

14 March 2007

General Manager
 Adjudication Branch
 Australian Competition Consumer Commission
 PO Box 1199
 DIXON ACT 2602

Dear Sir/Madam

I refer to the application for authorisation lodged by Sky Channel Pty Ltd (**Sky**), TabCorp Holdings Limited (**Tabcorp**) and ThoroughVision Pty Ltd (**TVN**).

FOXTEL welcomes the resolution of the dispute between TabCorp, Sky and TVN and believes there are real public benefits arising from the memorandum of understanding (**MOU**) between the parties.

FOXTEL is Australia's leading subscription television provider and commenced distributing its services on cable in 1995 and extended its service to satellite in 1999. In March 2004, FOXTEL launched its FOXTEL Digital service, giving Australian viewers the choice of more than 100 digital channels. FOXTEL is available to more than 70% of Australian homes with more than 1.29 million homes currently connected to the FOXTEL service directly or by services provided on a wholesale basis to other providers such as Optus.

FOXTEL has carried Sky Racing as part of its channel line up since 1996 and currently carries the Sky Racing channel as part of its "Get Started" package (i.e. basic). TVN has been an access seeker and available after purchase of the FOXTEL basic package since 2005. The TVN channel has been available to FOXTEL subscribers for an additional \$1 per month and was purchased directly from TVN. However, as of 15 March 2007, TVN will be available to all FOXTEL subscribers who receive the My Sports package at no additional charge. Existing subscribers who receive the pre-May 2006 Basic package will also receive the channel at no additional charge. This means subscribers no longer need to pay the \$12 annual subscription fee.

The MOU has positive outcomes in that it will enable the Sky Racing channel to return to broadcasting a complete coverage of race meetings through the return of the Sydney and Victorian thoroughbred races. During the period of the dispute between Sky Racing and TVN, Sky Racing lost access to these races. This meant keen racing enthusiasts needed to subscribe to both Sky Racing and TVN to have the complete racing line up.

In addition, the MOU will also permit TVN to be incorporated into the FOXTEL package of channels from 15 March 2007, as outlined above, which will give TVN access to over 1.29 million subscribers. TVN will also be incorporated into the Optus package, as FOXTEL will

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supply Optus with this channel under the terms of the FOXTEL Optus Content Supply Agreement. This arrangement will also strengthen the financial position of TVN which will enable it to continue to introduce new races into its channel including the Hong Kong, Dubai and US races and will enable TVN to produce enhanced magazine style shows and more in-depth coverage of races. Each of these outcomes are clearly in the public's benefit.

FOXTEL notes at point 9.13 that submissions are made that the market for the supply of subscription pay television services to residential customers is a possible downstream market relevant to any assessment the Commission must make in relation to markets.

FOXTEL submits that the relevant market is not the residential pay television market but the television entertainment market. This market includes a broad range of competitors who both acquire and supply content including other subscription television operators, the commercial and national television broadcasters and providers of video and DVD retail sales and rentals. FOXTEL has made numerous submissions to the ACCC in relation to the question of market and again submits that this is the relevant market for any such assessment.

If you have any further questions in relation to this submission please do not hesitate to contact me directly on 02 9813 7600.

Yours sincerely



Lynette Ireland
Director of Legal and Business Affairs
FOXTEL