

15 June 2020

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

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

Thank you for your email, dated 3 June 2020, informing us of the public submissions from Levitt Robinson Solicitors and the Australian Small Business and Family Enterprise Ombudsman in relation to the application from 7-Eleven Stores Pty Limited (**7-Eleven**) for authorisation.

We are instructed by 7-Eleven to provide the following responses to some of the statements made by those interested parties.

1 Response to submission from Levitt Robinson Solicitors

1.1 Communicating criteria with Franchisees

Throughout the COVID-19 pandemic, 7-Eleven has maintained an active dialogue with its Franchisees and has continued to monitor the trading conditions of all Stores in its network.

7-Eleven will continue to make necessary adjustments to optimise its network of Stores, taking into account the effects of the COVID-19 pandemic as they unfold.

7-Eleven's applications for authorisations to the Commission which include a description of its Proposed Conduct and to which Levitt Robinson Solicitors have described in their submission, are on the public record.

Additionally, and as stated in 7-Eleven's applications for authorisation, Franchisees may reach out to 7-Eleven at any point to discuss the Proposed Conduct or, based on grounds of individual hardship, seek 7-Eleven's consent to temporarily close their store or reduce their trading hours. 7-Eleven would

consider each approach by a Franchisee, on a case-by-case basis, and in a lawful manner. 7-Eleven understands it must not behave unreasonably in relation to any such approach by any Franchisee and does not wish to do so.

1.2 Application of the Proposed Conduct to 7-Eleven's network of Stores

Not all Franchisees have been affected equally by the COVID-19 pandemic. In response to the current circumstances, 7-Eleven has had active regard to the current trading conditions of each Store and the coverage offered to customers across its network when determining which Stores to approach to temporarily close or temporarily reduce their trading hours. 7-Eleven has acted fairly at all times.

7-Eleven appreciates that the Commission may only authorise conduct that gives rise to a net public benefit. If 7-Eleven were to make an offer to all Franchisees to temporarily close their Stores or to temporarily reduce their trading hours, 7-Eleven considers it would be responding to the economic effects of the pandemic in a disproportionate way and would be substantially reducing the net public benefit of its Proposed Conduct.

The criteria applied by 7-Eleven for identifying which Franchisees to approach are based on objective, numerical evidence about the performance of the Franchisee's Store.

1.3 7-Eleven's inclusive approach

The characterisation of Franchisees as "subordinate or excluded from the process" is incorrect.

Franchisees may approach 7-Eleven at any time to seek 7-Eleven's consent to opt-in to the Proposed Conduct, as set out in 7-Eleven's applications to the Commission. 7-Eleven will consider each such approach on a case-by-case basis and in accordance with law.

Consequently, it would not be in 7-Eleven's interest to unlawfully refuse to provide its consent.

Each Franchisee who is approached by 7-Eleven to temporarily close their Store or to temporarily reduce their trading hours may choose not to take up 7-Eleven's offer or, should they have decided to accept 7-Eleven's offer, can seek 7-Eleven's consent to opt-out as and when they consider it would be in their best interests to do so and 7-Eleven must not unreasonably withhold its consent to any such approach.

1.4 Factual inaccuracies in the submission

7-Eleven considers the submission from Levitt Robinson Solicitors contains inaccurate statements about its operations and the operations of its Franchisees' stores.

The submission incorrectly states that Franchisees "bear the overhead expenses except for rent, electricity and insurance", incorrectly implying that rent, electricity and insurance are the only overhead expenses carried by 7-Eleven. 7-Eleven also carries land rates, taxes and the cost of repairs and maintenance, banking and transaction fees, security costs, and non-cash items such as depreciation.

The main overhead expense incurred by Franchisees is wages for staff.

Franchisees also incur ancillary costs such as supply items and stock loss variations.

The Minimum Gross Income paid by 7-Eleven to Franchisees has accordingly been set at a level that would ensure that the Franchisee's reasonable direct expenses (such as wage costs) would be

covered. It is a financial safety net that, to the best of 7-Eleven's knowledge, no other franchise system provides.

Further, the statement that "commissions paid to Franchisees on fuel sales are minimal, the Franchisees survive on their convenience store sales" is incorrect. Fuel sales are important to the viability of these stores and account for a material, rather than minimal, proportion of the income that a Store (that sells fuel) generates.

2 Response to submission from the Australian Small Business and Family Enterprise Ombudsman

2.1 7-Eleven will not unreasonably withhold consent

Franchisees who have signed up to the Proposed Conduct may approach 7-Eleven at any time 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 not unreasonably withhold consent for a Franchisee that approaches them wanting to resume normal trade and will not impose any sanctions on Franchisees that wish to opt-out of the Proposed Conduct.

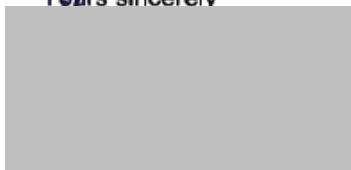
7-Eleven will recommend that Franchisees wanting to opt-out of the Proposed Conduct seek independent financial and legal advice to ensure they are informed and make the correct decision for them.

Should 7-Eleven consider that the resumption of normal Store operations could adversely affect the Franchisee, 7-Eleven would seek to explain the likely challenges for the Franchisee with resuming normal trade but would not unreasonably withhold its consent.

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

Thank you for your assistance.

Yours sincerely



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