

# herbertgeer

Your Ref: C2010/450

Our Ref: GXP:KAL:1341602

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18 June 2010

Dr Richard Chadwick  
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Australian Competition and Consumer Commission  
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By facsimile: (02) 6243 1211  
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Dear Dr Chadwick

## **Exclusive dealing notification N94674, lodged by FOXTEL Management Pty Limited ('Foxtel') - interested party consultation**

### **1. INTRODUCTION**

We act on behalf of Internode, iiNet and Adam Internet ('**Our Clients**').

Our Clients welcome the opportunity to provide a written submission to the Australian Competition and Consumer Commission ('**ACCC**') in relation to notification number N94674 by Foxtel Management Pty Limited ('**Foxtel**') under section 93(1) of the *Trade Practices Act 1974* ('the **Act**') ('the **exclusive dealing notification**').

The exclusive dealing notification relates to Foxtel's proposal to supply customers with the ability to download and purchase "a wide variety of content such as movies and television programs" delivered via the internet, on the condition that the customers use a Telstra BigPond broadband connection for the carriage of those programs ('the **proposed conduct**'). As Foxtel acknowledges, the proposed conduct falls within section 47(6) and 47(7) of the Act. That is, it is a form of third line forcing.

### **2. EXECUTIVE SUMMARY**

Unlike other forms of exclusive dealing, which are subject to a competition test, third line forcing is expressly prohibited, regardless of its effect on competition. By making this conduct illegal, the legislature clearly regards third line forcing as a particularly egregious form of anti-competitive conduct which should not be tolerated. Accordingly, immunity to

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FROM

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TO

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engage in such illegal conduct should only be granted in exceptional circumstances where the benefit to the public is substantial and clearly outweighs public detriment.

Further, as recognised by the ACCC in its "Guide to exclusive dealing notifications" (**ACCC Guide**), the greater the market power of the parties proposing to engage in third line forcing conduct, the greater the detriment caused by the forcing and the greater the offsetting public benefit needed to obtain immunity.<sup>1</sup> In this instance, the market power held by Foxtel and Telstra is overwhelming. As such:

- a) The exclusive dealing arrangement between Foxtel and Telstra will damage competition in the market for broadband services. Hindering competition will result in considerable public detriment that is not outweighed by any benefits that result from the conduct.
- b) The exclusive dealing arrangement between Foxtel and Telstra will damage competition in the market for subscription TV services. Again, this will damage competition and result in considerable public detriment that is not outweighed by any benefits that could result from the conduct.

Foxtel has failed to address a fundamental issue in its exclusive dealing notification. Essentially Foxtel has argued that there is a public benefit in the product that it proposes to supply. It has failed to argue that there is a public benefit in the third line forcing conduct itself, which it must establish in order to obtain the immunity it seeks.

The public benefits that Foxtel has described in the exclusive dealing notification would be available without the third line forcing conduct, that is if Foxtel's service was available via other internet providers and not only Telstra. Therefore, it is not possible to conclude the third line forcing is necessary or that the public benefit outweighs the public detriments of losing ISP choice and damaging competition in broadband and subscription TV markets.

For these reasons, Our Clients strongly object to Foxtel's exclusive dealing notification and urge the ACCC to promptly withdraw the legal protection conferred on Foxtel and Telstra BigPond by the exclusive dealing notification in respect of this anti-competitive market conduct.

### **3. RELEVANT MARKETS**

The unparalleled dominance of Foxtel and Telstra in the markets for the supply of residential subscription TV and broadband services places each company in a position where it has the power to exert considerable adverse influence on competition. There is of course nothing wrong with Foxtel and Telstra using their economies of scale to engage in vigorous competition. Such behaviour benefits consumers and is to be encouraged. However, where these two companies jointly utilise their market power to engage in third line forcing there is a paramount obligation on the ACCC to closely assess the public detriment that will result.

Foxtel lists three markets which it says are relevant to the proposed conduct and argues that the proposed conduct will enhance competition in each of those markets. Our Clients submit that:

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<sup>1</sup> January 2007, p 8.

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- a) Foxtel's description of the markets that are relevant to its exclusive dealing arrangement with Telstra are far too broad; and
- b) many of the competitive 'players' identified by Foxtel are not relevant for the purposes of the proposed conduct, but have been included by Foxtel to create the misleading impression that competition is already well-developed in the markets within which it plans to introduce the new product.

Our Clients submit that, contrary to Foxtel's submission:

- competition is under-developed in the relevant markets within which Foxtel plans to introduce the new content product;
- Foxtel and Telstra are the dominant players in markets relevant to the notification; and
- competition in those markets will be further stifled if the ACCC does not revoke Foxtel's notification.

