

22 April 2022

To Mr Simon Bell
Assistant Director | Competition Exemptions |
Mergers, Exemptions & Digital
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601
simon.bell@accc.gov.au

Copy gavin.jones@accc.gov.au
exemptions@accc.gov.au

Dear Simon

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, our letter in response to your email dated 11 March 2022 (**First RFI Response**) and your email dated 5 April 2022 requesting further information from 7-Eleven (**Second RFI**).

Before responding to the Second RFI, 7-Eleven reiterates that its current ERP system is not fit for purpose. 7-Eleven has strong incentives to upgrade its ERP system and is commercially committed to doing so. As is prudent in the case of major (and business-critical) information technology projects, the upgrades will be undertaken by 7-Eleven in a staged and systematic manner to ensure that its current systems are not impacted as it undertakes the requisite upgrades. Until 7-Eleven is able to replace its current ERP system, absent the Notification, it will be unable to fully implement its strategic goals and, critically, it will be unable to offer franchisees and customers the benefits of a digital customer experience. This is a significant public benefit.

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

Definition of eCommerce platform for the purposes of the Notification

In response to a request from the ACCC, 7-Eleven's letter dated 11 March 2022 defines an eCommerce platform as:

... a technology through which customers can purchase 7-Eleven products at a price that cannot be manually reduced by a store operator.

It appears that this definition could, in the future, apply to technologies beyond the types of eCommerce initiatives identified in section 4 of 7-Eleven's 28 January 2022 submission in support of the notification. Specifically, defining an eCommerce platform by reference to a technological limitation of the platform through which the transaction is processed means that the notified conduct could apply to other sales channels which in the future might be subject to that limitation (for example purchases at the physical checkout in store) if changes were made to the system for processing such transactions. Particularly as, as discussed below, the notified conduct appears to reduce or remove incentives to avoid this type of functional limitation.

We note that 7-Eleven has not indicated that it has any such intention. However, the ACCC must assess the notified conduct on the basis that the full scope of the notified conduct, as defined, will be engaged in.

1. For the avoidance of doubt please:

- a. provide a definition of eCommerce platform, or another description of the notified conduct, that limits the instances in which 7-Eleven proposes to engage in the notified conduct in accordance with the intention reflected in 7-Eleven's 28 January 2022 submission (for example, eCommerce platforms that employ a technology that does not allow prices to be manually reduced by the store operator), or
- b. if 7-Eleven wishes for the legal protection provided by the notification to extend beyond eCommerce initiatives such as those described in 7-Eleven's 28 January 2022 submission, explain this.

For the purposes of the Notification, an "eCommerce platform" is:

- (a) a customer-facing technology that allows customers to purchase a product directly (i.e., without the assistance of an employee); and
- (b) which operates using technology that does not allow store operators to manually alter the price charged to the customer for the product being purchased.

For the avoidance of doubt, the Notified Conduct:

- (a) would never include purchases by customers at the physical checkout in store. This is because purchases at the physical checkout require the assistance of an employee to carry out the transaction (for example, to scan and charge the customer);
- (b) includes each of the eCommerce platforms described in sections 4.1 to section 4.5 of the Notification, namely:
 - (i) Pay & Go;
 - (ii) Digital Screen food ordering;
 - (iii) 'Micro Market' stores;
 - (iv) 7-Eleven's proprietary eCommerce platform; and

- (v) Third-party marketplaces (other than those which operate using their own technology that allows store operators to manually reduce the price charged to the customer for the product being purchased, such as **[Confidential]**); and
- (c) may include future eCommerce platforms, other than those specified in section 4.1 to section 4.5 of the submission in support of the Notification. These include eCommerce platforms that 7-Eleven has not yet considered for implementation that operate using technology that does not allow store operators to manually alter the price charged to the customer for the product being purchased through the eCommerce platform (as described in section 4.6 of the Notification). We note the ACCC's observation that the Notified Conduct appears to reduce or remove incentives to avoid this type of functional limitation. We have addressed this observation in the response to question 5 below.

Limitations of 7-Eleven's enterprise resource planning system

7-Eleven's letter of 11 March 2022 states, in response to question 3, that a range of the eCommerce platforms described in the notification are affected by a functional limitation which means that:

7-Eleven's core enterprise resource planning (ERP) system cannot integrate with the eCommerce platform in a way that would allow store operators to manually override the price set by 7-Eleven for that product. This is because 7-Eleven's core ERP system cannot accommodate more than two different price points per product in each state (for example, one for regional stores and one for CBD stores).

The ACCC notes that section 5.1 of 7-Eleven's original submission in support of the notification identifies two technical limitations that 7-Eleven submits make it necessary to engage in the notified conduct in offering the 'Pay & Go' service. These are administrative burdens for the store operator and challenges for 7-Eleven in reconciling inventories. The functional limitation explained in 7-Eleven's 11 March 2022 submission is not directly identified.

