

| | |
|-------------|--|
| FILE No: | |
| DOC: | |
| MARS/PRISM: | |

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:

N94337 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:

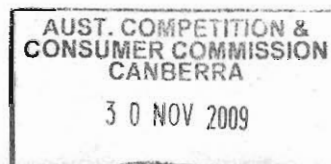
Eloise Schnierer
Legal Counsel
FOXTEL Management Pty Limited
5 Thomas Holt Drive, North Ryde, NSW, 2113
Ph: (02) 9813 7610
Fax: (02) 9813 7606

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 an exclusive promotion with the electrical retail stores in south west regional Western Australia listed in Schedule 1 on 14 December 2009. It is proposed that customers who spend \$1000.00 or more in any one of these stores will be eligible to receive a discounted FOXTEL Service installation. This offer will be made available to existing and new FOXTEL subscribers.

The offer to new FOXTEL subscribers who subscribe to a 12 month direct debit contract on the Family iQ Value Pack comprises a free standard metropolitan city installation of the FOXTEL iQ2 set top unit, valued at \$200.00 ("**New Subscriber FOXTEL Offer**").

Existing FOXTEL subscribers who wish to upgrade to FOXTEL iQ2 will be offered a half price standard metropolitan city upgrade to the FOXTEL iQ2 (\$100), valued at \$200 provided they upgrade to the Family iQ Value Pack for at least one (1) month ("**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 Family iQ Value Pack for a minimum of one (1) month.

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 of the electrical retailers in Schedule 1 who spend more than \$1000.00 in store and who wish to take advantage of the FOXTEL Offers.

(b) Number of those persons:

- (i) At the present time – Nil.
- (ii) Estimate within the six months – 100

(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 of the electrical retailers in Schedule 1 with the ability to take up one of the FOXTEL Offers at a genuine saving on the total price of the FOXTEL Service than if they were to subscribe in the normal course; and
- result in savings when upgrading to FOXTEL iQ2 in the case of existing 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 High Definition subscription television services;
- the FOXTEL Offers do not limit the genuine choice of consumers who wish to subscribe to the FOXTEL service. Consumers may elect to subscribe to the FOXTEL Service independently of the FOXTEL Offers if the terms of the FOXTEL Offers do not appeal to these consumers.
- there is no obligation on the 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 appliances in south-west Western Australia.

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 products from the participating stores in order to subscribe to the FOXTEL Service. Consumers can still subscribe to the FOXTEL Service from FOXTEL directly and they can purchase electrical products from other suppliers.

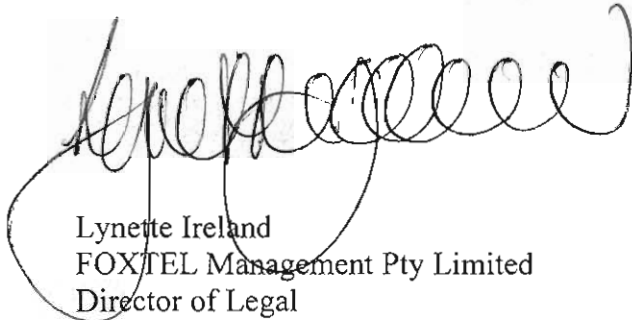
7. Further information

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

Eloise Schnierer
Legal Counsel
FOXTEL Management Pty Limited
5 Thomas Holt Drive, North Ryde, NSW, 2113
Ph: (02) 9813 7610
Fax: (02) 9813 7606

Dated 24 November 2009

Signed by/on behalf of the applicant



Lynette Ireland
FOXTEL Management Pty Limited
Director of Legal

**Schedule 1
Participating Stores**

Esperance Communications

33 Norseman Road, Esperance WA 6450

Bunbury Retravision

59 Forrest Ave, Bunbury WA 6230

Kalgoorlie Retravision

10 Federal Road, Kalgoorlie WA 6430

Albany Retravision

35-37 Campbell Road, Albany WA 6330

Keevils Betta Electrical

28 Randell Road, Esperance WA 6450

Bunbury Harvey Norman

Cnr Sandridge Rd & Denning Rd, Bunbury WA 6230

Busselton Retravision

44 Busselton Highway, Busselton WA 6280

Bennetts Betta Electrical

24 Faure Lane, Dunsborough WA

Margaret River Retravision

32 Station Road, Margaret River WA 6285

Collie Retravision

101 Steere Street, Collie WA 6225

Narrogin Retravision

88 Federal Street, Narrogin WA 6312

Katanning Retravision

118 Clive Street, Katanning WA 6317

McCays Manjimup Retravision

7 Giblett Street, Manjimup, WA 6258

Esperance Retravision

106 Dempster Street, Esperance WA 6450

