

**Undertaking to the Australian Competition  
and Consumer Commission**

**Given under section 87B of the Trade  
Practices Act by 7-Eleven Stores Pty Ltd**

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## 1. Person giving the Undertaking

This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by 7-Eleven Stores Pty Ltd ACN 005 299 427, on behalf of itself, its subsidiaries and affiliates (**7-Eleven**).

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## 2. Background

### *The parties and the transaction*

- (a) 7-Eleven is a privately owned franchisor of over 400 retail convenience stores, 195 of which also operate as retail service stations. The majority of 7-Eleven's retail sites are operated under franchise arrangements. However, 7-Eleven sets the price of fuel at all sites that sell fuel. 7-Eleven sources fuel from Shell nationally and is a subscriber to the Informed Sources Oil Pricewatch service.
- (b) Peregrine is a privately owned operator of 44 retail service stations in Adelaide. Two of Peregrine's sites are operated under its company brand 'On the Run'. The remaining sites are operated under the BP brand, with 'On the Run' branded convenience stores on site. Peregrine currently has a supply contract for fuel with BP and is a subscriber to the Informed Sources Oil Pricewatch service.
- (c) Mobil Oil Australia Pty Ltd (**Mobil**) and its parent company ExxonMobil Australia Pty Ltd is one of the four refiner-marketers of petrol, diesel and LPG in Australia. The ultimate holding company of Mobil is Exxon Mobil Corporation (**Exxon Mobil**), a US based corporation. Mobil owns a refinery in Altona, Melbourne, and the 'mothballed' Port Stanvac refinery in SA. Mobil has recently announced the Port Stanvac refinery will be demolished and the site rehabilitated. Mobil also owns or operates five fuel terminals located across Australia.
- (d) Mobil sells petrol, diesel and LPG on a wholesale basis to its own retail sites as well as independent fuel retailers (including United and Mobil branded independent retailers in regional areas).
- (e) On 27 May 2010, 7-Eleven announced that it would acquire the retail fuel business of Mobil which comprises 295 Mobil retail fuel sites throughout Victoria, New South Wales, Queensland and South Australia (**7-Eleven Proposed Acquisition**). 7-Eleven does not currently operate in South Australia. Therefore all of the Mobil retail fuel sites (i.e. 29 sites) and associated assets in South Australia will be divested by 7-Eleven to Peregrine (**Peregrine Proposed Acquisition**).

#### *The ACCC's review*

- (f) On 27 May 2010, the ACCC commenced its informal review of the 7-Eleven Proposed Acquisition and the Peregrine Proposed Acquisition.
- (g) The ACCC undertook market inquiries and considered information provided by 7-Eleven, Peregrine, industry participants, motoring organisations and others. The ACCC's inquiries were aimed at assessing whether the Proposed Acquisition would have the effect or be likely to have the effect of substantially lessening competition in a market in contravention of section 50 of the *Trade Practices Act 1974* (the Act).

#### *The ACCC's competition concerns*

- (h) The ACCC considered that the 7-Eleven Proposed Acquisition raised competition concerns in markets for the retail supply of petrol, diesel and automotive LPG in the following areas:
  - (i) Mount Druitt (NSW);
  - (ii) Ashmore (Queensland); and
  - (iii) Riverhills (Queensland).(collectively, the **Relevant 7-Eleven Retail Fuel Markets**)
- (i) The ACCC considered that the 7-Eleven Proposed Acquisition, in the absence of this Undertaking, would remove a significant competitor in the Relevant 7-Eleven Retail Fuel Markets. As a result, the ACCC considered that in the absence of this Undertaking, the 7-Eleven Proposed Acquisition would have the effect or be likely to have the effect of substantially lessening competition in each of the Relevant 7-Eleven Retail Fuel Markets.
- (j) 7-Eleven does not consider that the 7-Eleven Proposed Acquisition would be likely to substantially lessen competition in relation to the Relevant 7-Eleven Retail Fuel Markets. However, in order to address the ACCC's competition concerns, 7-Eleven has, without admission, provided this Undertaking pursuant to section 87B of the Act.

#### *Proposed divestiture*

- (k) The objective of this Undertaking is to address the ACCC's competition concerns which would otherwise arise as a consequence of the 7-Eleven Proposed Acquisition.
- (l) This Undertaking aims to maintain competition through:

- (i) the creation of a viable, effective, stand-alone independent and long term competitor for the retail supply of petrol, diesel and automotive LPG in each of the Relevant 7-Eleven Retail Fuel Markets; and
- (ii) ensuring that the Approved Purchasers of the Divestiture Businesses have the necessary assets, rights and obligations to compete effectively in the Relevant 7-Eleven Retail Fuel Markets.

*Related undertaking by Peregrine*

- (m) This Undertaking is related to an undertaking given to the ACCC by Peregrine (the **Peregrine Undertaking**).
- (n) The ACCC also considered that the Peregrine Proposed Acquisition raised competition concerns in markets for the retail supply of petrol, diesel and automotive LPG in the area of Noarlunga Downs in South Australia (the **Peregrine Retail Fuel Market**).
- (o) The ACCC considered that the Peregrine Proposed Acquisition, in the absence of the Peregrine Undertaking, would remove a significant competitor in the Peregrine Retail Fuel Market. As a result, the ACCC considered that in the absence of the Peregrine Undertaking, the Peregrine Proposed Acquisition would have the effect or be likely to have the effect of substantially lessening competition in the Peregrine Retail Fuel Market.
- (p) Peregrine has, without admission, provided the Peregrine Undertaking pursuant to section 87B of the Act.

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### **3. Defined terms and interpretation**

#### **3.1 Definitions in the Dictionary**

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 2 (**Dictionary**), has the meaning given to it in the Dictionary; and
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

#### **3.2 Interpretation**

The interpretation clause in Schedule 2 sets out rules of interpretation for this Undertaking.

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## **4. Commencement and termination of Undertaking**

### **4.1 Commencement**

This Undertaking comes into effect when:

- (a) the Undertaking is executed by 7-Eleven; and
- (b) the Undertaking so executed is accepted by the ACCC.

