

Special Access Undertaking to the Australian Competition & Consumer Commission

Under Subdivision B of Division 5 of Part XIC of The Trade
Practices Act 1974 (Cth)

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)

1 December 2006

**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**

PURSUANT TO SECTION 152CBA OF THE TRADE PRACTICES ACT 1974

Background

- A. FOXTEL is a carriage service provider within the meaning of section 87 of the Telecommunications Act 1997.
- B. FOXTEL is in the business of supplying a listed carriage service or a service that facilitates the supply of a listed carriage service, being the Digital Set Top Unit Service.
- C. FOXTEL is providing this special access undertaking pursuant to section 152CBA of the *Trade Practices Act 1974* in relation to the Digital Set Top Unit Service.

1. Interpretations and Definitions

- 1.1 In this undertaking and the appendices, the singular includes the plural and vice versa.
- 1.2 In this undertaking and the appendices, a reference to Appendix 2 includes a reference to Appendix 2 as varied from time to time in accordance with this undertaking.
- 1.3 In this undertaking and the appendices, unless defined in clause 1.4 below, all defined terms have the meaning set out in Appendix 2.
- 1.4 In this undertaking and the appendices, unless the context otherwise requires:

Digital Access Agreement means the agreement at Appendix 2.

Digital Set Top Unit Service has the meaning set out in Appendix 1.

FOXTEL means FOXTEL Management Pty Limited (ACN 068 671 938) for and on behalf of the FOXTEL Partnership (which is the partnership established between Telstra Media Pty Limited (ACN 069 279 027) and Sky Cable Pty Limited (ACN 069 799 640), FOXTEL Cable Television Pty Limited (ACN 069 008 797) and any wholly-owned subsidiary of FOXTEL Management Pty Limited and FOXTEL Cable Television Pty Ltd.

Rate Card means the access seeker rate card referred to in the Digital Access Agreement.

Simulcast Period means the period from the Undertaking Commencement Date to the date that FOXTEL ceases to supply an analogue cable Subscription Television Service to subscribers.

Undertaking Commencement Date has the meaning set out in clause 3.1

2. Undertaking

- 2.1** FOXTEL agrees to be bound by the obligations referred to in section 152AR of the Act to the extent that those obligations would apply to FOXTEL in relation to the Digital Set Top Unit Service if the Digital Set Top Unit Service were treated as an active declared service.
- 2.2** 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).
- 2.3** FOXTEL undertakes to make available at least the following amount of capacity for the supply of the Digital Set Top Unit Service to access seekers:
- (a) 15% of the total capacity of FOXTEL to supply the Digital Set Top Unit Service during the Simulcast Period; or
 - (b) 35% of the total capacity of FOXTEL to supply the Digital Set Top Unit Service after the Simulcast Period,
- based on the quantity of digital cable or digital satellite capacity that addresses the relevant STU. It is the responsibility of the access seeker to obtain an equivalent volume of digital cable or satellite capacity as the case may be.
- 2.4** FOXTEL has no obligation to enter into a Digital Access Agreement with an access seeker unless:
- (a) the access seeker has arranged for the carriage of its digital Subscription Television Services to the Network Termination Point and has provided to FOXTEL, if requested, such proof as FOXTEL may require; and
 - (b) (b) the access seeker has provided to FOXTEL:
 - (i) an executed confidentiality agreement in the form of Appendix 3;
 - (ii) a bank guarantee as required pursuant to the Digital Access Agreement; and
 - (iii) a deposit of \$50,000, in cleared funds which amount will be applied towards the access seeker's fees once it commences acquiring the Digital Set Top Unit Service under the Digital Access Agreement or, if the access seeker does not commence acquiring the Digital Set Top Unit Service and asks FOXTEL to terminate negotiations, will be refundable to the access seeker with interest after FOXTEL deducts any reasonable costs incurred by FOXTEL.
- 2.5** FOXTEL may vary Appendix 2 (other than in respect of price) on the provision of one month's notice to the Commission that includes an amended Appendix 2, if FOXTEL reasonably considers that:
- (a) a technical or related problem necessitates a change to the terms and conditions upon which the Digital Set Top Unit Service is supplied; or
 - (b) it is necessary to make a technical change to the Digital Set Top Unit Service; or

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- (c) there has been a change in the way in which the Digital Set Top Unit Service or Subscription Television Services are supplied by local or international subscription television operators, with the result that Appendix 2 does not reflect current market practice,

provided that:

- (i) the amendment only amends Appendix 2 to the extent necessary to address the technical or related problem, technical change or market practice; and
- (ii) the Digital Set Top Unit Service supplied to an access seeker is supplied to the equivalent quality as FOXTEL supplies to itself.

2.6 FOXTEL will arrange for an independent review of:

- (a) the calculations made pursuant to the Digital Access Agreement used to prepare the Rate Card; and
- (b) the process undertaken by FOXTEL management to identify and separate general marketing costs from channel specific and other specific marketing costs for the purposes of ascertaining the Defined Capital Expenditure in Schedule 3 of the Digital Access Agreement,

after the first 12 months and thereafter every 3 years and will provide a copy of the report to the Commission.

2.7 This undertaking is only in relation to the supply of the Digital Set Top Unit Service and is not an undertaking in relation to the supply of each component service.

3. Commencement and Expiry

3.1 This undertaking comes into operation immediately after the Commission provides FOXTEL with written notice under section 152CBC(3) of the Act that the undertaking has been accepted (*Undertaking Commencement Date*).

3.2 This undertaking expires 8 years after the Undertaking Commencement Date.

3.3 For the avoidance of doubt, any executed Digital Access Agreement will continue to run for its full term even if this undertaking has expired.

EXECUTED on

for and on behalf of

FOXTEL Management Pty Limited

Kim Williams
Director

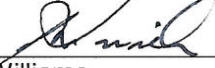
Date

Witness

C. J. L. S. F.
CLINT DAL SANTO

Date

FOXTEL Cable Television Pty Limited



Kim Williams
Director

30/11/06

Date



Witness

30/11/06

Date