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29 JULY 2022

Dear Gavin

7-Eleven Australia Pty Limited and 7-Eleven Stores Pty Limited – Notification of resale price maintenance under section 93 of the *Competition and Consumer Act 2010* (Cth)

We act for 7-Eleven Australia Pty Limited (**7-Eleven Australia**) and 7-Eleven Stores Pty Limited (**7-Eleven**).

7-Eleven Australia and 7-Eleven are notifying the Australian Competition and Consumer Commission (**Commission**) that they propose to engage in resale price maintenance.

Notified Conduct

The conduct the subject of this notification will be limited to whenever 7-Eleven Australia or 7-Eleven supplies a product to an operator of a 7-Eleven branded store (be they franchised or corporate stores) and 7-Eleven specifies a price at which the franchisee must resell the product to a customer via an eCommerce platform for a period of 6 years (the **Notified Conduct**).

The Notified Conduct the subject of this notification is different to the notified conduct the subject of the notification lodged by 7-Eleven Australia and 7-Eleven on 28 January 2022 that is currently before the Commission (RPN10000458 and RPN10000457) (**Prior Notification**). As discussed previously with you, we request that the Commission does not progress its consideration of the Prior Notification, and instead considers this notification.

The Notified Conduct is not intended, or expected, to result in increased prices. The Notified Conduct will lead to substantial public benefits.

Net public benefit

7-Eleven's digital strategy aims to grow digital sales by catering to the demands of the modern customer.

7-Eleven Australia and 7-Eleven engaging in the Notified Conduct will allow 7-Eleven to launch new and efficient retail experiences that improve consumer choice and boost the competitiveness of 7-Eleven's corporate and franchised stores in markets for convenience retailing.

Operators of 7-Eleven branded stores, many of whom are franchisees operating small businesses, will enjoy the benefits of having customers purchase products from their stores in more efficient ways and will likely receive the benefit of increased sales.

7-Eleven's competitors will likely be incentivised to invest in their own customer-facing technology.

These are substantial public benefits arising from the Notified Conduct.

The Notified Conduct is not expected to result in any measurable public detriments. It is also not expected to change store operators' current practices when pricing products for sale in their stores.

Intense competition in convenience retail markets will continue to constrain 7-Eleven and 7-Eleven store operators from raising prices.

Contents

The attached notification relates to 7-Eleven Australia's and 7-Eleven's proposal to engage in resale price maintenance within the meanings of sections 48 and 96 of the *Competition and Consumer Act 2010* (Cth) (the Act).

The notification consists of the following:

- declarations by 7-Eleven Australia and 7-Eleven (see **Attachment A1 and Attachment A2**).
- a confidential version of the notification marked "*restriction of publication claimed*" (see **Confidential Attachment B** to this letter).
- a non-confidential version of the notification, marked "*restriction of publication of part claimed*" (see **Attachment C** to this letter);
- a table recording the information required by the notification available on the Commission's website (see **Schedule 1 to Confidential Attachment B and Attachment C**);
- a list of names and contact details of likely interested parties (see **Schedule 2 to Confidential Attachment B and Attachment C**);
- a confidential list of 7-Eleven's franchisees, including their contact details, as at 22 July 2022 (see **Confidential Schedule 3 to Confidential Attachment B**);
- a set of non-confidential internal documents about the Notified Conduct (see **Schedule 4 to Confidential Attachment B and Confidential Attachment C**); and
- a set of confidential internal documents about the Notified Conduct (see **Schedule 5 to Confidential Attachment B**).

Payment of prescribed filing fee

We have paid, by way of electronic funds transfer on 22 July 2022, the prescribed filing fee of \$1,000 for each party to the notification (for a total \$2,000).

Please refer to **Attachment D** for proof of payment.

Claim for confidentiality

The information in **Confidential Attachment B** (including **Confidential Schedule 3** and **Confidential Schedule 5**) is confidential to 7-Eleven Australia, 7-Eleven and/or 7-Eleven's franchisees.

If the confidential information were to become publicly available, 7-Eleven Australia, 7-Eleven and 7-Eleven's franchisees would likely suffer commercial detriment and, in relation to some of the information, be exposed to proceedings for breach of their contractual and equitable obligations of confidentiality.

7-Eleven Australia and 7-Eleven request, pursuant to section 89(5) of the Act, that the confidential information described above be excluded from the Commission's public register.

Further, 7-Eleven Australia and 7-Eleven consider that the confidential information described above relates to the Commission's core statutory function of administering and enforcing the Act.

Accordingly, 7-Eleven Australia and 7-Eleven consider that the information comprises "*protected information*" as defined by section 155AAA(21)(a) of the Act.

Please contact us if the Commission would like any further information.

Thank you for your assistance.

Yours sincerely


Simon Cooke | Partner
King & Wood Mallesons

T 
M 
F 
E 

Partner profile

Notification of resale price maintenance

Lodged by 7-Eleven Australia Pty Limited and 7-Eleven Stores Pty Limited



29 July 2022

**NON-CONFIDENTIAL VERSION – RESTRICTION OF PUBLICATION
OF PART CLAIMED**

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1 Notifying parties

7-Eleven Australia Pty Limited (ACN 637 676 558) (**7-Eleven Australia**) is an Australian private company.

7-Eleven Australia is an associated entity of 7-Eleven Stores Pty Limited (ACN 005 299 427) (**7-Eleven**).

7-Eleven Australia and 7-Eleven are the notifying parties for the purpose of this application.

7-Eleven is an Australian private company with a license to operate and franchise 7-Eleven branded stores in Australia from 7-Eleven Inc., the latter of which is domiciled in the United States of America.

7-Eleven Australia and 7-Eleven contract, including with third-party merchandise suppliers, for the supply of goods to 7-Eleven's network of franchised and corporate stores in Australia and for the supply of warehousing, pick and logistics services.

As at the date of this notice, 549 of 7-Eleven's branded stores were franchised by 7-Eleven to third parties, many of whom are small business operators.

7-Eleven also operates 188 corporate stores, the majority of which are operated by a related company to 7-Eleven, Convenience Holdings Pty Limited.

7-Eleven's network of franchised and corporate stores in Australia, currently, comprises 737 stores in Victoria, New South Wales, the Australian Capital Territory, Queensland and Western Australia. Some of the stores are convenience stores while others are convenience and petrol stores.

7-Eleven's network of franchised and corporate stores offers convenience to the customer and sells products which include groceries, takeout foods and beverages, dairy products, non-food merchandise, specialty items and incidental services.

Further information about 7-Eleven can be found at <https://www.7eleven.com.au/>.

7-Eleven Stores' contact details are:

7-Eleven Stores Pty Limited	
ACN	005 299 427
Address	2/658 Church Street, Richmond Victoria 3121
Email for service	[CONFIDENTIAL]
Contact person	James Wyatt, General Counsel and Company Secretary
Telephone	[CONFIDENTIAL]
Email	[CONFIDENTIAL]

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7-Eleven Australia's contact details are:

7-Eleven Australia Pty Limited	
ACN	637 676 558
Address	2/658 Church Street, Richmond Victoria 3121
Email for service	[CONFIDENTIAL]
Contact person	James Wyatt, Company Secretary
Telephone	[CONFIDENTIAL]
Email	[CONFIDENTIAL]

2 Notified conduct

2.1 Description

The conduct the subject of this notification comprises resale price maintenance within the meaning of sections 48 and 96 of the *Competition and Consumer Act 2010* (Cth) (**Act**).

The conduct the subject of this notification will be limited to whenever 7-Eleven Australia or 7-Eleven supplies a product to an operator of a 7-Eleven branded store (third party franchisees and related companies to 7-Eleven) and 7-Eleven specifies a price at which the operator of the store must resell the product to a customer via an eCommerce platform during the Timeframe (**Notified Conduct**).

For the purposes of this notification, an 'eCommerce platform' is:

- (a) a customer-facing technology that allows customers to purchase a product directly (i.e., without the assistance of an employee); and
- (b) which operates using technology that does not allow store operators to manually alter the price charged to the customer for the product being purchased.

7-Eleven will be specifying the prices on behalf of 7-Eleven Australia, other than in cases where 7-Eleven itself is supplying the goods (and therefore specifying the price on its own behalf).

The Notified Conduct will not include sales made by the operators of 7-Eleven branded stores to customers who pay for their purchase at the physical checkout in store.

The Notified Conduct does not have the purpose of increasing prices and is not expected to increase the prices of any products sold in any 7-Eleven branded stores. It is clearly distinguishable from those cases where suppliers proposed to engage in resale price maintenance for the purpose, and with the likely effect, of preventing discounting.

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3 Timeframe for Notified Conduct

The Notified Conduct will commence if, and when, the Commission allows this notification to stand and will occur for a period of 6 years from the date of commencement (**Timeframe**).

The rationale for the Timeframe is discussed in the document at Confidential Annexure P and Annexure Q.

4 7-Eleven's eCommerce platforms

7-Eleven intends to implement a range of eCommerce platforms in pursuit of its goal to enable **[CONFIDENTIAL]** of its annual retail transactions, measured across its network of franchised and corporate stores, to be digital **[CONFIDENTIAL]**. The key details of 7-Eleven's relevant digital strategy for the Notified Conduct are detailed below.

Critically, the eCommerce platforms the subject of this notification are only those which are affected by a functional limitation that prevents store operators altering the price of products because of the way that technology interacts with 7-Eleven's core enterprise resource planning (**ERP**) system. The limitations of 7-Eleven's ERP system are discussed in the documents annexed at Confidential Annexure K, Annexure L, Confidential Annexure P and Annexure Q.

4.1 'Pay & Go'

The eCommerce platform through which 7-Eleven Australia and 7-Eleven initially intend to engage in the Notified Conduct is the 'Pay & Go' service.

7-Eleven's 'Pay & Go' service will allow customers to purchase one or more items on a mobile app used in store without going to the physical checkout in the store to pay for their purchase or otherwise interacting with any personnel in the store.

[CONFIDENTIAL]

4.2 Digital Screen food ordering

An additional eCommerce platform that 7-Eleven is currently considering implementing is Digital Screen. Digital Screen would allow customers to order and pay for food through a digital self-service kiosk in store. Similar technology is currently available in some fast-food restaurants.

