
**FOXTEL MANAGEMENT PTY LIMITED (ACN 068 671 938) FOR AND ON BEHALF OF THE
FOXTEL PARTNERSHIP AND FOXTEL CABLE TELEVISION PTY LTD (ACN 069 008 797)**

**SPECIAL ACCESS UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER
COMMISSION**

SECTION 152CBA OF THE TRADE PRACTICES ACT 1974

CONFIDENTIALITY UNDERTAKING

I, **[insert name of third party]**, of **[insert address and employer]** being retained by an interested third party with respect to the special access undertaking lodged with the Australian Competition & Consumer Commission (**ACCC**) under s152CBA of the *Trade Practices Act* 1974 by FOXTEL Management Pty Limited for and on behalf of the FOXTEL Partnership and FOXTEL Cable Television Pty Limited (together, **FOXTEL**) (**Special Access Undertaking**), undertake to FOXTEL that:

1. Subject to the terms of this undertaking and any order of the ACCC, I will keep confidential in accordance with the terms of this undertaking:
 - (a) the documents provided by FOXTEL set out in the Schedule to this undertaking (the **Confidential Material**); and
 - (b) the contents of the documents referred to in (a) above (the **Confidential Information**).
2. I will not use the Confidential Material/Confidential Information or any part of it for any purpose other than for providing submissions to the ACCC, the Australian Competition Tribunal (the **ACT**) or the Federal Court in relation to the Special Access Undertaking.
3. Subject to paragraph 4 below, I will keep the Confidential Material/Confidential Information confidential and will not disclose the Confidential Material/Confidential Information or any part of it, or allow it to be disclosed, either directly or indirectly, to any other person (including other interested parties and their servants and agents), unless FOXTEL gives prior consent in writing to that disclosure.
4. I may disclose any Confidential Material/Confidential Information or any part of it if:
 - (a) disclosure is required by law; or
 - (b) disclosure is to other legal advisors or independent experts if:
 - (i) the person to whom disclosure is proposed to be made (the **person**) has signed a confidentiality undertaking in the form of this undertaking or in a form otherwise acceptable to FOXTEL ; and
 - (ii) a signed undertaking of the person has already been served on FOXTEL;
or
 - (c) disclosure is to secretaries or word processing support staff, who work under my supervision and perform purely administrative tasks in relation to the Special Access Undertaking, provided that I use reasonable endeavours to ensure s/he

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- protects the confidentiality of the Confidential Material/Confidential Information in a manner consistent with the intent of this undertaking; or
- (d) disclosure to a court is necessary for the purposes of an application in relation to this undertaking.
5. I will ensure that:
- (a) I will do everything reasonably required of me to prevent any breach of this undertaking;
- (b) I do not do, or fail to do, anything which would result in disclosure of Confidential Material/Confidential Information other than as contemplated by this undertaking;
- (c) any disclosure made in accordance with this undertaking is the minimum disclosure required in the circumstances;
- (d) the Confidential Material is kept in a safe and secure area at all times; and
- (e) any discussion in relation to the Confidential Material/Confidential Information is conducted in a private room.
6. I will establish and maintain security measures to safeguard the Confidential Material/Confidential Information from unauthorised access, use, copying, reproduction or disclosure and use.
7. I will promptly notify FOXTEL if I become aware of any disclosure in breach of this undertaking and comply with all reasonable requests in relation to such disclosure.
8. If I create or review any document which incorporate Confidential Information I acknowledge that the portion of such documents incorporating the Confidential Information are with the exception referred to in paragraph 11 below, subject to this undertaking.
9. I acknowledge that the Confidential Material/Confidential Information is of significant commercial value to FOXTEL and that disclosure of such information could cause considerable detriment to FOXTEL . In the event that I breach this undertaking and all or part of the Confidential Material/Confidential Information is disclosed, I acknowledge that damages may be an inadequate remedy and that FOXTEL may seek protective orders including injunctions to protect its interests.
10. I acknowledge that this undertaking does not convey any proprietary or other interest in the Confidential Material/Confidential Information and that it remains the exclusive property of FOXTEL .
11. Except as required by law, within a reasonable time after:
- (a) a final decision in respect of the Special Access Undertaking following:
- (i) any review of a decision in respect of the Special Access Undertaking by the ACT or the Federal Court; or
- (ii) the expiration of the period to initiate a review of a decision in respect of the Special Access Undertaking by the ACT or the Federal Court without any application for review being filed;

or

(b) **[name of firm]** ceasing to be retained by an interested party to the Special Access Undertaking;

I will destroy or deliver to FOXTEL the Confidential Material in my possession, custody or control. Documents which incorporate Confidential Information such as submissions to the ACCC are not subject to this requirement but remain subject to all other requirements contained within this undertaking.

12. I acknowledge that no variation of this undertaking is effective unless made in writing and signed by FOXTEL .
13. This undertaking is the entire agreement in relation to maintaining the confidentiality of the Confidential Material/Confidential Information.
14. Any term of this undertaking which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of the undertaking is not affected.
15. No waiver or a right or remedy under this undertaking is effective unless it is in writing and signed by FOXTEL . Any such waiver is only effective in the specific instance and for the specific purpose for which it is granted. A single or partial exercise of a right or remedy pursuant to this undertaking does not prevent a further exercise of that or of any other right or remedy. Failure to exercise or delay in exercising a right or remedy does not operate as a waiver or prevent further exercise of that or of any other right or remedy.
16. This undertaking is governed by the laws of New South Wales.

SCHEDULE:

- Attachment 3: Confidential Statement of Peter Campbell regarding the terms of FOXTEL's digital content agreements;
- Attachment 4: Henry Ergas, Charles River & Associates: Reasonableness of Limiting the Supply of FOXTEL's Conditional Access Service **[Unredacted]**;
- Attachment 6: Philip Williams – Frontier Economics: Report on Market Definition and Promotion of Competition **[Unredacted]**;
- Attachment 8: DN Ridehalgh, PricewaterhouseCoopers: Report on Cable IBAC Cost Schedules dated 13 July 2005, Appendix 1;
- Attachment 9: DN Ridehalgh, PricewaterhouseCoopers: Report on Satellite IBAC Cost Schedules dated 13 July 2005, Appendix 1;
- Attachment 10: DN Ridehalgh, PricewaterhouseCoopers: Independent Audit Report on the Schedule of Gross Capital Purchase Costs of Satellite Set Top Units (STUs) dated 13 July 2005 **[Unredacted]**;
- Attachment 11: Maria Martin, PricewaterhouseCoopers: Report on Gross Purchase Costs of Cable Set Top Units dated 19 January 2001, Appendix 1 and "FOXTEL Analogue STU Access Pricing";
- Attachment 12: DN Ridehalgh, PricewaterhouseCoopers: Independent Review Report on FOXTEL's Digital Regulatory Accounting Procedures Manual dated 13 July 2005 **[Unredacted]**;
- Attachment 13: DN Ridehalgh, PricewaterhouseCoopers: Independent Audit Report on FOXTEL's Digital Access Pricing Model dated 13 May 2005, version 6, for the T1 period dated 13 July 2005, "Digital Cable STU Access Seeker Charges 2004 Forecast" and "Digital Satellite STU Access Seeker Charges 2004 Forecast";
- Attachment 15: Stephen Gray, SFG Consulting: A Beta Estimate for FOXTEL **[Unredacted]**
- Attachment 19: Folder of Statements