

19<sup>th</sup> January 2017

Australian Competition & Consumer Commission  
GPO BOX 3131  
**CANBERRA ACT 2601**

Via email: [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

Dear Sir / Madam,

**RE: A91550 – British American Tobacco Australia Limited & Ors – submission in response to ACCC’s draft determination**

We have taken the time to read through the ACCC’s draft determination and upon completion of reading this document, we feel that a number of organisations have expressed their views and thoughts, but have little evidence or consideration as to what is actually happening in the retail environment and how the illicit trade is impacting retailers businesses and livelihood. As explained in our previous submission, we are a Franchise with over 200 tobacconist Franchisees, so we have a significant interest in this submission.

Retailers rely on consumers to provide their income – they don’t have the luxury of a guaranteed monthly pay cheque. So when retailers are selling a legal product but are losing business to a an illegal product, we feel there should be more concern and consideration into stopping this, rather than organisations trying to prove it isn’t an issue or its just big tobacco making noise. Lets make it very clear when we say this is not just big tobacco, this is a large number of retailers losing their income to an illicit product and it continually feels that rather than someone actively doing something to stop it, the focus is on the legal tobacco products and the health concerns surrounding it.

Illicit trade in the market is very prevalent. Whether it be the loose tobacco, known as chop-chop, or the branded packaging with the incorrect health warnings. However the biggest growth in illicit product is in the tobacco products that come into the country in plain packaging, but the price its being sold for does not even cover the cost of taxes associated with tobacco products here in Australia. Currently on a packet of cigarettes, taxes and duties alone are approximately \$13.50, so how can you have these unknown suppliers selling cigarettes in plain packaging for anywhere between \$11.00 and \$13.00 a pack?

When investigating how big the illicit trade is in Australia, it’s easy for some of the Health organisations to sit back and say it’s not that big an issue, but has anyone actually taken the time to be out in the retail environment looking at what goes on and how much of a problem it is. Another concern is that the major tobacco companies in the world are very tightly controlled in regards to what goes into the making of tobacco products. At no stage have health checks been conducted on

any of the illicit trade to establish what goes into these products and determine the health risk to consumers.

In summary, millions of dollars are being lost by retailers losing sales, manufacturers losing sales and the government losing taxes and all because of the illicit trade and the amount of this illicit stock in the market is significantly increasing, with many consumers moving to this product due to pricing. Something does need to be done and although the government has now realised there is an issue, there aren't enough penalties being enforced for parties involved in selling illicit product.

The tobacco manufacturers request to share information on retailers selling illicit trade, is a valid one. In the circumstances of 'covert purchases' the matter is fully documented and a retailer is not penalised for the first instance, merely advised that the product they were selling is illegal. It is only after the second and third covert purchases that demonstrate illicit product is available in the outlet, is the outlet then reviewed as a concern. As a Franchise with a large number of tobacco Franchisees, we view that as fair and reasonable and can't see why the three major tobacco manufacturers could not work together on this model. The issue of whether they stop supply to an outlet is not actually that big an issue, as retailers can still source this stock elsewhere. The most important part in all this is that all three manufacturers become aware of problem stores participating in illicit trade so they don't reward these stores with any additional activities.

We request the ACCC to reconsider the application, as something does need to be done about the significant quantity of illicit product in the Australian market. However if the ACCC believes there are still some concerns, we would recommend either investigating the issue further before making final decisions, or alternatively suggesting other measures that could be used to help control the illicit trade in the retailing environment.

Should you require any further information, please do not hesitate to contact me.

Regards



Cristie Bowler

**Operations Manager**