7-Eleven has not yet determined whether Digital Screen will be rolled out to 7-Eleven branded stores as part of its digital strategy. In addition, 7-Eleven has not yet determined whether, if it were implemented, the Digital Screen technology could allow store operators to change the price charged to a customer who is using the Digital Screen to purchase products from a price set by 7-Eleven. As such, it is not yet certain if 7-Eleven will introduce Digital Screen technology and if, as a result of its introduction, 7-Eleven Australia and 7-Eleven will be engaging in the Notified Conduct.

[CONFIDENTIAL]

4.3 Fully automated 'Micro Market' stores

7-Eleven is intending to launch fully automated physical stores known as 'Micro Market' stores. 'Micro Market' stores will be unstaffed and checkout-free. The stores will operate by integrating technology developed by Mastercard, known as

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'Shop Anywhere',¹ or other similar technology partners, with 7-Eleven's own IT systems.

In simple terms, this technology will enable customers to purchase items from 7-Eleven branded stores simply by taking items from the shelf and leaving the 'Micro Market' store. Customers will only be able to access the 'Micro Market' stores if they have registered their payment information. Sensors and cameras will observe which items customers have removed from shelves and automatically charge the customer after they have departed the 'Micro Market' store.

'Micro Market' stores will exist in three different formats: very small shopfronts located on 7-Eleven forecourts and other standalone locations called 'Grab & Go'; medium-sized shopfronts called 'Micro Market Kiosks' and full-scale shopfronts called 'C-Stores' or 'Shop in a Box'.

[CONFIDENTIAL]

4.4 Proprietary eCommerce platform

7-Eleven is proposing to build its own eCommerce platform through which customers will be able to order products to be collected from a nominated 7-Eleven branded store (i.e., 'click and collect') or to nominate an address to which the products will be delivered.

4.5 Third-party marketplaces

In addition, 7-Eleven may advertise its products on third-party marketplace apps, to enable customers to order and pay for delivered products from 7-Eleven branded stores. A third-party marketplace is an eCommerce platform that is the subject of the notification, except where it operates using its own technology that allows store operators to manually reduce the price charged to the customer for the product being purchased, such as DoorDash.

4.6 Future eCommerce platforms

7-Eleven Australia and 7-Eleven may engage in other forms of the Notified Conduct when 7-Eleven is implementing future eCommerce platforms in pursuit of its digital strategy.

5 Reasons for Notified Conduct

5.1 Technological limitations

In some circumstances, it will be necessary for 7-Eleven Australia and 7-Eleven to engage in the Notified Conduct because of technological limitations associated with an eCommerce initiative implemented by 7-Eleven.

For example, for the 'Pay & Go' service, technological limitations will prevent store operators from selling products at a price different from the one advertised by 7-Eleven on the 'Pay & Go' mobile app.

This is because a customer must use an app on their mobile device to scan a product's barcode in a store to purchase a product through the 'Pay & Go' service.

¹ More information about Mastercard's 'Shop Anywhere' technology is available at: <https://brainstation.io/magazine/mastercard-shop-anywhere-and-the-rise-of-frictionless-retail>.

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Using the app will result in the price of the product being the same as the recommended maximum resale price set by 7-Eleven in its systems and signified by the barcode placed on each product before it is supplied to the operators of the stores.

It is not practical for 7-Eleven to offer the 'Pay & Go' service to customers without specifying a resale price for each product. This is because all of the products sold in store contain a barcode which signifies the maximum recommended resale price. Not specifying a resale price for each product would mean that each of the store operators would need to manually place stickers over the barcode on each product in their store advertised for sale through the 'Pay & Go' service. That would be time consuming and onerous for each store operator.

Further, placing the stickers over the barcodes would mean that 7-Eleven's systems would record the products as generic products, rather than correctly recording which products had been sold to customers via the 'Pay & Go' service. This would result in insurmountable challenges in reconciling product inventories and financial budgets, both of which depend on sales being correctly recorded in 7-Eleven's systems. For example, the operators of 7-Eleven branded stores would not be able to determine which products they have actually sold.

7-Eleven anticipates that similar limitations inherent to the technology used in the Digital Screen and 'Micro Markets' initiatives will prevent store operators from selling products through these initiatives at a price different from the one advertised by 7-Eleven. If 7-Eleven is unable to develop a technological solution which overcomes these limitations, 7-Eleven Australia and 7-Eleven would be engaging in resale price maintenance when 7-Eleven implements the Digital Screen and 'Micro Markets' eCommerce initiatives.

5.2 Substantial administrative burdens

In other circumstances, there may be no perceived technological limitations associated with 7-Eleven's eCommerce initiative but there would be an ongoing and substantial administrative burden for 7-Eleven associated with ensuring that the prices advertised on the eCommerce platform are the same as the prices charged to the customer. The administrative burden would arise from the need for 7-Eleven to continually vary prices on the platform by product and by store, based on inputs from each operator of a store.

6 Purpose of the Notified Conduct

6.1 Grow sales and improve competitiveness in the digital economy

7-Eleven's and 7-Eleven Australia's purpose for engaging in the Notified Conduct is to grow digital sales across the 7-Eleven network, including from 7-Eleven's franchised and corporate stores, in circumstances where 7-Eleven expects sustained growth in the digital economy at the expense of sales to consumers who are physically present in a store at the time of the sale and who use the physical checkout in the store to purchase products.

Consumers have come to demand the ability to purchase and receive products without being physically present in-store. This consumer need has been further exacerbated by the impacts of COVID-19, including the various state and federal government health restrictions on physical retail trading, which have been imposed to prevent the spread of COVID-19 in the past two years.

Retailers have responded to this demand by adopting digital ordering and delivery platforms. That, in turn, has resulted in increases in the types of

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convenience goods available to customers who wish to purchase those goods digitally.

In addition, consumers' uptake of marketplace apps has also changed consumer behaviour in food and drink retail markets. This is reflected in the reach of marketplace apps. For example, research published in May 2021 shows that 26.5% of Australians aged over 14 used meal delivery services in the past year.² This accounts for 26.5% of Australian adults. The figure has increased from 19% in 2019 and 16.3% in 2018.

Incorporating existing technologies as well as investing in new technology is essential for 7-Eleven to maintain and grow its competitiveness against other retailers of convenience store items.

7-Eleven's digital strategy is to enable [CONFIDENTIAL] of its annual retail transactions, measured across its corporate and franchised stores, to be digital [CONFIDENTIAL].³

The adoption of this strategy is in response to 7-Eleven's identification that:

- (a) On-demand marketplace providers are vertically integrating into convenience retailing and threatening 7-Eleven's core business;
- (b) [CONFIDENTIAL] and
- (c) [CONFIDENTIAL]

Rather than relying solely on incumbent digital retailers and marketplace apps, 7-Eleven also intends to build its own digital infrastructure to operate its own eCommerce platforms.

A transaction that would count towards 7-Eleven's goal of reaching [CONFIDENTIAL] digital transactions over the next [CONFIDENTIAL] is one:

- (a) during which a customer scans their My 7-Eleven app for the purposes of redeeming a special offer or gaining loyalty rewards points when purchasing goods in store. These situations will **not** involve the customer purchasing an item from a 7-Eleven branded store using digital technology on the customer's mobile device or computer. The Notified Conduct will not apply to these situations; or
- (b) paid for via an online or eCommerce platform (such as the 'Pay & Go' service).

6.2 Improve offering to existing and future customers of 7-Eleven's stores

7-Eleven intends to integrate eCommerce initiatives to improve its offering for existing and future customers of 7-Eleven's branded stores.

² Roy Morgan 'Meal delivery services Uber Eats, Menulog, Deliveroo and DoorDash experienced rapid growth during 2020 – a year of lockdowns and work from home', available at: <http://www.roymorgan.com/findings/8713-food-delivery-services-may-2021-202105280627>.

³ See, e.g., Confidential Annexure A, page 5.

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7-Eleven expects its eCommerce initiatives will improve customer experiences by expediting transaction times and offering customers different and convenient ways to purchase and receive products. This will increase competition:

- (a) [CONFIDENTIAL]
- (b) 7-Eleven's confidential research and scaled trials demonstrate a clear demand for eCommerce platforms and technologies that allow online purchases and on-demand delivery.

6.3 Integration with 7-Eleven's digital strategy

7-Eleven's eCommerce initiatives will complement other elements of 7-Eleven's digital strategy.

The features of 7-Eleven's digital strategy that have been launched, or are intended for launch, include the rollout of the 'My 7-Eleven' App in June 2020 (including integration with 7-Eleven's loyalty rewards program), targeted merchandise and fuel offers, personalised communications and new payment options including Apple Pay and Google Pay.

[CONFIDENTIAL]

7 Documents

Documents detailing the terms of the Notified Conduct and which form part of this application are annexed to this application.

They comprise:

- (a) [CONFIDENTIAL]
- (b) [CONFIDENTIAL]
- (c) [CONFIDENTIAL]
- (d) [CONFIDENTIAL]
- (e) [CONFIDENTIAL]
- (f) [CONFIDENTIAL]
- (g) [CONFIDENTIAL]
- (h) [CONFIDENTIAL]
- (i) [CONFIDENTIAL]
- (j) [CONFIDENTIAL]
- (k) [CONFIDENTIAL]
- (l) [CONFIDENTIAL]
- (m) [CONFIDENTIAL]
- (n) [CONFIDENTIAL]

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- (o) [CONFIDENTIAL]
- (p) [CONFIDENTIAL]
- (q) [CONFIDENTIAL]
- (r) [CONFIDENTIAL]
- (s) [CONFIDENTIAL]
- (t) [CONFIDENTIAL]
- (u) [CONFIDENTIAL]

Non-confidential annexures are contained in Schedule 4.

Confidential annexures are contained in Confidential Schedule 5.

8 Persons affected by Notified Conduct

The persons who may be directly affected by the Notified Conduct include:

- (a) operators of 7-Eleven branded stores who will benefit from an offering that will allow them to better compete with other convenience retailers;
- (b) current and future customers of 7 Eleven branded stores who will enjoy more expedient and convenient ways of purchasing and receiving products;
- (c) competitors of 7-Eleven who will be encouraged to improve their own customer offerings through the integration of eCommerce initiatives; and
- (d) developers and operators of eCommerce platforms.

Other persons or classes of persons who may be directly affected by the Notified Conduct are set out in **Schedule 2**.

The names and contact details of 7-Eleven's franchisees are contained at **Confidential Schedule 3**.

9 Market information

9.1 Relevant industry

The relevant industry is convenience retailing.

9.2 Product and functional dimensions of the relevant markets

7-Eleven branded stores sell food and beverage products produced by major brands.

Those products are widely available in supermarkets and other convenience stores.