### **4.2 Termination**

- (a) This Undertaking will terminate on the date the ACCC confirms to 7-Eleven in writing that the sale of all Divestiture Businesses has been completed and any transfer, grant, or provision of licences, agreements, and transitional services necessary for the operation of the Divestiture Businesses have been fulfilled.
- (b) Notwithstanding clause 4.2(a), this Undertaking terminates on the date the ACCC consents in writing to the withdrawal of this Undertaking in accordance with section 87B of the Act.

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## **Sale of Divestiture Businesses**

### **5.1 Sale of Divestiture Businesses**

- (a) 7-Eleven must divest, or cause the divestiture of, the Divestiture Businesses to one or more Approved Purchasers of the Divestiture Businesses within the Divestiture Period in accordance with this Undertaking.
- (b) The Divestiture Businesses specifically consist of:
  - (i) the transfer of ownership of the property as described in the relevant Business Sale Agreement;
  - (ii) the assets of the relevant Divestiture Business, which include the plant and equipment, wet stock and dry stock as described in the relevant Business Sale Agreement.
- (c) At the option of the Approved Purchaser, a Divestiture Business must include the transfer to the Approved Purchaser of:
  - (i) all employees employed in the operation of the Divestiture Business at the Control Date;
  - (ii) any service provider;

who are, in each case, necessary for the Approved Purchaser to maintain, operate and conduct effectively the Divestiture Business



and who consent to the transfer of their employment to the Approved Purchaser.

- (d) 7-Eleven must do everything in its power or control to enforce the terms of any agreement with an Approved Purchaser under which the Approved Purchaser is obliged to acquire a Divestiture Business.
- (e) At the option of the Approved Purchaser, 7-Eleven must provide services that the Approved Purchaser requires for the operation of a Divestiture Business, subject to the services being:
  - (i) provided on a transitional basis;
  - (ii) provided on arm's length terms; and
  - (iii) notified to the ACCC.

## **5.2 Licences, permits, regulatory approvals and Third Party Consents**

- (a) 7-Eleven must before the Divestiture Date effect or obtain the transfer to the Approved Purchaser of, or assist the Approved Purchaser to obtain, subject to law, all licences, permits and/or other regulatory approvals that are required for the operation of the Divestiture Business.
- (b) 7-Eleven must:
  - (i) obtain or assist an Approved Purchaser to obtain all Third Party Consents before the Divestiture Date;
  - (ii) comply with all requirements necessary to obtain any Third Party Consents, including by promptly providing information to the third party; and
  - (iii) act in good faith in its negotiations with an Approved Purchaser in relation to gaining any Third Party Consents.
- (c) If, seven days before the Divestiture Date, an Approved Purchaser fails to obtain or is unable to obtain any licence, permit or other regulatory approval referred to in clause 5.2(a) above or an Approved Purchaser fails to obtain or is unable to obtain any Third Party Consents, then:
  - (i) 7-Eleven must immediately provide the ACCC with details of those licences, permits, approvals or Third Party Consents and include reasons why those licences, permits, approvals or Third Party Consents could not be given prior to that date, and identify the information

required to obtain the licences, permits, approvals or Third Party Consents; and

- (ii) 7-Eleven must continue to do everything in its power to satisfy clause 5.2(a) and 5.2(b) above as soon as possible after the Divestiture Date (and until such time as clause 5.2(a) and 5.2(b) is satisfied).
- (d) Notwithstanding that 7-Eleven has complied with clauses 5.2(a), 5.2(b) and 5.2(c) of this Undertaking, it remains a breach of this Undertaking if 7-Eleven is unable to effect the divestiture of a Divestiture Business by reason of a failure to obtain any licences, permits, approvals or Third Party Consents.

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## 6 Purchaser approval process

### 6.1 Approved Purchasers

The ACCC has approved the following proposed purchasers in accordance with the Proposed Purchaser criteria set out in clause 6.2:

- (a) Caltex Australia Petroleum Pty Ltd (**Caltex**) as the Approved Purchaser for the Divestiture Business located in Mt Druitt;
- (b) Mr Ian Ross McPhee (**McPhee**) as the Approved Purchaser for the Divestiture Businesses located in Ashmore and Riverhills.

### 6.2 Proposed Purchaser Notice

If 7-Eleven seeks to have a purchaser approved by the ACCC for the purposes of clause 6.3(a) (**Proposed Purchaser**) other than the Approved Purchasers provided in clause 6.1, 7-Eleven must give the ACCC a written notice (**Proposed Purchaser Notice**), containing:

- (a) the name, address, telephone number and any other available contact details of the Proposed Purchaser;
- (b) a copy of the proposed business sale agreement;
- (c) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business;
- (d) details of the Proposed Purchaser's experience in the relevant markets;
- (e) the names of the owner and the directors of the Proposed Purchaser; and



- (f) a submission from 7-Eleven addressing the factors set out in clause 6.3(b) below.

### 6.3 Approval Notice

- (a) The ACCC may, within 15 Business Days after receipt by the ACCC of the Proposed Purchaser Notice, or such further period as is required by the ACCC, provide 7-Eleven with a written notice (**Approval Notice**) stating that the Proposed Purchaser is an Approved Purchaser.
- (b) Without limiting the ACCC's discretion, in making a decision to provide an Approval Notice, the factors the ACCC will have regard to include whether:
  - (i) the Proposed Purchaser will complete the transaction as contemplated by the relevant ACCC approved business sale agreement pursuant to which the Proposed Purchaser will acquire from 7-Eleven the relevant Divestiture Business;
  - (ii) the Proposed Purchaser is independent of, and has no direct or indirect interest in, 7-Eleven;
  - (iii) the Proposed Purchaser is of good financial standing and has an intention to maintain and operate the Divestiture Business as a going concern;
  - (iv) the Proposed Purchaser is able to conduct the Divestiture Business effectively; and
  - (v) the divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including the likely long-term viability and competitiveness of the Divestiture Businesses under the ownership of the Proposed Purchaser.
- (c) The ACCC may revoke its:
  - (i) acceptance of an Approved Purchaser; and/or
  - (ii) acceptance of this Undertaking,if the ACCC becomes aware that the information provided to it was incorrect, inaccurate or misleading.

