



26 May 2010

Mr David Hatfield  
Director, Adjudication Branch  
Australian Competition and  
Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

Dear Mr Hatfield

**Exclusive dealing notification N94674, lodged by FOXTEL  
Management Pty Limited**

I refer to your letter dated 19 May 2010. As requested, I set out below FOXTEL Management Pty Limited's (*FOXTEL*) responses to the Australian Competition and Consumer Commission's request for further information.

1. **Please describe the exact nature of the Proposed Service, including whether it will replace any existing services (such as FOXTEL's on-demand and Box Office services).**

The Proposed Service is as outlined in section 1 of FOXTEL's Submission in support of the Notification. The Proposed Service will be accessed by subscribers via the On Demand button on the remote control or via the On Demand button in the EPG as a separate menu item. Once selected subscribers can then select from a series of screens that display the titles of the content that the subscriber can purchase for download.

No existing service will be closed down as a consequence of the introduction of the Proposed Service.

2. **Please describe in detail what will be included in the 'wide variety of content such as movies and television programs' for the Proposed Service.**

At launch the Proposed Service will offer:

[CONFIDENTIAL]

3. **Will the content described in FOXTEL's response to question 2 above be available through other FOXTEL services following the introduction of the Proposed Service?**

In relation to the Proposed Service, FOXTEL will be acquiring movies and television series itself directly from third party suppliers. The content on third party linear channels included in the FOXTEL service is determined by the channel suppliers. Accordingly, some of the content offered by the Proposed Service may be the same as the content supplied by FOXTEL's linear channel suppliers but this will be the result of independent decisions being made by FOXTEL and the channel suppliers.

FOXTEL also confirms that some of the content offered on the FOXTEL Box Office service and On Demand service will be the same as content offered on the Proposed Service.

4. **Will the Proposed Service be available to existing FOXTEL customers, or only to new FOXTEL customers?**

The Proposed Service will be available to existing and new FOXTEL subscribers with an iQ1.5 or an iQ2.

5. **What is the relevant release window for movie content to be provided on the Proposed Service? Is it ahead of the release window for FOXTEL's standard pay TV service?**

[CONFIDENTIAL]

6. **Please explain whether the exclusivity condition is necessary for the introduction of the Proposed Service, or just for the discounted/unmetered downloads. Will FOXTEL launch the Proposed Service if the exclusivity condition is not permitted? If not, why not?**

[CONFIDENTIAL]

7. Did FOXTEL approach Internet service providers other than Telstra to discuss the prospect of entering into unmetered download agreements for the Proposed Service? If not, why not?

[CONFIDENTIAL]

8. Please describe the nature of FOXTEL's agreement with Telstra regarding the proposed conduct, including what, if any, benefits FOXTEL stands to receive from Telstra in return for the exclusivity condition (beyond unmetering of downloads for FOXTEL customers that use BigPond); and the expected duration of the conduct.

FOXTEL reached agreement with Telstra to connect FOXTEL's iQ 1.5s and iQ2 units to internet protocol (IP) connectivity services supplied by Telstra. In return for exclusivity, FOXTEL will benefit from reduced excess carriage fees which are described further in response to question nine.

[CONFIDENTIAL]

9. FOXTEL's notification states (at page 5) that 'Telstra has only agreed to waive certain charges to FOXTEL if the agreement is an exclusive one'. What is the nature and quantum of charges to FOXTEL that Telstra has agreed to waive?

[CONFIDENTIAL]

10. **FOXTEL's notification states (at page 14) that 'An ISP other than Telstra can easily acquire video on demand content rights on a competitive basis or enter into an arrangement with another content aggregator...'. FOXTEL uses FetchTV as an example of a possible partner aggregator. Given that FetchTV has not yet launched in the market, can FOXTEL provide any other examples of content aggregators that non-Telstra ISPs may be able to partner with?**

As discussed in detail in the three tables included in the submission accompanying FOXTEL's notification, FOXTEL faces existing and imminent competitive threats from, among others, service providers who plan to supply video entertainment services to televisions in conjunction with or via IP connectivity.

TiVo already has ISP partnerships with Internode, Iprimus, Adam Internet, iiNet, Apex Internet and vividwireless. Under these partnerships customers can download to their TiVo media device unmetered content and services including video content, weather and games services, software updates and electronic program guide data. TiVo has stated that it expects to announce partnerships with more ISPs soon.<sup>1</sup>

In addition, on 12 April 2010, Sony announced that it was strengthening its IPTV offering in Australia by including the addition of five new channels, including ABC's iView, to its BRAVIA Internet Video service and the release of IPTV-enabled Blu-ray players.<sup>2</sup> Other channels that will be offered by Sony include Yahoo!7, SBS and YouTube.

In addition, Sony's PlayStation 3 is already offering some video content (mainly feature films on an on-demand basis) via its PlayStation Network Video Download facility and it is expected that this offering will increase in the near future<sup>3</sup>. Sony recently announced that Playstation 3 will be supporting a new video-on-demand service called 'MUBI' which includes free-to-watch movies, pay-per-view movies (on a weekly rental basis) or an all-you-can-watch monthly subscription.<sup>4</sup> MUBI will target international, classic, independent and cult cinema. The ABC's iView player is also able to be accessed via a PlayStation 3.<sup>5</sup>

It is also important to note, however, that ISPs do not necessarily have to partner with any content aggregator in order to supply a competing service to the Proposed Service as the ISPs can aggregate content themselves. For example (and as noted in FOXTEL's submission), iiNet already supplies its Freezone product which allows customers to download movies, sport, news, documentaries, music and other content. Further (and as also noted in FOXTEL's submission), TPG IPTV allows customers to watch selected TV channels on their computer without the need to purchase a set top box.

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<sup>1</sup> See <http://www.mytivo.com.au/whatistivo/unmetering/>

<sup>2</sup> See <http://www.sony.com.au/pressrelease/asset/392405/section/consumerproductspressreleases&printLink>

<sup>3</sup> <http://www.PlayStation3.com.au/video/video-store>

<sup>4</sup> <http://au.playstation.com/home/news/articles/detail/item279768/MUBI-is-coming-to-PlayStation-3/>

<sup>5</sup> <http://www.PlayStation3.com.au/tv/iview>

FOXTEL also understands that Telstra's release of its Tbox product is expected in June. The Tbox product will allow users to watch the digital free-to-air channels, BigPond TV, movie downloads and other content on their TVs.<sup>6</sup>

FOXTEL wishes to re-emphasise that the launch of FetchTV in Australia is imminent with iiNet already advertising the product on its website and calling for customer expressions of interest.<sup>7</sup>

11. **What is FOXTEL's forecast of take-up for the Proposed Service:**

- (a) **By existing FOXTEL customers who do not currently have a BigPond internet service?**
- (b) **By consumers who are not currently FOXTEL customers?**

[CONFIDENTIAL]

12. **When does FOXTEL intend to commence the Proposed Service and/or marketing of the Proposed Service?**

[CONFIDENTIAL]

Please do not hesitate to contact me if you have any further questions.

Yours sincerely,



Lynette Ireland

Director of Legal and Business Affairs

<sup>6</sup> See Lee, Julian 'Telstra primed for T-box launch in June', *The Age*, 2 April 2101 at <http://www.theage.com.au/digital-life/hometech/telstra-primed-for-tbox-launch-in-june-20100402-rj20.html>

<sup>7</sup> See <http://www.iinet.net.au/fetchtv/>