7-Eleven branded stores also sell some products which are exclusive to 7-Eleven, including some 7-Eleven branded and trademarked food and beverage products. However, there are many close substitutes for those products sold by other retailers.

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Aside from food and beverages, 7-Eleven branded stores sell tobacco and related products. In some cases, the stores also sell fuel.

7-Eleven submits that the product dimension of the relevant markets is supply of convenience store products and the functional dimension of the relevant markets is retail.

9.3 Geographic dimensions of the relevant markets

There are 737 stores operating under 7-Eleven's brand.

549 of those stores are franchised.

The remaining 188 stores are owned by 7-Eleven Stores Pty Ltd or related bodies corporate or associated entities of 7-Eleven Stores Pty Ltd.

The Figure below sets out the number and location of 7-Eleven's corporate and franchised stores, based on each State and Territory.

Figure 9.3.1. – Number of 7-Eleven branded stores operating in Australia

State/territory	Total No. of stores	No. of franchised stores	No. of corporate-owned stores
Victoria	242	195	47
New South Wales	235	204	31
Queensland	200	132	68
Australian Capital Territory	10	9	1
Western Australia	50	9	41

7-Eleven submits that it is not necessary for the Commission to precisely define the geographic boundaries of the relevant markets, which will tend to have local geographic dimensions because of the retail nature of 7-Eleven's offering.

9.4 7-Eleven's competitors

Each 7-Eleven branded store operates in a highly competitive market, the characteristics of which are summarised below.

7-Eleven branded stores compete with other bricks and mortar retailers of convenience store items in the same geographic region, including:

- (a) stores in major fuel and convenience retailer networks, including:
 - (i) BP;
 - (ii) Ampol (Caltex)⁴;

⁴ Of which some stores are co-branded Woolworths.

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- (iii) Coles Express (in partnership with Viva Energy);
 - (iv) Liberty Oil (a wholly owned subsidiary of Viva Energy);
 - (v) EG Group Australia (branded as Woolworths);
 - (vi) United Petroleum;
 - (vii) Puma Energy; and
 - (viii) Metro Petroleum;
- (b) stores in smaller fuel and convenience retailer networks, including:
- (i) Freedom Fuels;
 - (ii) Mogas Regional;
 - (iii) Westside Petroleum; and
 - (iv) Costco;
- (c) stores in convenience retailer networks, including:
- (i) City Convenience Store;
 - (ii) EzyMart;
 - (iii) NewsLink; and
 - (iv) NightOwl Convenience Stores;
- (d) independent convenience store retailers; and
- (e) stores in major supermarket retailer networks, including:
- (i) Coles;
 - (ii) Woolworths; and
 - (iii) IGA.

9.5 Competitors have made substantial investments in eCommerce technologies

In addition to bricks and mortar outlets, some of 7-Eleven's competitors have developed eCommerce platforms and/or partnered with third-party marketplace apps to allow customers to purchase and receive delivery of convenience store products without being physically present in-store.

By way of example, consumers can purchase and receive home delivery of convenience store items from Woolworths, which has also recently partnered with Uber Eats to allow same-hour grocery delivery.⁵

⁵ <https://www.theaustralian.com.au/business/uber-eats-and-woolworths-team-up-for-samehour-topup-grocery-delivery/news-story/15207b579d3ba7a895d55c535294b394>

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These investments have affected competition in markets for the retail supply of convenience store products by:

- (a) widening the geographic boundaries of the markets in which (and increasing the number of convenience store item retailers with whom) 7-Eleven branded stores compete;
- (b) improving the efficiency and value proposition to consumers;
- (c) lowering search and transaction costs for consumers; and
- (d) accelerating consumer demands for more efficient and rewarding retail experiences relying on eCommerce technologies.

Even 5 years ago, shifting consumer trends were clearly evident, with data from 2016 showing:

- (a) 76% of shoppers look at a retailer's website or app to become aware of a product or category on their own;
- (b) 71% of consumer use digital before a shopping trip;
- (c) 55% of millennials and 44% of non-millennials use digital during a shopping trip;
- (d) digital interactions influence 60% of retail sales; and
- (e) 39% of shoppers are likely to initiate a product return or refund from a digital device (compared to 20% in 2015).⁶

9.6 Store operators almost always price at maximum recommended resale price

7-Eleven's store operators are able to set the prices up to a maximum specified resale price of each product they sell in their store.

However, in approximately **[CONFIDENTIAL]** of instances, store operators adopt the maximum resale price recommended by 7-Eleven.

9.7 Capacity constraints in bricks and mortar retailing

The requirements on customers to select products from shelves and pay at a single physical checkout (and the typical time taken to do so) limit the number of transactions that a bricks and mortar store can complete during a day of trade.

10 Public benefits

7-Eleven is keen to implement its eCommerce strategy, but it is currently prevented from doing so by the risk this poses of 7-Eleven Australia and 7-Eleven engaging in resale price maintenance.

The Notified Conduct will allow 7-Eleven to implement its digital strategy, leading to the following public benefits.

⁶ Deloitte University Press, 'The new digital divide – the future of digital influence in retail', available at: https://www2.deloitte.com/content/dam/Deloitte/za/Documents/za_Deloitte-The-future-of-digital-influence-in-retail-Jan17.pdf

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10.1 Encouraging innovation to improving the customer experience

Allowing the notice to stand will enable 7-Eleven to invest in the eCommerce initiatives for its digital strategy because it will remove the risk of 7-Eleven Australia and 7-Eleven engaging in resale price maintenance when it engages in the Notified Conduct.

Currently, customers can only purchase convenience store items from 7-Eleven branded stores by physically entering the store, selecting the product and lining up to pay for it at the physical checkout. **[CONFIDENTIAL]**

7-Eleven's eCommerce initiative will improve the consumer experience by allowing customers to purchase products faster and in more ways than is currently available, including through digital platforms that consumers have become accustomed to and prefer.

Customers will be able to receive personalised recommendations and choose their preferred type of purchase, payment method and transactional platform.

Regardless of how customers choose to purchase products and interact with 7-Eleven branded stores, the Notified Conduct will allow 7-Eleven to ensure that customers have a consistent experience.

7-Eleven's investment in its eCommerce initiative will:

- (a) respond to consumer demands, which are increasingly revolving around technological integration across the entire retail experience;
- (b) improve 7-Eleven's competitiveness against other retailers of convenience items (which are already leading 7-Eleven in terms of digital transformation); and
- (c) assist with overcoming the capacity constraints faced by bricks and mortar stores.

10.2 Greater choice of retailer for consumers

Aside from improving the experience of purchasing products from 7-Eleven, the Notified Conduct is expected to increase the number of customers who are able to purchase products from 7-Eleven branded stores at any given time.

For example, the Notified Conduct will allow consumers to purchase convenience store products without being physically present in-store. Consequently, it will allow customers who are prevented from, or who do not wish to, travel to a store to purchase its products.

Further, the Notified Conduct will allow customers who do purchase in-store to avoid the need for queuing to purchase some products, as they will be able to complete a transaction without transacting via a traditional register. This will save consumers time to make purchases and allow them to reduce the level of in-person contact (which some consumers are seeking in response to the recent emergence of COVID-19).

10.3 Benefits to store operators

Supply from a 7-Eleven branded store is currently constrained by factors inherent to bricks and mortar retailing such as floor space and staffing. The efficiency gains of 'Pay & Go' will benefit 7-Eleven store operators, including franchisees, in the following ways.

Notification of resale price maintenance

a) Allowing employees to add more value

Replacing iterative processes requiring human input with automated processes will likely reduce the administrative burden on store operators, in turn, freeing up human and financial resources which can be deployed in more valuable ways.

For example, allowing customers to purchase products through the 'Pay & Go' service will reduce the number of customers that a store operator must serve at the physical checkout.

This will allow employees to spend more time on value-add tasks like assisting other customers.

b) Enhancing profitability

7-Eleven's eCommerce initiatives are expected to increase the number of customers to whom a store operator can sell products on a given day of trade, thereby increasing the prospect of boosting the store operator's revenue.

Alleviating the staffing and administrative burdens of traditional retail process, such as the checkout, is expected to improve the profitability of operators of 7-Eleven branded stores, including franchisees.

11 Public detriments

The Notified Conduct is not expected to result in any measurable detriments to the public.

11.1 Store operators rarely discount

Currently, approximately **[CONFIDENTIAL]** of all sales by 7-Eleven's store operators are of products priced below the maximum recommended resale price set by 7-Eleven. Those sales are likely to occur where a store operator wishes to move stock which is nearing its use-by date. In those cases, the store operator would usually place the discounted stock in a basket with signage to indicate that the stock is discounted. 7-Eleven Australia and 7-Eleven engaging in the Notified Conduct will not prevent 7-Eleven store operators from allowing customers to purchase discounted products at the physical checkout.

For the most recent 6-month period, being 1 January to 30 June 2021, only **[CONFIDENTIAL]** of products sold by 7-Eleven's store operators were sold below the maximum recommended retail price set by 7-Eleven.

Because of the very low rate at which store operators discount, 7-Eleven Australia and 7-Eleven engaging in the Notified Conduct will not materially affect the prices at which customers can purchase products from 7-Eleven branded stores. Rather, in almost all cases, store operators will continue to choose to price products at the maximum recommended resale price.

Further, where a 7-Eleven store operator wishes to discount a product for sale below the resale price set by 7-Eleven, they will still be able to do so on sales made through the physical checkout.

11.2 Prices will not increase

Neither 7-Eleven as a whole nor any of its corporate or franchised stores has market power in the retail supply of convenience store items.

7-Eleven will continue to be constrained from raising prices by:

Notification of resale price maintenance

- (a) intense competition from a large number of competitors offering the same product range, including bricks and mortar retailers and online marketplaces; and
- (b) consumers, who face *de minimis* switching costs and who are price sensitive.

Similarly, 7-Eleven's competitors are unlikely to increase prices in response to 7-Eleven's conduct due to these constraining factors.

As a result, the Notified Conduct is not intended, and is not expected, to result in any increases to the price of products sold at the checkout of 7-Eleven branded stores.

7-Eleven may need to specify a minimum resale price to store operators for products sold through a third-party's marketplace app to cover the **[CONFIDENTIAL]** commission and other miscellaneous charges charged by the third party. Similarly, 7-Eleven may need to specify a resale price to store operators for products sold through its proprietary eCommerce platform to cover the additional costs associated with the operation of the platform. In those circumstances, 7-Eleven may have to specify a resale price for a product when it is delivered that is greater than the maximum recommended resale price of that product when it is sold in bricks and mortar stores. However, in those circumstances, 7-Eleven will be specifying a price for a product plus a service (i.e., operating a platform that facilitates delivery of the product) rather than increasing the price on a good without offering any additional good or service to the customer.

