

16 May 2022

To Mr Simon Bell
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Mergers, Exemptions & Digital
Australian Competition & Consumer Commission
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Dear Simon, Gavin and Connie

7-Eleven Australia Pty Limited and 7-Eleven Stores Pty Limited — Notification of resale price maintenance under section 93 of the Competition and Consumer Act 2010 (Cth)

We refer to:

- the submission in support of the resale price maintenance notification lodged by 7-Eleven Australia Pty Limited and 7-Eleven Stores Pty Limited (together, **7-Eleven**) on 28 January 2022;
- your email dated 24 February 2022 requesting information from 7-Eleven and our letter in response to your email dated 11 March 2022 (**First RFI Response**);
- your email dated 5 April 2022 requesting further information from 7-Eleven (**Second RFI**), our letter in response to your email dated 22 April 2022 (**Second RFI Response**); and
- your email requesting further information from 7-Eleven dated 3 May 2022 (**Third RFI**).

We are instructed to provide the following responses to the Third RFI, which are set out below each of the questions in your email.

Rationale / reasons for the notified conduct

As discussed in our call on 29 April, we seek further information to understand the rationale/reasons for the notified conduct.

1. **Please provide any contemporaneous documents that explain that configuring 7-Eleven's ERP system without the functional limitation which means that the ERP system cannot accommodate more than two different price points per product per state (except in far North Queensland), as described in 7-Eleven's 22 April 2022 submission, would be commercially unfeasible.**

A. Documents relating to the feasibility of "clustering"

The document at Confidential Annexure A is a presentation produced in October 2021 by 7-Eleven, in conjunction with Boston Consulting Group (**BCG**), analysing the potential implications and requirements if 7-Eleven were to introduce six different price points based on "clusters" (referred to throughout the document as "clustering").

The document at Confidential Annexure B summarises the different profiles that were proposed to be the respective target markets for each of the clusters.

7-Eleven is still in the process of considering the potential implications and requirements of the clustering approach at a strategic level, and no decision has been made on these proposals.

7-Eleven notes that, absent the notification, avoiding resale price maintenance while engaging in the notified conduct is not just a matter of having an ERP system that can accommodate more than two different price points per product per state. In fact, absent the notification, the only way 7-Eleven could theoretically engage in the notified conduct while avoiding resale price maintenance conduct would be to allow each of its franchisees to have complete discretion over the prices of the products sold in their stores. Presently, there are c.500 different franchisees operating one or more stores in Australia so this would require 7-Eleven introducing c.500 price points nationally.

The resourcing burden on 7-Eleven associated with doing this would be exponentially larger than the scenario of introducing six price points which is considered in Confidential Annexure A and Confidential Annexure B.

B. Documents relating to the resourcing burden arising from the current promotional process, as discussed in 7-Eleven's response to question 2 of the Second RFI

The document at Confidential Annexure C is the store guide provided by 7-Eleven to store operators for the month of March 2022. Pages 2 to 4 of Confidential Annexure C list the promotions which are to apply during that month.

The document at Confidential Annexure D is an email from September 2021 from the manager of the store technology support (**STS**) team at 7-Eleven who is responsible for managing complaints from store operators in relation to errors with scanning promotional products. The email analyses the number and situations in which those errors arose in the preceding six-month period.

As discussed in the response to question 2 in the Second RFI Response, the resourcing burden on 7-Eleven arising from manually inputting promotional data and responding to consequent errors, both of which result from the limitations of the current ERP system, is substantial. This burden is a significant reason why it would be commercially unfeasible for 7-Eleven to introduce even more complexity into the promotional process by accommodating more than two different price points per product per state (except in Far North Queensland).

Replacing the ERP system

We note that 7-Eleven's 22 April 2022 submission explains why 7-Eleven considers that if the notified conduct is permitted this will not reduce 7-Eleven's incentives to replace the current ERP system. The main focus of this submission is the general limitations of 7-Eleven's current ERP system.

