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**FOXTEL** 

14 May 2008

Dr Richard Chadwick  
General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

Dear Dr Chadwick

**Notification of Exclusive Dealing**

I refer to my letter of 14 May 2008 attaching Exclusive dealing notification N93413.

I enclose 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 promotion which FOXTEL proposes to commence is identical to that which was received by the ACCC on 15 May 2008. However, Harvey Norman, a retailer who is involved in the promotion has requested that it be specifically named in the exclusive dealing notification. The only change to the previous notification is to the following paragraph under clause 2(b) of the notification (with changed wording highlighted in bold type):

FOXTEL intends to commence a promotion with SAMSUNG on 1 July 2008 (ceasing on 31 August 2008), available at major retailers of electronic goods **including Harvey Norman stores throughout Australia**, which will be available to customers who purchase a 46 inch or greater SAMSUNG Full HD LCD or plasma TV (the "**SAMSUNG TV**"). It is proposed that customers who purchase a SAMSUNG TV will be eligible to receive a discounted FOXTEL HD+ Service subscription.

We enclose a cheque on behalf of FOXTEL Management in the amount of \$100.00 representing the lodgement fee.

If you have any questions in relation to this notification, or require any additional information please contact me on (02) 9813 7605.

Yours sincerely

  
**Anthony Poole**  
Senior Legal Counsel  
FOXTEL Management Pty Ltd  
Encl.



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# Form G

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 93 (1)*

## NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

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

### 1. Applicant

(a) Name of person giving notice:

N93425 FOXTEL Management Pty Limited (ACN 068 671 938) ("**FOXTEL**").

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

FOXTEL provides subscription television services to members of the general public.

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

Anthony Poole  
Senior Legal Counsel  
FOXTEL Management Pty Limited  
5 Thomas Holt Drive, North Ryde, NSW, 2113  
Ph: (02) 9813 7605  
Fax: (02) 9813 7606

### 2. Notified arrangement

(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 with SAMSUNG on 1 July 2008 (ceasing on 31 August 2008), available at major retailers of electronic goods including Harvey Norman stores throughout Australia, which will be available to customers who purchase a 46 inch or greater SAMSUNG Full HD LCD or plasma TV (the "**SAMSUNG TV**"). It is proposed that customers who purchase a SAMSUNG TV will be eligible to receive a discounted FOXTEL HD+ Service subscription.

This offer will be made available to existing FOXTEL subscribers, as well as new FOXTEL subscribers and relates specifically to the FOXTEL HD+ Service (being a new FOXTEL branded service delivering high definition channels in addition to the channel packages currently available) that FOXTEL will launch on or before 30 June 2008.

The offer to new FOXTEL subscribers who subscribe to a 24 month contract with FOXTEL to receive the FOXTEL HD+ Service comprises:

- i. the waiver of the FOXTEL iQ2 upgrade fee, valued at \$200.00 (the FOXTEL iQ2 is required to receive the FOXTEL HD+ Service);
- ii. three months of the FOXTEL HD+ Service high definition channels, valued at \$44.85;
- iii. three months of the FOXTEL iQ2 Service fees, valued at \$30.00; and
- iv. a free standard metropolitan city installation of the FOXTEL iQ2 set top unit, valued at \$139.95.

(the “**New Subscriber FOXTEL Offer**”)

Existing FOXTEL subscribers who wish to upgrade to the FOXTEL HD+ Service will be offered:

- i. the waiver of the FOXTEL iQ2 upgrade fee, valued at \$200.00;
- ii. three months of the FOXTEL HD+ Service high definition channels, valued at \$44.85; and
- iii. three months of the FOXTEL iQ2 Service fees, valued at \$30.00.

(the “**Existing Subscriber FOXTEL Offer**”)

The New Subscriber FOXTEL Offer and the Existing Subscriber FOXTEL Offer are collectively referred to as the FOXTEL Offers. In each case, new and existing subscribers will be required to subscribe to the Get Started (or entry level) FOXTEL Service and, for so long as they are subscribing to all the FOXTEL HD+ Service high definition channels, the My Sports package and one of the general entertainment tiers on the standard definition service.

**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

- (a) Class or classes of persons to which the conduct relates:

Customers who purchase a SAMSUNG TV who wish to take advantage of the FOXTEL Offers.

- (b) Number of those persons:

- (i) At the present time – Nil.
- (ii) Estimate within the next year – approximately 9000

- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Not applicable.

#### **4. Public benefit claims**

(a) Arguments in support of notification:

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

- provide customers who purchase the relevant SAMSUNG TV and who wish to subscribe to the FOXTEL HD+ Service with the ability to take up one of the FOXTEL Offers at a genuine saving on the total price of FOXTEL HD+ Service than if they were to subscribe in the normal course; and
- result in savings when upgrading from a standard definition FOXTEL service to the FOXTEL HD+ Service in the case of existing subscribers and savings on installation and access to the FOXTEL HD+ Service for new FOXTEL subscribers.

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

- the FOXTEL Offers are intended to stimulate demand for FOXTEL's subscription television services and, in particular, the new FOXTEL HD+ Service;
- the FOXTEL Offers do not limit the genuine choice of consumers who wish to subscribe to either the standard definition FOXTEL service or the new FOXTEL HD+ Service. Consumers may elect to subscribe to the FOXTEL HD+ Service or FOXTEL standard definition service independently of the FOXTEL Offers if the terms of the FOXTEL Offers do not appeal to these consumers.
- there is no obligation on a SAMSUNG customer to take up the FOXTEL Offers; 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.

#### **5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

The relevant market likely to be affected by the proposed conduct is the market for the provision of electrical goods, specifically high definition

televisions, including department stores, electrical goods stores and home entertainment stores.

**6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:

FOXTEL considers that limited public detriment results from the proposed conduct as consumers are not forced to purchase a SAMSUNG TV in order to subscribe to the FOXTEL HD+ Service. Consumers can still subscribe to the FOXTEL HD+ Service from FOXTEL directly and they can purchase a television from a number of other television suppliers.

**7. Further information**

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Anthony Poole  
Senior Legal Counsel  
FOXTEL Management Pty Limited  
5 Thomas Holt Drive, North Ryde, NSW, 2113  
Ph: (02) 9813 7605  
Fax: (02) 9813 7606

Dated 2 June 2008.

Signed by/on behalf of the applicant

Anthony Poole  
FOXTEL Management Pty Limited  
Senior Legal Counsel