11.3 eCommerce transactions are a small proportion of 7-Eleven's business

A digital transaction is a transaction that is fulfilled by digital means when a customer:

- (a) scans their My 7-Eleven app for the purposes of redeeming a special offer or gaining loyalty rewards points; or
- (b) pays for a product for via an online or eCommerce platform (such as the 'Pay & Go' service).

The proportion of the number of transactions in 7-Eleven branded stores which are currently initiated by digital means or involve a digital element is currently only approximately **[CONFIDENTIAL]** are currently fulfilled by digital means.

The vast majority of those **[CONFIDENTIAL]** of transactions are transactions that involve customers scanning their My 7-Eleven app for the purposes of redeeming a special offer or gaining loyalty rewards points, rather than paying for a product via an online or eCommerce platform.

7-Eleven is aiming for approximately **[CONFIDENTIAL]** of sales across its network to be digital **[CONFIDENTIAL]** Even if that target is reached over the course of the next **[CONFIDENTIAL]** the relevant subset of products would not be large enough to constitute a material loss in potential price competition in any relevant market.

Notification of resale price maintenance

11.4 7-Eleven may develop solutions or mitigations to technological limitations

There is a possibility that 7-Eleven will be able to develop solutions to the technological limitations and administrative burdens which are currently preventing the implementation of eCommerce initiatives without the risk this poses of 7-Eleven Australia and 7-Eleven engaging in resale price maintenance. If that occurs, then there will be no need to engage in the Notified Conduct and the negligible public detriment described in this section will be avoided entirely.

12 Contact details of relevant market participants

Please refer to **Schedule 2** and **Confidential Schedule 3**.

Notification of resale price maintenance

Schedule 1 Information requested by ACCC

The table below sets out where the information required by the notification form available on the ACCC's website is contained in this notice.

#	Information required by the notification form	Section in which information is provided
1	Provide details of the notifying party, including:	
1.1	name, address (registered office), telephone number, and ACN	1
1.2	contact person's name, telephone number, and email address	1
1.3	a description of business activities	1
1.4	email address for service of documents in Australia.	1
2	Indicate whether the notified conduct is for:	
2.1	exclusive dealing (s. 47 of the Competition and Consumer Act 2010 (Cth) (the Act);	
2.2	resale price maintenance (s. 48)	2.1
2.3	collective bargaining (s. 93AB). If the notified conduct is for collective bargaining, whether the notified conduct includes a collective boycott.	
3	Provide details of the notified conduct including:	
3.1	a description of the notified conduct	2.1
3.2	any relevant documents detailing the terms of the notified conduct	7; Schedule 4; Confidential Schedule 5
3.3	the rationale for the notified conduct	5
3.4	any time period relevant to the notified conduct.	3
4	Provide documents submitted to the notifying party's board or prepared by or for the notifying party's senior management for purposes of assessing or deciding in	7; Confidential Annexures A-D, N, O, R and S

Notification of resale price maintenance

#	Information required by the notification form	Section in which information is provided
	relation to the notified conduct and any minutes or record of the decision made.	
5	Provide the names and/or a description of the persons or classes of persons who may be directly impacted by the notified conduct (including targets in collective bargaining or boycott conduct) and detail how or why they might be impacted.	8; Schedule 2; Confidential Schedule 3
6	Describe the products and/or services, and the geographic areas, supplied by the notifying parties. Identify all products and services in which two or more parties to the notified conduct overlap (compete with each other) or have a vertical relationship (e.g., supplier-customer).	9
7	Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.	9
8	In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.	N/A
9	In assessing a notification, the ACCC considers competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:	9
9.1	Existing competitors	
9.2	Likely entry by new competitors	
9.3	Any countervailing power of customers and/or suppliers	
9.4	Any other relevant factors	
10	Describe the benefits to the public that are likely to result from the notified conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.	10
11	Describe any detriments to the public that are likely to result from the notified conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.	11
12	Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties, such as actual or potential	Schedule 2; Confidential Schedule 3

Notification of resale price maintenance

#	Information required by the notification form	Section in which information is provided
	competitors, customers and suppliers, trade or industry associations and regulators.	
13	Provide any other information you consider relevant to the ACCC's assessment of the notified conduct.	N/A

Notification of resale price maintenance

Schedule 2 Contact details of relevant market participants


Name	Phone number	Other details
Fuel and Convenience Retailers		
City Convenience Store	(02) 8338 0060	197 King St, Mascot NSW 2020
EzyMart	+61 2 9252 3222	info@ezymart.net.au
Coles Express	1800 061 562	PO Box 480 Glen Iris VIC 3146
NewsLink	+61-282181100	Level 5/50 Holt Street, Surry Hills NSW 2010
NightOwl Convenience Stores	(07) 3088 1200	info@nightowl.com.au
BP	1300 130 027	aucustcare@bp.com
Ampol (Caltex)	+61 2 9250 5000	media@ampol.com.au
Viva Energy	+61 3 8823 4444	TellVivaEnergy@vivaenergy.com.au ; media@vivaenergy.com.au
Woolworths	(02) 8885 0000	media@woolworths.com.au
United Petroleum	(03) 9413 1400	600 Glenferrie Road, Hawthorn VIC 3122
Puma Energy	1300 723 706	brisbanereception@chevron.com
Metro Petroleum	(02) 8722 2100	info@metropetroleum.com.au
Freedom Fuels	(07) 3268 5077	Unit 5/16 Theodore St, Eagle Farm QLD 4009
Mogas Regional	(08) 8367 2000	info@mogasregional.com.au
Westside Petroleum	+61 2 9553 8525	2/11 Forest Road, Hurstville NSW 2200
Costco	(02) 9469 7999	17-21 Parramatta Rd, Lidcombe NSW 2141
Other		
Australasian Association of Convenience Stores	+61 467 873 789	
Australian Association of Franchisees	+61 2 8002 7432	info@aaf.asn.au

Name	Phone number	Other details
The Australian Small Business and Family Enterprise Ombudsman	1300 650 460	media@asbfeo.gov.au
Franchise Advisory Centre	(07) 3716 0400	N/A
Franchise Council of Australia	+61 3 9508 0888	19/567 Collins St Melbourne VIC 3000
Small Business Association of Australia	1300 413 915	Level 2, Suite 8, 60 Nerang Street, Nerang, QLD 4211
NSW Small Business Commissioner	1300 795 534	PO Box W275 Parramatta NSW 2150
Victorian Small Business Commission	13 8722	GPO Box 4509 Melbourne Victoria 3001
Queensland Small Business Commissioner	1300 312 344	N/A
Western Australia Small Business Commissioner	133 140	Level 2, 140 William St, Perth WA 6000

Declaration by notifying party

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).

DocuSigned by:

02CF7A7ADA604DC...

Signature of authorised person

GENERAL COUNSEL and COMPANY SECRETARY of 7-ELEVEN STORES PTY LTD

Office held

JAMES WYATT

(Print) Name of authorised person

This 29th day of July 2022

Note: If the Notifying Party is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Notifying Party, this fact must be stated.

Declaration by notifying party

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).

DocuSigned by:

FCBAD3283D5C4A6...

Signature of authorised person

COMPANY SECRETARY of 7-ELEVEN AUSTRALIA PTY LTD

Office held

JAMES WYATT

(Print) Name of authorised person

This 29th day of July 2022

Note: If the Notifying Party is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Notifying Party, this fact must be stated.

Schedule 4 Non-confidential Annexures

Public versions of 7-Eleven's responses to the ACCC's previous requests for information are annexed at Annexure F, Annexure L and Annexure Q.

11 March 2022

To Mr Alex Reed
Senior Analyst, Mergers, Exemptions and Digital
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601
alex.reed@accc.gov.au

Copy sharon.deano@accc.gov.au
gavin.jones@accc.gov.au
exemptions@accc.gov.au

Dear Alex

7-Eleven Australia Pty Limited and 7-Eleven Stores Pty Limited — Notification of resale price maintenance under section 93 of the Competition and Consumer Act 2010 (Cth)

We refer to the resale price maintenance notification lodged by 7-Eleven Australia Pty Limited and 7-Eleven Stores Pty Limited (together, **7-Eleven**) on 28 January 2022 and your email dated 24 February 2022 requesting further information from 7-Eleven.

We are instructed to provide the following responses, which are set out below each of the questions in your email.

1 We note that a range of 7-Eleven eCommerce initiatives are described in the notification. Please define “eCommerce platform” for the purposes of the Notification.

For the purposes of the Notification, an “eCommerce platform” is a technology through which customers can purchase 7-Eleven products at a price that cannot be manually reduced by a store operator.

The eCommerce initiatives described in section 4 of the Notification each involve an “eCommerce platform” through which customer transactions would be processed.

Critically, the “eCommerce platforms” the subject of the Notification are only those which are affected by a functional limitation that prevents store operators altering the price of products because of the way that technology interacts with 7-Eleven’s core enterprise resourcing planning (**ERP**) system.

Where 7-Eleven rolls out an eCommerce platform which does not have such a functional limitation, 7-Eleven will allow store operators to manually override the price set by 7-Eleven to reduce the price of a product being purchased by a customer.

For example, 7-Eleven has [Confidential] operates using technology that allows a store operator to individually reduce the price of a product sold to a customer. Consequently, when 7-Eleven [Confidential], 7-Eleven will allow store operators to individually discount products [Confidential].

2 Explain the extent to which, pursuant to the Notification, 7-Eleven intends to deploy or adapt existing eCommerce initiatives (for example, the eCommerce platform used by 7-Eleven's USA counterpart) versus develop new solutions.

7-Eleven currently does not intend to deploy or adapt any existing eCommerce initiatives.

Each of the initiatives referred to in the Notification will be developed as new solutions as part of 7-Eleven's digital strategy. The exception is where 7-Eleven partners with an existing third-party marketplace, such as Uber Eats, in which case this would involve deploying that third-party marketplace's existing technology for processing transactions rather than developing a new solution.

[Confidential] However, transactions from Micro Market stores will still be processed through 7-Eleven's core ERP system, meaning that the eCommerce platform will still be subject to the functional limitation described in the response to question 1 above.

