



Australian  
Retailers  
Association

Adjudication  
ACCC  
23 Marcus Clarke Street  
Canberra ACT 2601

Via email: adjudication@accc.gov.au

21 September 2016

Dear Sir/Madam,

**ACCC – British American Tobacco Australia Limited & Ors application for authorisation A91550 –interested party consultation, Illicit and Counterfeit Product**

As you are aware, counterfeiting/illicit tobacco is a significant problem that affects brand owners, suppliers, retailers and consumers across all retail in Australia.

Although the negative impact of illicit/counterfeiting is well-known, Australia's anti-counterfeiting/illicit laws have not kept pace with the various methods employed by counterfeiters. In spite of hard work by customs officers and other law enforcement agencies, the flow of counterfeit/illicit products into Australia, and their sale in our markets, continues unabated.

The fundamental approach on these issues by legitimate retailers who do the right thing is that all retail should operate on an equal footing, those who do not operate in a legal or equal way should not be able to undertake those practices within the Australian retail market.

We welcome your invitation to address the key objectives outlined in the authorisation, being to allow major tobacco suppliers to cease supply to those who have undertaken illegal activity.

**Enforcement**

The measure to restrict supply should not be casually applied and must be measured and based on appropriate evidence gathered. Having reviewed the authorisation application, we support the proposed covert purchase and testing approach by the applicants, as outlined in section 3.2. It also ensures a retailer, where there is evidence of them selling illicit, is given a warning and an opportunity to desist before supply of the Applicants' legal tobacco products are suspended or terminated.

This is an important measure to ensure that in the event of a staff member or supply chain issues being the cause of illicit supply the retail licence holder has an opportunity to address the issue within their business.

As also outlined in section 3.2, should there be a successful prosecution of a retailer for the sale of illicit tobacco, we support the applicants ceasing legal supply. We also would expect that state and territory jurisdictions cancel licences related to that person or entity where licencing exists (note not all States have formal licencing).

**Support**



**Australian  
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Association**

Our members and stakeholders believe the time is ripe in Australia for such a restriction and action in Australia to stop those undertaking illicit and counterfeit trade in tobacco products.

Illicit tobacco is by the very nature non-compliant with any mandatory quality, safety or packaging requirements. Yet they are already available for sale – and not through responsible, trained retailers or a trusted supply chain. The illegal trade distorts the market and should carry consequences for those who try to use legitimate supply chains to sell illegal product.

Please do not hesitate in contacting me to discuss further.

Kind regards,

Russell Zimmerman  
Executive Director  
Australian Retailers Association