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## **7. Preservation of the Divestiture Businesses**

### **7.1 Divestiture Businesses – maintenance obligations on 7-Eleven**

- (a) From the Control Date, 7-Eleven must not sell or transfer its interest, or any assets comprising part of, or used in, the Divestiture Businesses or make any Material Change, except in accordance with this Undertaking.
- (b) Without limiting this clause 7, but subject to clause 7.4, 7-Eleven must, from the Control Date until the Divestiture Date take all steps to ensure that:
  - (i) the Divestiture Businesses are managed and operated in the ordinary course of business as fully operational, competitive going concerns and in such a way that preserves the value in and goodwill of the Divestiture Businesses as at the Control Date;
  - (ii) the Divestiture Businesses are operationally and financially separate from 7-Eleven unless this Undertaking otherwise provides;
  - (iii) books and records of the Divestiture Businesses are kept separate from those of 7-Eleven;
  - (iv) the Divestiture Businesses continues existing arrangements, agreements, or contracts with customers, suppliers or other third parties that were in place at the Control Date;
  - (v) 7-Eleven does not directly or indirectly procure, promote or encourage the redeployment of personnel necessary for the operation of the Divestiture Businesses as at the Control Date to any other business operated by 7-Eleven;
  - (vi) 7-Eleven continues to provide access to working capital and sources of credit for the Divestiture Businesses;
  - (vii) the personnel (including contractors) of 7-Eleven are not concerned with the management or operation of any aspect of the Divestiture Businesses.

### **7.2 Direction to personnel**

As soon as practicable after the Control Date, 7-Eleven must direct its personnel, including directors, contractors, managers, officers, employees and

agents not to do anything in breach of or inconsistent with 7-Eleven's obligations under this Undertaking.

### **7.3 Confidential Information**

- (a) Subject to clause 7.3(b), 7-Eleven must not, at any time from the Control Date and for a period of 12 months after the termination of this Undertaking, use or disclose any confidential information about the Divestiture Businesses gained through:
  - (i) the ownership and/or management of the Divestiture Businesses; or
  - (ii) the provision of any services or technical assistance to the Approved Purchaser of the Divestiture Businesses.
- (b) Clause 7.3(a) does not apply to information that 7-Eleven requires to comply with legal and regulatory obligations.

### **7.4 Possible temporary closure for the sole purpose of environmental remediation**

- (a) 7-Eleven will need to engage a third party to conduct environmental site assessments (ESAs) in relation to each of the Divestiture Businesses. If the reports produced as a result of the ESAs reveal the existence of contamination at the site of a Divestiture Business that needs to be remedied for the continued operation of the Divestiture Business, 7-Eleven may temporarily suspend the operation of a Divestiture Business to undertake the required remediation works.
- (b) 7-Eleven must use its reasonable endeavours to ensure that the required remediation works are completed as soon as reasonably practical to allow the relevant Divestiture Business to resume operations.
- (c) If, despite 7-Eleven complying with its obligations under clause 7.4(b), the remediation works are not completed within four months of the Control Date, the Divestiture Period will be automatically extended in accordance with Schedule 3.

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## **8. Approved Independent Manager**

### **8.1 Approved Purchaser to act as an independent manager**

- (a) Where an Approved Purchaser for a Divestiture Business has entered into an interim agreement or arrangement with 7-Eleven to lease or licence the relevant site and manage the Divestiture Business from the Control Date (or shortly thereafter) until the Divestiture Date, 7-Eleven is not required to comply with this clause 8.

- (b) If however:
- (i) as of the Control Date, or shortly thereafter, there is no such agreement or arrangement referred to in clause 8.1(a) in place with an Approved Purchaser;
  - (ii) the relevant Business Sale Agreement for the Divestiture Business involving the Approved Purchaser is terminated; or
  - (iii) the Divestiture Business becomes an Unsold Business (see clause 10);

7-Eleven must comply with this clause 8.

## **8.2 Obligation to appoint an Approved Independent Manager**

Subject to clause 8.1, 7-Eleven must appoint, and maintain, an Approved Independent Manager (**Approved Independent Manager**) to manage the Divestiture Businesses, from the Control Date until the Divestiture Date in accordance with this Undertaking. If required, the Approved Independent Manager will also effect the sale of an Unsold Business pursuant to clause 10 of this Undertaking.

## **8.3 Proposed Independent Manager**

- (a) Within five Business Days of an event occurring in clause 8.1(b), 7-Eleven must identify a prospective Approved Independent Manager (the **Proposed Independent Manager**) and provide the ACCC with written notice of the identity of the Proposed Independent Manager.
- (b) The written notice referred to in clause 8.3(a) is to include such information and documents as the ACCC requires to assess whether to object to the appointment of the Proposed Independent Manager, including the proposed terms of appointment.
- (c) The Proposed Independent Manager must be a person who has the qualifications and experience necessary to manage the Divestiture Businesses; and the qualifications and experience necessary to, if required, effect the sale of an Unsold Business pursuant to clause 10 of this Undertaking.
- (d) The Proposed Independent Manager must be a person who is independent of 7-Eleven. The criteria by which the independence of the Proposed Independent Manager will be determined include whether the person is:
  - (i) a current employee or officer of 7-Eleven;

- (ii) a person who has been an employee or officer of 7-Eleven in the past three years;
- (iii) a person who, in the opinion of the ACCC, holds a material interest in 7-Eleven;
- (iv) a professional adviser of 7-Eleven whether current or in the past three years;
- (v) a person who has a contractual relationship, or is an employee or contractor of a firm or company that has a contractual relationship, with 7-Eleven, but for the terms of any Approved Independent Manager agreement with 7-Eleven;
- (vi) a supplier, or a person who is an employee or contractor of a firm or company that is a supplier, of 7-Eleven; or
- (vii) a customer of, or a person who is an employee or contractor of a firm or company that is a customer of 7-Eleven.