Each of the markets, as defined by Foxtel, are dealt with in turn below.

### **3.1 The market for the retail supply of audiovisual content**

As recognised in the ACCC Guide, third line forcing conduct involves the supply of, or offer to supply, goods or services (Product A) on condition that the buyer acquires a second product (Product B) from another supplier.<sup>2</sup> If one takes the view that 'Product A' in this circumstance is the 'wide variety of content such as movies and television programs from a content delivery network to (the Foxtel subscriber's) iQ set top unit...for viewing on their television', then the relevant market within which Product A competes is the market for the retail supply of subscription television services to residential consumers. Subscription TV is not commonly purchased in business markets. As identified by Foxtel itself in its submission, there are few other national players currently in this market, being only Austar, Optus and SelecTV<sup>3</sup>. Foxtel is the dominant player, with approximately 63% market share when compared to Optus and Austar<sup>4</sup>.

Foxtel argued that the new content will also soon compete against other online video services, including those supplied by FetchTV and potentially Hulu. Our Clients submit that future entrants, whether likely or not and whether launching in the market for the retail supply of subscription television services or the broader market of the retail supply of audiovisual content, should be discounted by the ACCC in its consideration of Foxtel's notification. Potential future market entrants are irrelevant for the purposes of ascertaining whether or not competition is sufficiently developed, at the time legal protection conferred by the exclusive dealing notification commences, so as to justify the third line forcing conduct outlined in that notification. Further, when new services such as FetchTV are launched, they will need a substantial amount of time to build up market share before they can legitimately be considered a competitor to Foxtel. The exclusive dealing arrangement proposed by Foxtel

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<sup>2</sup> ACCC Guide, p.8

<sup>3</sup> Neighbourhood Cable and Transact also supply retail subscription television services, however only within the areas of regional Victoria and Canberra, respectively.

<sup>4</sup> As at June 2009, Foxtel had 1,479,000 SIOs (Telstra Annual Report 2009 p.19). This accounts for approximately 63% market share when compared with the figures for Austar and Optus at the same time. Note this does not account for the subscribers attributed to SelecTV.

and Telstra will weaken the ability of prospective market entrants to build such market share. Our Clients submit that this is in fact a key purpose of the proposed exclusive dealing arrangement – to prevent competitors from gaining a foothold in the market for the retail supply of subscription television services.

If the ACCC accepts Foxtel's submission that the relevant market for the purposes of 'Product A' is the more broadly defined "market for the retail supply of audiovisual content", then Our Clients submit that Foxtel has overestimated the number of current players in that particular market by listing players which do not provide goods and services that are in reality substitutable for, or otherwise competitive with Product A. Our Clients submit that this market, as it is defined by Foxtel, is ludicrously broad and potentially limitless in scope so as to encompass *any* retailer of *any* type of audiovisual content. If taking this view, one could equally include Hoyts theatres or Qantas in-flight entertainment as players in the market. However, Our Clients submit that a necessary limiting factor, and one that is implied from the five categories of goods and services which Foxtel lists at part 3.2 of its submission, is that the content must be capable of being viewed on a television. Any other platform for the retail supply of audiovisual content, such as to a PC or mobile device, should be discounted by the ACCC. Those platforms, and the content delivered to them, are purchased by consumers in addition to, and not in substitution for, content delivered to a television (for example, mobile phone users who purchase mobile content ordinarily acquire such content to view for short periods whilst in transit, and not as a substitute for their television viewing). For this reason, Our Clients submit that the following players listed by Foxtel in Table 2 of its submission are not in competition with Foxtel's proposed service and therefore should be removed from any consideration of the exclusive dealing notification:

- Telstra BigPond TV/Movies/Sport - this content is supplied to a PC and/or 3G or NextG mobile;
- Optus Zoo - this content is supplied online using a PC;
- Optus Mobile TV - this content is supplied to a mobile phone in the Optus 3G/HSPA or Dual Band coverage area;
- iiNet Freezone - this content is supplied online using a PC; and
- TPG IPTV - this content is supplied online using a PC.

As previously stated, Our Clients submit that potential future entrants are irrelevant to a consideration of competition in the relevant market. Notwithstanding this, should the ACCC decide to include potential future entrants in its consideration of the market for the retail supply of audiovisual content, and use Table 3 of Foxtel's submission as a guide, Our Clients submit that the following players should be discounted:

- Hulu - this content is supplied online and is a U.S only service at this time. It does not yet have international streaming rights<sup>5</sup>;
- EdgeCast Networks - this is an online content delivery network offering media streaming rather than the retail supply of content to a television;

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<sup>5</sup> <http://www.hulu.com/support/article/171122>;

- TBA – this category of unspecified suppliers of content over the National Broadband Network is clearly too vague and too far removed to constitute a credible inclusion by Foxtel;
- Sony Play TV - this is a PVR console only and does not actually supply content to an end user;
- Microsoft Windows Media Center - this content is supplied online using a PC;
- Sony, Panasonic, Samsung, LG Internet Ready TVs - these are televisions which enable access to the internet and internet sites. The end user purchases the television, rather than the content; and
- TriplePlay - this company is present in more than 20 countries worldwide, of which Australia is not one, and the company has not yet announced any service offering in Australia either now or in the near future.

