# Statement of Issues

## 13 September 2012

# Seven Group Holdings Limited – proposed acquisition of Consolidated Media Holdings Limited

## Introduction

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (**ACCC**) on the proposed acquisition of Consolidated Media Holdings Limited by Seven Group Holdings Limited (the proposed acquisition).

2. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC's preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.

3. In line with the ACCC's Merger Review Process Guidelines (at www.accc.gov.au/processguidelines) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by 27 September 2012 and anticipates making a final decision by 11 October 2012. However, the anticipated timeline can change in line with the Merger Review Process Guidelines. To keep abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the Mergers Register on the ACCC's website at www.accc.gov.au/mergersregister.

4. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

## The proposed acquisition

5. Seven Group Holdings (**Seven**) proposes to acquire all of the issued shares in Consolidated Media Holdings (**CMH**). Seven currently has a 24% interest in CMH.

6. On 21 July 2012, Seven provided a submission seeking informal clearance from the ACCC. The ACCC commenced an informal review on 22 July 2012.

## The parties

### Seven Group Holdings Limited

7. Seven is a diversified Australian operating and investment group. It has interests in a range of non-media and media entities, including:

- Seven West Media – approximately 32% and a $250m convertible note which does not carry voting rights;
- CMH – approximately 24%; and
- Prime Media Group – approximately 11%.

8. Seven West Media comprises the Seven Network, Pacific Magazines, Yahoo7 the West Australian newspaper, and regional newspapers and radio stations in Western Australia. Kerry Stokes is the executive director of both Seven and Seven West Media. Seven also appoints two of Seven West Media's seven directors.

9. Prime Media Group owns the PRIME7 television network (broadcast as the Golden West Network in Western Australia).

10. The interests and activities of CMH are discussed below.

11. For the six months to 31 December 2012, Seven had total revenue of $1.96 million and EBITDA[1] of $288.6 million.

### Consolidated Media Holdings Limited

12. CMH is a media investment company, with investments primarily in the subscription television sector. CMH has a 50% interest in FOX SPORTS Australia Pty Limited (**FSA**) and, through its stake in FSA, has a 25% interest in FOXTEL.

13. The largest shareholder in CMH is Consolidated Press Holdings (50%), a family company. James Packer is the deputy chairman of CMH and the executive chairman of Consolidated Press Holdings.

14. For the 2011/12 financial year, CMH reported an operating net profit after tax of $97.9m.

## Other industry participants

### FOXTEL

15. FOXTEL's immediate owners are Telstra Corporation Ltd (50%) and FSA (via its wholly owned subsidiary Sky Cable) (50%). News Corporation Ltd and Consolidated Media Holdings Limited each have a 50% interest in FSA. As set out above, Seven currently has a 24% interest in CMH.

16. The ownership structure of FOXTEL is depicted in Figure 1.

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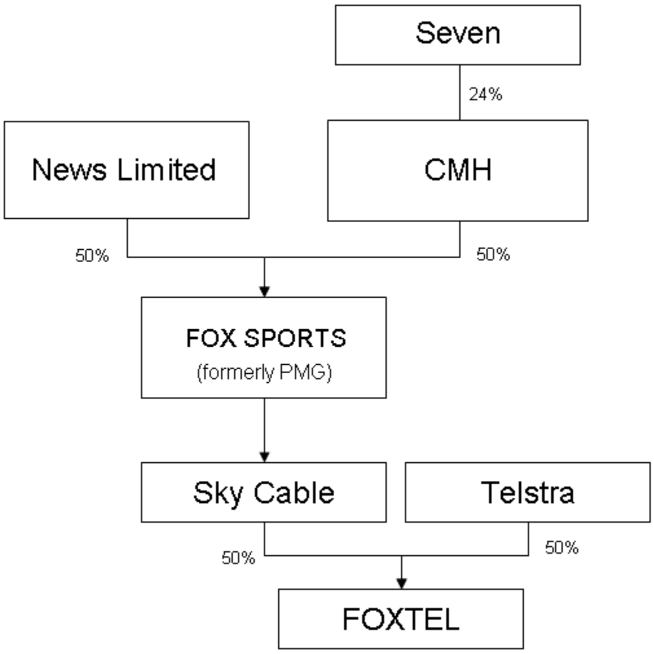
[1] Profit before depreciation and amortisation, net finance costs and tax, and before significant items.

**Figure 1 - FOXTEL ownership structure**




17. FOXTEL is Australia’s largest subscription television provider delivering audiovisual content to more than 2.3 million residential subscribers in Australia.

18. FOXTEL delivers more than 200 channels, including high definition (HD) content, covering news, sport, general entertainment, movies, documentaries, music and children’s programming.

19. After including one-off, transaction and integration costs and consolidation of Austar from May 23 2012, FOXTEL generated an EBITDA of $558m and EBIT of $241m in the year ended 30 June 2012.