#### **8.4 Appointment of the Approved Independent Manager**

If:

- (a) within five Business Days of receipt by the ACCC of the written notice referred to in clause 8.3(a); or
- (b) such further period as is required by the ACCC and notified to 7-Eleven in writing prior to the expiration of the five Business Day period,

the ACCC informs 7-Eleven that it:

- (c) does not object to the appointment of the Proposed Independent Manager as the Approved Independent Manager and if required the Approved Divestiture Agent, 7-Eleven will:
  - (i) appoint the Proposed Independent Manager as the Approved Independent Manager as soon as practicable, and within two Business Days of the date on which the ACCC informs 7-Eleven that it does not object to the appointment of the Proposed Independent Manager as the Approved Independent Manager, on terms approved by the ACCC and consistent with the performance by the Approved Independent Manager of his or her functions under this Undertaking; and

- (ii) forward to the ACCC a copy of the executed terms of appointment within one business day of its execution; or
- (d) does object to the appointment of the Proposed Independent Manager as the Approved Independent Manager and if required the Approved Divestiture Agent, 7-Eleven will:
  - (i) appoint a person identified by the ACCC at its absolute discretion as the Approved Independent Manager, within two Business Days of the ACCC nominating the alternative person, on terms approved by the ACCC and consistent with the performance by the Approved Independent Manager of his or her functions under this Undertaking; and
  - (ii) forward to the ACCC a copy of the executed terms of appointment within one business day of its execution.

#### **8.5 Obligations relating to the Approved Independent Manager**

- (a) 7-Eleven must procure that the terms of appointment of the Approved Independent Manager include obligations on the Approved Independent Manager to:
  - (i) continue to satisfy the independence criteria in clause 8.3(d) for the period of his or her appointment;
  - (ii) manage and operate the Divestiture Businesses lawfully in the ordinary course of business, having regard to the nature of the Divestiture Businesses;
  - (iii) make only those Material Changes to the Divestiture Businesses which have been approved by the ACCC;
  - (iv) to the maximum extent practicable, operate the Divestiture Businesses in a manner which is financially and operationally separate from 7-Eleven;
  - (v) keep the books and records of the Divestiture Businesses separate from those of 7-Eleven;
  - (vi) implement specific measures to maintain the confidentiality of any competitively sensitive information of the Divestiture Businesses;
  - (vii) use best endeavours to renew or replace upon expiry material contracts for the provision of goods or services to the Divestiture Businesses on commercial terms favourable to the Divestiture Businesses;



- (viii) maintain appropriate personnel levels and ensure that the Divestiture Businesses have access to a sufficient number of personnel to operate as viable going concerns, and may engage personnel (including professional advisers) as the Approved Independent Manager determines necessary;
- (ix) until the Divestiture Date, approve any redeployment of employees employed in the Divestiture Business, to any other business operated by 7-Eleven;
- (x) not use any confidential information gained through the management of the Divestiture Businesses other than for performing his or her functions as Approved Independent Manager;
- (xi) from the date of appointment, provide a written report each month to the ACCC in relation to the operation of the Divestiture Businesses and this Undertaking and carry out the ACCC's directions in relation to matters arising from the report;
- (xii) review and report to the ACCC regarding any changes made to the Divestiture Businesses by 7-Eleven to ensure the separation of the Divestiture Businesses, and make any recommendation considered appropriate including, if necessary, steps to reverse such changes made by 7-Eleven;
- (xiii) provide any information or documents requested by the ACCC about the Divestiture Businesses directly to the ACCC;
- (xiv) report or otherwise inform the ACCC directly of any issues that arise in the performance of his or her functions as Approved Independent Manager or in relation to any matter that may arise in connection with this Undertaking;
- (xv) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Manager under this Undertaking;
- (xvi) co-operate with 7-Eleven in relation to the sale of the Divestiture Businesses, including by providing reasonable information required by prospective purchasers, facilitating reasonable site visits to the

location of the Divestiture Businesses and making personnel available as required for interview by prospective purchasers; and

- (xvii) if the Divestiture Business becomes an Unsold Business pursuant to clause 10.1, and the Approved Independent Manager acts as the Approved Divestiture Agent pursuant to clause 10.2(a)(i), satisfy the obligations in clause 10.5.

(b) Without limiting the obligations in this Undertaking, 7-Eleven must:

- (i) provide a copy of the executed terms of appointment for the Approved Independent Manager to the ACCC within one Business Day of their execution;
- (ii) comply with and enforce the terms of appointment for the Approved Independent Manager;
- (iii) maintain and fund the Approved Independent Manager to carry out his or her functions;
- (iv) indemnify the Approved Independent Manager for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Manager of his or her functions as the Approved Independent Manager except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Manager;
- (v) not interfere with, or otherwise hinder, the Approved Independent Manager's ability to carry out his or her functions as the Approved Independent Manager;
- (vi) ensure that the Approved Independent Manager is fully able to acquire and pay for sufficient and timely delivery of all goods and services (including from third parties) which the Approved Independent Manager considers are required by the Divestiture Businesses;
- (vii) accept (and direct its directors, contractors, managers, officers, employees and agents to accept) direction from the Approved Independent Manager as to the control, management, financing and operations of the Divestiture Businesses, and for the Divestiture Businesses to meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;

- (viii) provide and pay for any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager;
- (ix) provide access to the facilities, sites or operations of the Divestiture Businesses reasonably required by the Approved Independent Manager and/or the ACCC;
- (x) provide to the Approved Independent Manager any information or documents requested by the Approved Independent Manager that he or she considers necessary for managing and operating the Divestiture Businesses or for reporting to or otherwise advising the ACCC;
- (xi) request any information relating to the Divestiture Businesses which it requires in order to comply with any obligation under this Undertaking, and which obligation is notified to the Approved Independent Manager, who may decide whether or not to provide access to that information;
- (xii) ensure that the Approved Independent Manager will provide information or documents requested by the ACCC directly to the ACCC; and
- (xiii) take any steps directed by the ACCC in relation to the matters arising from a report of the Approved Independent Manager referred to in clauses 8.5(a)(xi), 8.5(a)(xii), or 8.5(a)(xiv) within 10 Business Days of being so directed (or such longer period agreed with the ACCC).

