



**Minister for Health; Culture & the Arts
Government of Western Australia**

Our Ref: 33-35302

Mr Gavin Jones
Director
Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

Dear Mr Jones

Thank you for your e-mail of 5 September 2016 regarding an application for authorisation from British American Tobacco Australia Limited, Imperial Tobacco Australia Limited and Philip Morris Limited (the Applicants).

As you may be aware, the Commonwealth Department of Health has primary responsibility for the development and implementation of tobacco product regulatory measures. Issues which relate to excise, customs tariffs, and law enforcement are matters for the Treasury, the Australian Taxation Office, the Department of Immigration and Border Protection and law enforcement agencies (including the Australian Federal Police and the Australian Crime Commission).

There are significant inherent conflicts of interest associated with the tobacco industry becoming involved in monitoring and enforcement activity related to tobacco control. The tobacco industry is subject to the same regulatory regime that they are seeking to "assist", and the conflicts of interest that arise from the proposed activities are not capable of being remedied.

Also, as outlined in the World Health Organisation Framework Convention on Tobacco Control, to which Australia is a signatory, there is a need to protect tobacco control from industry interference.

Finally, the issue of illicit tobacco is primarily a revenue evasion matter that attracts significant penalties under the Commonwealth *Excise Act 1901* and *Customs Act 1901*. Given that the production, distribution and sale of illicit tobacco products is currently illegal, and subject to regulatory oversight by a number of Commonwealth and State/Territory government regulatory authorities, it would be unnecessary and inappropriate for tobacco industry participants to be involved in regulatory activities as proposed.

For the reasons outlined above, I oppose the application for authorisation A91550.

Thank you for bringing this important public health matter to my attention.

Yours sincerely

**JOHN DAY
MINISTER FOR HEALTH;
CULTURE AND THE ARTS**

22 SEP 2016