

18 November 2022

Attention: Legal Section  
Australian Human Rights Commission  
GPO Box 5218 Sydney NSW 2001  
By email: [legal@humanrights.gov.au](mailto:legal@humanrights.gov.au)

Dear Commissioner

**Application by 7 Holdings Pty Ltd for an exemption under the *Age Discrimination Act 2004* (Cth)**

We refer to your invitation dated 4 October 2022 to the Foundation for Alcohol and Research and Education ('FARE') to make a submission in respect of the application by 7 Holdings Pty Ltd and its wholly owned subsidiaries ('7 Holdings') for an exemption under the *Age Discrimination Act 2004* (Cth) ('Act') to enable it to refuse the sale of 'non-alcoholic, but alcohol-like' products to children in 7-Eleven stores.

We appreciate the opportunity to make this submission. FARE is Australia's leading not-for-profit organisation working towards an Australia free from alcohol harm. With local communities, values-aligned organisations, health professionals and researchers across the country, we strive to improve the health and wellbeing of everyone in Australia. We develop evidence-informed policy that puts people's health first, enable people-powered advocacy to help create long-term change, and deliver health promotion programs designed to reduce the risk of alcohol harm in our communities.

We confirm that FARE supports the application by 7 Holdings for a three-year exemption under s 44 of the Act from s 28 of the Act in respect of the sale of 'non-alcoholic, but alcohol-like' products to children in 7-Eleven stores.

We concur that no and low alcohol products should not be supplied to children because of:

- the likeness of such products to alcoholic beverages (in terms of their naming, appearance, smell, taste, packaging, labelling and marketing);
- the evidence on the harms of consumption of alcohol by children;
- the evidence on the harms from exposure to alcohol marketing by children; and
- the potential for exposure to, and consumption, of 'alcohol-like' no and low alcohol products to increase the risk of harm to children..

In light of these factors and the particular duties owed by society to special groups such as children, a precautionary approach indicates that no and low alcohol products should not be supplied to children.

We do also wish to record our strong objection to no and low alcohol products being available for purchase through retail outlets, such as 7-Eleven convenience stores. In accordance with a precautionary approach, in order to more completely protect children from exposure to no and low alcohol products (as 7 Holdings has indicated it is committed to doing), unlicensed premises, such as 7-Eleven convenience stores, should refrain from the retail sale of such products. We make this objection on the understanding that it is not within the jurisdiction of the AHRC to determine whether it should be lawful for no and low alcohol products to be sold in 7-Eleven stores.

Our submission is structured as follows:

1. Background on no and low alcohol products
2. Regulation of the availability of no and low alcohol products in Australia

3. Reasons why no and low alcohol products should not be supplied to children
4. Reasons why no and low alcohol products should not be sold in general retail stores like 7-Eleven
5. Additional measures that 7 Holdings should implement to protect children from no and low alcohol products

## 1. Background on no and low alcohol products

In Australia, there is available for purchase forms of alcoholic beverages (e.g., beer, wine, spirits, ciders) that have a reduced or very reduced alcohol content, but that resemble alcohol in appearance, taste and smell. 7 Holdings refers to these as 'non-alcoholic, but alcohol-like'. In our submission, we refer to them as 'no or low alcohol products'. We do so because some of these products contain no alcohol, but most contain some alcohol and are not completely alcohol free. There are differences in the nomenclature used to refer to these beverages in different countries around the world (e.g., no, low, zero, de-alcoholised, alcohol free, non-alcoholic).<sup>1</sup>

These no or low alcohol products are often packaged, labelled and marketed in the same manner as alcoholic products, with the same product livery (e.g., bottle shape, colours, label design) often being used for alcoholic and non-alcoholic products in a company's range (e.g., Heineken lager and Heineken 0.00). In this sense, some no and low alcohol products can be seen as extensions of existing alcohol brands. No and low alcohol products are increasing in popularity and now constitute 3.5% of the global alcohol market,<sup>2</sup> with the market value of these products growing from \$7.8bn in 2018 to just under \$10bn in 2021.<sup>3</sup> In Australia, the interest in no and low alcohol products is also growing, with a forecast that the market will grow by 16% between 2020 and 2024. In 2020, no and low alcohol products accounted for 5.3% of the beer and cider market, but only about 0.5% of the wine and 0.3% of the spirits markets.<sup>4</sup>