#### **8.6 Resignation or termination of an Approved Independent Manager**

- (a) 7-Eleven must immediately notify the ACCC in the event that an Approved Independent Manager resigns or otherwise stops acting as an Approved Independent Manager before the Divestiture Date.
- (b) The ACCC may approve any proposal by, or alternatively may direct, 7-Eleven to terminate an Approved Independent Manager if in the ACCC's view the Approved Independent Manager acts inconsistently with the provisions of this Undertaking.
- (c) If either clause 8.6(a) or 8.6(b) applies, the ACCC may nominate an alternative Approved Independent Manager.
- (d) 7-Eleven must, within two Business Days of the ACCC nominating an alternative Approved Independent Manager:

- (i) appoint the Approved Independent Manager nominated by the ACCC on terms approved by the ACCC and consistent with the performance by the Approved Independent Manager of his or her functions under this Undertaking; and
- (ii) forward to the ACCC a copy of the executed terms of appointment within one business day of its execution.

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## **9. 7-Eleven Compliance Reporting**

### **9.1 Compliance Audit**

- (a) 7-Eleven must provide the ACCC with a detailed report certifying compliance with this Undertaking and detailing the steps 7-Eleven has taken to comply with this Undertaking (**Compliance Report**).
- (b) 7-Eleven must provide its first Compliance Report to the ACCC within 10 Business Days of the Control Date and every month thereafter until the termination of this Undertaking.
- (c) In each Compliance Report, 7-Eleven must include details of any failure or anticipated failure by 7-Eleven to comply with its obligations in this Undertaking and the steps undertaken or proposed to be undertaken by 7-Eleven to remedy the failure or anticipated failure.
- (d) 7-Eleven must comply with any direction of the ACCC in relation to matters arising from a Compliance Report within 10 Business Days of being so directed (or such longer period as agreed with the ACCC).

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## **10. Sale of the Unsold Business**

### **10.1 The Unsold Business**

In the event that the divestiture of a Divestiture Business to an Approved Purchaser is not completed by the end of the Divestiture Period, the ACCC may declare, by written notice, that the Divestiture Business has become an unsold business (**Unsold Business**) and the provisions of clause 10 of this Undertaking shall apply.

### **10.2 Approved Divestiture Agent to manage and effect the sale of the Unsold Business**

- (a) If a Divestiture Business becomes an Unsold Business pursuant to clause 10.1:

- (i) the Approved Independent Manager may act as the Approved Divestiture Agent to manage and effect the sale of the Unsold Business in accordance with this Undertaking; or
  - (ii) if the Approved Independent Manager does not act as the Approved Divestiture Agent, 7-Eleven must, within five Business Days of the Divestiture Business becoming an Unsold Business, identify a prospective divestiture agent to effect the sale of the Unsold Business in accordance with this Undertaking (the **Proposed Divestiture Agent**) and provide the ACCC with written notice of the identity of the Proposed Divestiture Agent, together with such information and documents as the ACCC requires to assess whether to object to the appointment of the Proposed Divestiture Agent, including the proposed terms of appointment.
- (b) The Proposed Divestiture Agent must be a person who has the qualifications and experience necessary to effect the sale of the Divestiture Businesses.
- (c) The Proposed Divestiture Agent must be a person who is independent of 7-Eleven. The criteria by which the independence of the Proposed Divestiture Agent will be determined include whether the person is:
- (i) a current employee or officer of 7-Eleven;
  - (ii) a person who has been an employee or officer of 7-Eleven in the past three years;
  - (iii) a person who, in the opinion of the ACCC, holds a material interest in 7-Eleven;
  - (iv) a professional adviser of 7-Eleven whether current or in the past three years;
  - (v) a person who has a contractual relationship, or is an employee or contractor of a firm or company that has a contractual relationship, with 7-Eleven, but for the terms of any Approved Independent Manager agreement with 7-Eleven;
  - (vi) a supplier, or a person who is an employee or contractor of a firm or company that is a supplier, of 7-Eleven; or
  - (vii) a customer of, or a person who is an employee or contractor of a firm or company that is a customer of 7-Eleven.



### **10.3 Appointment of the Approved Divestiture Agent**

If:

- (a) within five Business Days of receipt by the ACCC of the written notice referred to in clause 10.2(a)(ii); or
- (b) such further period as is required by the ACCC and notified to 7-Eleven in writing prior to the expiration of the five Business Day period,

the ACCC informs 7-Eleven that it:

- (c) does not object to the appointment of the Proposed Divestiture Agent as the Approved Divestiture Agent, 7-Eleven will:
  - (i) appoint the Proposed Divestiture Agent as the Approved Divestiture Agent as soon as practicable, and within two Business Days of the date on which the ACCC informs 7-Eleven that it does not object to the appointment of the Proposed Divestiture Agent as the Approved Divestiture Agent, on terms approved by the ACCC and consistent with the performance by the Approved Divestiture Agent of his or her functions under this Undertaking; and
  - (ii) forward to the ACCC a copy of the executed terms of appointment within one business day of its execution; or
- (d) does object to the appointment of the Proposed Divestiture Agent as the Approved Divestiture Agent, 7-Eleven will:
  - (i) appoint a person identified by the ACCC at its absolute discretion as the Approved Divestiture Agent, within two Business Days of the ACCC nominating the alternative person, on terms approved by the ACCC and consistent with the performance by the Approved Divestiture Agent of his or her functions under this Undertaking; and
  - (ii) forward to the ACCC a copy of the executed terms of appointment within one business day of its execution.

### **10.4 Powers of the Approved Divestiture Agent**

- (a) The Approved Divestiture Agent is the only person who may effect the divestiture of an Unsold Business.
- (b) 7-Eleven must grant the Approved Divestiture Agent an irrevocable power of attorney conferring all necessary power and authority to effect the divestiture of the Unsold Business on terms considered by



the Approved Divestiture Agent in his or her sole discretion to be consistent with this Undertaking.