As noted in the ACCC's 5 April 2022 information request, being able to engage in the notified conduct may impact 7-Eleven's decision if/when the ERP system is replaced about what sort of system to replace it with (i.e. it may obviate the need to develop or deploy a system in the future that can accommodate more than two price points).

2. Please outline in detail 7-Eleven's views about the impact of the notified conduct on 7-Eleven's longer term incentives to develop solutions to the functional limitations *that avoid the need to engage in the notified conduct*.

The ACCC asked the same question in the Second RFI.

7-Eleven maintains the position explained in the Second RFI Response that 7-Eleven has strong incentives to develop solutions to the functional limitations that avoid the need to engage in the notified conduct.

In relation to these incentives, 7-Eleven would be open to the ACCC imposing a time limitation that 7-Eleven is only permitted to engage in the notified conduct for a period of 6 years from the date on which that notice is given.

The effect of such a limitation would be that, after the expiry of the 6-year period, 7-Eleven would be in breach of the prohibition on resale price maintenance if it were to engage in the notified conduct.

7-Eleven considers that 6 years is an appropriate period to allow it to develop solutions to the functional limitations that would allow 7-Eleven to avoid the need to engage in the notified conduct, given:

- (a) as discussed in the First RFI Response and the Second RFI Response, 7-Eleven's current technological roadmap includes plans to upgrade its POS and ERP system in a staged and systematic manner, noting the ERP system reaches its end-of-life in the 2027 financial year; and
- (b) the 6-year period includes a reasonable buffer to account for the possibility that 7-Eleven's plans to upgrade its ERP system are delayed beyond the 2027 financial year (which is not foreseen but is common for large-scale projects to upgrade the enterprise technology of a business of 7-Eleven's size).

In addition, 7-Eleven undertakes to withdraw the notification if it develops solutions to the functional limitations that avoid the need to engage in the notified conduct before the expiry of the 6-year period.

For convenience, 7-Eleven's response to this question in the Second RFI Response is included below:

"For the reasons already outlined above, irrespective of whether the Notified Conduct is permitted, there is no likelihood that 7-Eleven's incentives to replace the current ERP system will be reduced.

7-Eleven considers that it must develop a solution to the functional limitations of its ERP system to grow as a business and reach its strategic goals. In particular, 7-Eleven recognises that it will only be able to reach its goals if it:

- (a) *continues to offer value-for-money to customers, which is critical to 7-Eleven's business model and its ability to compete with other convenience retailers. The inability to discount through its eCommerce platforms as they gain scale will impact customers' perception of 7-Eleven as a convenience retailer offering value-for-money. 7-Eleven recognises that, unless it can develop a solution that allows discounting through eCommerce platforms, it will lose market share to its competitors, who will also be heavily investing in a convenient and compelling digital experience;*

- (b) *automates in-store manual processes. 7-Eleven expects its in-store transactions to triple by 2030. 7-Eleven will only be able to manage this if it invests in updating its core systems (i.e., ERP and POS systems) to enable automation of previously manual processes, such as the manual markdown process described in response to question 2, which will allow staff to allocate their time to serving more customers;*
- (c) *minimises the substantial resources currently allocated to launching promotions, which result from the functional limitations in the ERP system. As discussed in the response to question 2, 7-Eleven currently spends considerable resources each month manually inputting and reviewing promotional data in its ERP system. This is not sustainable and the scope for human error during this process is large. Reducing the complexity of launching a promotion through 7-Eleven's ERP system by automating those processes or enhancing the technological capability of its ERP system would materially contribute to 7-Eleven's growth ambitions; and*
- (d) *minimises the negative effects of the ERP's end-of-life constraints on the performance of other internal systems (e.g., the POS) and on the customer experience. Replacement of the system will be necessitated by the fact that maintenance support for the ERP system will diminish as it reaches its end-of-life.*

"These substantial incentives to develop solutions to the functional limitation outweigh any incentive 7-Eleven would have to rely on the notification and not develop those solutions. It is not in 7-Eleven's interests, nor the interests of its franchisees or customers, for it not to develop solutions to the functional limitations it is currently experiencing. Accordingly, 7-Eleven has already commenced the process of overhauling its enterprise technology software, starting with the POS upgrade, which will be followed by an ERP upgrade, as evidenced by the documents at Confidential Annexure B and Confidential Annexure C.

