocers Australia (MGA) is a national employer industry association representing independent grocery and liquor stores in all States and Territories of Australia. Independent supermarkets and liquor stores comprise a significant subsector of the retail industry in Australia and a large number of our members sell tobacco products. The stores operate under banners such as IGA, Foodland, FoodWorks, Friendly Grocer, SPAR, Cellarbrations, Bottle-O, IGA Liquor, Local Liquor and Bottlemart. Australia's 4000-plus independent grocery and liquor retailers employ 115,000 people and generate annual sales of \$14 billion. Many of our members around Australia sell tobacco products in their stores and this application has the potential to have a significant effect on their businesses.

Tobacco products are among the most illegally trafficked goods throughout the world. The illegal trade of tobacco products is a major issue for our members as it severely impacts the profitability of their small retail businesses and government revenues while profiting illegal retailers. The Australian Crime Commission noted in 2015 that:

“Organised crime remains entrenched within the illegal tobacco market in Australia. It continues to perceive involvement in this market as a low risk, high profit enterprise... Since the closure of the legal domestic tobacco production industry in 2006, there has been an ongoing decline in the supply of domestically grown tobacco to the illegal market. However, in May 2014, the Australian Taxation Office Operation Garnet search warrants, with the

assistance of the Australian Federal Police, resulted in the largest-ever seizure of illegal locally grown tobacco, located in regional Victoria. About 350,000 mature tobacco plants were seized, which were estimated to have an excise value of A\$15 million. It is highly likely that the illegal tobacco market will remain attractive for serious and organized crime groups because of the very large profits that can be made with very low risk”¹

With recent government announcements confirming a significant increase in the tax and cost of tobacco, instead of quitting as hoped by the government, many smokers are buying cut-price cigarettes from the dangerous and unregulated illicit industry, which distributes approximately 2.4 million kilograms of tobacco annually across Australia.² Illicit tobacco has extensive links with organised crime groups or individuals who see the illegal tobacco trade as a low-risk, high-profit opportunity. Illicit tobacco is not only available from individual dealers but we are also aware that there are some supermarket or grocery retailers who have decided to sell illicit tobacco from their premises.

Unfortunately, it is small businesses, including our members that are doing the right thing who are being penalised and losing profits as customers turn to illegal traders and smugglers for cost or convenience. Bigger retailers are able to absorb such losses but small businesses are especially hit hard and many of our members have advised that the government is not doing enough to crack down on illicit tobacco sales and assist them with their grievances.

By allowing the Applicants, who are major tobacco suppliers, to limit the supply of legal tobacco to those found or suspected to be engaging in illegal conduct, it will be an incentive to those in the industry to cease or avoid engaging in such conduct. It is in the public’s interest to combat the illicit tobacco trade which finances and supports other organised crime. Furthermore, authorising the Applicants’ conduct may assist in limiting the availability of cheaper tobacco products, causing consumers to either pay the higher price for legal tobacco or quit smoking, which may provide health benefits to the public. We also note that there is no way of knowing what chemicals are in these unregulated products, so the health risks are even greater if the trade of illicit tobacco is not addressed.

MGA does not consider that this application would encourage anti-competitive conduct and those who engage in criminal activity should not be protected by the provisions in the Competition and Consumer Act 2010. MGA also considers that it would be unreasonable to expect the Applicants to continue trading with those individuals or businesses who support the illicit tobacco trade which is harming their own businesses,

¹ Organised Crime in Australia 2015, Australian Crime Commission, page 68:
<https://www.crimecommission.gov.au/sites/default/files/FINAL-ACC-OCA2015-180515.pdf>

² Emma Reynolds, “Illegal tobacco industry flourishing in Australia as government hikes taxes” 6 May 2016 sourced from news.com.au
<http://www.news.com.au/finance/economy/australian-economy/illegal-tobacco-industry-flourishing-in-australia-as-government-hikes-taxes/news-story/c1d28c0a1919d0fbcc499579a2386b28>

their customers and the ultimate consumer. MGA applauds the Applicants for taking a firm stance against perpetrators through legitimate avenues. MGA also suggests and encourages an inclusion of a clause in the proposed arrangements that obliges the Applicants pass on any information collected regarding illicit tobacco to the relevant authorities for further investigation.

In view of the above, MGA unequivocally supports the application and urges the ACCC to authorise the Applicants to identify, issue warnings, suspend and/or cease supply of their tobacco products to retailers and wholesalers who sell illicit tobacco products as it is in the public interest and would be a significant step in combating illicit tobacco.

MGA sincerely thanks the ACCC for this opportunity to make this submission and we would be pleased to explain our position further should the ACCC require additional information.

Yours sincerely,



Jos de Bruin

CEO

MGA Independent Retailers