



File Note

Matter name:	7-Eleven Stores Pty Limited – application for authorisation A1000500		
ACCC	Susan Philp, Rebecca Hall, Kristie Piniuta		
Other parties	Professor Jenny Buchan, University of New South Wales		
Date:	Wednesday 20 May 2020		
Time:	10:00-10:30am		

Professor Buchan is an expert in the field of franchising law, she provided the following observations on the application for authorisation lodged by 7-Eleven Stores Pty Limited (7-Eleven):

- **Duration of the authorisation:** Professor Buchan noted that COVID-19 restrictions are starting to ease (more in some states than others) and sales, particularly fuel sales, are likely to start picking up. Professor Buchan noted there may be public detriment if the proposed conduct, being the temporary closure or reduction in trading hours of certain stores, were to continue for 6 months from the date of final authorisation. Professor Buchan noted that this could be as late as March 2021. Professor Buchan questioned whether any Authorisation could be calibrated to take account of the differing responses in timing and scope of each State and Territory to the resumption of more normal trading and travel patterns.
- **Bargaining imbalance in franchisor/franchisee relationship:** Professor Buchan considers that there needs to be explicit provision to allow franchisees who enter into agreements to temporarily close or reduce hours to terminate the agreement if they want to return to normal operations sooner than anticipated. Professor Buchan noted that some corporate-owned stores and franchisees compete for business, and raised concern that if corporate-owned stores start to see sales increasing, 7-Eleven may be disincentivised from allowing nearby franchisee owned stores to return to normal operations. Professor Buchan further noted that franchisees may be disadvantaged against corporate-owned stores when 7-Eleven is selecting which stores to approach under the proposed conduct.
- **Provision for rent relief for franchisees.** Professor Buchan noted the ex-gratia payment identified in the application, and queried whether rent is included in the 'unavoidable operating costs' referred to in the application. Professor Buchan further queried whether rent has been reduced for the period of the proposed conduct. This is also relevant in the context of the mandatory code adopted by the National Cabinet, the *SME Commercial Leasing Principles During COVID-19*. Rent relief will apply inconsistently across the 7-Eleven network as specific criteria will need to be met to access the scheme.

- Jobkeeper. Professor Buchan noted that, whereas it is likely the franchisor owned and operated outlets could be eligible to participate in the federal Jobkeeper program, it is less likely that franchisees will meet the criteria. The application does not address this issue, but Professor Buchan said that may be because the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (Cth) was enacted on 8 April 2020, one day before the application was lodged.