- (c) Any irrevocable power of attorney granted pursuant to clause 10.4(b) will end upon resignation or termination of the Independent Manager acting as the Approved Divestiture Agent in accordance with clause 8.6 or in the event that the Unsold Business is divested in accordance with this Undertaking.

#### **10.5 Obligations relating to the Appointment of the Approved Divestiture Agent**

- (a) 7-Eleven must procure that the terms of appointment of the Approved Divestiture Agent include obligations to the effect that the Approved Divestiture Agent:
  - (i) must divest the Unsold Business to an Approved Purchaser, approved by the ACCC in accordance with clause 10.7 of this Undertaking. [The remainder of this clause is in Schedule 3.]
  - (ii) must immediately inform the ACCC of any offers for the Unsold Business;
  - (iii) must immediately accept any offer for the Unsold Business upon instruction from 7-Eleven given in accordance with clause 10.5(b);
  - (iv) may charge such fees as are agreed between the Approved Divestiture Agent and 7-Eleven (but not fees contingent on the price to be obtained for the Unsold Business), and to be paid by 7-Eleven. If an agreement cannot be reached between the Approved Divestiture Agent and 7-Eleven within five Business Days from the date of:
    - A. A Divestiture Business becoming an Unsold Business; or
    - B. the ACCC nominating an alternative Approved Independent Manager pursuant to clause 8.6(c) of this Undertaking;pursuant to clause 8 of this Undertaking, 7-Eleven agrees to pay such fees as are directed by the ACCC;
  - (v) is the only person who may divest the Unsold Business after the Approved Divestiture Agent's appointment;

- (vi) may retain any lawyer or other adviser or agent required to effect the sale of the Unsold Business, and the fees of that lawyer, adviser or agent must be paid by 7-Eleven;
- (vii) must use his or her best endeavours to enter into a binding agreement for the sale of the Unsold Business as quickly as possible adopting a standard form Business Sale Agreement prepared by 7-Eleven and previously approved by the ACCC;
- (viii) must account to 7-Eleven for:
  - A. any moneys derived from the divestiture of the Unsold Business;
  - B. all disbursements, fees and charges incurred by the Approved Divestiture Agent in undertaking his/her duties; and
  - C. all agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 10.5(a)(vi));
- (ix) must provide a written report to the ACCC and 7-Eleven on the first Business Day of each month until the Divestiture Date, concerning:
  - A. the efforts made to sell the Unsold Business;
  - B. costs and fees incurred;
  - C. the identity of any advisers engaged;
  - D. the identity of any persons expressing interest in the Unsold Business; and
  - E. any other information required by the ACCC;
- (x) must use best endeavours to ensure that 7-Eleven complies with its obligations as set out in this clause 10 and report to the ACCC any material failure by 7-Eleven to do so;
- (xi) must follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Divestiture Agent under this Undertaking;
- (xii) not use any confidential information gained through the management of the Unsold Business other than for

performing his or her functions as Approved Divestiture Agent; and

- (xiii) report or otherwise inform the ACCC directly of any issues that arise in the performance of his or her functions as Approved Divestiture Agent or in relation to any matter that may arise in connection with this Undertaking.
- (b) The ACCC may direct 7-Eleven to instruct the Approved Divestiture Agent to accept any offer for an Unsold Business from an Approved Purchaser previously notified to the ACCC under clause 10.7 of this Undertaking.
- (c) 7-Eleven must comply with any direction made under clause 10.5(b) within five Business Days.
- (d) Without limiting the obligations in this Undertaking, 7-Eleven must:
  - (i) provide a copy of the executed terms of appointment for the Approved Divestiture Agent to the ACCC within one Business Day of their execution;
  - (ii) comply with and enforce the terms upon which the Approved Divestiture Agent is appointed in clause 10.5(a) and elsewhere in this Undertaking;
  - (iii) indemnify the Approved Divestiture Agent for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Divestiture Agent of his or her functions as the Approved Divestiture Agent except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Divestiture Agent;
  - (iv) not interfere with, or otherwise hinder, the Approved Divestiture Agent's ability to carry out his or her functions as Approved Divestiture Agent;
  - (v) ensure that the Approved Divestiture Agent will provide information or documents requested by the ACCC directly to the ACCC;
  - (vi) ensure that the Approved Divestiture Agent undertakes to report or otherwise inform the ACCC directly of any issues that arise in the performance of his or her functions as Approved Divestiture Agent or in relation

to any matter that may arise in connection with this Undertaking;

- (vii) provide to the Approved Divestiture Agent any information or documents requested by the Approved Divestiture Agent that he or she considers necessary to effect the sale of the Unsold Business, or for reporting to or otherwise advising the ACCC;
- (viii) assist the Approved Divestiture Agent to effect the sale of the Unsold Business as quickly as possible;
- (ix) not authorise the Approved Divestiture Agent to sell the Unsold Business to a purchaser other than an Approved Purchaser;
- (x) not contract to sell the Unsold Business on terms which would be inconsistent with the Approved Divestiture Agent's role, the granting of authority to the Approved Divestiture Agent under clause 10.4, or any other obligation in this Undertaking;
- (xi) take any steps directed by the ACCC in relation to matters arising from a report of the Approved Divestiture Agent referred to in this clause 10 within 10 Business Days of being so directed (or such longer period agreed with the ACCC);
- (xii) maintain and fund the Approved Divestiture Agent to carry out his or her functions; and
- (xiii) provide and pay for any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent.

#### **10.6 Resignation or termination of the Approved Divestiture Agent**

- (a) 7-Eleven must immediately notify the ACCC in the event that an Approved Divestiture Agent resigns or otherwise stops acting as an Approved Divestiture Agent before the Divestiture Date.
- (b) The ACCC may approve any proposal by, or alternatively may direct, 7-Eleven to terminate an Approved Divestiture Agent if in the ACCC's view the Approved Divestiture Agent acts inconsistently with the provisions of this Undertaking.
- (c) If either clause 10.6(a) or 10.6(b) applies, the ACCC may nominate an alternative Approved Divestiture Agent.

