

9 June 2020

To Ms Susan Philp
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Australian Competition and Consumer
Commission
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Dear Ms Philp and Ms Hall

Request for response to submissions from interested parties – 7-Eleven Stores Pty Limited (7-Eleven) – Application for Authorisation (AA1000500)

Thank you for your letter dated 26 May 2020 seeking 7-Eleven Stores Pty Limited's (**7-Eleven**) response to concerns raised by interested parties in relation to the application from 7-Eleven for authorisation, and for a list of the addresses for 7-Eleven's corporate stores.

The list of corporate store addresses was provided to the Commission on 5 June 2020.

We are instructed by 7-Eleven to provide the following responses to the concerns raised by interested parties.

For your ease of reference, we have repeated each of the concerns referred to in your letter before providing 7-Eleven's response to it.

- 1 **Concerns have been raised that the period of authorisation, if it is indicative of the duration of the arrangements entered into with Franchisees, is inappropriately long and fails to take into account changing circumstances.**

The 6-month term sought for the authorisation is necessary and realistic due to the uncertainty surrounding the retail landscape and consumer spending patterns during the COVID-19 pandemic.

7-Eleven considers a 6-month period to be a realistic timeframe having regard to the fact that the ongoing economic effects of the COVID-19 pandemic are widely expected to continue to be more apparent over time and the anticipated impact on 7-Eleven and franchisee stores will likely to persist beyond the easing of lockdown restrictions.

Shift in consumer spending patterns beyond easing of restrictions

The effects of the COVID-19 pandemic on the retail landscape are likely to be protracted and uncertain and may continue beyond the easing of lockdown restrictions due to changes in consumer spending patterns and changes in working arrangements, with potentially more people working from home and fewer people working in the central business districts (CBDs) of capital cities.

Changes in consumer spending behaviour may be longer-term and more fundamental, rather than transitory. In particular, discretionary spending could remain persistently low as consumers focus on saving, especially those who have either lost, or who are at risk of losing, their employment as a result of the COVID-19 pandemic and the current recessionary period.

7-Eleven expects the impact on its network of stores and the convenience retailing industry in general to be unpredictable and pronounced – particularly for stores located in CBD areas – as a significant proportion of the spending at its stores is more discretionary in nature and the unknown consequences of the COVID-19 recovery.

In all of circumstances, 7-Eleven considers 6 months to be a reasonable period for the authorisation.

Emerging trends in central business districts may have long-term effects

Many of the stores that 7-Eleven has approached to temporarily close or reduce their trading hours are located in CBD areas. Of the stores 7-Eleven informed the Commission it was intending to approach (on April 24 and 7 May 2020), [REDACTED] % ([REDACTED] of [REDACTED]) of the Victorian stores are located in Melbourne's CBD, [REDACTED] % ([REDACTED] of [REDACTED]) of the stores in New South Wales are located in Sydney's CBD, and [REDACTED] % ([REDACTED] of [REDACTED]) of the Queensland stores are located in Brisbane's CBD.

Foot traffic in CBDs of capital cities is likely to continue to be low, as temporary working-from-home arrangements for many CBD workers may continue for an unknown period. 7-Eleven expects consumers will likely avoid higher density areas like CBDs for a time after the pandemic has subsided.

These factors will contribute substantially to reduced incidental traffic to 7-Eleven's stores, especially those located in CBDs, translating to persistently low sales and revenues for some time to come.

7-Eleven's application takes into account changing circumstances and uncertainty

The Proposed Conduct was formulated with the purpose of allowing flexibility to adapt to the impact of changing circumstances from the COVID-19 pandemic.

If economic conditions improve more rapidly than anticipated, fewer stores will meet the objective criteria 7-Eleven applies to identify stores eligible for temporary closure or reduced trading hours. In those circumstances, the Proposed Conduct would have a more limited impact. This would reflect the fact that there simply would be less of a need for these temporary measures to be in place.

Therefore, once economic conditions improve, Franchisees may approach 7-Eleven to discuss opting-out of the Proposed Conduct to resume normal trade as and when they consider it would be in their interests to do so.

7-Eleven will recommend any Franchisee that does approach them prior to the agreed period to seek independent legal and financial advice to ensure they are informed and make the correct decision for them. 7-Eleven will not unreasonably withhold consent for a Franchisee that approaches them wanting to resume normal trade.

Conversely, if economic conditions deteriorate, more stores will satisfy the criteria and the Proposed Conduct will involve more Franchisees (should they decide to accept 7-Eleven's offer). 7-Eleven believes that the Proposed Conduct will support those Franchisees in, at least, a financial sense until they are able to resume normal trade.

2 Concerns have been raised that there is a lack of clarity about the ability of Franchisees to 'opt-in' or 'opt-out' of arrangements. It has been argued that Franchisees should be permitted to opt-out without first requiring the agreement of 7-Eleven.

Any Franchisee may choose not to take up 7-Eleven's offer of temporary closure or reduced trading hours. Should they accept 7-Eleven's offer, the Franchisee may approach 7-Eleven to discuss opting-out of the Proposed Conduct to resume normal trade as and when they consider it would be in their interests to do so. All signed agreements between 7-Eleven and a Franchisee include an express provision allowing the Franchisee to request an earlier end to the temporary closure period or the period for which trading hours are reduced. The agreements also expressly require 7-Eleven to not unreasonably withhold consent to such requests if it is satisfied the resumption of normal trade is sustainable.

