

# Application for Urgent Interim and Final Authorisation

Lodged by 7-Eleven Stores Pty Limited



NON-CONFIDENTIAL VERSION – RESTRICTION OF PUBLICATION  
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# Application for Urgent Interim and Final Authorisation

## 1 Application for Authorisation

### 1.1 Background and rationale for the Proposed Conduct

7-Eleven Stores Pty Limited (**7-Eleven** and the **Applicant**) seeks authorisation, including urgent interim authorisation, to engage in the following conduct (**Proposed Conduct**):

- (a) to approach some of its franchisees (who form part of 7-Eleven's network in Australia) (**Franchisees**), with the particular Franchisees yet to be identified; and
- (b) to enter into arrangements with those Franchisees, should the Franchisee be willing, to either temporarily close or reduce the trading hours certain stores (**Stores**) either operated by some of the Franchisees, as well as those operated by itself (or through its sister entity, Convenience Holdings Pty Limited).

The purpose of the Proposed Conduct is to assist 7-Eleven and its Franchisees to respond to and endure the COVID-19 pandemic in a cost-efficient manner, while supporting customers of the Stores. The Proposed Conduct will assist the business continuity of 7-Eleven and its Franchisees for the duration of the pandemic and as the economy recovers from the effects of the pandemic.

As the Commission will be aware, the retail sector (including the convenience retail sector in which 7-Eleven and its Franchisees operate) has been particularly hard hit by the ongoing pandemic, with no signs of reprieve for some months.

Government-mandated lockdowns and social distancing measures which require people to stay at home except in very limited circumstances will not be lifted for at least the next three months (in the case of New South Wales, for example) and the economic effects of the pandemic, in terms of reduced consumer demand, rising unemployment and reduced income levels are likely to persist for a considerable period even after these measures are lifted.

The COVID-19 pandemic has, to date, resulted in 7-Eleven and its Franchisees experiencing considerable financial hardship. 7-Eleven and its Franchisees have experienced an immediate and drastic fall in pedestrian traffic.

As a result, some of their Stores in Central Business Districts (**CBD**) have experienced a decrease of approximately [**CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES**] in their usual daily merchandise sales value due to customers self-isolating given the growing concerns around community transmission of COVID-19.

For example, [**CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES**].

This has translated to the Stores experiencing a severe and continuing decline in volumes of transactions and sales of merchandise as demonstrated by Figure 1 and Figure 2 below. Figure 1 and Figure 2 below highlight the Store segments which 7-Eleven considers to be the most affected by the COVID-19 pandemic.

Figure 1 shows that Non-Fuel Stores have experienced, on average, a [**CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES**] % decrease in average weekly volumes of transactions and [**CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES**] % decrease in average weekly revenue from sales of

merchandise compared to the average weekly volumes and revenue from the period between July and December 2019.

Similarly, Stores that sell fuel have experienced, on average, a [CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES]% decrease in average weekly volumes of transactions and an [CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES]% decrease in average weekly revenue from sales of merchandise over the same period.

**Figure 1: Average change in volumes and sales for the week commencing 30 March 2020 against the average weekly volumes and sales from the period between July to December 2019 for Stores operating in both comparison periods**

Store Category and Segment	Transaction Volumes	Merchandise Sales (\$)	Fuel Litres	Fuel Sales (\$)
Non-Fuel Stores	[CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES]			
Fuel Stores				

Figure 2 compares the average Non-Fuel Store performance over the last few weeks with the same period from last year. It shows that the Stores have experienced, on average, a decrease of [CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES]% in transaction volume and a decrease of [CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES]% in revenue from sales of merchandise compared to one year ago.

Similarly, Stores that sell fuel have experienced, on average, a [CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES]% decrease in volumes of transactions and an [CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES]% decrease in revenue from sales of merchandise over the same period.

**Figure 2: Average change in weekly volumes and sales for the period from 16 March to 5 April 2020 against the period from 18 March to 7 April 2019 for Stores operating in both comparison periods**

Store Category and Segment	Transaction Volumes	Merchandise Sales (\$)	Fuel Litres	Fuel Sales (\$)
Non-Fuel Stores	[CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES]			
Fuel Stores				

During the COVID-19 pandemic, consumers have been far more likely to make planned visits to supermarkets to buy necessities in larger volumes than they usually would in order to reduce exposure and to maintain social distancing efforts. This has reduced the frequency of unplanned buying behaviour which is typical of the customers of convenience goods and services sold by 7-Eleven and its Franchisees, who instead normally benefit largely from incidental pedestrian traffic and customers purchasing a smaller number of items than they would, even under normal circumstances, from a supermarket.

