

# ANNEXURE B

## QUESTIONS

### FOR ECONOMIC EXPERT OPINION FROM PHILIP WILLIAMS

1. FOXTEL proposes to give a special access undertaking (**SAU**) to the Australian Competition and Consumer Commission (**Commission**) under s152CBA(2) of the *Trade Practices Act 1974* (Cth) (**Act**) in connection with the provision of access to the Digital Set Top Unit Service supplied by FOXTEL. A copy of the SAU is attached.
2. In the SAU, the Digital Set Top Unit Service is defined as meaning:
  - (a) Set Top Unit Services which are the provision of services for the reception and decryption of signals for a digital Subscription Television Service and a Related Service in customer premises by means of Conditional Access Customer Equipment and Customer Cabling;
  - (b) Conditional Access Services which consists of:
    - (i) CA Services which are the services that allow a service provider to determine the entitlement of customers to receive particular signals for a digital Subscription Television Service and a Related Service through Conditional Access Customer Equipment and Customer Cabling;
    - (ii) Service Information Service which is the processing of information necessary to be received by Conditional Access Customer Equipment which permits the reception of a digital Subscription Television Service and a Related Service;
    - (iii) Smartcard Authorisation Verification Information Services which is the provision of information necessary to enable a service provider to verify which of its digital Subscription Television Services and Related Services are enabled on a Smartcard;
  - (c) EPG Services which consists of the incorporation of data relating to programs transmitted on a service provider's digital Subscription Television Service into an electronic program guide; and
  - (d) Modem Services which consist of services using a modem integrated with Conditional Access Customer Equipment which enable a customer to send to the provider of the content a reaction of the customer to that content.

The capitalised terms are defined in the Digital Access Agreement attached to the SAU.
3. FOXTEL currently supplies the Digital Set Top Unit Service to itself and its subscribers in connection with the supply of digital subscription television services.
4. Under the SAU, FOXTEL offers to supply the Digital Set Top Unit Service to third persons in relation to the supply by such persons of digital subscription television services.

5. Under s152CBD of the Act, the Commission must not accept the undertaking unless, amongst other things, it is satisfied that the terms and conditions are reasonable. Under s152AH(1) of the Act, in determining whether the terms and conditions are reasonable the Commission must have regard to, among other things, whether the terms and conditions promote the long term interests of end users of carriage services or of services supplied by means of carriage services. Under s152AB(2) of the Act, in determining whether the terms and conditions promote the long term interests of end users of carriage services or of services supplied by means of carriage services (collectively referred to as listed services), the Commission must have regard to the extent to which the terms and conditions are likely to result in the achievement of the following objectives:
  - (a) the objective of promoting competition in markets for listed services;
  - (b) the objective of achieving any-to-any connectivity in relation to carriage services that involve communication between end users;
  - (c) the objective of encouraging the economically efficient use of, and the economically efficient investment in, the infrastructure by which listed services are supplied.
6. In connection with the SAU to be given by FOXTEL to the Commission, FOXTEL seeks an opinion from you on the following questions:
  - (a) The markets that would be relevant for assessing whether and to what extent the terms and conditions of the SAU are likely to result in the achievement of the objective of promoting competition in the markets for listed services.
  - (b) Whether and to what extent the terms and conditions of the SAU are likely to result in the achievement of the objective of promoting competition in the markets for listed services.
7. For the purposes of providing your opinion, please assume that:
  - (a) in the context of FOXTEL's SAU, the relevant listed services are:
    - (i) in the case of carriage services, services by which digital subscription television services are carried by HFC cable or by satellite to subscriber locations;
    - (ii) in the case of services supplied by means of carriage services, digital subscription television services;
  - (b) the expression 'promoting competition' means improving the conditions, environment or opportunities for competition.
8. The factual assumptions on which your opinion is to be based are set out in the Annexure.
9. If you are unable to provide a concluded opinion on any of the above issues because necessary factual information is not available to you, please indicate that in your opinion and state:
  - (a) the economic criteria by which the issue ought to be determined; and
  - (b) the further information required in order to provide the opinion.