Evidence is not yet available to determine whether no and low alcohol products are being used in Australia primarily as 'substitutes' for occasions when a person would otherwise consume an alcoholic product (or a higher alcohol product) or whether they are being used primarily as 'additives' by persons or on occasions when alcohol would not have been consumed (such as by people who do not drink alcohol or children, or in workplaces, in sport, during driving, during abstinence initiatives such as Dry July, or for use at earlier times in the day).<sup>5</sup> This question of whether no and low alcohol products are operating, at a population level, as substitutes or additives requires much further study in Australia and most other countries.<sup>6</sup>

The reason that the substitution versus addition question is important is that no and low alcohol products carry potential benefits in terms of alcohol-related harm if they are used by people who currently drink

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<sup>1</sup> Alex O. Okaru and Dirk W Lachenmeier, 'Defining No and Low (NoLo) Alcohol Products' (2022) 14 *Nutrients* 3873, doi.org/10.3390/nul14183873.

<sup>2</sup> 'No- and Low-Alcohol in Key Global Markets Reaches Almost US\$10 Billion in Value' (Press release, IWSR Drinks Market Analysis, January 2022) <<https://www.theiwsr.com/wp-content/uploads/IWSR-2022-No-and-Low-Alcohol-Press-Release.pdf>>.

<sup>3</sup> Ibid.

<sup>4</sup> Paul Brescia, 'Retailers, Manufacturers, and Researchers Agree: Non-alcoholic Beverages are Booming', SmartCompany, 16 June 2021 <<https://www.smartcompany.com.au/industries/retail/non-alcoholic-drinks-growth-australia/>>.

<sup>5</sup> Mia Miller, Simone Pettigrew and Cassandra J.C. Wright, 'Zero-alcohol Beverages: Harm Minimisation or Gateway Drink?' (2022) 41 *Drug and Alcohol Review* 546-9, doi:10.1111/dar.13359. Emily Nicholls, 'The Marketing and Consumption of No and Low Alcohol Drinks in the UK' (Report for the Institute of Alcohol Studies, March 2022).

<sup>6</sup> Peter Anderson, Daša Kokole and Eva Jané Llopis, 'Production, Consumption and Potential Health Impact of Low- and No-Alcohol Products: Results of a Scoping Review' (2021) 12 *Nutrients* 3153-66, doi: [10.3390/nu13093153](https://doi.org/10.3390/nu13093153).

alcohol to reduce or cease use of higher-strength alcoholic beverages.<sup>7</sup> The availability of no and low alcohol products in licensed outlets (e.g., pubs, bars, liquor stores) means that people who drink alcohol have access to these products in places where they would normally consume alcoholic products (or higher alcoholic products) and they have the option of substituting a no or low alcohol product. There is some evidence from experiments in the United Kingdom that offering no and low alcohol products results in people increasingly choosing no and low alcohol products – suggesting a substitutive effect<sup>8</sup> – although this may not be the case for people who drink alcohol at riskier levels or people with alcohol use disorders.<sup>9</sup>

However, there is also evidence from the United Kingdom that people perceive the targets for no and low alcohol products to be non-drinkers and non-drinking occasions – suggesting an additive effect.<sup>10</sup> There is also some evidence from the United Kingdom that people who drink alcohol may not consume less alcohol with low alcohol products as they drink more overall.<sup>11</sup> Studies of the marketing messages associated with no and low alcohol products suggest that they are being presented by the industry as additives.<sup>12</sup> The availability of these products in unlicensed venues, such as 7-Eleven stores, also suggests that they are being positioned for additional consumption, and not as substitutes on standard drinking occasions. Further research is needed to better understand consumer behaviours associated with no and low alcohol products in Australia, as well as in other countries, including:

- how people understand, view and are using these products, in particular whether they are acting as ‘substitutes’ or ‘additions’ or something ‘in between’ these two for current drinkers and non-drinkers;<sup>13</sup>
- whether these products serve to reduce or increase the amount of alcohol consumed; and
- whether these products aid or hinder people with alcohol use problems.