3 Explain the extent to which 7-Eleven would implement its digital strategy in Australia if it was unable to engage in the Notified Conduct.

- (a) Where 7-Eleven considers that eCommerce initiatives could not proceed or would be limited, explain why including details of specific limitations or burdens.
- (b) Where 7-Eleven considers that eCommerce initiatives could proceed, explain the form they would likely take and provide reasons why.

Please provide a response in relation to at least each of the eCommerce initiatives described in 7-Eleven's notification, not just Pay & Go.

7-Eleven considers that each of the eCommerce initiatives described in the Notification could not proceed if it were unable to engage in the Notified Conduct, including Pay & Go, Digital Screen food ordering, 'Micro Market' stores, the proprietary eCommerce platform, third-party marketplaces (other than those not affected by the functional limitation described in the response to question 1, [Confidential]), and any future eCommerce platforms affected by the functional limitation described in the response to question 1.

In each case, the specific limitation preventing 7-Eleven from proceeding with the eCommerce platform is that 7-Eleven's core ERP system cannot integrate with the eCommerce platform in a way that would allow store operators to manually override the price set by 7-Eleven for that product. This is because 7-Eleven's core ERP system cannot accommodate more than two different price points per product in each state (for example, one for regional stores and one for CBD stores).

We note that section 5.2 of the Notification contemplates some of 7-Eleven's eCommerce initiatives may not be affected by any perceived technological limitation. By way of clarification, this paragraph noted that 7-Eleven could technically allow for store operators to discount if, every time a store operator wanted to process a transaction at a discounted price, this was communicated to 7-Eleven,

which would then alter the price set of the product on the core ERP system (before changing it back to the original price after that store operator had processed the transaction). While the price on the ERP system is set at the reduced price requested by the store operator who wishes to discount, no other store operators can also request that 7-Eleven reduce the price of that product. In addition, 7-Eleven's ERP system may take up to 14 days to implement each change to the price of a product. This potential workaround is clearly not feasible given the substantial administrative burdens on 7-Eleven would outweigh any benefit of implementing the eCommerce platform.

4 Regarding the discounting figure provided at section 11.1 of the Notification about the approximate percentage of all sales by 7-Eleven's store operators that are of products priced below the maximum recommended resale price set by 7-Eleven, please provide the following information:

- (a) The methodology used to calculate this figure, or, if simpler, the underlying data.
- (b) A frequency distribution table for the number of (1) corporate-owned and (2) franchised stores by discounting levels, or data presented in another way that would enable the ACCC to understand patterns in behaviour in respect of pricing. For example, does the figure indicate a small number of stores discounting frequently or is the incidence of discounting relatively consistent across stores. Please provide this information for each six-month period from 1 January 2020 to 31 December 2021.
- (a) The discounting figure provided was obtained by dividing the quantity of transactions involving a price override by a store operator [Confidential] by the total quantity of transactions [Confidential]. This led to an approximate discounting rate of [Confidential].
- (b) The reporting system that 7-Eleven used to extract the discounting figure provided in the Notification and described in (a) above has been disabled. 7-Eleven can no longer provide the discounting figure by number of sales; instead, it can only provide data on the proportion of transactions by *value of sales* that were subject to a price override for both franchised stores and corporate owned stores in the 2020 and 2021 calendar years.

The data by month for 2020 (separated into totals for franchised vs corporate owned stores) is annexed at **Confidential Annexure A**.

The data by month for 2021 (separated into totals for franchised vs corporate owned stores) is annexed at **Confidential Annexure B**.

The relevant figures for each six-month period from 1 January 2020 to 31 December 2021 (separated into totals for franchised vs corporate owned stores) are set out in **Confidential Table 4.1** below.

The data by month for 2020 for each individual store is annexed at **Confidential Annexure C**.

The data by month for 2021 for each individual store is annexed at **Confidential Annexure D**.

The minimum and maximum annual discounting rates among franchised and corporate stores are set out in **Confidential Table 4.2** below.

Confidential Table 4.1 – Discount rate (by value of sales) for 1 January 2020 to 31 December 2021

		Franchised	Corporate owned	Total
1 January to 30 June 2020	Total sales	[Confidential]	[Confidential]	[Confidential]
	Total price override			
	Total discount rate			
1 July to 31 December 2020	Total sales			
	Total price override			
	Total discount rate			
1 January to 30 June 2021	Total sales			
	Total price override			
	Total discount rate			
1 July to 31 December 2021	Total sales			
	Total price override			
	Total discount rate			

Confidential Table 4.2 – Maximum and minimum annual discount rate (by value of sales) among corporate and franchised stores

		Min annual discount rate ¹	Max annual discount rate ²
2020	Franchised	[Confidential]	
	Corporate		
2021	Franchised		
	Corporate		

- 5 The last paragraph of section 11.2 of the notification states that 7-Eleven may need to specify a minimum retail price to store operators for products sold through a third-party’s marketplace app to cover commissions and other miscellaneous charges charged by the third party. Please explain why such commissions could not be recovered in another way. For example, directly passing on the cost to the store operator or stipulating the mark up (as a percentage or figure) the store operator must apply to the product rather than a minimum price.**

7-Eleven considers that passing on the costs of third-party marketplace commissions and charges to store operators would directly impact their revenue and profit figures. Store operators could not recoup the costs by increasing prices to customers because 7-Eleven specifies a maximum recommended resale price of products. The adverse impact on revenue and profit would be more significant for store operators who generate more sales through third-party marketplaces, creating an incentive to reduce sales from eCommerce platforms which is contrary to the rationale of 7-Eleven’s digital strategy.

7-Eleven interprets the second alternative posed by the ACCC as 7-Eleven stipulating a mark-up that store operators must apply to products sold in-store, because it is impossible (as explained above) for store operators to set, by way of manual override, a different price to that which is set by 7-Eleven for products sold through eCommerce platforms the subject of the Notification.

7-Eleven considers that stipulating a mark-up that store operators must apply is worse for customers, who would then face higher prices across the board (i.e., regardless of whether they purchase products in-store or via an eCommerce platform) and who would not have the ability to purchase certain products in-store at a discounted price. In addition, preventing store operators from discounting the product sold in-store would adversely impact their profit and revenue figures, because they would be unable to sell certain stock (e.g., products with a limited shelf-life or that have been discontinued). This would become “bad merchandise”, the cost of which they are required to bear under the 7-Eleven franchise agreement.

- 6 Section 11.3 of the notification states that eCommerce transactions are a small proportion of 7-Eleven sales. As noted above, the ACCC is also considering the impact the Notified Conduct may have on store operators’ pricing decisions for products sold through channels other than**

¹ Excluding stores for which there was not data for every month in 2020.

² Excluding stores for which there was not data for every month in 2020.

eCommerce platforms (for example, physical checkout in-store). The ACCC notes that there may be a significant staffing and administrative burden in offering products for sale through physical checkout in store at a price that is different to that stipulated by 7-Eleven for eCommerce transactions – for example, it may be necessary to display two prices for the product in store, one for physical check out sales and another for eCommerce sales. Please provide 7-Eleven’s view about the likely impact of the Notified Conduct on prices set for products sold via physical checkout in store.

7-Eleven considers there will be no impact of the Notified Conduct on prices set for products sold via physical checkout in store.

Discounting products

If the ACCC authorised the Notified Conduct, store operators will still be able to discount products sold via physical checkout in store. Store operators are currently primarily incentivised to discount products in the following two circumstances:

- (a) when a product is nearing its expiration date; or
- (b) when a product is discontinued.

These incentives will not change.

As an example, when a store operator discounts stock which is yet to be sold but close to its expiration date, the store operator offers the discount by manually changing the displayed price of the product (e.g., by placing a new price sticker on the product or placing the product in a specific section or basket with clear signage indicating that it is discounted). The purpose of the discount is to encourage customers to purchase the product so that it does not become “bad merchandise”, the cost of which store operators are required to bear under the 7-Eleven franchise agreement. Each time a customer purchases the discounted product, the store operator manually overrides the price at the physical checkout.

The Notified Conduct does not prevent customers from purchasing discounted stock in store via the physical checkout and does not affect the ability or incentive of store operators to offer such discounts. The only alteration that the Notified Conduct will bring about is that, when labelling products as discounted, store operators will have to make clear that the discount is only available when the

customer purchases the product via the physical checkout (and not when the customer purchases the product via an eCommerce platform).

This is not a meaningful increase in the administrative burden on store operators offering an in-store discount. Accordingly, 7-Eleven considers there will be no change to the tendency of store operators to offer in-store discounts if it engages in the Notified Conduct.

Promotions

7-Eleven engaging in the Notified Conduct will also not affect the setting of promotions by 7-Eleven. Promotions are customer offers such as special price point, multi-buys or unique loyalty offers and are distinct from the setting of discounts by store operators as described above.

Unlike other convenience retail franchise networks in which individual store operators determine the promotions available in store, the decision to offer a promotion for a product in a 7-Eleven branded store is made by 7-Eleven at the national level. Promotions are then advertised to customers and implemented in-store at a national, state or cluster level. Offering promotions is an important way for 7-Eleven to offer value to its customers and is central to its business model. Accordingly, 7-Eleven intends to only implement eCommerce platforms which will be able to accommodate promotional initiatives set by 7-Eleven at the national level.

If 7-Eleven were to engage in the Notified Conduct, it would continue offering such promotions for products available for sale in store and would also have the ability to offer even more value for customers by offering promotions on products purchased via an eCommerce platform.

7 Regarding section 11.4 of the Notification, explain the types of solutions to technological limitations or administrative burdens that 7-Eleven may be able to develop to avoid the need to engage in the Notified Conduct. Please also explain any incentive for 7-Eleven to develop and implement such solutions if 7-Eleven is able to engage in the Notified Conduct.

The need to engage in the Notified Conduct arises from technological limitations in 7-Eleven's core ERP system, which cannot accommodate more than two price points per product in each state.

This limitation would prevent store operators from manually overriding the price set by 7-Eleven for a product sold through a certain eCommerce platform.

Accordingly, the only solution that 7-Eleven may be able to develop to avoid the need to engage in the Notified Conduct is a full replacement of its core ERP system. **[Confidential]**

8 Provide any key 7-Eleven Board documents or other internal documents over the period 1 January 2019 to 31 December 2021 considering:

- (a) **The Notified Conduct.**
- (b) **Implementing 7-Eleven's digital strategy or eCommerce initiatives without the Notified Conduct.**
- (c) **Store-level discounting.**

We have not identified any key 7-Eleven Board documents considering these matters in the time available to respond to this notice. We are continuing to review other internal documents to identify if

there is any material (in addition to the documents already provided to the Commission) that would assist the Commission in assessing the Notification.

