

7-Eleven Stores Pty. Ltd.

13/11/08

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13 November 2008

General Manager - Adjudication
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Sir/Madam

Notification of third line forcing conduct

On behalf of 7-Eleven Stores Pty Ltd (ABN 48 005 299 427) (**7-Eleven**).

We enclose:

- notification under section 93(1) of the *Trade Practices Act 1974 (TPA)*; and
- a cheque in the amount of \$100 as payment of the required fees.

If you have any questions in relation to this notification or require any further information, please do not hesitate to contact John Pettit of our office.

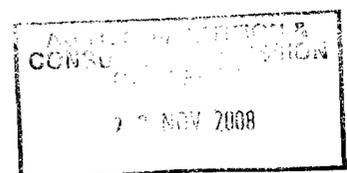
Yours faithfully

A handwritten signature in black ink, appearing to read 'Greg Neave', with a long horizontal stroke extending to the right.

Greg Neave
Company Secretary
7-Eleven Stores Pty. Ltd.

New South Wales

Queensland



Annexure 1

1. Background

- 1.1 7-Eleven owns and operates a series of convenience retail stores throughout Australia, some of which offer motor spirit (all grades), diesel and liquefied petroleum gas for sale to consumers in Australia.

Nature of the proposed conduct

- 1.2 7-Eleven is proposing to enter into a fuel discount scheme arrangement with Crown Melbourne Limited (**Crown**), under which 7-Eleven will offer a discount on the standard purchase price of automotive fuel and automotive LPG (**Fuel**) purchased in Victoria at 7-Eleven convenience stores to customers who are members of Crown's customer loyalty card scheme known as "Crown Club" and acquire gaming and/or entertainment services from Crown of a specified value, or to customers who choose to become a member of Crown's customer loyalty card scheme. In order to redeem the Fuel discount, 7-Eleven customers must present a valid 'scheme token' issued by Crown.
- 1.3 7-Eleven intends to offer the relevant discount on Fuel purchased from 7-Eleven Stores in Australia during an initial period from 16 December 2008 to 31 March 2009 (**Trial Period**). The discount scheme will continue after the Trial Period, unless it is terminated by mutual agreement between Crown and 7-Eleven before the end of the trial.
- 1.4 The percentage amount of the fuel discount will be determined by Crown and recorded on the scheme token. The discount will only be available for cash or credit card purchases of Fuel and cannot be used in conjunction with any other Crown or 7-Eleven promotions.
- 1.5 The availability of the Fuel discount under the Crown customer loyalty card scheme will be advertised via promotional materials provided by Crown. Crown will notify existing and potential customers of the Crown loyalty scheme via promotional materials including but not limited to a range of pamphlets, signage and newsletter articles, as determined by Crown during the Promotional Period.
- 1.6 7-Eleven intends to offer the Fuel discount to customers that are members of the Crown customer loyalty scheme and who acquire gaming and/or entertainment services of a specified value at Crown, and to customers who choose to become a member of the Crown customer loyalty scheme, which conceivably raises a technical third line forcing issue (as discussed below).

2. Notified Conduct

- 2.1 Out of an abundance of caution, in order to minimise the risk of contravening sections 47(6) and (7), our client wishes to notify the conduct under section 93(1) of the TPA. The conduct is set out in Form G.

3. Competition issues

- 3.1 7-Eleven submits that the Commission should not serve a notice under section 93(3A) of the TPA because:

- (a) the conduct in question will not adversely affect competition in any relevant market; and
- (b) the conduct in question will result in public benefits and no identifiable public detriment.

3.2 It is highly unlikely that the proposed conduct could have any adverse affect on competition in any relevant market. We consider the markets primarily relevant to the assessment of this notification include markets for the supply of gaming and entertainment services in Victoria and the retail market for Fuel in Victoria.

3.3 Both of these markets are highly competitive and characterised by relatively low barriers to entry. There are a large number of Fuel retailers and gaming/entertainment service providers competing in the Victorian market. The conduct will not create any barriers to entry or otherwise harm competition in the relevant market. Further information in relation to these markets can be provided to the Commission, if requested.

Public benefits

3.4 Crown customers who participate in Crown's loyalty card scheme and acquire gaming and/or entertainment services of a specified value, or who choose to become a member of the loyalty card scheme, are entitled to a discount on Fuel purchased from 7-Eleven Stores in Victoria.

3.5 The notified conduct is a common form of sales promotion, under which Crown is seeking to compete by offering incentives to customers who participate in or join the loyalty card scheme to increase membership of the scheme and sales of its services in Victoria.

