



28 September 2016

Mr Gavin Jones
Director - Adjudication Branch
Australian Competition and Consumer Commission (ACCC)
GPO Box 3131
Canberra ACT 2601
Email: adjudication@accc.gov.au

Dear Sir,

RE: British American Tobacco Australia Limited & Ors application for authorisation A91550

British American Tobacco Australia Limited, Imperial Tobacco Australia Limited, and Philip Morris Limited (the Applicants) have sought authorisation of an arrangement whereby they will work together using a 'covert purchase model' and 'agency cooperation model' to reduce the supply of illicit tobacco in Australia.

Cancer Council Western Australia (CCWA) does not support the application for authorisation from the Australian Competition and Consumer Commission (ACCC).

All tobacco is harmful to health, whether legal or not. The illicit tobacco trade in Australia has been overestimated and is harnessed by the industry to distract from tobacco control measures that have been proven to reduce the prevalence of smoking. The enforcement of laws to reduce the supply of illicit tobacco is a matter for the Australian Government, and additional public resources could be used to target non-compliant retailers. Industry interference is therefore unnecessary and, importantly, a significant departure from the WHO Framework Convention on Tobacco Control. In these circumstances, we implore the ACCC to dismiss the application for authorisation.

Illicit tobacco trade in Australia

In Australia, the acquisition and supply of illicit tobacco products is limited. Despite [many reports](#) by the tobacco industry claiming high levels of illicit trade of tobacco, particularly since the introduction of plain packaging in Australia, conflicting [evidence](#) shows no increase in contraband cigarettes, no increase in purchases from informal sellers and no increase in the use of unbranded illicit 'chop-chop' tobacco.¹ In addition, data from the most recent [National Drug Strategy Household Survey](#) shows that in 2013, only 3.6% of lifetime users of unbranded loose tobacco were smoking it at the

¹ Scollo, M. Zacher, M. Coomber, K. Wakefield, M. Use of illicit tobacco following introduction of standardised packaging of tobacco products in Australia: results from a national cross-sectional survey. *Tobacco Control*. 2015; 24: 1176-1181.

time of the survey.² The vast majority of smokers who have ever used illicit tobacco no longer use it, and—of those who do still use it—most used it only occasionally.³ The low frequency of use among current users casts some doubt on the figure of 14% cited in the KPMG Report commissioned by the Applicants.

Previous reports commissioned by the tobacco industry have also contradicted data on illicit tobacco collected by the Australian Institute of Health and Welfare.⁴ We would strongly caution against relying on the information in these reports due to the risk of industry bias.

WHO Framework Convention on Tobacco Control

As a Party to the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC), Australia is required to cooperate in the formulation of proposed measures, procedures and guidelines for implementation of the treaty. This includes implementing [Article 5.3](#), which aims to protect tobacco control from commercial and other vested interests of the tobacco industry, recognising that there is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests.

The tobacco industry's application to conduct 'covert purchasing' and 'agency cooperation' with the aim of ceasing the acquisition and/or supply of illicit tobacco products would breach Article 5.3 of the FCTC.

Enforcement is the domain of the Australian Government

The tobacco industry should have no role in implementing tobacco control measures, and as a Party to the FCTC the Australian Government should not allow it. Preventing the acquisition and supply of illicit tobacco products is the responsibility of the Australian Government. The Applicants have given no compelling reasons why covert purchasing investigations could not be undertaken by public officers. In jurisdictions with licensing schemes, retailers found to be selling illicit tobacco can lose the ability to sell legal tobacco products.

It is wholly inappropriate for the tobacco industry to be involved in the private enforcement of public regulations. If there are shortcomings in the way that the supply of illicit tobacco is managed at the retailer level, the Australian Government should direct additional resources to enforcement in this area.

Significant gains have been made in Australia over time to reduce smoking prevalence and uptake via the use of comprehensive and evidence-based tobacco control strategies and policies. By upholding the guidelines for implementation of the FCTC we can continue to reduce the harm caused by tobacco.

Please note, CCWA does not have any tobacco industry links or vested interests, and does not require any comments made in this submission to be confidential.

² Australian Institute of Health and Welfare. 2014. National Drug Strategy Household Survey 2013 detailed report. Drug statistics series no. 28. Cat. no. PHE 183. Available at: <http://www.aihw.gov.au/publication-detail/?id=60129549469>

³ See Scollo, MM and Winstanley, MH. Tobacco in Australia: Facts and issues. Melbourne: Cancer Council Victoria; 2016. Available from www.TobaccoInAustralia.org.au

⁴ See Scollo, MM and Winstanley, MH. Tobacco in Australia: Facts and issues. Melbourne: Cancer Council Victoria; 2016. Available from www.TobaccoInAustralia.org.au

We thank the ACCC for the opportunity to provide comment in regard to the application for authorisation A91550. Please do not hesitate to contact Libby Jardine on 08 9388 4368 or email ljardine@cancerwa.asn.au if you would like further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Terry Slevin'.

Terry Slevin
Education & Research Director
Cancer Council WA