Additionally, some of the Stores operated by 7-Eleven and its Franchisees sell fuel. The ban on non-essential travel has resulted in a substantial decline in the



volume of fuel sold by approximately [CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES]% and exacerbated the financial hardship experienced by 7-Eleven and its Franchisees selling fuel.

Despite this, 7-Eleven and its Franchisees have continued to incur similar levels of operating costs as they did before the COVID-19 pandemic. In the case of 7-Eleven, this includes liabilities for rent and electricity of all Stores, and the wages for the staff in their corporate Stores. For Franchisees, this includes liabilities such as staff wages.

As a result, 7-Eleven has received requests from some of its Franchisees to review the need for certain Stores to remain open and/or to reduce the need for the Stores to remain open for 24 hours a day, 7 days a week.

Until the COVID-19 pandemic is over and Governments lift their lockdowns and social distancing-related measures, these circumstances are not expected to change.

In these unprecedented times, and in a continually evolving and fast-moving crisis, 7-Eleven is seeking to continue to support customers by ensuring they continue to have access to conveniently located 7-Eleven Stores in their local areas but to do so in an efficient way that assists to alleviate the financial difficulties experienced by its Franchisees and itself due to heavily reduced foot-traffic and consumer demand.

This is a question of long-term sustainability for certain of the Franchisees who are small businesses operators and who have sizeable external commitments (such as bank loan repayments).

7-Eleven considers the only way to minimise the financial hardship experienced by these Franchisees and to ensure they are best positioned to resume trading as normal following the crisis, is to engage in an immediate and continuous dialogue with them to ensure the roster of Stores that are within the same catchment area is operated in a way that supports the viability of those Stores into the future.

Further detail of the Proposed Conduct is set out in section 3 ("Proposed Conduct ") of this application.

## 1.2 Application for Authorisation and urgent Interim Authorisation

### (a) Authorisation

7-Eleven and some of its Franchisees compete to supply goods and services to consumers to the extent that they operate Stores located in the same geographic catchment areas.

7-Eleven therefore seeks authorisation under section 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**) as the Proposed Conduct may give rise to contraventions of sections 45, 45AF, 45AG, 45AJ and 45AK of the Act.

### (b) Term of authorisation sought

7-Eleven seeks authorisation to engage in the Proposed Conduct for a period of 6 months from the date of the Commission's final determination, noting that the Commission could under section 91B of the Act revoke the authorisation should there be a material change in circumstances such as will occur once the effects of the COVID-19 pandemic subside.

Should customer demand for convenience stores continue to be materially and adversely impacted as a result of the COVID-19 crisis following this period, 7-

Eleven may seek variation of the authorisation (should the Commission grant the authorisation) to extend the period in which it and its Franchisees can continue to engage in the Proposed Conduct.

(c) **Request for urgent Interim Authorisation**

Given the speed at which the COVID-19 crisis is evolving, and the financial hardship experienced by some 7-Eleven Franchisees to date (and which can only be expected to worsen as the crisis continues), 7-Eleven seeks urgent interim authorisation under section 88(1) of the Act with effect as soon as possible until final authorisation has been granted.

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## 2 Parties to the Proposed Conduct

### 2.1 Applicant

7-Eleven is a locally-owned private company with a license to operate and franchise 7-Eleven stores in Australia from the US-based 7-Eleven Inc. The majority of 7-Eleven's Stores are franchised by 7-Eleven and held by third party entities, many of whom are small business operators. 7-Eleven also operates its own corporate Stores, some of which are franchised and held by a sister entity of 7-Eleven, Convenience Holdings Pty Limited.

The 7-Eleven network in Australia comprises petrol and convenience stores across Australia, with over 700 stores in Victoria, New South Wales, the Australian Capital Territory, Queensland and Western Australia.

7-Eleven Stores emphasise convenience to the customer and sell products including, petrol, groceries, takeout foods and beverages, dairy products, non-food merchandise, specialty items and incidental services.

Further information about 7-Eleven can be found at <https://www.7eleven.com.au/>.

7-Eleven's contact details are:

7-Eleven Stores Pty Limited	
ACN	005 299 427
Address	2/658 Church Street, Richmond Victoria 3121
Contact Person	James Wyatt, General Counsel
Telephone	[REDACTED]
Email	[REDACTED]

### 2.2 Service of documents

King & Wood Malleons	
Name	Sharon Louise Henrick
Position	Partner, Head of Competition Law and Regulatory Group, Australia
Telephone	[REDACTED]

### 3 Proposed Conduct

The Proposed Conduct will, subject to the ACCC granting interim authorisation, involve 7-Eleven approaching some Franchisees and, if they agree, to enter into arrangements with them to temporarily close their Stores or reduce their trading hours based on customer demand and their financial viability.

The Stores targeted for temporary closure or a reduction in operating hours are likely to be determined based on criteria relating to their location, trading performance and operational requirements. This may include criteria such as:

- The Store has experienced a decline in merchandise sales to a certain extent (for example, [CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES]);
- The Store is currently trading at less than a certain amount (for example, [CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES]);
- The Store is located within a certain distance from another trading Store (which is more applicable to Stores located in the CBD); and/or
- The Store is not subject to any other operational requirements to continue trading.

The thresholds for each criterion may vary based on whether the Store sells fuel or not.

Where trading hours are reduced, Stores are likely to be closed from late evening to early morning, with the possibility of further reductions on weekends and/or public holidays depending on demand. In the usual course, they would be open either 24-hours, 7 days a week or for a specified time as provided under the relevant Store Agreement.

7-Eleven does not expect this change to impact customers materially because pedestrian traffic is typically very low during this window under normal circumstances but has been especially low during the pandemic.

The Proposed Conduct would also involve, subject to the ACCC granting interim authorisation, 7-Eleven and the relevant Franchisees directing customers from a closed Store to nearby Stores and providing information to customers about changes to the operating hours of the relevant Stores.

7-Eleven and its Franchisees will **not be engaging in any price coordination behaviour**. Under the terms of the Store Agreement, [CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES]. The Proposed Conduct does not affect this.

The Proposed Conduct is voluntary. Any Franchisee can opt out of the Proposed Conduct at any time and can choose not to take up 7-Eleven's offer of temporary closure or reduced trading hours. If the Franchisee wishes to resume ordinary operations prior to the expiry of the authorisation, 7-Eleven would not unreasonably withhold consent for them to do so.

### 4 Counterfactual

In the absence of the Proposed Conduct, 7-Eleven and its Franchisees would remain open in accordance with the terms of the Store Agreement – 24-hours a



day, 7 days a week or for a specified time as provided under the relevant Store Agreement.

Without being able to coordinate to determine whether certain of the 7-Eleven Stores should temporarily close or whether the opening hours should be scaled back based on customer demand and financial hardship, 7-Eleven and its Franchisees would be collectively operating more Stores than required to support the current demand for these Stores in many areas under substantial financial hardship.

This would be highly inefficient because of the unnecessary costs that 7-Eleven and its Franchisees would continue to incur.

Many of the Franchisees are small business operators who are at particular risk of needing to close their Stores permanently in the absence of the Proposed Conduct.

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## 5 Persons who may be directly impacted by the Proposed Conduct

The Franchisees who 7-Eleven approaches and who enter into an arrangement to temporarily close their Store or reduce their trading hours would be directly impacted by the Proposed Conduct.

The Franchisees operate their Store(s) in accordance with a confidential Store Agreement with 7-Eleven. The current version of this agreement and the relevant Exhibits and Addendums are provided collectively as **Confidential Attachment B**. Some of these Exhibits and Addendums apply to Stores that sell fuel and others apply to Stores that do not. Some Franchisees operate their Stores in accordance with earlier versions of this Store Agreement.

Relevantly, under the terms of the Store Agreement, **[CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES]**.

Under the Store Agreement between 7-Eleven and its Franchisees, **[CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES]**.

Where a Store's trading hours are temporarily reduced, **[CONFIDENTIAL TO 7-ELEVEN AND/OR FRANCHISEES]**.

For Stores that will be temporarily closed, 7-Eleven will also make an ex gratia payment to the relevant Franchisee to cover certain unavoidable costs. The details of this payment are still to be finalised.

7-Eleven may also consider providing further support to Franchisees should the need arise.

7-Eleven also seeks authorisation to approach any person that may become a Franchisee in the relevant period, in an abundance of caution although it seems unlikely at this point in time.

A list of all current Franchisees as of 9 April 2020 and their contact details is provided to this application as **Confidential Attachment C**.

Other persons who would be directly impacted by the Proposed Conduct include customers, suppliers and staff of 7-Eleven's Stores that are temporarily closed or have their trading hours reduced.

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## 6 Significant public benefits

The Proposed Conduct is a temporary and urgent measure aimed at preserving the viability of Stores that might otherwise be forced to close permanently.

### 6.1 Reducing the incidence of financial hardship and long-term closures

As stated in section 1 (“Application for Authorisation”) above, pedestrian traffic and volumes sales and revenues have drastically declined while 7-Eleven and its Franchisees continue to incur their existing operating costs. This has led many of the Franchisees (who are small business operators) to experience considerable financial hardship and the viability of their Stores to be substantially compromised.