3.6 The proposed conduct will generate a number of public benefits for consumers of Fuel and gaming and/or entertainment services in Victoria. These include:

- (a) providing Crown and 7-Eleven customers with an opportunity to benefit from lower petrol prices;
- (b) encouraging innovative, non-price competition from other retailers of Fuel in order to attract and retain custom

Public detriment

3.7 We submit that the proposed conduct is not likely to cause any identifiable detriment to the public.

3.8 The conduct in no way limits the genuine choice of consumers in choosing whether to acquire Fuel from 7-Eleven rather than other competing retailers. Customers are not compelled to acquire fuel from either 7-Eleven or any other Fuel retailer, they are simply presented with the option of obtaining a discount on Fuel if they are a member of the Crown customer loyalty card scheme and spend a specified amount on Crown gaming and/or entertainment services. The conduct does not have the necessary element of 'compulsion' and is not inherently anti-competitive.

3.9 There is also no restriction on the ability of customers to acquire products from other suppliers of gaming and entertainment services that compete with Crown in Victoria.

These suppliers remain free to compete with Crown and to offer similar sales promotions and/or other customer loyalty schemes in order to increase their own sales.

4. Conclusion

- 4.1 For the reasons set out above, we do not believe the Commission should serve a notice under section 93(3A) of the TPA in respect of the attached notifications.
- 4.2 This is because the proposed conduct will cause little (if any) identifiable detriment, will generate public benefits and will not adversely affect competition in any relevant market. Moreover, the Commission has reviewed a number of notifications in relation to similar fuel discount schemes in the past and has allowed the notified conduct to proceed on the basis it is likely to result in a net public benefit.

Form G

Commonwealth of Australia

Trade Practices Act 1974 - sub-section 93(1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

1. Applicant

(a) Name of person giving notice:

N 93707

7-Eleven Stores Pty Ltd ABN 48 005 299 427 (7-Eleven)

(b) Short description of business carried on by that person:

7-Eleven owns and operates convenience retail stores throughout Australia, some of which offer motor spirit (all grades), diesel and liquefied petroleum gas for sale in Australia.

(c) Address in Australia for service of documents on that person:

*7-Eleven Stores Pty. Ltd.
357 Ferntree Gully Road
Mount Waverley Vic 3149*

2. Notified arrangement

(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

The retail supply of automotive fuel and automotive LPG (Fuel) in Victoria.

(b) Description of the conduct or proposed conduct:

7-Eleven, or a related body corporate of 7-Eleven:

(i) *giving or offering a discount, allowance, rebate or credit to customers who acquire Fuel from 7-Eleven Stores in Victoria, on the condition that those customers are members of a customer loyalty card scheme offered by Crown Ltd or one of its related bodies corporate (Crown) and acquire gaming and entertainment services from Crown of a specified value in Victoria during the promotional period; or*

- (ii) *refusing to give or offer a discount, allowance, rebate or credit to customers who acquire Fuel from 7-Eleven Stores in Victoria, on the condition that those customers are not members of a customer loyalty card scheme offered by Crown and/or have not acquired gaming and entertainment services from Crown of a specified value in Victoria during the promotional period.*

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

- (a) Class or classes of persons to which the conduct relates:

Customers who acquire or wish to acquire Fuel from 7-Eleven in Victoria

- (b) Number of those persons:

- (i) At present time:

7,488,924 fuel transactions took place during the 2008 financial year

- (ii) Estimated within the next year:

7,297,939 fuel transactions are budgeted for in the 2009 financial year

- (c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:

Not applicable.

4. Public benefit claims

- (a) Arguments in support of notification:

The notified conduct will generate a number of public benefits. Please refer to Annexure 1.

- (b) Facts and evidence relied upon in support of these claims:

Please refer to Annexure 1.

5. Market definition

Please refer to Annexure 1.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2(a) above and the prices of goods or services in other affected markets:

The notified conduct is not likely to cause any identifiable detriment to the public. Please refer to Annexure 1.

(b) Facts and evidence relevant to these detriments:

Not applicable

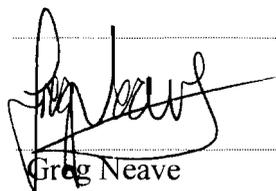
7. Further information

(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

*John Pettit
National Fuel Manager 7-Eleven Stores Pty. Ltd.
357 Ferntree Gully Road
Mount Waverley VIC 3149
Ph 09 9541 0711*

Dated 13.11.2008

Signed by/on behalf of 7-Eleven



Greg Neave

7-Eleven Stores Pty. Ltd.

Company Secretary

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible