



AUSTRALIAN
COMPETITION
& CONSUMER
COMMISSION

**7-Eleven Stores Pty Limited –
Application for revocation of AA1000500 and the substitution of
authorisation AA1000547
Interim authorisation decision
25 March 2021**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to suspend the operation of authorisation AA1000500 and grant conditional interim authorisation in substitution for the authorisation suspended, in respect of an application lodged by 7-Eleven Stores Pty Ltd (**7-Eleven**) on 11 March 2021. 7-Eleven is seeking authorisation on behalf of itself, Convenience Holdings Pty Limited and current and future franchisees.
2. The interim authorisation is granted in respect of the conduct which is described at paragraphs 5 to 14 below, and extends to conduct engaged in to give effect to any arrangements of the kind described in those paragraphs. Interim authorisation is subject to a condition described at paragraphs 25 to 29 below, that 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. Interim authorisation is granted in relation to Division 1 of Part IV and section 45 of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
3. Interim authorisation commences immediately and remains in place until the ACCC's final determination comes into effect, the application for revocation and substitution is withdrawn, or until the ACCC decides to revoke interim authorisation.

The application for revocation and substitution

4. On 11 March 2021, 7-Eleven lodged an application for revocation of the existing authorisation A1000500 and its substitution with a new authorisation AA1000547 (re-authorisation). 7-Eleven seeks re-authorisation for the same conduct as previously authorised by the ACCC for a period of up to 6 months from 1 April 2021 (to the end of October 2021). 7-Eleven submits that the uncertainty as a result of the COVID-19 pandemic on 7-Eleven stores, particularly in CBD areas, will continue at least until the current vaccination programme is more advanced.
5. In particular, 7-Eleven seeks authorisation, and requests urgent interim authorisation, to continue engage in the following conduct (the **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).
6. The 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.

7. As part of the 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.
8. The Conduct does not involve 7-Eleven and its Franchisees engaging in any price coordination.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 7-Eleven seeks authorisation for a further 6 months. 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 Conduct.
16. 7-Eleven expects to have only one Store on temporarily reduced trading hours as at 31 March 2021. However, 7-Eleven considers it vital to its long term sustainability and that of its Franchisees to have the ability to continue to respond to the real possibility of future outbreaks and Government restrictions.

The authorisation process

17. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of 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 a proposed arrangement results in a net public benefit.
18. 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

19. The ACCC may grant an interim authorisation where it considers it appropriate to do so, including for the purpose of enabling due consideration to be given to an application for the revocation of an authorisation and the substitution of a new one (re-authorisation). In this case the ACCC may suspend the operation of the authorisation sought to be revoked and grant an interim authorisation in substitution for the authorisation suspended. This allows the parties to engage in the Conduct while the ACCC is considering the application for re-authorisation.¹
20. 7-Eleven requests urgent interim authorisation as the ACCC will not be in a position to issue a Final Determination in relation to the application for re-authorisation prior to expiry of authorisation AA1000500. 7-Eleven seeks interim authorisation to ensure uninterrupted legal protection should 7-Eleven need to continue engage in the Conduct with its Franchisees in response to any COVID-19 outbreaks or Government restrictions after 31 March 2021.

Consultation

21. The ACCC has not yet commenced public consultation process in respect of the request for urgent interim authorisation.
22. The ACCC will conduct a public consultation process on the application for re-authorisation, and how the 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](#).
23. The ACCC has not received any complaints about the conduct authorised under the existing authorisation AA1000500.
24. Further information in relation to the application for re-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

25. The ACCC grants interim authorisation in respect of the conduct described at paragraphs 5-14 above, and extends to conduct engaged in to give effect to any arrangements of the kind described in those paragraphs.
26. Interim authorisation is granted 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 Conduct:

¹ Section 91(2) of the Act.

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 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.
27. The notification shall specify whether the store (either franchised or corporate owned) is a fuel or non-fuel store.
28. The notification should be sent to the ACCC by sending an email to exemptions@acc.gov.au.
29. The ACCC may authorise the ACCC Competition Exemptions Division, a member of the ACCC or a member of the ACCC staff, to exercise any decision making function under these conditions on its behalf and that authorisation may be subject to any conditions which the ACCC may impose.

Reasons for decision

30. In granting interim authorisation, the ACCC recognises that this will provide continuity of legal protection and certainty in the context of the ongoing difficulties faced by 7-Eleven and its Franchisees 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 Conduct. In particular, the ACCC notes that:
 - the Conduct is a temporary measure. Authorisation is sought for a further 6 months from the expiry of the current authorisation AA1000500 and the 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 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 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 ongoing circumstances of the COVID-19 pandemic, 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 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 pandemic it is appropriate to grant of interim authorisation, subject to the condition at paragraphs 25 – 29.

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.