Even where the resumption of normal store operations could adversely affect the Franchisee, 7-Eleven is unlikely to withhold its consent and would instead seek to explain the likely challenges with resuming normal trade.

7-Eleven will consider, on a case-by-case basis, requests from Franchisees who have not been approached by 7-Eleven but who would like to opt-in to the Proposed Conduct.

3 Concerns have been raised that the Proposed Conduct may allow 7-Eleven to self-preference its corporate owned stores by closing or reducing the trading hours of Franchisee stores that are within the same geographic market.

Objective criteria used by 7-Eleven applies equally to franchised and corporate stores

7-Eleven uses the same objective criteria to identify Franchisee stores to be approached and identify its Corporate-owned stores for temporary closure or reduced trading hours. There is no discrimination against Franchised stores in favour of Corporate-owned stores.

7-Eleven has regard to the same considerations independent of the ownership of the stores. These considerations include:

- the performance across 7-Eleven's network and specific parts of its network, such as CBD areas;
- the ongoing assessment of supply and demand;
- the coverage offered to customers across its network;
- the proximity of other stores; and
- traffic flows within the catchment area and the city in which the catchment area is based.

7-Eleven does not have any incentive to preference its Corporate-owned stores

Whether open or closed, even for limited hours, 7-Eleven is committed to financially and personally assisting their Franchisees.

7-Eleven has sought to help its stores most impacted by the current circumstances based on transparent and objective criteria and has come to arrangements with their Franchisees in mutual agreement.

There is a coincidence of interest between 7-Eleven and its Franchisees in terms of Franchisee store performance, even where a Franchised store is located in the same geographic catchment area as a Corporate-owned store.

This is because, under its Store Agreement with Franchisees, 7-Eleven receives a share of the gross profit generated by both Franchised and Corporate-owned stores. 7-Eleven is therefore incentivised to ensure that gross profit is maximised in all of its stores, not just its Corporate-owned stores.

Furthermore, in the case of Franchised stores that sell fuel, Franchisees receive a fixed cents-per-litre amount for the volume of fuel sold through their store. Therefore, 7-Eleven and its Franchisee both stand to profit through higher fuel sales, even if the Franchisee's store competes with 7-Eleven's.

7-Eleven is consequently incentivised to allow competing Franchised stores to resume normal operations where it is sustainable for them to do so.

It is ultimately in 7-Eleven's interest to ensure that its network of stores (both Corporate-owned and Franchised) is successful as a collective and that an efficient distribution of stores is maintained in and available for consumers, including as the level of demand improves.

7-Eleven's focus on Franchised stores is a function of the composition of its network

7-Eleven's network overwhelmingly comprises Franchised, rather than Corporate-owned, stores and this is particularly the case in the CBDs of major cities.

As of 5 June 2020, approximately [REDACTED] % of 7-Eleven's stores across Australia are Franchised, with the remaining being corporate stores. Furthermore, 7-Eleven's [REDACTED] Franchised stores account for [REDACTED] % of all 7-Eleven stores located in CBD areas and only [REDACTED] stores (or [REDACTED] % of all 7-Eleven stores) are Corporate-owned.

On April 24 and 7 May 2020, 7-Eleven informed the Commission that it intends to approach [REDACTED] stores. Of those [REDACTED] stores, [REDACTED] are Franchised (approximately [REDACTED] %). This is consistent with the fact

that [REDACTED] % of all stores across 7-Eleven's Australia-wide network located in CBDs are Franchised stores. This figure is higher in Melbourne's CBD, with [REDACTED] % of 7-Eleven's stores being Franchised stores.

Accordingly, the Proposed Conduct relates primarily to Franchised stores, as they are more likely to be located in CBDs. This is simply a reflection of the composition of 7-Eleven's network and a function of 7-Eleven having applied objective criteria to identify which stores to approach for temporary closure or to reduce their trading hours.

Claim for confidentiality

Information in this letter that is inside square brackets and highlighted in yellow is confidential to 7-Eleven and/or its Franchisees and could cause commercial harm to 7-Eleven and/or its Franchisees, if disclosed. 7-Eleven requests, pursuant to section 89(5) of the *Competition and Consumer Act 2010* (Cth), that this confidential information be excluded from the Commission's public register.

Further, 7-Eleven considers that the confidential information relates to the Commission's core statutory function of administering and enforcing the Act. As such, 7-Eleven considers that the information comprises "protected information" as defined by section 155AAA(21) of the Act.

7-Eleven understands that:

- there will be no restriction on the internal use, including future use, the Commission may make use of the confidential information consistent with its statutory functions;
- the confidential information may be viewed by the Commission's external consultants (for example legal, economic and industry advisers) on the condition that each such consultant will be informed of the obligation to treat the information as confidential; and
- the Commission will not disclose the confidential information to any third parties (other than its external consultants) unless compelled to do so by law or in accordance with section 155AAA of the Act.

Should the Commission be compelled by law to disclose the confidential information, or any part of it, 7-Eleven asks the Commission to, where possible, give as much notice as possible to 7-Eleven before disclosing the confidential information, or any part of it, so that 7-Eleven may consider seeking an order from the Court to protect the information and documents from disclosure.

Please let us know if you require any further information at this stage.

Thank you for your assistance.

Yours sincerely

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