## 10.7 Proposed Purchaser Notice

If the Approved Divestiture Agent seeks to have a purchaser approved by the ACCC for the purposes of clause 10.5(a)(i) above (**Proposed Purchaser**), the Approved Divestiture Agent must give the ACCC a written notice (**Proposed Purchaser Notice**), containing:

- (a) the name, address, telephone number and any other available contact details of the Proposed Purchaser;
- (b) a copy of the standard form Business Sale Agreement prepared by 7-Eleven and previously approved by the ACCC;
- (c) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business;
- (d) details of the Proposed Purchaser's experience in the relevant markets;
- (e) the names of the owner and the directors of the Proposed Purchaser; and
- (f) a submission from 7-Eleven addressing the factors set out in clause 10.8(b) below.

## 10.8 Approval Notice

- (a) The ACCC may, within 15 Business Days after receipt by the ACCC of the Proposed Purchaser Notice, or such further period as is required by the ACCC, provide the Approved Divestiture Agent with a written notice (**Approval Notice**) stating that the Proposed Purchaser is an Approved Purchaser.
- (b) Without limiting the ACCC's discretion, in making a decision to provide an Approval Notice, the factors the ACCC will have regard to include whether:
  - (i) the Proposed Purchaser will complete the transaction contemplated by the standard form Business Sale Agreement prepared by 7-Eleven and previously approved by the ACCC pursuant to which the Proposed Purchaser will acquire from 7-Eleven the Unsold Business;
  - (ii) the Proposed Purchaser is independent of, and has no direct or indirect interest in, 7-Eleven;

- (iii) the Proposed Purchaser is of good financial standing and has an intention to maintain and operate the Unsold Business as a going concern;
  - (iv) the Proposed Purchaser is able to conduct the Unsold Business effectively; and
  - (v) the divestiture of the Unsold Business to the Proposed Purchaser will address any competition concerns of the ACCC, including the likely long-term viability and competitiveness of the Unsold Business under the ownership of the Proposed Purchaser.
- (c) The ACCC may revoke its acceptance of an Approved Purchaser approved pursuant to clause 10.8(a) if the ACCC becomes aware that the information provided to it was incorrect, inaccurate or misleading.

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## **11. Information**

- (a) 7-Eleven must notify the ACCC in writing of the date of the proposed Control Date at least one week before the proposed Control Date.
- (b) 7-Eleven must notify the ACCC in writing of the occurrence of:
  - (i) the completion of the Proposed Acquisition within one Business Day of the Control Date; and
  - (ii) the divestiture of each Divestiture Business within one Business Day of the Divestiture Date.
- (c) 7-Eleven must provide the ACCC with a copy of the executed Business Sale Agreements, related licence or lease agreements, and any other agreements relating to the sale of each Divestiture Business within one Business Day of any such agreement being executed.
- (d) 7-Eleven must respond in a timely manner to any queries or requests for information or documents made by the ACCC.
- (e) The ACCC may direct 7-Eleven in respect of its compliance with this Undertaking to, and 7-Eleven must:
  - (i) furnish information, documents and materials to the ACCC in the time and in the form requested by the ACCC;
  - (ii) produce information, documents and materials to the ACCC within 7-Eleven's custody, power or control in the time and in the form requested by the ACCC; and/or



- (iii) direct its personnel, including its directors, contractors, managers, officers, employees and agents, to attend the ACCC at a reasonable time and place appointed by the ACCC to answer any questions the ACCC (including its Commissioners, its staff or its agents) may have.
- (f) In respect to 7-Eleven's compliance with this Undertaking, the ACCC may request the Approved Independent Manager and/or the Approved Divestiture Agent (Undertakings Appointments) to:
  - (i) furnish information, documents and materials to the ACCC in the time and in the form requested by the ACCC;
  - (ii) produce information, documents and materials to the ACCC within the Undertaking Appointment's custody, power or control in the time and in the form requested by the ACCC; and/or
  - (iii) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (including its Commissioners, its staff or its agents) may have.
- (g) 7-Eleven will use its best endeavours to ensure that the Undertakings Appointments comply with any request from the ACCC in accordance with clause 11(f).
- (h) Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 11 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- (i) Any direction made by the ACCC under clause 11(e) will be notified to 7-Eleven, in accordance with clause 16.1.
- (j) The ACCC may, in its discretion, to be exercised in good faith:
  - (i) advise any Undertaking Appointment of any request made by it under this clause 11; and/or
  - (ii) provide copies to any Undertaking Appointment of any information furnished, documents and material produced or information given to it under this clause 11.
- (k) Nothing in this clause 11 requires the provision of information or documents in respect of which 7-Eleven has a claim of legal professional or other privilege.

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## **12. Disclosure of the Undertaking**

- (a) 7-Eleven and the ACCC agree that:
  - (i) Schedule 1 and Clause 2 of Schedule 3 will remain confidential at all times; and
  - (ii) Clause 1 of Schedule 3 will remain confidential until after the Divestiture Date.
- (b) 7-Eleven acknowledges that the ACCC may, subject to clause 12(a):
  - (i) make this Undertaking publicly available;
  - (ii) publish this Undertaking on its Public Section 87B Undertakings Register; and
  - (iii) from time to time publicly refer to this Undertaking.
- (c) Nothing in the confidential parts of this Undertaking referred to in clause 12(a) prevents the ACCC from disclosing such information as:
  - (i) is required by law;
  - (ii) is permitted by s 155AAA of the Act;
  - (iii) is necessary for the purpose of enforcement action under section 87B of the Act; or
  - (iv) is necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.
- (d) Nothing in the confidential parts of this Undertaking prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

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## **13. Obligation to procure**

Where the performance of an obligation under this Undertaking requires a Related Body Corporate of 7-Eleven to take or refrain from taking some action, 7-Eleven will procure that Related Body Corporate to take or refrain from taking that action, as the case may be.

