

Freehills

18 May 2006

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Mr Michael Cosgrove
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Commission
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Mr Arek Gulbenkoglul
Assistant Director - Convergence
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Australian Competition and
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Dear Mr Cosgrove and Mr Gulbenkoglul

Foxtel Digital Set-Top Unit Service Special Access Undertaking

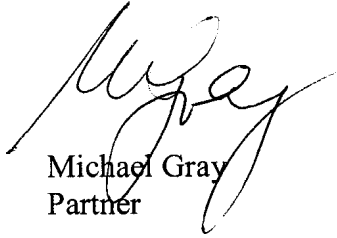
We refer to our conversations with Mr Gulbenkoglul on 10 May 2006 and 17 May 2006 relating to Seven's reliance on Professor Steven King's report in its submission regarding Foxtel's Special Access Undertaking (the **Undertaking**).

Mr Gulbenkoglul asked whether Seven relies on Professor King's report in whole, or only to the extent that it is quoted in Seven's submission, and Seven's responds as follows:


- (1) There is no issue as to the admissibility or relevance of Professor King's report in the Commission's consideration of the Undertaking, because the rules of evidence do not apply. Under section 152CBD(2)(d) of the Trade Practices Act 1974, Professor King's report is included in Seven's submission and is a matter that must be "considered" by the Commission in deciding whether to accept the Undertaking.
- (2) Professor King's report discusses fundamental economic principles that are not limited to the context in which his report was prepared.
- (3) Seven relies on Professor King's report in its entirety, just as Seven can rely on the public views of any respected economist. Seven's quoting from Professor King's report is no different from quoting from an article published in an academic journal.
- (4) The points raised by Foxtel in its letter dated 21 March 2006 to the Commission are not relevant in the light of (1), (2) and (3). Further, even if those points were relevant, they would be relevant only to the weight that should be given to Professor King's report.

If you have any questions, please contact Michael Gray on (02) 9225 5286.

Yours faithfully
Freehills



Michael Gray
Partner



Peter Strickland
Solicitor