By engaging in the Proposed Conduct, 7-Eleven and its Franchisees would effectively be servicing reduced customer demand through fewer Stores in areas that cannot support the current number of Stores and minimising overhead costs by doing so.

In the longer term, the Proposed Conduct would have a significant and clear public benefit, as 7-Eleven and its Franchisees may otherwise eventually be forced to permanently close Stores in areas where the very low levels of demand are unnecessarily and inefficiently distributed amongst the 7-Eleven Store network. Instead, by temporarily closing or reducing the operating hours of certain Stores, the Franchisees’ Stores stand a better chance of withstanding the financial pressures created by the COVID-19 pandemic over the longer term.

This mitigation of financial difficulty is also critical to supporting Franchisees who are currently suffering mental hardship as a result of dealing with the operational difficulties of sustaining Stores experiencing a significant reduction in sales volumes, sitting idle due to low Store traffic and managing staff in these difficult times.

### 6.2 Improving the ability of Stores to resume normal trade

The Proposed Conduct will place Stores across 7-Eleven’s network in a better position to resume normal trading once the effects of the COVID-19 pandemic subsides.

### 6.3 Reducing the need for staff travel

The demand on staff to travel to Stores (in circumstances where it is inadvisable that they do so for non-essential reasons) would also be mitigated by temporarily closing Stores or scaling back trading hours.

### 6.4 Consumer benefits

The long-term business survival of each Store is a clear benefit to consumers once the COVID-19 pandemic subsides.

In the absence of the Proposed Conduct, the ability of the 7-Eleven network to supply of goods and services to the public once the pandemic subsides is compromised if 7-Eleven Stores are not viable in the interim and need to be closed permanently.

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## 7 No or limited detriment to competition

7-Eleven submits that the public benefits arising from the Proposed Conduct will outweigh any public detriments as:



- the Proposed Conduct does not affect inter-brand competition. That is, 7-Eleven branded stores will continue to compete against other convenience stores;
- the Proposed Conduct excludes any price coordination behaviour;
- customer access to conveniently located 7-Eleven Stores should not be materially compromised as the temporary closures and reduced operating hours will primarily apply to instances where there are multiple underutilised 7-Eleven Stores in close proximity;
- any reduction in trading hours is likely to be limited to late evening to early morning, which will have a very limited impact on customer access to 7-Eleven Stores because pedestrian traffic is typically very low during this period under normal circumstances, but has been especially low during the pandemic;
- the duration of the Proposed Conduct is no longer than necessary. 7-Eleven has applied for a six-month period from the date of the Commission's final determination and the Proposed Conduct can be discontinued if the effects of the pandemic on 7-Eleven and its Franchisees subside at an earlier date; and
- the Proposed Conduct is conducted on a voluntary basis so that any of the Franchisees that are approached by 7-Eleven can cease/or begin their participation in the Proposed Conduct at any time. If the Franchisee wishes to resume ordinary operations prior to the expiry of the authorisation, 7-Eleven would not unreasonably withhold consent.

In short, the authorisation that 7-Eleven is seeking is a temporary measure, which seeks to maintain the viability of its Stores and those of its Franchisees during the current emergency and is highly unlikely to materially alter the competitive dynamics of the industry beyond the duration of the current crisis. Once the effects of the COVID-19 crisis subside and pedestrian traffic and customer demand is restored to more typical levels, 7-Eleven and the relevant Franchisees will cease engaging in the Proposed Conduct at that time.

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## 8 Confidentiality

Any information contained in this application and Attachments to the application that are marked Confidential, is confidential to the Applicant and/or the Franchisees.

If the confidential information were to become publicly available, the Applicant and/or the Franchisees would likely suffer commercial detriment and, in relation to some of the information, be exposed to proceedings for breach of its contractual and equitable obligations of confidentiality.

The Applicant requests, pursuant to section 89(5) of the Act that the confidential information described above be excluded from the Commission's public register.

Further, the Applicant considers that the confidential information described above relates to the Commissions' core statutory function of administering and enforcing the Act.

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

### **Declaration by Applicant**

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).

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James Wyatt

General Counsel, 7-Eleven Stores Pty Limited

This 9th day of April 2020

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James Wyatt

General Counsel, 7-Eleven Stores Pty Limited

This 9th day of April 2020

Signed on behalf of James Wyatt on 15 April 2020

  
Sharon Henrick | Partner, Head of Competition Law & Regulatory, Australia  
King & Wood Mallesons