



**Australian
Competition &
Consumer
Commission**

Our Ref: M2005/347
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Cc

Ms Jacqueline Downes
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Dear Mr Ball

Foxtel Digital Set Top Unit Special Access Undertaking: Request for Further Information

Pursuant to section 152CBB of the *Trade Practices Act 1974* (the Act), the Australian Competition and Consumer Commission (ACCC) requests Foxtel Management Pty Ltd for and on behalf of the Foxtel Partnership and Foxtel Cable Television Pty Ltd (Foxtel) to give the ACCC further information about Foxtel's special access undertaking (SAU) given to the ACCC on 6 October 2005 under section 152CBA of the Act.



Background

Paragraph 2.2 of the SAU provides:

Foxtel undertakes to supply the Digital Set Top Unit Service on the terms and conditions specified in the Digital Access Agreement (or on the terms of that agreement as varied in accordance with this undertaking).

The Digital Set Top Unit Service is defined by Appendix 1 to the SAU, and includes Modem Services, which are described as:

... 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.

Furthermore, paragraph 6.5(a) of the Digital Access Agreement (DAA), that constitutes Appendix 2 to the SAU, provides:

For the avoidance of doubt, Access Seeker Modem Content must not be linked to any channels or programming other than the Access Seeker's digital Subscription Television Service.

Since publishing the SAU, the ACCC has received a submission from Two Way TV Australia Limited (TWTV), which argued that these clauses effectively mean that:

...an existing channel provider who wishes to add interactive features to its channel, but who cannot reach agreement with Foxtel, cannot use the undertaking to acquire only "Modem Services". The channel provider can only use Foxtel's undertaking to acquire capacity from Telstra for a completely new pay TV channel, and will also have to acquire capacity from Telstra for cable distribution, and Optus (or another carrier) for satellite distribution.¹

In its supplementary submission of 29 March 2006, Foxtel did not dispute this interpretation of the SAU. Foxtel also argued that:

...there are real technical difficulties in allowing an access seeker to provide an interactive overlap onto an existing channel.²

Foxtel elaborated on these claimed technical difficulties in its SAU Supplementary Engineering Report of 29 March 2006. This report stated:

If an access seeker was provided with the ability to provide an interactive application in connection with a channel which was already a part of the Foxtel service, without being broadcast with that channel, it would result in Foxtel having to give up a part of its own cable or satellite capacity.³

This report also stated:

If the scenario is expanded to the extreme and many access seekers wish to use Foxtel primary video services, then Foxtel will be forced to acquire additional capacity on both cable and satellite,

¹ TWTV Submission, 17 February 2006, p. 8.

² Foxtel Supplementary Submission, 29 March 2006, p. 28.

³ Foxtel SAU Supplementary Engineering Report, 29 March 2006, p. 7.

implement additional infrastructure (which has a capital cost) and reduce the efficiency of the Foxtel operation as a result.⁴

The ACCC is seeking further information in relation to the technical difficulties claimed by Foxtel. This will inform the ACCC's assessment of whether the SAU is reasonable and consistent with the standard access obligations.

Information Requested

Following from the above background, the ACCC requests Foxtel to provide:

1. Details of Foxtel's total transmission capacity relating to the provision of pay TV services expressed in megabits per second (Mbps) currently contracted from both Telstra and Optus. This should be broken down into the total payload capacity (in Mbps), and the number of separate transport streams supported.
2. In relation to (1), details of Foxtel's current allocation of services within each transport stream – that is, please identify where all Foxtel and third party channels are allocated across all of Foxtel's transport streams. Please indicate the capacity (in Mbps) that each of these services takes up within each stream.
3. Details of the typical allocation of capacity (in Mbps) within each of Foxtel's existing transport streams to video, audio, interactive applications, CA/SI, and any other features requiring capacity.
4. Details of any Foxtel channels that must remain together in any particular transport stream, and cannot be moved separately to another transport stream (e.g. due to the fact that they are all accessed by the same interactive application).
5. Details of the total amount of transmission capacity (in Mbps) used up by the 'applications data' associated with each of Foxtel's seventeen (17) existing interactive channels, and the extent to which this capacity is used constantly or intermittently.
6. Details of the likely circumstances under which Foxtel would or might find itself required to return transmission capacity to either Telstra or Optus, as a result of its decision to incorporate an interactive feature into an existing channel.
7. To the extent that Foxtel is in possession of it, detailed information of the total transmission capacity that Foxtel intends to acquire during the next eight (8) years and three (3) months. This should be broken down into the total payload capacity (in Mbps), and the number of separate transport streams supported. Foxtel is only required to provide its existing forecasts of this information, and is not required to gather any new information.
8. To the extent that Foxtel is in possession of it, details of Foxtel's planned allocation of services within each transport stream within the next eight (8) years and three (3) months. Please indicate where all Foxtel and third party channels will be allocated

⁴ Ibid., p. 8.

across all of Foxtel's transport streams. Please also indicate the capacity (in Mbps) that each of these services will take up within each stream. Foxtel is only required to provide its existing forecasts of this information, and is not required to gather any new information.

9. Details of any Foxtel-specific network infrastructure upgrades required (if any), and associated costs, for Foxtel to prepare and configure a new (additional) transport stream for transmission on the Telstra cable and Optus satellite delivery platforms.
10. In relation to the information provided by Foxtel in accordance with paragraphs 1-9, which parts of the information (if any) are confidential? In the event that Foxtel claims confidentiality in relation to part of the information, Foxtel must provide the ACCC with both a confidential and public version of the information; and establish a process for responding to any requests for access to the confidential information.

Details for Provision of Information

The information should be forwarded (in both hard and electronic format) to:

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In accordance with section 152CBC(6)(b) of the Act, a day during any part of which this request (or part of this request) remains unfilled, is disregarded in calculating the period within which the ACCC must make a decision about the SAU.

Should you have any questions regarding this request, please contact Arek Gulbenkoglu on (03) 9290 1892.

Yours sincerely



Richard Home
Senior Manager
Communications Group