## 2. Regulation of the availability of no and low alcohol products

No and low alcohol products are not subject to the rules contained in state and territory liquor licensing legislation. Their sale is also not subject to any other product-specific regulation (although they are, of

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<sup>7</sup> Jürgen Rehm et al, ‘Evidence of Reducing Ethanol Content in Beverages to Reduce Harmful Use of Alcohol’ (2016) 1 *The Lancet Gastroenterology and Hepatology* 78-83, doi: [10.1016/S2468-1253\(16\)30013-9](https://doi.org/10.1016/S2468-1253(16)30013-9).

<sup>8</sup> A Blackwell et al, ‘The Impact of Selection of Non-alcoholic vs Alcoholic Drinks Availability: An Online Experiment’ (2020) 20(1) *BMC Public Health* 1-9, doi: <https://doi.org/10.1186/s12889-020-08633-5>; Natasha Clarke, ‘Impact on Alcohol Selection and Purchasing of Increasing the Proportion of Non-alcoholic Versus Alcoholic Drinks: Randomised Controlled Trial’ (2022) *medRxiv* <<https://www.medrxiv.org/content/10.1101/2022.03.04.22271898v2>> as discussed in ‘Are Alcohol-free Liquor Products a Gateway to Alcohol Consumption?’ (NSW Government, Liquor & Gaming NSW, June 2022) <[https://www.liquorandgaming.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0006/1093299/are-alcohol-free-liquor-products-a-gateway-to-alcohol-consumption.pdf](https://www.liquorandgaming.nsw.gov.au/__data/assets/pdf_file/0006/1093299/are-alcohol-free-liquor-products-a-gateway-to-alcohol-consumption.pdf)>.

<sup>9</sup> Elsa Caballeria et al, ‘Doctor, Can I Drink Alcohol-Free Beer? Low-Alcohol and Alcohol-Free Drinks in People with Heavy Drinking or Alcohol Use Disorders: Systematic Review of the Literature’ (2022) 14 *Nutrients* 3925, doi.org/10.3390/nul4193925.

<sup>10</sup> Milica Vasiljevic, Dominique-Laurent Couturier and Theresa Marteau, ‘What are the Perceived Target Groups and Occasions for Wines and Beers Labelled with Verbal and Numerical Descriptors of Lower Alcohol Strength? An Experimental Study’ (2019) 9 *BMJ Open* e024412, doi: 10.1136/bmjopen-2018-024412; Emily Nicholls, ‘The Marketing and Consumption of No and Low Alcohol Drinks in the UK’ (Report for the Institute of Alcohol Studies, March 2022).

<sup>11</sup> Milica Vasiljevic et al, ‘Impact of Lower Strength Alcohol Labeling on Consumption: A Randomized Controlled Trial’ (2018) 37(7) *Health Psychology* 658-67, doi: 10.1037/hea0000622.

<sup>12</sup> Milica Vasiljevic et al, ‘Marketing Messages Accompanying Online Selling of Low/er and Regular Strength Wine and Beer Products in the UK. A Content Analysis’ (2018) 18(1) *BMC Public Health* 1-7, <https://doi.org/10.1186/s12889-018-5040-6>.

<sup>13</sup> Peter Anderson, Daša Kokole and Eva Jané Llopis, ‘Production, Consumption and Potential Health Impact of Low- and No-Alcohol Products: Results of a Scoping Review (2021) 12 *Nutrients* 3153-66, doi.org/10.3390/nul3093153.

course, subject to the general consumer protection and food safety laws). Some liquor licensing legislation defines ‘liquor’ as alcohol containing more than 0.5% alcohol content,<sup>14</sup> but other Australian states and territories use the definition of 1.15% alcohol content.<sup>15</sup> The Food Standards Code that covers alcohol labelling in Australia and New Zealand specifies that all products containing 0.5% or more ABV must include information on the label about the alcohol content (Standard 2.7.1). While for alcoholic products containing more than 1.15% ABV, the label must include the alcohol content as a percentage of ABV or mL/100 ml.<sup>16</sup>

The liquor licensing legislation in each state and territory, which allows only licensed businesses to sell liquor and which places limits on where, when and to whom liquor can be sold, does not apply to no and low alcohol products that do not meet the definition of ‘liquor’. There is, therefore, no requirement that 7-Eleven convenience stores obtain a liquor licence (or any other licence) to sell no and low alcohol products that are not ‘liquor’. There is also no restriction in the liquor licensing legislation on the sale of non-alcoholic beverages to children (although the NSW regulator does seem concerned about the way in which no and low alcohol products might act as a ‘gateway’ drink for children).<sup>17</sup> However, the differences between the jurisdictions in the definition of ‘liquor’ means that, in several jurisdictions (ACT, NSW, NT, SA, WA), 7-Eleven could be selling products with up to 1.15% alcohol content, whilst in other jurisdictions, it will be limited to 0.5% alcohol content. Further, products that contain less than 0.5% alcohol content do not need to include on their label information on their alcohol product.

