

28 January 2022

**To** Ms Sharon Deano  
General Manager, Competition Exemptions  
Australian Competition and Consumer  
Commission  
23 Marcus Clarke Street  
Canberra ACT 2601  
[sharon.deano@accc.gov.au](mailto:sharon.deano@accc.gov.au)

Mr Gavin Jones  
Director, Competition Exemptions  
Australian Competition and Consumer  
Commission  
23 Marcus Clarke Street  
Canberra ACT 2601  
[gavin.jones@accc.gov.au](mailto:gavin.jones@accc.gov.au)

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Dear Ms Deano and Mr Jones

**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.

**The notified conduct**

The conduct the subject of this notification will be limited to whenever 7-Eleven Australia or 7-Eleven supply 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 (the **Notified Conduct**).

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

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

It is also envisaged that 7-Eleven Australia and 7-Eleven will engage in the Notified Conduct when 7-Eleven implements other eCommerce initiatives, including a proprietary eCommerce platform, in the foreseeable future.

The Notified Conduct is not intended, or expected, to result in increased prices.

Technological limitations and substantial administrative burdens are the reasons why 7-Eleven Australia and 7-Eleven wish to engage in the Notified Conduct.

In accordance with the request from the ACCC and as a gesture of good faith, we confirm that 7-Eleven Australia and 7-Eleven are willing to voluntarily commit to not engaging in the Notified Conduct until the ACCC has completed its review of the notification.

#### 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.

#### Notice

The attached notice 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 notice consists of the following:

- declarations by 7-Eleven Australia and 7-Eleven (see **Attachment A1 and Attachment A2**).
- a confidential version of the notice marked "*restriction of publication claimed*" (see **Confidential Attachment B** to this letter).
- a non-confidential version of the notice, marked "*restriction of publication of part claimed*" (see **Attachment C** to this letter);
- a table recording the information required by the notice 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 28 January 2022 (see **Confidential Schedule 3 to Confidential Attachment B**); and
- a set of confidential internal documents about the Notified Conduct (see **Confidential Schedule 4 to Confidential Attachment B**).

#### Payment of prescribed filing fee

We have paid, by way of electronic funds transfer on 1 October 2021, the prescribed filing fee of \$1,000 for the notice. We have also paid, by way of electronic funds transfer on 22 December 2021, an additional filing fee of \$1,000 for the notice.

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 4**) 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**

Level 27, 447 Collins Street  
Melbourne VIC 3000

T [Redacted]  
M [Redacted]  
E [Redacted]

## 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).



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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 28 day of January 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).



\_\_\_\_\_  
Signature of authorised person

COMPANY SECRETARY of 7-ELEVEN AUSTRALIA PTY LTD

Office held

JAMES WYATT

(Print) Name of authorised person

This 28 day of January 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.*

# Notification of resale price maintenance

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



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

28 January 2022

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# Notification of resale price maintenance

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# Notification of resale price maintenance

## 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, 557 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 161 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 718 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 TO 7-ELEVEN]
Contact person	James Wyatt, General Counsel and Company Secretary
Telephone	[CONFIDENTIAL TO 7-ELEVEN]
Email	[CONFIDENTIAL TO 7-ELEVEN]

# Notification of resale price maintenance

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 TO 7-ELEVEN]
Contact person	James Wyatt, Company Secretary
Telephone	[CONFIDENTIAL TO 7-ELEVEN]
Email	[CONFIDENTIAL TO 7-ELEVEN]

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## 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 supply 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 (**Notified Conduct**).

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 be ongoing.

# Notification of resale price maintenance

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## 4 7-Eleven's eCommerce initiatives

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

### 4.1 'Pay & Go'

The eCommerce initiative through which 7-Eleven Australia and 7-Eleven initially intend to engage in the Notified Conduct is '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 TO 7-ELEVEN]**

**[CONFIDENTIAL TO 7-ELEVEN]**

### 4.2 Digital Screen food ordering

An additional eCommerce initiative 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 TO 7-ELEVEN]**

**[CONFIDENTIAL TO 7-ELEVEN]**

### 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 'Shop Anywhere',<sup>1</sup> 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

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

# Notification of resale price maintenance

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 TO 7-ELEVEN]

### 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, such as DoorDash, Uber Eats and the like, to enable customers to order and pay for delivered products from 7-Eleven branded stores.

### 4.6 Future eCommerce initiatives

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

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## 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.

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.

# Notification of resale price maintenance

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.

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## 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 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.<sup>2</sup> This accounts for 26.5% of Australian adults. The figure has increased from 19% in 2019 and 16.3% in 2018.

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<sup>2</sup> 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>

# Notification of resale price maintenance

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 TO 7-ELEVEN]** of its annual retail transactions, measured across its corporate and franchised stores, to be digital **[CONFIDENTIAL TO 7-ELEVEN]**.<sup>3</sup>

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 TO 7-ELEVEN]** and
- (c) **[CONFIDENTIAL TO 7-ELEVEN]**

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 TO 7-ELEVEN]** digital transactions over the next **[CONFIDENTIAL TO 7-ELEVEN]** 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.

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 TO 7-ELEVEN]**
- (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.

<sup>3</sup> See, e.g., Confidential Annexure A, page 5

# Notification of resale price maintenance

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 TO 7-ELEVEN]**

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## 7 Documents

Documents about 7-Eleven's intended 'Pay & Go' service (sometimes referred to as 'Mobile Checkout' or 'Mobile Check-out') and its broader eCommerce and digital strategy are annexed at **Confidential Schedule 4**.

They comprise: **[CONFIDENTIAL TO 7-ELEVEN]**

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## 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**.

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## 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.

# Notification of resale price maintenance

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 718 stores operating under 7-Eleven's brand.

557 of those stores were franchised.

The remaining 161 stores were 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	241	204	37
New South Wales	225	199	26
Queensland	195	135	60
Australian Capital Territory	10	10	0
Western Australia	47	9	38

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)<sup>4</sup>;

<sup>4</sup> Of which some stores are co-branded Woolworths.



# Notification of resale price maintenance

- (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.<sup>5</sup>

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

# Notification of resale price maintenance

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).<sup>6</sup>

## 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 TO 7-ELEVEN]** 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.

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## 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.

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<sup>6</sup> 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](https://www2.deloitte.com/content/dam/Deloitte/za/Documents/za_Deloitte-The-future-of-digital-influence-in-retail-Jan17.pdf)

# Notification of resale price maintenance

## 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 TO 7-ELEVEN]**

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.

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## 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 TO 7-ELEVEN]** 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 TO 7-ELEVEN]** 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.

# Notification of resale price maintenance

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

- (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 TO 7-ELEVEN]** 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 TO 7-ELEVEN]**. **[CONFIDENTIAL TO 7-ELEVEN]** are currently fulfilled by digital means.

The vast majority of those **[CONFIDENTIAL TO 7-ELEVEN]** 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 TO 7-ELEVEN]** of sales across its network to be digital **[CONFIDENTIAL TO 7-ELEVEN]**. Even if that target is reached over the course of the next **[CONFIDENTIAL TO 7-ELEVEN]** 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.

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## 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; Confidential Annexures A-D (Confidential Schedule 4)
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 (Confidential Schedule 4)

# 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

## Schedule 2 Contact details of relevant market participants

Name	Phone number	Other details
<b>Fuel and Convenience Retailers</b>		
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
<b>Other</b>		
Australasian Association of Convenience Stores		
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