Similar, section 5.2 of the 28 January 2022 submission directly contemplates the administrative burden that would arise from the need for 7-Eleven to continually vary prices on the platform by product and by store, based on inputs from each operator of a store.

2. The ACCC infers from 7-Eleven's 11 March 2022 submission that the statement noted above that 7-Eleven's core ERP system cannot accommodate more than two different price points per product in each state relates only to when the ERP system integrates with particular eCommerce platforms. That is, it does not apply for example to purchases at the physical checkout in store. Please confirm if this is correct, or alternatively, if the limitation on the operation of the ERP system is broader than this, how more than two different price points are currently accommodated for purchases through other channels?

The statement above that 7-Eleven's core ERP system cannot accommodate more than two different price points per product in each state relates to all purchases made through 7-Eleven's ERP system, including purchases at the physical checkout in store.

A. Qualification

The only qualification to this statement is that 7-Eleven will be introducing an additional price point for products sold in Far North Queensland (**FNQ**) stores, the first of which will open in Townsville in June

2022. This means that 7-Eleven will accommodate three price points per product in FNQ. The introduction of this additional price point is dictated by the geographic constraints of FNQ, and the fact that 7-Eleven is required to incur additional delivery costs and partner with new suppliers and vendors just so that it can augment the 7-Eleven supply chain in order to accommodate supplying its products to customers in FNQ.

B. Clarification

7-Eleven wishes to clarify that its core ERP system (i.e., SAP) technically allows for more than two prices per product per store, however, because of 7-Eleven's monthly promotional cycles, it is commercially unfeasible for 7-Eleven to utilise this functionality. This is because every time 7-Eleven introduces a promotion, a team member must manually load into the ERP system the new promotional price of each product that is within the scope of the promotion, as well as the price of combinations of products, if relevant (i.e., if the promotion is "any 3 products for \$11", there are multiple combinations of products which would qualify for the promotion, the price of each of which must be manually adjusted in the ERP system). Depending on the promotion and products involved, there could be up to 25 to 35 products that customers could select from. Because each possible product combination requires a separate manual adjustment to be loaded into the ERP, a promotion incorporating any 3 of 25 different products would require the manual entry of about 2,300 different price points.

7-Eleven typically offers between 60 and 100 promotions a month. In March 2022, 7-Eleven offered 93 promotions and, in the last 12 months, 1 in 3 products was sold on promotion. Currently, the burden on resourcing, as well as on the capacity of the ERP system itself, is considerable. 7-Eleven estimates that it takes 120 hours to set up the promotional program each month, including inputting the pricing data in the ERP system, producing the product barcodes and sending the data to the stores via the Point of Sales (**POS**) system (which is equivalent to 15 business days for 1 full-time employee). The manual process also leads to errors and significant resources being allocated to fix them. In fact, of all the issues that 7-Eleven's store technology support team address, the highest number relate to errors in product data for promotions.

The resourcing burden would be commercially unfeasible if 7-Eleven elected to offer store-specific pricing — rather than just changes to the two price "books" offered in each state, each promotion would necessitate a manual change to every relevant product in every store's price book, while the scope for error would increase considerably. Accordingly, 7-Eleven has configured its core ERP system to allow only two different price points per product per store (except in FNQ, as noted above).

In addition, the technological systems which integrate with 7-Eleven's core ERP system (e.g., the POS system) have been set up to account for this functional limitation. As a result, those systems' capacity to manage more than two price points per product in each state is completely untested. If 7-Eleven were, hypothetically, to increase the number of price points to the number of stores in the 7-Eleven network (as would be required to offer store-specific pricing), those systems would likely experience serious delays or faults, especially when a transaction involves a product subject to a promotional pricing rule. Delays and faults at the POS system would cause frustration for franchisees and customers.

Given the number of promotions offered and number of products sold on promotion, introducing additional complexity to the ERP system (and therefore the promotional process) has the potential to significantly hinder the customer experience, and 7-Eleven's ability to continue to offer such promotions to its customers. This is another reason that configuring the ERP system without the functional limitation is commercially unfeasible.

C. Current process for multiple price points

Currently, multiple price points for the same 7-Eleven product are accommodated for purchases at the physical checkout through a manual override process relying on generic price stickers. If a store operator wants to sell a product at a price that is different to the price at which the product is set in the ERP system, they must manually place a price sticker (without a barcode) on the product. When the product is purchased at the physical checkout, the store operator scans the product at the price set for the product in the ERP system but manually overrides that price and charges the customer the price indicated by the sticker.

Another way that more than two different price points for the same 7-Eleven product can be accommodated is if the purchases are not processed through 7-Eleven's core ERP system and instead are processed using third-party technology that allows multiple price points to be assigned to a particular product. On these occasions, store operators can manually reduce the price charged to the customer. The only example is **[Confidential]** which uses its own transaction-processing system that allows for multiple price points (and therefore for store operators to manually reduce the price charged to a customer). This is why DoorDash is not an eCommerce platform the subject of the Notification.