As the disciplines of the liquor licensing legislation do not apply to no and low alcohol products, some supermarkets have started to stock no and low alcohol products in the same aisle as soft drinks and water. We understand that some supermarkets have a policy of restricting the sale of no and low alcohol products to children under 18 years of age. However, we have also observed that there is variable adherence to these policies by staff working in these supermarkets.

The lack of regulation of the availability of no and low alcohol products is not confirmation that state and territory governments have affirmatively determined that no and low alcohol products should be consumed by children or should be available for general retail sale. Rather, there is a regulatory and policy gap around no and low alcohol products that requires attention. Until such time as regulation occurs, a precautionary approach to supplying these products should be adopted by retailers.

### **3. Reasons why no or low alcohol products should not be available to children**

The restrictions on the supply of alcohol to children discussed in the previous section rest on concerns about the serious short- and long-term health and social impacts of alcohol use on young people. The National Health and Medical Research Council’s *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* state that: ‘To reduce the risk of injury and other harms to health, children and people under 18 years of age should not drink alcohol’.<sup>18</sup> The NHMRC’s key message is that: ‘There is no clear “safe” level of alcohol consumption for children and people under 18 years of age.’<sup>19</sup> Young people are vulnerable to harms from alcohol because of their developing brains (this vulnerability persists until

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<sup>14</sup> *Liquor Act 1992* (Qld) s 4B; *Liquor Act 1990* (Tas) s 3; *Liquor Control Reform Act 1998* (Vic) s 3;

<sup>15</sup> *Liquor Act 2010* (ACT) s 11; *Liquor Act 2007* (NSW) s 3; *Liquor Act 2019* (NT) s 6; *Liquor Licensing Act 1997* (SA) s 4; *Liquor Control Act 1988* (WA) s 3.

<sup>16</sup> “Labelling of alcoholic beverages”, May 2022, Available online at <https://www.foodstandards.gov.au/consumer/labelling/Pages/Labelling-of-alcoholic-beverages.aspx>

<sup>17</sup> Andy Young, ‘The Rules Regarding the Service of Non-alc Beer, Wine and Spirits’ (The Shout, 20 July 2022).

<sup>18</sup> *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (National Health and Medical Research Council. Commonwealth of Australia, Canberra, 2020) 5.

<sup>19</sup> *Ibid.*

approximately age 25), their relative inexperience with consuming alcohol compared to adults, and their predilection for risk-taking behaviour. The risks to young people from alcohol use include injury (such as in car accidents, assaults or self-harm), alcohol poisoning, risk taking, altered brain development and the potential for developing harmful drinking patterns later in life.<sup>20</sup>

It has not been demonstrated that no and low alcohol products (which mimic alcohol in naming, appearance, smell, taste, packaging, labelling and marketing) are safe for consumption by children. Research in relation to these products is at a very early stage. There is preliminary evidence from Australia which suggests that some parents believe no and low alcohol products could normalise drinking amongst children, while others support moderated supply to children in contexts where alcohol might otherwise be used.<sup>21</sup> Beyond this, we currently have limited understanding of the implications of no or low alcohol beverages for children. The evidentiary gaps relate to:

- the use of no and low alcohol products by children;
- the knowledge, attitudes and motivations for use by children towards no and low alcohol products;
- the health and other consequences for children of the use of no and low alcohol products, especially the contribution of these products to their initiation to drinking alcohol (i.e., the capacity of these products to act as ‘gateway’ products);
- the normalisation of drinking as a social and cultural practice through the use of no and low alcohol products.

