



**7-Eleven Stores Pty Limited –
Application for authorisation AA1000500
Interim authorisation decision
24 April 2020**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted conditional interim authorisation in respect of the application for authorisation AA1000500 made by 7-Eleven Stores Pty Limited (**7-Eleven**) on 9 April 2020.
2. 7-Eleven has applied for authorisation to approach some of its franchisees (**Franchisees**), and if they agree, to enter into arrangements with those Franchisees to either temporarily close or reduce the trading hours of certain stores. This may include stores operated by its Franchisees, and stores operated by 7-Eleven (or through its sister entity, Convenience Holdings Pty Limited) (**corporate-owned stores**). 7-Eleven advised that 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 7-Eleven’s customers.
3. The ACCC has granted conditional interim authorisation for the conduct described at paragraphs 8 to 10 below. The condition (at paragraphs 26 – 28 below) requires 7-Eleven to notify the ACCC of the Franchisees it proposes to approach for temporary store closure or a reduction in hours, and the stores (both corporate owned and franchised) which will be closed or have reduced hours.
4. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC’s final determination comes into effect.

The application for authorisation

5. 7-Eleven submits that corporate owned and franchised stores are experiencing considerable financial hardship as a result of the COVID-19 pandemic. The government-mandated lockdowns and social distancing measures have resulted in an immediate and drastic fall in pedestrian traffic and a corresponding decline in the volumes of transactions and sales of petrol and merchandise/convenience products.
6. 7-Eleven considers that the way to minimise the financial hardship experienced by its Franchisees and to ensure they are best positioned to resume trading as normal following the pandemic is by engaging 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.
7. 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 submits that without being able to coordinate to determine whether certain 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.

8. 7-Eleven seeks authorisation, including urgent interim authorisation, to engage in the following conduct (**Proposed Conduct**):
 - to approach some of its Franchisees (who form part of 7-Eleven's network in Australia), with the particular Franchisees yet to be identified, and
 - to enter into arrangements with those Franchisees, should the Franchisees be willing, to temporarily close or reduce the trading hours of stores either operated by some of the Franchisees, or by itself (or through its sister entity, Convenience Holdings Pty Limited).
9. The Proposed Conduct would also include instances where a franchisee who doesn't meet the criteria approaches 7-Eleven on the grounds of hardship for the purpose of entering into an arrangement to temporarily close or reduce the trading hours of its store.
10. As part of the Proposed Conduct, 7-Eleven and the Franchisees would direct customers from a closed store to nearby stores and provide information to customers about changes to the operating hours of the relevant stores.
11. The Proposed Conduct does not involve 7-Eleven and its Franchisees engaging in any price coordination.
12. Where a Franchisee's store closes temporarily, 7-Eleven will make an ex gratia payment to the relevant Franchisee to cover certain unavoidable operational costs. For stores that reduce their hours, the minimum guaranteed income that the Franchisee receives from 7-Eleven would be pro-rata adjusted to reflect the temporary reduction in trading hours.
13. Franchisees can choose not to temporarily close or reduce their trading hours. Franchisees will not be subject to any penalties if they do not agree to enter into the temporary arrangements, and will continue to receive the minimum gross income they are entitled to under their store agreements.
14. If a Franchisee agrees to temporarily reduce its trading hours, the store is 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. If a 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.
15. 7-Eleven advises that 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:
 - the store has experienced a decline in merchandise sales to a certain extent
 - the store is currently trading at less than a certain amount
 - 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. Operational requirements may include for example:
 - obligations in leases to remain open for a certain minimum hours, which only a landlord can release a tenant from
 - the store can be closed and secured in a manner that satisfies 7-Eleven's security requirements, and
 - ensuring sufficient network coverage whereby sufficient stores remain open and continue servicing catchment areas over the network, having regard to current (markedly diminished) levels of demand across the network and within particular catchment areas.

16. 7-Eleven advises that it will not discriminate in favour of its corporate owned stores over Franchisees, and the criteria will be applied in the same way to corporate as to non-corporate owned stores.
17. 7-Eleven also seeks authorisation to enable it to approach any person who becomes a Franchisee within the period of authorisation. 7-Eleven submits that it has included this as an abundance of caution, although it is unlikely to approach new franchisees at this point in time. The ACCC has granted Interim Authorisation only to existing Franchisees. The ACCC will consider whether authorisation should extend to 7-Eleven approaching future Franchisees as part of its assessment of the substantive application for authorisation.
18. 7-Eleven seeks authorisation for 6 months from the date of the final determination. If customer demand for convenience stores continues to be materially and adversely impacted as a result of COVID-19 prior to the end of this period, 7-Eleven may seek a variation of the authorisation to extend the period in which it and its Franchisees can continue to engage in the Proposed Conduct.

The authorisation process

19. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether proposed conduct results in a net public benefit.
20. The ACCC may specify conditions in an authorisation. The legal protection provided by an authorisation does not apply if any conditions are not complied with.

Interim authorisation

21. The ACCC may, where it considers it appropriate, grant interim authorisation, which allows parties to engage in proposed conduct while the ACCC is considering the substantive application.
22. 7-Eleven requests urgent interim authorisation due to the speed at which the COVID-19 pandemic is evolving, and the financial hardship experienced by some 7-Eleven Franchisees to date, which it expects will worsen as the pandemic continues.

Consultation

23. The ACCC has conducted a limited initial public consultation process in respect of the request for interim authorisation.
24. The ACCC will conduct a public consultation process on the substantive application for authorisation, and how the Proposed Conduct under the Interim Authorisation is operating, in the coming days, and details regarding how to make a submission will be available on the [ACCC's authorisations public register](#).
25. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's Public Register.

Granting of conditional interim authorisation

26. The ACCC grants Interim Authorisation in respect of the Proposed Conduct as described at paragraphs 8 - 10 above.

27. Interim Authorisation is subject to the following condition that requires 7-Eleven to notify the ACCC of the matters outlined below to ensure there is transparency over the arrangements reached under the Proposed Conduct:

Notification Condition

- 7 Eleven must notify the ACCC of the Franchisees it proposes to approach for temporary closure or a reduction in operating hours under the Proposed Conduct, at least 24 hours prior to approaching those Franchisees;
 - 7 Eleven must notify the ACCC of: (a) those Franchisees that have agreed to either temporarily close or reduce the trading hours, and (b) any corporate owned store that is temporarily closed and/or has the hours reduced. Such notification must be provided as soon as practicable after an arrangement has been reached but not less than 48 hours after the implementation of the store's closure or reduction in hours.
28. The notification shall specify whether the store (either franchised or corporate owned) is a fuel or non-fuel store.
29. The notification should be sent to the ACCC by sending an email to adjudication@accc.gov.au.

Reasons for decision

30. In granting conditional interim authorisation, the ACCC recognises the urgency of the request for interim authorisation in light of the financial difficulties that 7-Eleven and its Franchisees are facing due to reduced consumer demand as a result of the COVID-19 pandemic.
31. In addition, the ACCC considers that:
- There are a number of factors which mitigate the risk of longer-term competitive detriment arising from the Proposed Conduct. In particular, the ACCC notes that:
 - the Proposed Conduct is a temporary measure. Authorisation is sought for six months from the date of the ACCC's final determination and the Proposed Conduct can be discontinued in the event that the effects of the pandemic subside at an earlier date
 - 7-Eleven intends to approach Franchisees based on criteria relevant to location, trading performance and operational requirements. Franchisees who do not meet the criteria can still approach 7-Eleven on hardship grounds.
 - it is not compulsory for Franchisees to agree to temporarily close or reduce their trading hours if they are approached by 7-Eleven. If a 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
 - the Proposed Conduct does not enable 7-Eleven and its Franchisees to agree the retail prices of products
 - the condition of Interim Authorisation provides some transparency over the Proposed Conduct by requiring 7-Eleven to notify the ACCC of the stores that it intends to approach and those who agree to close or reduce their trading hours, and
 - the Franchising Code will continue to apply to Franchisees that operate non-fuel stores and the Oil Code will continue to apply to Franchisees that operate fuel stores. Both codes contain a dispute resolution process.
 - There are likely to be public benefits given the current unprecedented circumstances, including:

- assisting stores across 7-Eleven’s network to remain in business for the duration of the pandemic through enabling the more efficient distribution of customer demand amongst areas that cannot support the current number of stores, and minimising overhead costs in doing this. In this respect, 7-Eleven submits that without the Proposed Conduct, 7-Eleven and its Franchisees may be required to permanently close stores in areas where the very low levels of demand are unnecessarily and inefficiently distributed amongst the 7-Eleven store network. 7-Eleven advises that it may consider providing additional support to Franchisees should the need arise
- assisting stores to be better placed to resume normal trading once the effects of the COVID-19 pandemic subsides, and
- by temporarily closing stores and reducing opening hours, reducing the demand on staff to travel to stores.

32. The ACCC is satisfied that given the extraordinary circumstances of the COVID-19 crisis it is appropriate to grant of interim authorisation, subject to the condition at paragraph 27 – 28.

Reconsideration of interim authorisation

33. The ACCC may review a decision on interim authorisation at any time, including in response to feedback raised following interim authorisation.
34. The ACCC’s decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.