Claim for confidentiality

The information in this letter labelled **[Confidential]** and in red text and the Annexures are confidential to 7-Eleven and/or 7-Eleven's franchisees.

If the confidential information were to become publicly available, 7-Eleven and 7-Eleven's franchisees would likely suffer commercial detriment and, in relation to some of the information, be exposed to proceedings for breach of their contractual and equitable obligations of confidentiality.

7-Eleven requests, pursuant to section 89(5) of the Act, that the confidential information described above be excluded from the Commission's public register.

Further, 7-Eleven considers that the confidential information described above relates to the Commission's core statutory function of administering and enforcing the Act.

Accordingly, 7-Eleven considers that the information comprises "*protected information*" as defined by section 155AAA(21)(a) of the Act.

Please contact us if the ACCC would like any further information.

Thank you for your assistance.

Yours sincerely



Simon Cooke | Partner
King & Wood Mallesons

Level 27, 447 Collins Street
Melbourne VIC 3000

T [Redacted]

M [Redacted]

E [Redacted]

22 April 2022

To Mr Simon Bell
Assistant Director | Competition Exemptions |
Mergers, Exemptions & Digital
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601
simon.bell@accc.gov.au

Copy gavin.jones@accc.gov.au
exemptions@accc.gov.au

Dear Simon

7-Eleven Australia Pty Limited and 7-Eleven Stores Pty Limited — Notification of resale price maintenance under section 93 of the Competition and Consumer Act 2010 (Cth)

We refer to the submission in support of the resale price maintenance notification lodged by 7-Eleven Australia Pty Limited and 7-Eleven Stores Pty Limited (together, **7-Eleven**) on 28 January 2022, your email dated 24 February 2022 requesting information from 7-Eleven, our letter in response to your email dated 11 March 2022 (**First RFI Response**) and your email dated 5 April 2022 requesting further information from 7-Eleven (**Second RFI**).

Before responding to the Second RFI, 7-Eleven reiterates that its current ERP system is not fit for purpose. 7-Eleven has strong incentives to upgrade its ERP system and is commercially committed to doing so. As is prudent in the case of major (and business-critical) information technology projects, the upgrades will be undertaken by 7-Eleven in a staged and systematic manner to ensure that its current systems are not impacted as it undertakes the requisite upgrades. Until 7-Eleven is able to replace its current ERP system, absent the Notification, it will be unable to fully implement its strategic goals and, critically, it will be unable to offer franchisees and customers the benefits of a digital customer experience. This is a significant public benefit.

We are instructed to provide the following responses to the Second RFI, which are set out below each of the questions in your email.

Definition of eCommerce platform for the purposes of the Notification

In response to a request from the ACCC, 7-Eleven's letter dated 11 March 2022 defines an eCommerce platform as:

... a technology through which customers can purchase 7-Eleven products at a price that cannot be manually reduced by a store operator.

It appears that this definition could, in the future, apply to technologies beyond the types of eCommerce initiatives identified in section 4 of 7-Eleven's 28 January 2022 submission in support of the notification. Specifically, defining an eCommerce platform by reference to a technological limitation of the platform through which the transaction is processed means that the notified conduct could apply to other sales channels which in the future might be subject to that limitation (for example purchases at the physical checkout in store) if changes were made to the system for processing such transactions. Particularly as, as discussed below, the notified conduct appears to reduce or remove incentives to avoid this type of functional limitation.

We note that 7-Eleven has not indicated that it has any such intention. However, the ACCC must assess the notified conduct on the basis that the full scope of the notified conduct, as defined, will be engaged in.

1. For the avoidance of doubt please:

- a. provide a definition of eCommerce platform, or another description of the notified conduct, that limits the instances in which 7-Eleven proposes to engage in the notified conduct in accordance with the intention reflected in 7-Eleven's 28 January 2022 submission (for example, eCommerce platforms that employ a technology that does not allow prices to be manually reduced by the store operator), or
- b. if 7-Eleven wishes for the legal protection provided by the notification to extend beyond eCommerce initiatives such as those described in 7-Eleven's 28 January 2022 submission, explain this.

For the purposes of the Notification, an "eCommerce platform" is:

- (a) a customer-facing technology that allows customers to purchase a product directly (i.e., without the assistance of an employee); and
- (b) which operates using technology that does not allow store operators to manually alter the price charged to the customer for the product being purchased.

For the avoidance of doubt, the Notified Conduct:

- (a) would never include purchases by customers at the physical checkout in store. This is because purchases at the physical checkout require the assistance of an employee to carry out the transaction (for example, to scan and charge the customer);
- (b) includes each of the eCommerce platforms described in sections 4.1 to section 4.5 of the Notification, namely:
 - (i) Pay & Go;
 - (ii) Digital Screen food ordering;
 - (iii) 'Micro Market' stores;
 - (iv) 7-Eleven's proprietary eCommerce platform; and

- (v) Third-party marketplaces (other than those which operate using their own technology that allows store operators to manually reduce the price charged to the customer for the product being purchased, such as **[Confidential]**); and
- (c) may include future eCommerce platforms, other than those specified in section 4.1 to section 4.5 of the submission in support of the Notification. These include eCommerce platforms that 7-Eleven has not yet considered for implementation that operate using technology that does not allow store operators to manually alter the price charged to the customer for the product being purchased through the eCommerce platform (as described in section 4.6 of the Notification). We note the ACCC's observation that the Notified Conduct appears to reduce or remove incentives to avoid this type of functional limitation. We have addressed this observation in the response to question 5 below.

Limitations of 7-Eleven's enterprise resource planning system

7-Eleven's letter of 11 March 2022 states, in response to question 3, that a range of the eCommerce platforms described in the notification are affected by a functional limitation which means that:

7-Eleven's core enterprise resource planning (ERP) system cannot integrate with the eCommerce platform in a way that would allow store operators to manually override the price set by 7-Eleven for that product. This is because 7-Eleven's core ERP system cannot accommodate more than two different price points per product in each state (for example, one for regional stores and one for CBD stores).

The ACCC notes that section 5.1 of 7-Eleven's original submission in support of the notification identifies two technical limitations that 7-Eleven submits make it necessary to engage in the notified conduct in offering the 'Pay & Go' service. These are administrative burdens for the store operator and challenges for 7-Eleven in reconciling inventories. The functional limitation explained in 7-Eleven's 11 March 2022 submission is not directly identified.

Similar, section 5.2 of the 28 January 2022 submission directly contemplates the administrative burden that would arise from the need for 7-Eleven to continually vary prices on the platform by product and by store, based on inputs from each operator of a store.

2. The ACCC infers from 7-Eleven's 11 March 2022 submission that the statement noted above that 7-Eleven's core ERP system cannot accommodate more than two different price points per product in each state relates only to when the ERP system integrates with particular eCommerce platforms. That is, it does not apply for example to purchases at the physical checkout in store. Please confirm if this is correct, or alternatively, if the limitation on the operation of the ERP system is broader than this, how more than two different price points are currently accommodated for purchases through other channels?

The statement above that 7-Eleven's core ERP system cannot accommodate more than two different price points per product in each state relates to all purchases made through 7-Eleven's ERP system, including purchases at the physical checkout in store.

A. Qualification

The only qualification to this statement is that 7-Eleven will be introducing an additional price point for products sold in Far North Queensland (**FNQ**) stores, the first of which will open in Townsville in June

2022. This means that 7-Eleven will accommodate three price points per product in FNQ. The introduction of this additional price point is dictated by the geographic constraints of FNQ, and the fact that 7-Eleven is required to incur additional delivery costs and partner with new suppliers and vendors just so that it can augment the 7-Eleven supply chain in order to accommodate supplying its products to customers in FNQ.

B. Clarification

7-Eleven wishes to clarify that its core ERP system (i.e., SAP) technically allows for more than two prices per product per store, however, because of 7-Eleven's monthly promotional cycles, it is commercially unfeasible for 7-Eleven to utilise this functionality. This is because every time 7-Eleven introduces a promotion, a team member must manually load into the ERP system the new promotional price of each product that is within the scope of the promotion, as well as the price of combinations of products, if relevant (i.e., if the promotion is "any 3 products for \$11", there are multiple combinations of products which would qualify for the promotion, the price of each of which must be manually adjusted in the ERP system). Depending on the promotion and products involved, there could be up to 25 to 35 products that customers could select from. Because each possible product combination requires a separate manual adjustment to be loaded into the ERP, a promotion incorporating any 3 of 25 different products would require the manual entry of about 2,300 different price points.

7-Eleven typically offers between 60 and 100 promotions a month. In March 2022, 7-Eleven offered 93 promotions and, in the last 12 months, 1 in 3 products was sold on promotion. Currently, the burden on resourcing, as well as on the capacity of the ERP system itself, is considerable. 7-Eleven estimates that it takes 120 hours to set up the promotional program each month, including inputting the pricing data in the ERP system, producing the product barcodes and sending the data to the stores via the Point of Sales (**POS**) system (which is equivalent to 15 business days for 1 full-time employee). The manual process also leads to errors and significant resources being allocated to fix them. In fact, of all the issues that 7-Eleven's store technology support team address, the highest number relate to errors in product data for promotions.

The resourcing burden would be commercially unfeasible if 7-Eleven elected to offer store-specific pricing — rather than just changes to the two price "books" offered in each state, each promotion would necessitate a manual change to every relevant product in every store's price book, while the scope for error would increase considerably. Accordingly, 7-Eleven has configured its core ERP system to allow only two different price points per product per store (except in FNQ, as noted above).

In addition, the technological systems which integrate with 7-Eleven's core ERP system (e.g., the POS system) have been set up to account for this functional limitation. As a result, those systems' capacity to manage more than two price points per product in each state is completely untested. If 7-Eleven were, hypothetically, to increase the number of price points to the number of stores in the 7-Eleven network (as would be required to offer store-specific pricing), those systems would likely experience serious delays or faults, especially when a transaction involves a product subject to a promotional pricing rule. Delays and faults at the POS system would cause frustration for franchisees and customers.

Given the number of promotions offered and number of products sold on promotion, introducing additional complexity to the ERP system (and therefore the promotional process) has the potential to significantly hinder the customer experience, and 7-Eleven's ability to continue to offer such promotions to its customers. This is another reason that configuring the ERP system without the functional limitation is commercially unfeasible.