### FOX SPORTS AUSTRALIA

20. FSA is a sports producer and broadcaster and supplies a number of subscription television sports channels to FOXTEL. FSA compiles and produces the FOX SPORTS, FOX SPORTS NEWS, FOX FOOTY, FUEL TV and SPEED subscription TV channels available via and the SPORTS Play and FOOTY Play powered by FOX SPORTS IPTV channels available on Xbox360 and Telstra T-box.

21. FSA also supplies the FOX SPORTS produced channels including FOX FOOTY, FUEL TV and SPEED to more than 5,100 hotels and licensed venues as well as 180,000 hotel rooms throughout Australia.

## With/without test

22. Section 50 of the Act prohibits mergers or acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in a market. In assessing a proposed acquisition pursuant to section 50 of the Act, the ACCC considers the effects of the acquisition by comparing the likely future competitive environment post-acquisition if the acquisition proceeds (the “with” position) to the likely future competitive environment if the acquisition does not proceed (the “without” position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.

23. The ownership and control of CMH in the absence of the proposed acquisition, and in particular whether News Limited would increase its interest in CMH, is not clear. However, for the purposes of the Statement of Issues, the ACCC has

proceeded on the basis that in the absence of the proposed acquisition, there will be no increase in the proportion of CMH which is owned by a FTA network or an entity with interests in a FTA network, relative to the position under the status quo.

## Market inquiries

24. On 22 July 2012 the ACCC commenced market inquiries regarding the proposed acquisition. A range of interested parties provided responses, including other free to air and subscription television suppliers.

## Market definition

25. The ACCC's preliminary view is that the following markets are relevant to its review of the proposed acquisition:

    - The national market for the supply of free to air television services.
    - The national market for the supply of subscription television services.
    - The national market for the acquisition of audiovisual content (including possible markets, or sub-markets, for the acquisition of specific content such as sports).

The ACCC invites comments from market participants on its proposed definition of the relevant markets.

## Statement of issues

26. For the purposes of this Statement of Issues, the issues in this matter are divided into two categories, 'issues of concern' and 'issues unlikely to pose concerns'.

## Issues of concern

27. The ACCC's preliminary view is that the proposed acquisition is likely to raise competition concerns in the market for the supply of free to air television (**FTA**) services.

### Supply of free to air television services

28. FSA acquires a large number of sporting rights and frequently enters into commercial arrangements with FTA networks in relation to sporting rights. FOXTEL also acquires sporting rights from time to time and sometimes enters into commercial arrangements with FTA networks in relation to those rights.

29. Market inquiries have indicated that, at the present time, it is very important for FTA networks to have the opportunity to partner with FSA or FOXTEL in relation to the acquisition of sporting rights, whether through a joint venture for the acquisition of rights or by selling parts of an acquired rights package to FSA or FOXTEL. This is because many sporting bodies sell the relevant sporting rights as a single package of games or events and not all of this content is suitable to be broadcast by a FTA network due to commercial scheduling considerations. Thus it is important for FTA networks to be able to jointly acquire rights with a subscription television partner and/or sell excess games or events to a subscription television partner. In addition, joint arrangements with FSA or FOXTEL can also be used to share production assets and reduce costs.

30. The ability to partner with FSA or FOXTEL in relation to the acquisition of sporting rights in commercially beneficial ways enables FTA networks to submit higher bids for sporting rights which are more likely to be accepted by the rights holders. Market inquiries indicated that if the proposed acquisition were to create difficulties for FTA networks in their dealings with FSA or FOXTEL, it could have a significant effect on their businesses by making them less competitive in the acquisition of sporting rights.

31. The ACCC is concerned that Seven's acquisition of a 50% interest in FSA as well as the representation on the board of FSA that it would gain as a result of the proposed acquisition, would enable Seven to exercise significant influence over FSA. The ACCC considers that this would likely result in FSA favouring Seven Network over rival FTA networks. To the extent that FOXTEL acquires sporting rights, similar concerns would arise by virtue of Seven acquiring a 25% stake in, and gaining representation on the board of, FOXTEL as a result of the proposed acquisition.

32. On the basis of information available to date, the ACCC considers that the proposed acquisition would give Seven the ability to influence FSA and FOXTEL's engagement with other FTA networks in relation to the acquisition of sporting rights. In particular, the proposed acquisition would give Seven board representation on each of FSA and FOXTEL (which it does not currently have) and, in combination with Seven's significant shareholding in FSA and FOXTEL post acquisition, would result in a closer alignment of the interests and incentives of FSA, FOXTEL and Seven.

33. In the event that FSA and FOXTEL did continue to engage with other FTA networks despite Seven's involvement, the ACCC would be concerned that Seven's representation on the FSA and FOXTEL boards would give it access to confidential information relating to sports rights bids being made by other FTA networks. This may provide Seven with a competitive advantage in negotiations with sporting bodies in acquiring such rights.

