

Our Ref: 60742
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**Australian
Competition &
Consumer
Commission**

3 May 2017

Mr Eddie Scuderi
Partner
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By email: eddie.scuderi@corrs.com.au
CC: james.cameron@corrs.com.au

Dear Mr Scuderi

**British American Tobacco & Ors applications for authorisation A91556 – A91557 –
invitation for final submission**

I refer to the Australian Competition and Consumer Commission's (the ACCC) draft determination in relation to the above listed applications for authorisation, released on 15 December 2016, and subsequent submissions made by interested parties.

I invite the Applicants to make a submission in response to issues raised by interested parties, should they wish to do so.

In addition, please provide responses to the issues outlined below.

- In relation to the revised methodological approach outlined in the Applicants' submission of 15 March 2017, please provide information as to:
 - whether the revised methodology has been utilised by any of the Applicants in their surveillance activities to date, and if so the how effective they have found the approach to be
 - how the investigation would remain covert, given the proposed use of photographic, video and audio evidence
 - the robustness of the proposed revised methodology if evidence gathered in this manner were challenged during a mediation or arbitration process.
- In the Applicants' submission of 19 January 2017 they outlined a proposal to notify relevant law enforcement agencies of any evidence of illicit tobacco and to refrain from taking any action in circumstances where a law enforcement agency requests it. Would the Government's interpretation of the restrictions imposed by Article 5.3 of the World Health Organization's Framework Convention on Tobacco Control prevent law enforcement agencies from requesting the Applicants to not taking any action with respect to a particular retailer? Would this significantly impact the effectiveness of the Applicants' proposal in practice? Have the Applicants discussed this proposal

with any law enforcement agencies, and if so have they provided any indication as to whether they consider this approach satisfactory?

- Please provide more information on the experience of individual Applicants acting unilaterally in attempts to reduce the volume of illicit tobacco products being sold by retailers. In particular, information about the following:
 - instances where one of the Applicants detected illicit tobacco being sold but decided *not* to withhold supply from that retailer due to concerns that one or both of the other Applicants would 'fill the gap' by supplying more tobacco products to that retailer
 - instances where one of the applicants *did* withhold supply due to sale of illicit tobacco, but this action was unsuccessful in disciplining the retailer because one or both of the other Applicants filled the gap by supplying more tobacco products to that retailer
 - Based on the Applicants' experience and research, if a customer was told by their regular tobacco retailer that their preferred brand of tobacco product was unavailable (due to supply of it being withheld), is it more likely that such a customer would continue to shop at that retailer in future but buy an alternative brand tobacco product, or instead switch future purchases to another retailer who stocks their preferred brand?

Please provide your written response to this request by **COB 11 May 2017**.

A copy of this letter will be placed on the ACCC's public register.

If you wish to discuss any aspect of this matter please do not hesitate to contact Hannah Ransom on (02) 6243 1255.

Yours sincerely



David Jones
General Manager
Adjudication