C. Current process for multiple price points

Currently, multiple price points for the same 7-Eleven product are accommodated for purchases at the physical checkout through a manual override process relying on generic price stickers. If a store operator wants to sell a product at a price that is different to the price at which the product is set in the ERP system, they must manually place a price sticker (without a barcode) on the product. When the product is purchased at the physical checkout, the store operator scans the product at the price set for the product in the ERP system but manually overrides that price and charges the customer the price indicated by the sticker.

Another way that more than two different price points for the same 7-Eleven product can be accommodated is if the purchases are not processed through 7-Eleven's core ERP system and instead are processed using third-party technology that allows multiple price points to be assigned to a particular product. On these occasions, store operators can manually reduce the price charged to the customer. The only example is **[Confidential]** which uses its own transaction-processing system that allows for multiple price points (and therefore for store operators to manually reduce the price charged to a customer). This is why DoorDash is not an eCommerce platform the subject of the Notification.

3. Please provide:

- a. any contemporaneous documents that explain that 7-Eleven's core ERP system cannot integrate with certain eCommerce platforms (i.e. those affected by the functional limitation) in a way that can accommodate more than two different price points per product in each state, and**
- b. any response 7-Eleven wishes to provide to the ACCC's observations above about the absence of any specific information about this functional limitation in the submission in support of the notification.**

For completeness we note that we also have further questions about 7-Eleven's original submission that allowing store operators to set their own prices on the Pay & Go service would be time consuming and onerous for the store operator and create difficulties for 7-Eleven in reconciling product inventories.

However, we also note that if, as 7-Eleven submits in its 11 March 2022 submission, this eCommerce initiative could not proceed if 7-Eleven were unable to engage in the notified conduct, then such difficulties would not arise with or without the notified conduct. Accordingly, for the moment we are not seeking further information in relation to these points.

- (a) Confidential Annexure A contains a diagram showing the process by which product pricing files are loaded from SAP, 7-Eleven's core ERP system, to Magento (Adobe Commerce), which is the enterprise software that will process customer transactions made through eCommerce platforms the subject of the Notification. Because Magento's pricing files are drawn directly from SAP, which currently can only accommodate two different price points per product in each state, the eCommerce platforms the subject of the Notification will not be able to sell products to customers at multiple price points. 7-Eleven does not have any other documents which explain the functional limitation of its core ERP system.
- (b) In response to the ACCC's observations about the absence of any specific information about the functional limitation in the submission in support of the notification, 7-Eleven wishes to clarify, for the avoidance of doubt, that the two technical limitations that were discussed in the submission in support of

the Notification (i.e., administrative burdens for store operators and challenges for 7-Eleven in reconciling inventories) are a direct consequence of, and would not arise without, the functional limitation specified in the First RFI Response. On this basis, there is no inconsistency between the submission in support of the Notification and the First RFI Response. 7-Eleven elected to emphasise in the submission in support of the Notification the consequences of the functional limitation because they are the direct effects on 7-Eleven, its franchisees and its customers that have driven 7-Eleven to notify the ACCC about the Notified Conduct.

Replacing the core ERP system

In response to question 7, 7-Eleven's 11 March 2022 submission states that the only solution that 7-Eleven may be able to develop to avoid the need to engage in the notified conduct is a full replacement of its core ERP system.

[Confidential].

7-Eleven appears to be submitting that in the absence of the notified conduct, 7-Eleven's core ERP system may be incompatible with its goal to increase digital transactions.

4. Please outline in detail why any plans to replace the ERP system cannot be expedited, potentially avoiding the need for the notified conduct.

7-Eleven has identified several features of its current enterprise technological architecture which present significant hurdles to its strategic goals. One such feature is its ERP system (i.e. SAP). Another is its POS system. 7-Eleven has assessed that its POS system is presenting the greatest and most immediate hurdle to its strategic goals because it is currently exhibiting end-of-life constraints, blocking immediate customer value and preventing future improvements to the customer experience. Accordingly, 7-Eleven has prioritised—and has already commenced the process of—replacing its POS system. The document at Confidential Annexure B is a slide deck produced in April 2022 by the 7-Eleven team responsible for the upgrade of its POS system which details the progress and planning of the upgrade.

7-Eleven has also determined that it can only replace its ERP system after it has completed the replacement of its POS system. This is because the ERP and POS systems are the systems which are most critical to the operation of 7-Eleven's business; simultaneously replacing them would create a substantial risk of technological failure that, if it eventuated, would jeopardise 7-Eleven's ability to operate its business.

The document at Confidential Annexure C is a submission to the 7-Eleven board from August 2021 outlining 7-Eleven's enterprise technology roadmap. We refer to the following parts of the board submission which discuss the sequencing of the replacements of 7-Eleven's ERP and POS systems:

- (a) (Page 3) **[Confidential]**
- (b) (Page 9) **[Confidential]**
- (c) (Page 11) **[Confidential]**
- (d) (Page 24) **[Confidential]**

7-Eleven will need to undertake the upgrade of its ERP System in a staged and systematic manner to ensure that its current systems are not adversely impacted. Such an approach is necessary (and in accordance with prudent commercial practice) given the business-critical nature of these systems. Accordingly, it will require significant time to ensure each component of the upgrade is investigated and identified as fit for purpose, thoroughly tested and then brought online in a manner that does not adversely impact the current system.

We note that being able to engage in the notified conduct may reduce the incentives that would otherwise exist for 7-Eleven to replace its current ERP system, particularly given the protection provided by the notification, if allowed to stand, would be ongoing. It may also impact 7-Eleven's decision if/when the ERP system is replaced about what sort of system to replace it with (i.e. it may obviate the need to develop or deploy a system in the future that can accommodate more than two price points).

5. Please outline in detail 7-Eleven's views about the impact of the notified conduct on 7-Eleven's longer term incentives to develop solutions to the functional limitations that avoid the need to engage in the notified conduct.

For the reasons already outlined above, irrespective of whether the Notified Conduct is permitted, there is no likelihood that 7-Eleven's incentives to replace the current ERP system will be reduced.

7-Eleven considers that it must develop a solution to the functional limitations of its ERP system to grow as a business and reach its strategic goals. In particular, 7-Eleven recognises that it will only be able to reach its goals if it:

- (a) continues to offer value-for-money to customers, which is critical to 7-Eleven's business model and its ability to compete with other convenience retailers. The inability to discount through its eCommerce platforms as they gain scale will impact customers' perception of 7-Eleven as a convenience retailer offering value-for-money. 7-Eleven recognises that, unless it can develop a solution that allows discounting through eCommerce platforms, it will lose market share to its competitors, who will also be heavily investing in a convenient and compelling digital experience;
- (b) automates in-store manual processes. 7-Eleven expects its in-store transactions to triple by 2030. 7-Eleven will only be able to manage this if it invests in updating its core systems (i.e., ERP and POS systems) to enable automation of previously manual processes, such as the manual markdown process described in response to question 2, which will allow staff to allocate their time to serving more customers;
- (c) minimises the substantial resources currently allocated to launching promotions, which result from the functional limitations in the ERP system. As discussed in the response to question 2, 7-Eleven currently spends considerable resources each month manually inputting and reviewing promotional data in its ERP system. This is not sustainable and the scope for human error during this process is large. Reducing the complexity of launching a promotion through 7-Eleven's ERP system by automating those processes or enhancing the technological capability of its ERP system would materially contribute to 7-Eleven's growth ambitions; and
- (d) minimises the negative effects of the ERP's end-of-life constraints on the performance of other internal systems (e.g., the POS) and on the customer experience. Replacement of the system will be necessitated by the fact that maintenance support for the ERP system will diminish as it reaches its end-of-life.

These substantial incentives to develop solutions to the functional limitation outweigh any incentive 7-Eleven would have to rely on the notification and not develop those solutions. It is not in 7-Eleven's interests, nor the interests of its franchisees or customers, for it not to develop solutions to the functional limitations it is currently experiencing. Accordingly, 7-Eleven has already commenced the process of overhauling its enterprise technology software, starting with the POS upgrade, which will be followed by an ERP upgrade, as evidenced by the documents at Confidential Annexure B and Confidential Annexure C.

In addition to the parts of Confidential Annexure C referred to in the response to question 4 above, we refer to:

- (a) (Page 28) [Confidential]
- (b) (Page 30) [Confidential]
- (c) (Page 31) [Confidential]

Claim for confidentiality

The information in this letter labelled [Confidential] and in red text and the Annexures are confidential to 7-Eleven and/or 7-Eleven's franchisees.

If the confidential information were to become publicly available, 7-Eleven and 7-Eleven's franchisees would likely suffer commercial detriment and, in relation to some of the information, be exposed to proceedings for breach of their contractual and equitable obligations of confidentiality.

7-Eleven requests, pursuant to section 89(5) of the Act, that the confidential information described above be excluded from the ACCC's public register.

Further, 7-Eleven considers that the confidential information described above relates to the ACCC's core statutory function of administering and enforcing the Act.

Accordingly, 7-Eleven considers that the information comprises "*protected information*" as defined by section 155AAA(21)(a) of the Act.

Please contact us if the ACCC would like any further information.

Thank you for your assistance.

Yours sincerely



Simon Cooke | Partner
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16 May 2022

To Mr Simon Bell
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Mergers, Exemptions & Digital
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Dear Simon, Gavin and Connie

7-Eleven Australia Pty Limited and 7-Eleven Stores Pty Limited — Notification of resale price maintenance under section 93 of the Competition and Consumer Act 2010 (Cth)

We refer to:

- the submission in support of the resale price maintenance notification lodged by 7-Eleven Australia Pty Limited and 7-Eleven Stores Pty Limited (together, **7-Eleven**) on 28 January 2022;
- your email dated 24 February 2022 requesting information from 7-Eleven and our letter in response to your email dated 11 March 2022 (**First RFI Response**);
- your email dated 5 April 2022 requesting further information from 7-Eleven (**Second RFI**), our letter in response to your email dated 22 April 2022 (**Second RFI Response**); and
- your email requesting further information from 7-Eleven dated 3 May 2022 (**Third RFI**).

We are instructed to provide the following responses to the Third RFI, which are set out below each of the questions in your email.

Rationale / reasons for the notified conduct

As discussed in our call on 29 April, we seek further information to understand the rationale/reasons for the notified conduct.

