

11 August 2004

Mr Tim Grimwade
General Manager – Adjudication
Australian Competition & Consumer Commission
PO Box 1199
Dixon ACT 2602

FILE No:
DOC:
MARS/PRISM:

Dear Mr Grimwade

Application for notification of exclusive dealing

For the abundance of caution, we have enclosed a Form G application and supporting submission for notification of exclusive dealing for third line forcing under section 93(1) of the Trade Practices Act 1974 (Cth) (the **Act**) for FOXTEL Management Pty Limited on behalf of the FOXTEL Partnership (**FOXTEL**).

The notification relates to a promotion which FOXTEL proposes to commence. The following table sets out in summary the FOXTEL offer:

Nominated Retail Store (in FOXTEL areas)	Product Purchased	Free standard FOXTEL installation	Free monthly subscription (channel package)	Offer ends (unless withdrawn earlier)
Harvey Norman	Personal Computer	✓	1 month (Platinum)	31.12.04

There is an inherent public benefit in the conduct because it will provide consumers who would like the products with the ability to take up the offer at a genuine saving on the total price of the products if they were bought separately. The conduct will result in lower prices for customers and will increase competition in the markets for both products.

In addition, the proposed conduct will stimulate demand for FOXTEL's subscription television services, demand for computer products and sales at the nominated retailer and may promote competition in similar markets by encouraging other suppliers of similar computer related services to offer value-added services.

We enclose a cheque on behalf of FOXTEL Management in the amount of \$100 representing the lodgement fee.

If you have any questions in relation to this notification, or require any additional information please contact Matthew Strathdee on 02 9200 1346.

Yours sincerely


Josephine Johnston
Senior Legal Counsel



Encl.



FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 93(1)

EXCLUSIVE DEALING:

NOTIFICATION

To the Australian Competition & Consumer Commission:

Notice is given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974* of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(6) or (7), of that Act in which the person giving notice engages or proposed to engage.

1. (a) Name of person giving notice:

FOXTEL Management Pty Limited (ACN 068 671 797) (**FOXTEL**).

(a) Short description of business carried on by that person:

FOXTEL provides channels (apart from open broadcast channels) as part of the supply of subscription television services.

(b) Address in Australia for service of documents on that person:

Josephine Johnston
Senior Legal Counsel
FOXTEL Management Pty Limited
Wharf 8
Pyrmont NSW 2009
Ph: (02) 9200 1354
Fax: (02) 9200 1016

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

Subscription television services.

(b) Description of the conduct or proposed conduct:

FOXTEL intends to commence a promotion on 3 September 2004 (ceasing on 31 December 2004 or earlier if stocks run out) offering new FOXTEL subscribers a free Starter Kit (which includes standard FOXTEL installation plus the 1st month subscription to FOXTEL Digital's Platinum Channel Package on the basis of a 24 month residential contract with Direct Debit) when they purchase a personal computer from Harvey Norman.

3. (a) **Class or classes of persons to which the conduct relates:**
Members of the public including non-FOXTEL subscribers who wish to become FOXTEL subscribers and who wish to take advantage of the promotion
- (b) **Number of those persons:**
- (i) At the present time – Nil.
 - (ii) Estimate within the next year – approximately 1,000.
- (c) **Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:**

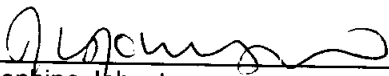
Not applicable.

4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:**

Josephine Johnston
Senior Legal Counsel
FOXTEL Management Pty Limited
Wharf 8
Pyrmont NSW 2009
Ph: (02) 9200 1354
Fax: (02) 9200 1016

Dated: 11 August 2004

Signed on behalf of the person giving this notice:



Josephine Johnston
Senior Legal Counsel
FOXTEL Management Pty Limited

SUBMISSION IN SUPPORT OF NOTIFICATION BY FOXTEL MANAGEMENT PTY LIMITED IN RELATION TO THIRD LINE FORCING CONDUCT

The Proposed Conduct

FOXTEL proposes to commence a promotion beginning 3 September 2004 offering new FOXTEL subscribers a free Starter Kit (which includes standard FOXTEL installation plus 1st month subscription to FOXTEL Digital's Platinum Channel Package on the basis of a 24 month residential contract with Direct Debit) when they purchase a personal computer (the **Product**) from Harvey Norman (**Nominated Retailer**).

It is proposed that when a customer purchases the Product from the Nominated Retailer, the customer will receive a free Starter Kit.

It is proposed that the offer will last until 31 December 2004 (or earlier if stocks run out) however customers will be required to book their FOXTEL standard installation before 15 February 2005.

Trade Practices Act

It is possible that the proposed conduct described above might involve conduct of the kind in section 47(6) of the Trade Practices Act 1974 (Cth) (**the Act**) on the basis that FOXTEL is giving a discount or credit (comprising a free Starter Kit for new FOXTEL subscribers) on the condition that the purchaser acquires the Product from the Nominated Retailer.

Similarly, the conduct may fall within section 47(7) of the Act if FOXTEL refuses to provide the discount or credit (comprising a free Starter Kit for new FOXTEL subscribers) because a person has not acquired the Product from the Nominated Retailer.

Public Benefit

The proposed conduct will be of benefit to the public as it will:

- provide consumers who would like both products with the ability to take up the offer at a genuine saving on the total price of the products if they were bought separately;
- result in lower prices for customers and will increase competition in the markets for both products;
- promote competition by encouraging other suppliers of similar computer related services to offer value-added services; and
- provide members of the public with the opportunity to obtain FOXTEL's subscription television services with a free Starter Kit (for new subscribers).

The proposed conduct does not have any anti-competitive effect in the markets for the relevant products and services as:

- the offer of the discount or credit by way of a free Starter Kit is intended to stimulate demand for FOXTEL's subscription television services and increase demand for the Product and consequently sales at the Nominated Retailer;
- there are a number of other potential suppliers of subscription television services and computer related products from whom consumers will still be able to acquire such products;
- the offer does not limit the genuine choice of consumers to subscribe to FOXTEL or to purchase the Product. Non-subscribers are able to choose whether to subscribe to FOXTEL at the standard installation rate, or to accept the promotional offer. Consumers therefore retain the ability to purchase FOXTEL without also purchasing another product. In addition, FOXTEL subscribers can either take advantage of the promotional offer by purchasing the Product from the Nominated Retailer or they can continue to subscribe to FOXTEL and not take up the offer;
- there is also no obligation on a consumer who purchases the Product from the Nominated Retailer to take up the offer; and
- there is no loss of transparency in the pricing of the products which would prevent a customer from making an informed decision about the promotion.

The public benefits arising from the proposed conduct will clearly outweigh any possible public detriment.