Given the likeness of no and low alcohol products to alcoholic beverages (in terms of naming, appearance, smell, taste, packaging, labelling and marketing), the known harms of consumption of alcohol by children, and the lack of evidence about no and low alcohol products and their risks to children, a precautionary approach to the availability of these products is strongly indicated. A precautionary approach requires that these products not be supplied to children.

#### **4. Reasons why no or low alcohol products should not be sold in general retail stores such as 7-Eleven**

In order to more completely protect children from the potential risk of no and low alcohol products, we argue that unlicensed premises, such as 7-Eleven convenience stores, should completely refrain from the sale of these products. Rather, consideration should be given as to whether these products should only be available from licensed premises.

There are several arguments that can be raised in favour of no and low alcohol products only being available through licensed venues (including maximising the capacity of the products to serve as substitutes for alcoholic beverages as discussed in Part 1), but our submission only addresses in detail those arguments which relate to the key concern underpinning 7 Holdings’ application to the AHRC – the protection of children.

A matter of considerable concern about the availability of no and low alcohol products from unlicensed premises, such as 7-Eleven convenience stores, is that such products, through their packaging, labelling, in-store displays and other advertising material (in traditional or digital media), constitute a form of

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<sup>20</sup> For further information on the risks of alcohol consumption for those under 18 years, see the review of evidence by the NHMRC: *ibid* 43-5.

<sup>21</sup> Nathan J Harrison et al, “‘It Works Like a Gateway Drug...They Start on the Zero Alcohol and They Want to Try the Real Thing’: Perceptions of Zero-alcohol Beverages and Their Use by Adolescents’ (Paper, APSAD conference, Darwin, October 2022). Abstract available in (2022) 41 Supp 1 *Drug and Alcohol Review* S3 (paper 362), <https://doi.org/10.1111/dar.13537>.



‘surrogate’ or ‘alibi’ marketing for alcohol products. This is a marketing technique which occurs ‘when companies use products other than alcohol to build alcohol brand familiarity and loyalty among consumers’.<sup>22</sup> This is particularly the case where no and low alcohol products are extensions of existing alcohol brands, but it may also apply to all no and low alcohol products. A study from Thailand found that young adults who saw the logos of companies that sell both alcohol and non-alcohol lines of products were more likely to associate those logos with alcohol.<sup>23</sup>

The sale of no and low alcohol products from 7-Eleven stores, even if not supplied to children, nonetheless exposes children to ‘surrogate’ alcohol marketing through the presence of the products and any in-store promotions of them. Further, if 7-Eleven engages in off-premises marketing of no and low alcoholic beverages (such as advertising about these products now being available for purchase at 7-Eleven), 7-Eleven is creating further opportunities for exposure of children to ‘surrogate’ alcohol marketing. The exposure of young people to ‘surrogate’ alcohol marketing through no and low alcohol products is very concerning because of the evidence that exposure to alcohol marketing is a causal driver of alcohol consumption for young people.<sup>24</sup> There is a substantial body of literature which links exposure to alcohol advertising to increased alcohol consumption, alcohol related harm and the initiation of alcohol use among adolescents.<sup>25</sup>

As well as no and low alcohol product marketing as acting as ‘surrogate’ marketing for alcohol brands, the messaging found in the marketing of no and low alcohol products may carry further negative consequences for young people. Several studies have found that the marketing for no and low alcohol products tends to suggest that these products should be used to enable additional drinking situations, such as at work or while playing sport, when traditionally alcohol has not been used.<sup>26</sup> Such marketing may serve to normalise the use of alcoholic products in these contexts. The marketing may also serve to position and reinforce drinking some form of alcoholic products – no, low or higher strength products as the social norm,<sup>27</sup> and undermine the acceptability of not drinking.

Commendable gains have been made in Australia in terms of reducing young people’s consumption of alcohol. For example, the proportion of young people (14 – 17 years) abstaining from alcohol had increased to 73% in 2019 (from 39% in 2007).<sup>28</sup> It is critical that these gains be retained and increased in

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<sup>22</sup> ‘The SAFER Technical Package: Five Areas of Intervention at National and Subnational Levels’ (World Health Organization, 2019) 18.