3. Please provide:

- a. any contemporaneous documents that explain that 7-Eleven's core ERP system cannot integrate with certain eCommerce platforms (i.e. those affected by the functional limitation) in a way that can accommodate more than two different price points per product in each state, and**
- b. any response 7-Eleven wishes to provide to the ACCC's observations above about the absence of any specific information about this functional limitation in the submission in support of the notification.**

For completeness we note that we also have further questions about 7-Eleven's original submission that allowing store operators to set their own prices on the Pay & Go service would be time consuming and onerous for the store operator and create difficulties for 7-Eleven in reconciling product inventories.

However, we also note that if, as 7-Eleven submits in its 11 March 2022 submission, this eCommerce initiative could not proceed if 7-Eleven were unable to engage in the notified conduct, then such difficulties would not arise with or without the notified conduct. Accordingly, for the moment we are not seeking further information in relation to these points.

- (a) Confidential Annexure A contains a diagram showing the process by which product pricing files are loaded from SAP, 7-Eleven's core ERP system, to Magento (Adobe Commerce), which is the enterprise software that will process customer transactions made through eCommerce platforms the subject of the Notification. Because Magento's pricing files are drawn directly from SAP, which currently can only accommodate two different price points per product in each state, the eCommerce platforms the subject of the Notification will not be able to sell products to customers at multiple price points. 7-Eleven does not have any other documents which explain the functional limitation of its core ERP system.
- (b) In response to the ACCC's observations about the absence of any specific information about the functional limitation in the submission in support of the notification, 7-Eleven wishes to clarify, for the avoidance of doubt, that the two technical limitations that were discussed in the submission in support of

the Notification (i.e., administrative burdens for store operators and challenges for 7-Eleven in reconciling inventories) are a direct consequence of, and would not arise without, the functional limitation specified in the First RFI Response. On this basis, there is no inconsistency between the submission in support of the Notification and the First RFI Response. 7-Eleven elected to emphasise in the submission in support of the Notification the consequences of the functional limitation because they are the direct effects on 7-Eleven, its franchisees and its customers that have driven 7-Eleven to notify the ACCC about the Notified Conduct.

Replacing the core ERP system

In response to question 7, 7-Eleven's 11 March 2022 submission states that the only solution that 7-Eleven may be able to develop to avoid the need to engage in the notified conduct is a full replacement of its core ERP system.

[Confidential].

7-Eleven appears to be submitting that in the absence of the notified conduct, 7-Eleven's core ERP system may be incompatible with its goal to increase digital transactions.

4. Please outline in detail why any plans to replace the ERP system cannot be expedited, potentially avoiding the need for the notified conduct.

7-Eleven has identified several features of its current enterprise technological architecture which present significant hurdles to its strategic goals. One such feature is its ERP system (i.e. SAP). Another is its POS system. 7-Eleven has assessed that its POS system is presenting the greatest and most immediate hurdle to its strategic goals because it is currently exhibiting end-of-life constraints, blocking immediate customer value and preventing future improvements to the customer experience. Accordingly, 7-Eleven has prioritised—and has already commenced the process of—replacing its POS system. The document at Confidential Annexure B is a slide deck produced in April 2022 by the 7-Eleven team responsible for the upgrade of its POS system which details the progress and planning of the upgrade.

7-Eleven has also determined that it can only replace its ERP system after it has completed the replacement of its POS system. This is because the ERP and POS systems are the systems which are most critical to the operation of 7-Eleven's business; simultaneously replacing them would create a substantial risk of technological failure that, if it eventuated, would jeopardise 7-Eleven's ability to operate its business.

The document at Confidential Annexure C is a submission to the 7-Eleven board from August 2021 outlining 7-Eleven's enterprise technology roadmap. We refer to the following parts of the board submission which discuss the sequencing of the replacements of 7-Eleven's ERP and POS systems:

- (a) (Page 3) **[Confidential]**
- (b) (Page 9) **[Confidential]**
- (c) (Page 11) **[Confidential]**
- (d) (Page 24) **[Confidential]**

7-Eleven will need to undertake the upgrade of its ERP System in a staged and systematic manner to ensure that its current systems are not adversely impacted. Such an approach is necessary (and in accordance with prudent commercial practice) given the business-critical nature of these systems. Accordingly, it will require significant time to ensure each component of the upgrade is investigated and identified as fit for purpose, thoroughly tested and then brought online in a manner that does not adversely impact the current system.

We note that being able to engage in the notified conduct may reduce the incentives that would otherwise exist for 7-Eleven to replace its current ERP system, particularly given the protection provided by the notification, if allowed to stand, would be ongoing. It may also 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).

5. 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.

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]

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



Simon Cooke | Partner
King & Wood Mallesons

Level 27, 447 Collins Street
Melbourne VIC 3000

T [Redacted]

M [Redacted]

E [Redacted]