1. **Please provide any contemporaneous documents that explain that configuring 7-Eleven's ERP system without the functional limitation which means that the ERP system cannot accommodate more than two different price points per product per state (except in far North Queensland), as described in 7-Eleven's 22 April 2022 submission, would be commercially unfeasible.**

A. Documents relating to the feasibility of "clustering"

The document at Confidential Annexure A is a presentation produced in October 2021 by 7-Eleven, in conjunction with Boston Consulting Group (**BCG**), analysing the potential implications and requirements if 7-Eleven were to introduce six different price points based on "clusters" (referred to throughout the document as "clustering").

The document at Confidential Annexure B summarises the different profiles that were proposed to be the respective target markets for each of the clusters.

7-Eleven is still in the process of considering the potential implications and requirements of the clustering approach at a strategic level, and no decision has been made on these proposals.

7-Eleven notes that, absent the notification, avoiding resale price maintenance while engaging in the notified conduct is not just a matter of having an ERP system that can accommodate more than two different price points per product per state. In fact, absent the notification, the only way 7-Eleven could theoretically engage in the notified conduct while avoiding resale price maintenance conduct would be to allow each of its franchisees to have complete discretion over the prices of the products sold in their stores. Presently, there are c.500 different franchisees operating one or more stores in Australia so this would require 7-Eleven introducing c.500 price points nationally.

The resourcing burden on 7-Eleven associated with doing this would be exponentially larger than the scenario of introducing six price points which is considered in Confidential Annexure A and Confidential Annexure B.

B. Documents relating to the resourcing burden arising from the current promotional process, as discussed in 7-Eleven's response to question 2 of the Second RFI

The document at Confidential Annexure C is the store guide provided by 7-Eleven to store operators for the month of March 2022. Pages 2 to 4 of Confidential Annexure C list the promotions which are to apply during that month.

The document at Confidential Annexure D is an email from September 2021 from the manager of the store technology support (**STS**) team at 7-Eleven who is responsible for managing complaints from store operators in relation to errors with scanning promotional products. The email analyses the number and situations in which those errors arose in the preceding six-month period.

As discussed in the response to question 2 in the Second RFI Response, the resourcing burden on 7-Eleven arising from manually inputting promotional data and responding to consequent errors, both of which result from the limitations of the current ERP system, is substantial. This burden is a significant reason why it would be commercially unfeasible for 7-Eleven to introduce even more complexity into the promotional process by accommodating more than two different price points per product per state (except in Far North Queensland).

Replacing the ERP system

We note that 7-Eleven's 22 April 2022 submission explains why 7-Eleven considers that if the notified conduct is permitted this will not reduce 7-Eleven's incentives to replace the current ERP system. The main focus of this submission is the general limitations of 7-Eleven's current ERP system.

As noted in the ACCC's 5 April 2022 information request, being able to engage in the notified conduct may impact 7-Eleven's decision if/when the ERP system is replaced about what sort of system to replace it with (i.e. it may obviate the need to develop or deploy a system in the future that can accommodate more than two price points).

2. Please outline in detail 7-Eleven's views about the impact of the notified conduct on 7-Eleven's longer term incentives to develop solutions to the functional limitations *that avoid the need to engage in the notified conduct*.

The ACCC asked the same question in the Second RFI.

7-Eleven maintains the position explained in the Second RFI Response that 7-Eleven has strong incentives to develop solutions to the functional limitations that avoid the need to engage in the notified conduct.

In relation to these incentives, 7-Eleven would be open to the ACCC imposing a time limitation that 7-Eleven is only permitted to engage in the notified conduct for a period of 6 years from the date on which that notice is given.

The effect of such a limitation would be that, after the expiry of the 6-year period, 7-Eleven would be in breach of the prohibition on resale price maintenance if it were to engage in the notified conduct.

7-Eleven considers that 6 years is an appropriate period to allow it to develop solutions to the functional limitations that would allow 7-Eleven to avoid the need to engage in the notified conduct, given:

- (a) as discussed in the First RFI Response and the Second RFI Response, 7-Eleven's current technological roadmap includes plans to upgrade its POS and ERP system in a staged and systematic manner, noting the ERP system reaches its end-of-life in the 2027 financial year; and
- (b) the 6-year period includes a reasonable buffer to account for the possibility that 7-Eleven's plans to upgrade its ERP system are delayed beyond the 2027 financial year (which is not foreseen but is common for large-scale projects to upgrade the enterprise technology of a business of 7-Eleven's size).

In addition, 7-Eleven undertakes to withdraw the notification if it develops solutions to the functional limitations that avoid the need to engage in the notified conduct before the expiry of the 6-year period.

For convenience, 7-Eleven's response to this question in the Second RFI Response is included below:

"For the reasons already outlined above, irrespective of whether the Notified Conduct is permitted, there is no likelihood that 7-Eleven's incentives to replace the current ERP system will be reduced.

7-Eleven considers that it must develop a solution to the functional limitations of its ERP system to grow as a business and reach its strategic goals. In particular, 7-Eleven recognises that it will only be able to reach its goals if it:

- (a) *continues to offer value-for-money to customers, which is critical to 7-Eleven's business model and its ability to compete with other convenience retailers. The inability to discount through its eCommerce platforms as they gain scale will impact customers' perception of 7-Eleven as a convenience retailer offering value-for-money. 7-Eleven recognises that, unless it can develop a solution that allows discounting through eCommerce platforms, it will lose market share to its competitors, who will also be heavily investing in a convenient and compelling digital experience;*

- (b) *automates in-store manual processes. 7-Eleven expects its in-store transactions to triple by 2030. 7-Eleven will only be able to manage this if it invests in updating its core systems (i.e., ERP and POS systems) to enable automation of previously manual processes, such as the manual markdown process described in response to question 2, which will allow staff to allocate their time to serving more customers;*
- (c) *minimises the substantial resources currently allocated to launching promotions, which result from the functional limitations in the ERP system. As discussed in the response to question 2, 7-Eleven currently spends considerable resources each month manually inputting and reviewing promotional data in its ERP system. This is not sustainable and the scope for human error during this process is large. Reducing the complexity of launching a promotion through 7-Eleven's ERP system by automating those processes or enhancing the technological capability of its ERP system would materially contribute to 7-Eleven's growth ambitions; and*
- (d) *minimises the negative effects of the ERP's end-of-life constraints on the performance of other internal systems (e.g., the POS) and on the customer experience. Replacement of the system will be necessitated by the fact that maintenance support for the ERP system will diminish as it reaches its end-of-life.*

"These substantial incentives to develop solutions to the functional limitation outweigh any incentive 7-Eleven would have to rely on the notification and not develop those solutions. It is not in 7-Eleven's interests, nor the interests of its franchisees or customers, for it not to develop solutions to the functional limitations it is currently experiencing. Accordingly, 7-Eleven has already commenced the process of overhauling its enterprise technology software, starting with the POS upgrade, which will be followed by an ERP upgrade, as evidenced by the documents at Confidential Annexure B and Confidential Annexure C.

In addition to the parts of Confidential Annexure C referred to in the response to question 4 above, we refer to:

- (a) **(Page 28) [Confidential]**
- (b) **(Page 30) [Confidential]**
- (c) **(Page 31) [Confidential]**

To the extent that the ACCC requires further details regarding 7-Eleven's incentives (if the ACCC allowed the notification to stand) to develop solutions to the functional limitations that avoid the need to engage in the notified conduct outlined in the Second RFI Response, we note the following:

- paragraph (a) above explained the need for 7-Eleven to develop a solution to the functional limitations of the ERP system that allows store operators to offer discounts on products sold through its eCommerce platforms. Such a solution would avoid the need to engage in the notified conduct because if store operators were able to offer discounts on products sold through its eCommerce platforms that are specific to their own store, then that would necessarily mean that 7-Eleven is not engaging in the notified conduct.
- paragraph (b) above explained the need for 7-Eleven to update its ERP system so that it enables automation of current manual processes, including the manual markdown process described in the response to question 2 of the Second RFI. Giving store operators the ability to sell discounted products via an automated process (i.e., without having to manually change the price of the product at the physical checkout) would necessarily require an ERP system that allows stores to sell products (including through eCommerce platforms) at prices that are different to those

recommended for that product by 7-Eleven. Accordingly, 7-Eleven would not be engaging in the notified conduct.

- paragraph (c) above explained the need for 7-Eleven to update its ERP system so that it allows for the input of promotional data in a less resource-intensive way than is currently required, either by automating those processes or boosting the technological capability of its ERP system; and
- paragraph (d) of that response explained the need for 7-Eleven to update its ERP system so that it minimises the negative effects of performance issues caused by end-of-life constraints, including diminishing maintenance support from the ERP provider, SAP.

In sum, 7-Eleven:

- (a) has strong incentives to adopt or develop an improved ERP system *that avoids the need to engage in the notified conduct*;
- (b) irrespective of whether the notified conduct is permitted, there is no likelihood that 7-Eleven's incentives to replace the current ERP system will be reduced. 7-Eleven is committed to developing an improved system that will ultimately benefit the end consumer;
- (c) even if 7-Eleven did have an incentive to rely on the notification to not replace its ERP system, or to replace it in a way that does not avoid the need to engage in the notified conduct (which is not the case), that incentive is outweighed by the strong incentives 7-Eleven has to adopt or develop an improved ERP system *that avoids the need to engage in the notified conduct*; and
- (d) 7-Eleven only seeks the benefit of the notification for a period of 6 years from the date on which the ACCC allows it to stand. This timeframe reflects 7-Eleven's targeted commercial timeline to develop solutions to the functional limitations that avoid the need to engage in the notified conduct within 6 years.

Claim for confidentiality

The information in this letter labelled **[Confidential]** and in red text and the Annexures are confidential to 7-Eleven and/or 7-Eleven's franchisees.

If the confidential information were to become publicly available, 7-Eleven and 7-Eleven's franchisees would likely suffer commercial detriment and, in relation to some of the information, be exposed to proceedings for breach of their contractual and equitable obligations of confidentiality.

7-Eleven requests, pursuant to section 89(5) of the Act, that the confidential information described above be excluded from the ACCC's public register.

Further, 7-Eleven considers that the confidential information described above relates to the ACCC's core statutory function of administering and enforcing the Act.

Accordingly, 7-Eleven considers that the information comprises "*protected information*" as defined by section 155AAA(21)(a) of the Act.

Please contact us if the ACCC would like any further information.

Thank you for your assistance.

Yours sincerely



Simon Cooke | Partner
King & Wood Mallesons

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T [Redacted]

M [Redacted]

E [Redacted]