In addition to the parts of Confidential Annexure C referred to in the response to question 4 above, we refer to:

- (a) **(Page 28) [Confidential]**
- (b) **(Page 30) [Confidential]**
- (c) **(Page 31) [Confidential]**

To the extent that the ACCC requires further details regarding 7-Eleven's incentives (if the ACCC allowed the notification to stand) to develop solutions to the functional limitations that avoid the need to engage in the notified conduct outlined in the Second RFI Response, we note the following:

- paragraph (a) above explained the need for 7-Eleven to develop a solution to the functional limitations of the ERP system that allows store operators to offer discounts on products sold through its eCommerce platforms. Such a solution would avoid the need to engage in the notified conduct because if store operators were able to offer discounts on products sold through its eCommerce platforms that are specific to their own store, then that would necessarily mean that 7-Eleven is not engaging in the notified conduct.
- paragraph (b) above explained the need for 7-Eleven to update its ERP system so that it enables automation of current manual processes, including the manual markdown process described in the response to question 2 of the Second RFI. Giving store operators the ability to sell discounted products via an automated process (i.e., without having to manually change the price of the product at the physical checkout) would necessarily require an ERP system that allows stores to sell products (including through eCommerce platforms) at prices that are different to those

recommended for that product by 7-Eleven. Accordingly, 7-Eleven would not be engaging in the notified conduct.

- paragraph (c) above explained the need for 7-Eleven to update its ERP system so that it allows for the input of promotional data in a less resource-intensive way than is currently required, either by automating those processes or boosting the technological capability of its ERP system; and
- paragraph (d) of that response explained the need for 7-Eleven to update its ERP system so that it minimises the negative effects of performance issues caused by end-of-life constraints, including diminishing maintenance support from the ERP provider, SAP.

In sum, 7-Eleven:

- (a) has strong incentives to adopt or develop an improved ERP system *that avoids the need to engage in the notified conduct*;
- (b) irrespective of whether the notified conduct is permitted, there is no likelihood that 7-Eleven's incentives to replace the current ERP system will be reduced. 7-Eleven is committed to developing an improved system that will ultimately benefit the end consumer;
- (c) even if 7-Eleven did have an incentive to rely on the notification to not replace its ERP system, or to replace it in a way that does not avoid the need to engage in the notified conduct (which is not the case), that incentive is outweighed by the strong incentives 7-Eleven has to adopt or develop an improved ERP system *that avoids the need to engage in the notified conduct*; and
- (d) 7-Eleven only seeks the benefit of the notification for a period of 6 years from the date on which the ACCC allows it to stand. This timeframe reflects 7-Eleven's targeted commercial timeline to develop solutions to the functional limitations that avoid the need to engage in the notified conduct within 6 years.

Claim for confidentiality

The information in this letter labelled **[Confidential]** and in red text and the Annexures are confidential to 7-Eleven and/or 7-Eleven's franchisees.

If the confidential information were to become publicly available, 7-Eleven and 7-Eleven's franchisees would likely suffer commercial detriment and, in relation to some of the information, be exposed to proceedings for breach of their contractual and equitable obligations of confidentiality.

7-Eleven requests, pursuant to section 89(5) of the Act, that the confidential information described above be excluded from the ACCC's public register.

Further, 7-Eleven considers that the confidential information described above relates to the ACCC's core statutory function of administering and enforcing the Act.

Accordingly, 7-Eleven considers that the information comprises "*protected information*" as defined by section 155AAA(21)(a) of the Act.

Please contact us if the ACCC would like any further information.

Thank you for your assistance.

Yours sincerely



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