34. The ACCC's market inquiries indicate that premium sporting rights (i.e. high-rating, high value sports that are typically sought after by FTA networks such as AFL, NRL, domestic cricket and the Australian Open) are a critical component of a FTA network's overall program offering. Premium sports programs are high-rating programs themselves and also provide an opportunity to bolster the network's overall ratings due to the cross-promotion of other programs and opportunities for tie-ins with other shows on the network. Based on current competitive dynamics, if these networks became weaker, this may reduce their capability to invest in the production and acquisition of content that is attractive to consumers and advertisers.

35. The ACCC considers that the proposed acquisition has the potential to cause a substantial lessening of competition in the FTA market by limiting the ability of Seven Network's rival FTA channels to effectively bid for premium sporting rights.

36. While market inquiries indicate that FSA and FOXTEL are, at present, a unique and important outlet for excess sports rights acquired by FTA networks, the ACCC is exploring the extent to which emerging content distribution platforms, such as IPTV, internet or mobile, could provide FTA networks with avenues to exploit excess rights (whether directly, or in partnership with another content distributor) as an alternative to partnering with FSA or FOXTEL.

37. If the proposed acquisition were to result in a reduction in FTA competition by virtue of Seven Network's rivals being less able to competitively bid for sports

rights, this reduction in the number of strong FTA networks could have a number of detrimental effects, including:

- Reduced choice and quality of programming available to consumers on competing FTA networks.
- Reduced choice for advertisers wishing to reach a mass-market audience. This could result in Seven having the ability to increase the price of its advertising opportunities/slots.

The ACCC invites market participants to comment on:

(i) The importance to a FTA network of being able to partner with FSA and FOXTEL in relation to the acquisition of sporting rights.

(ii) The level of competitive harm that the sharing of confidential bid information between FSA and Seven may have on other FTA networks in relation to the acquisition of sports rights.

(iii) The likelihood that emerging content distribution platforms could, in the short to medium term, provide a FTA network with an alternative to commercial arrangements with FSA or FOXTEL in relation to the acquisition of sports rights.

(iv) Whether, and in what ways, FTA viewers could be harmed by the proposed acquisition.

## Issues unlikely to pose concerns

### Supply of subscription television services

38. To the extent that Seven supplies non-sporting content to subscription television operators (or releases its content suppliers from exclusivity obligations with respect to such content) the ACCC considers that the proposed acquisition would give Seven an increased incentive to favour FOXTEL in such dealings. In addition, Seven would have an increased incentive to consider entering into a joint arrangement with FOXTEL if it were to contemplate an output deal for both FTA and subscription television rights in relation to such content.

39. However, the ACCC understands that it is relatively rare that non-sporting content acquired by FTA operators is on-supplied to subscription television operators. Also, instances of joint bidding between FTA operators and subscription television operators are very rare. The ACCC understands that this is because the rights holders of non-sporting content typically sell FTA and STV rights in separate time windows. As such, any attempt by Seven to favour FOXTEL would only have the potential to affect a small proportion of the relevant content available to other subscription television suppliers.

40. Accordingly, the ACCC does not consider that Seven's increased incentive to favour FOXTEL in these circumstances is likely to have a material effect on competition in the subscription television market.

### Acquisition of audiovisual content

41. The ACCC considers that Seven and FOXTEL are not close competitors in the acquisition of non-sporting rights. This is due to their different programming requirements and, to some extent, rights windowing arrangements, which make content available for sale to different parties at different times and limit the degree of competition between FTA networks and subscription television providers.

42. The ACCC considers that Seven and FOXTEL/FSA are also not close competitors in relation to the acquisition of many sporting rights. While FOXTEL/FSA are interested in a very wide range of sports, with varying degrees of mass-market appeal, Seven and other commercial FTA networks are primarily interested in acquiring the rights to sports with mass market appeal.

43. The ACCC considers that there is a degree of competition between Seven and FOXTEL/FSA in relation to the acquisition of some premium domestic sporting rights, such as AFL and NRL. However, a number of factors indicate that the market for the acquisition of these rights is unlikely to be materially affected by the proposed acquisition:

- Direct competition for these rights between FTA networks and subscription television providers is limited by the anti-siphoning regime.[2]
- Broadcasting schedule considerations mean that the interests of FTA networks and subscription television providers are to some extent complementary.
- Due to the very high appeal of these rights, the relevant rights holders could credibly threaten to deal exclusively with the other FTA networks. Over time, the relevant rights holders may also be able to consider alternative distribution mechanisms in response to an attempt by a combined Seven/FOXTEL entity to reduce the price that they offered for these rights.

## ACCC's future steps

44. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.

45. The ACCC now seeks submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter.

46. Submissions are to be received by the ACCC no later than 27 September 2012. The ACCC will consider the submissions received from the market and the merger parties in light of the issues identified above and will, in conjunction with information and submissions already provided by the parties, come to a final view in light of the issues raised above.

47. The ACCC intends to publicly announce its final view by 11 October 2012. However the anticipated timeline may change in line with the Merger Review Process Guidelines. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement.

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[2] The anti-siphoning regime is a component of s115 of the *Broadcasting Services Act 1992* under which the Minister for Communications may specify an event, or events of a kind, the televising of which should, in the opinion of the Minister, be available free to the general public.