

13 December 2004

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

FILE No:
DOC: 2004/60900
MARS/PRISM:

Dear Mr Grimwade

Application for notification of exclusive dealing

For the abundance of caution, we have **enclosed** 3 Form G applications and supporting submissions 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 attached notifications sets out three promotions which FOXTEL proposes to commence.

The first notification is in relation to an extension of a promotion that has recently received legal immunity (see attached). The second and third notifications are in relation to separate promotions.

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

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

We enclose a cheque on behalf of FOXTEL Management in the amount of \$300 representing lodgement fees.

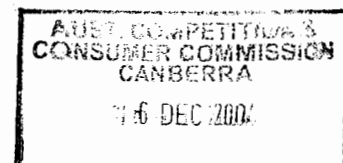
If you have any questions in relation to this notification, or require any additional information please contact Clint Dal Santo on 02 9200 1332.

Yours sincerely



Josephine Johnston
Senior Legal Counsel

Encl.



FOXTEL 

FORM G

Regulation 9

N91572

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**).

(b) **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.

(c) **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 the following promotions with Coles Myer:

1. From 13 December 2004 (ceasing on 31 January 2005 or earlier if stocks run out) offering:
 - a. a free standard FOXTEL Digital installation and 6 months subscription to the Big Value package when the customer purchases any television over \$4000.
 - b. a free standard FOXTEL Digital installation and 12 months subscription to the Big Value package when the customer purchases any television over \$8000.

2. From 2 January 2005 (ceasing 16 January 2005 or earlier if stocks run out) offering a free standard FOXTEL Digital installation and 12 months subscription to the Big Value package when the customer purchases a Panasonic TH42PV30 plasma television, Panasonic TUHDT104A Set top box, Panasonic DMRE55 DVD recorder, and Panasonic SCHT07 home theatre system.
3. From 20 January 2005 (ceasing 3 February 2005 or earlier if stocks run out) offering:
 - a. a free standard FOXTEL Digital installation and 12 months subscription to the Big Value package when the customer purchases a Samsung PS42D4SKX plasma television, Samsung DTB9401F set top box, Samsung DVDR100 DVD recorder and Samsung DVDCM500 home theatre system.
 - b. a free standard FOXTEL Digital installation and 12 months subscription to the Big Value package when the customer purchases a Philips 30PF9946 LCD television, Philips HDRW720 DVD recorder and Philips LX8320SA home theatre system.

If the customer is a current FOXTEL analogue customer they will receive a free standard FOXTEL Digital upgrade and the corresponding number of months free subscription depending on the bundle purchased above. Also, current FOXTEL Digital subscribers will receive the FOXTEL value of the promotion as credit on their current account depending on the bundle purchased above. In each situation the customer is not required to enter into a contract of any particular length with FOXTEL for ongoing subscription. At the end of the free subscription period, no termination fee is payable if the subscriber wishes to cease receiving the service.

(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:

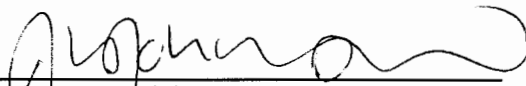
Not applicable.

3. 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 1912

Dated: 13.12.2004

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 intends to commence the following promotions with Coles Myer (Nominated Retailer):

1. From 13 December 2004 (ceasing on 31 January 2005 or earlier if stocks run out) offering:
 - a. a free standard FOXTEL Digital installation and 6 months subscription to the Big Value package when the customer purchases any television over \$4000.
 - b. a free standard FOXTEL Digital installation and 12 months subscription to the Big Value package when the customer purchases any television over \$8000.
2. From 2 January 2005 (ceasing 16 January 2005 or earlier if stocks run out) offering a free standard FOXTEL Digital installation and 12 months subscription to the Big Value package when the customer purchases a Panasonic TH42PV30 plasma television, Panasonic TUHDT104A Set top box, Panasonic DMRE55 DVD recorder, and Panasonic SCHAT07 home theatre system.
3. From 20 January 2005 (ceasing 3 February 2005 or earlier if stocks run out) offering:
 - a. a free standard FOXTEL Digital installation and 12 months subscription to the Big Value package when the customer purchases a Samsung PS42D4SKX plasma television, Samsung DTB9401F set top box, Samsung DVDR100 DVD recorder and Samsung DVDCM500 home theatre system.
 - b. a free standard FOXTEL Digital installation and 12 months subscription to the Big Value package when the customer purchases a Philips 30PF9946 LCD television, Philips HDRW720 DVD recorder and Philips LX8320SA home theatre system.

If the customer is a current FOXTEL analogue customer they will receive a free standard FOXTEL Digital upgrade and the corresponding number of months free subscription depending on the bundle purchased above. Also, current FOXTEL Digital subscribers will receive the FOXTEL value of the promotion as credit on their current account depending on the bundle purchased above. In each situation the customer is not required to enter into a contract of any particular length with FOXTEL for ongoing subscription. At the end of the free subscription period, no termination fee is payable if the subscriber wishes to cease receiving the service.

It is proposed that when a customer purchases the products from the Nominated Retailer, the customer will receive a voucher entitling them to the corresponding FOXTEL offer. The customer can redeem the voucher by contacting the FOXTEL call centre.

It is proposed that the offer will last until the dates specified above (or earlier if stocks run out) however customers will have the ability to redeem their voucher for free standard installation or upgrade by booking their FOXTEL installation or upgrade before 28 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 free standard installation for new FOXTEL subscribers and the corresponding monthly subscription, free standard upgrade for current FOXTEL subscribers and the corresponding monthly subscription or credit to the value of the relevant bundle for current FOXTEL Digital 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 free standard installation for new FOXTEL subscribers and the corresponding monthly subscription, free standard upgrade for current FOXTEL subscribers and the corresponding monthly subscription or credit to the value of the relevant bundle for current FOXTEL Digital 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 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;
- result in lower prices for customers and will increase competition in the markets for both products;
- promote competition by encouraging other suppliers of similar entertainment services to offer value-added services; and
- provide members of the public with the opportunity to obtain the applicable number of months free subscription to FOXTEL's digital television services with free standard installation (for new subscribers) or a free standard upgrade (for existing FOXTEL analogue 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 free standard installation or upgrade and corresponding monthly subscription depending on the bundle purchased 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 television 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 products. 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.