<sup>23</sup> Ratchakorn Kaewpramusol et al, ‘Brand advertising and brand sharing of alcoholic and non-alcoholic products, and the effects on young Thai people’s attitudes towards alcohol use: A qualitative focus group study’ (2019) 38 *Drug and Alcohol Review* 284-93, doi: 10.1111/dar.12910.

<sup>24</sup> James D. Sargent and Thomas F. Babor, ‘The Relationship Between Exposure to Alcohol Marketing and Underage Drinking Is Causal’ (2020) 19 (Supp) *Journal of Studies on Alcohol and Drugs* 113-24.

<sup>25</sup> Peter Anderson et al, ‘Impact of Alcohol Advertising and Media Exposure on Adolescent Alcohol Use: A Systematic Review of Longitudinal Studies’ (2009) 44(3) *Alcohol and Alcoholism* 229-43.

<https://doi.org/10.1093/alcalc/agn115>; Kaidy Stautz et al, ‘Immediate Effects of Alcohol Marketing Communications and Media Portrayals on Consumption and Cognition: A Systematic Review and Meta-analysis of Experimental Studies’ (2016) 16(1) *BMC Public Health* 465, doi.org/10.1186/s12889-016-3116-8.

<sup>26</sup> Milica Vasiljevic, Dominique-Laurent Couturier and Theresa Marteau, ‘What are the Perceived Target Groups and Occasions for Wines and Beers Labelled with Verbal and Numerical Descriptors of Lower Alcohol Strength? An Experimental Study’ (2019) 9 *BMJ Open* e024412, doi: 10.1136/bmjopen-2018-024412; Emily Nicholls, ‘The Marketing and Consumption of No and Low Alcohol Drinks in the UK’ (Report for the Institute of Alcohol Studies, March 2022).

<sup>27</sup> Mia Miller, Simone Pettigrew and Cassandra J.C. Wright, ‘Zero-alcohol Beverages: Harm Minimisation or Gateway Drink?’ (2022) 41 *Drug and Alcohol Review* 546-9, doi:10.1111/dar.13359.

<sup>28</sup> ‘Alcohol, Tobacco & Other Drugs in Australia’ (Australian Government, Australian Institute of Health and Welfare, 2022) <<https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/priority-populations/younger-people#alcohol-consumption>>.

the interests of young people's and the population's health and welfare. Widespread availability of no and low alcohol products from convenience stores, like 7-Eleven, and their associated marketing, have the potential to disrupt these public health achievements.

#### **5. Additional measures that 7 Holdings should implement to protect children from no and low alcohol products**

If 7 Holdings is granted the exemption but continues to sell no and low alcohol products through its 7-Eleven stores, there are several measures that it should adopt in order to further protect children from exposure to these products. These measures should apply in all 7-Eleven stores, whether operated by 7 Holdings directly or through franchise arrangements. These measures are as follows:

- No and low alcohol products should only be placed in stores in a position which minimises the exposure of children to these products. For example, the products should not be placed in fridges next to soft drinks, next to the Slurpee counter, near ice-cream freezers or shelves with confectionary.
- There should be training for 7-Eleven service staff to enable them to perform proper age verification checks on any consumer who appears under the age of 25 years and to manage situations where children seek to purchase no and low alcohol products. Such training should be extended to the staff of any third-party delivery service if 7 Holdings enables the provision of no and low alcohol products through such delivery services. Such training is akin to the responsible service of alcohol training that is used in licensed venues.
- There should be an independent, third-party audit to assess whether 7-Eleven service staff are carrying out valid age verification checking processes and, if deficiencies are identified, to recommend reforms to systems and processes used at 7-Eleven stores for refusing the sale of products to children.
- There should be no marketing of the availability of no and low alcohol products by 7-Eleven stores, whether in-store or through other media, traditional or digital.
- There should be no price discounts or other deals attractive to children (such as gifts, competitions or bonuses) offered by 7-Eleven stores in connection with no and low alcohol products.

#### **6. Conclusion**

Although we support the application by 7 Holdings for a three-year exemption under s 44 of the Act from s 28 of the Act in respect of the sale of 'non-alcoholic, but alcohol-like' products to children, we strongly object to 7 Holdings offering these products for sale from 7-Eleven stores.

We would be pleased to provide any further information you require or to answer any questions you have.

Yours faithfully,



**CATERINA GIORGI**  
**CHIEF EXECUTIVE OFFICER**