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## **14. No Derogation**

- (a) This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of

this Undertaking in respect of any breach by 7-Eleven of any term of the Undertaking.

- (b) Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that 7-Eleven does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

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## 15. Costs

7-Eleven must pay all of its own costs incurred in relation to this Undertaking.

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## 16. Notices

### 16.1 Giving Notices

- (a) Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Name: Australian Competition and Consumer Commission  
Address: 23 Marcus Clarke Street  
CANBERRA ACT 2601  
Fax number: (02) 6243 1212  
Attention: Executive General Manager - Mergers and Acquisitions Group

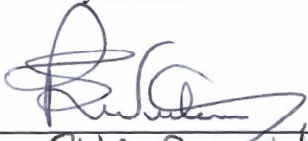
- (b) Any notice or communication to 7-Eleven pursuant to this Undertaking must be sent to:

Name: The Company Secretary, 7-Eleven Stores Pty Ltd  
Address: 357 Ferntree Gully Rd  
Mt Waverley VIC 3149  
Fax number: 03 9541 0890  
Attention: Mr Greg Neave

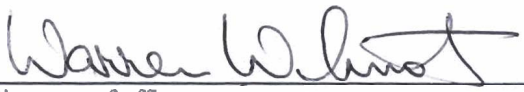
**16.2 Change of address of fax number**

If 7-Eleven or the ACCC gives the other three Business Days' notice of a change to its address or fax number, any notice or communication is only given to the relevant entity if it is delivered, posted or faxed to the most recently advised address or fax number.

**Signed by 7-Eleven** by its authorised signatory:

  
Signature of officer **CHAIRMAN / DIRECTOR**  
*Russell G. Withers*

Full name of officer and office held  
*337 Ferntree Gully Rd. Mt. Waverley Vic. 3149*

  
Signature of officer  
*Warren Wilmot*

Full name of officer and office held  
*337 Ferntree Gully Rd. Mt Waverley Vic.*

**Accepted by The Australian Competition and Consumer Commission** pursuant to section 87B of the Trade Practices Act 1974 (Cth):

  
Graeme Julian Samuel  
Chairman

Date:

*1<sup>st</sup> October 2010*

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**Schedule 1 – Confidential Clause**

Undertaking to the Australian Competition and Consumer Commission given under section 87B of the *Trade Practices Act 1974* by 7-Eleven Stores Pty Ltd

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## Schedule 2 – Dictionary and Interpretation

### 1. Dictionary

In this Undertaking:

**7-Eleven** means 7-Eleven Stores Pty Ltd ACN 005 299 427, together with its subsidiaries and affiliates.

**7-Eleven Proposed Acquisition** means 7-Eleven's proposed acquisition of the retail fuel businesses of Mobil.

**Approved Purchaser** means a purchaser of the Divestiture Business approved by the ACCC pursuant to clause 6.3 of this Undertaking or as previously approved by the ACCC as provided in clause 6.1 of this Undertaking.

**Business Day** means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

**Business Sale Agreement** means the relevant business sale agreement provided in Schedule 1.

**Commencement Date** means the date on which the Undertaking comes into effect under clause 4.1 of this Undertaking.

**Control Date** means the date on which the 7-Eleven Proposed Acquisition is completed.

**Corporations Act** means *Corporations Act 2001* (Cth).

**Divestiture Business** means one or more of the following businesses to be owned by 7-Eleven as of the Control Date:

- Mt Druitt site located at the corner of Luxford and Mount Streets, Mt Druitt, NSW (**Mt Druitt**);
- Ashmore site located at 170 Cotlew Street, Ashmore, Qld 4124 (**Ashmore**);
- Riverhills site located at 138 Riverhills Road, Riverhills, Qld 4074 (**Riverhills**);

(as applicable) that engage in retail supply of petrol, diesel and automotive LPG and described in clause 5.1 of this Undertaking.



**Divestiture Date** means the date on which 7-Eleven no longer has ownership or control of the Divestiture Businesses or a particular Divestiture Business (as applicable).

**Divestiture Period** [the remainder of this clause is in Schedule 3].

**Material Change** means any change to the structure, attributes, extent or operations of the Divestiture Businesses that may affect, or impact on, the Divestiture Businesses' competitiveness, independence from 7-Eleven and its viability.

**Mobil** means Mobil Oil Australia Pty Ltd. The ultimate holding company of Mobil is Exxon Mobil Corporation (**Exxon Mobil**).

**Peregrine** means Peregrine Corporation Pty Ltd ACN 101 751 400, together with its subsidiaries.

**Peregrine Proposed Acquisition** means Peregrine's proposed acquisition of 29 retail fuel sites located in South Australia from 7-Eleven, the sites of which were formerly owned by Mobil.

**Public Section 87B Undertakings Register** means the ACCC's public register of s 87B undertakings, available at [www.accc.gov.au](http://www.accc.gov.au).

**Related Body Corporate** has the meaning set out in section 50 of the Corporations Act.

**Third Party Consents** means any consents (excluding by a governmental agency or authority) required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, material contracts, permits or approvals used in the Divestiture Businesses.

**Undertakings** is a reference to this Undertaking and the Peregrine Undertaking.

## 2 Interpretation

In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:

- (i) a reference to this Undertaking includes all of the provisions of this document including its schedules;
- (ii) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
- (iii) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;

- (iv) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (v) a reference in this Undertaking to any company includes its Related Bodies Corporate;
- (vi) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (vii) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (viii) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (ix) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (x) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (xi) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (xii) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (xiii) material not forming part of this Undertaking may be considered to:
  - A. confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or

- B. determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (xiv) in determining whether consideration should be given to any material in accordance with paragraph (xiii), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to:
- A. the effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
  - B. the need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (xv) the ACCC may authorise the Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (xvi) in performing its obligations under this Undertaking, 7-Eleven will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (xvii) a reference to:
- A. a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
  - B. a party includes its successors and permitted assigns; and
  - C. a monetary amount is in Australian dollars.

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**Schedule 3 – Confidential Clause**