### 3.2 The market for the acquisition of audiovisual content

Foxtel has argued that another relevant market is the market for the acquisition of audiovisual content. It submits that it competes in a broad market for the acquisition of content rights, and faces competition from free-to-air television providers, online content providers via the PC and/or television and from other subscription television providers.

Our Clients submit that this market is not relevant for the purposes of assessing the proposed conduct. The conduct in the exclusive dealing notification relates to the supply of services to residential consumers not the supply arrangements behind that supply. If one continues to take the view that 'Product A' is the additional content supplied by Foxtel, then the relevant market within which Product A competes is the market for the retail supply of subscription television services, and not the market for the acquisition of audiovisual content. It is true that in order to supply audiovisual content, the supplier has to acquire the rights first (and there is competition between the suppliers to do so), however as Foxtel claims that it is seeking the rights to supply the additional content on a non-exclusive basis, it is difficult to see how this will 'enhance competition' in the market, or benefit anyone other than the benefit given to Telstra via the third line forcing conduct.

### 3.3 The market for the provision of broadband telecommunications services

Foxtel's submission lists another relevant market as being the market for the downstream retail supply of broadband internet access services by internet service providers. This is the primary market that Telstra BigPond and each of Our Clients operate in. This is the market that will be most affected by Foxtel and Telstra's third line forcing arrangement. Though the third line forcing will damage the emerging market for subscription TV delivered via IPTV platforms, it is the broadband market in which the arrangement will have an immediate anti-competitive impact. Our Clients strongly disagree that the proposed third line forcing conduct will enhance competition, or provide any sort of public benefit, in this market.

Given that the arrangement between Foxtel and Telstra can be regarded as contrary to Foxtel's interests, by restricting its supply of the proposed service to competitive ISPs, the immediate beneficiary of the conduct is Telstra. The benefit to Foxtel, through hindering emerging competition via IPTV, will be apparent in upcoming months and years. Our clients have no doubt that Telstra's intention is to encourage Foxtel customers that are connected to other ISPs to churn to BigPond on the basis that they will be able to download Foxtel content. If customers do this, they will be entering into more expensive plans with lower

download limits, that may also require them to purchase line rental off Telstra (as opposed to Naked DSL plans). None of this would be necessary if Foxtel offered the service to other ISPs, who can of course technically provide the service.

#### **4. ALLEGED PUBLIC BENEFITS OF THE PROPOSED CONDUCT**

Foxtel submits that, "given there is no anticompetitive detriment arising from the proposed conduct, it is not necessary for Foxtel to demonstrate more than minimal public benefits".<sup>6</sup> On the contrary, as set out in section 5 below, Our Client's consider that the detriment to the public from the proposed conduct will be very substantial and that the offsetting public benefits must therefore be great to warrant the proposed conduct. The benefits claimed by Foxtel either do not exist or do not meet this threshold, and are significantly outweighed by the public detriment that the arrangement between Foxtel and Telstra will cause.

##### **4.1 Increased choice of content for consumers**

Foxtel claims that the introduction of the proposed service will lead to an increase in consumer choice for the acquisition of content. Foxtel has acknowledged that some of the content offered by the proposed service may be the same as content already supplied by Foxtel's linear channel suppliers and/or offered on the Foxtel Box Office and On Demand services. There appears to be no increase in consumer choice in respect of this duplicated content.

In relation to the other 'additional' content, it is not clear why access to this content cannot also be provided over the existing Foxtel cable and satellite networks, rather than via the internet. The only conclusion we can draw is that the additional content will be deliberately withheld from Foxtel's cable and satellite customers so that they are forced to acquire a Telstra BigPond service in order to access it. The only party to benefit from this arrangement is Telstra BigPond. Consumers will in fact suffer a great detriment since, in order to access the new content, they must forego their freedom of choice for broadband supplier.

The public benefit could only be argued if the additional content could be accessed by all Foxtel subscribers with internet access, regardless of their broadband provider. There is no impediment to Foxtel entering into such arrangements with other ISPs, except for Telstra's 50% ownership of Foxtel and the pressure it is clearly able to exert on Foxtel's executive decisions. If Foxtel was independent of Telstra, arrangements with other ISPs would be in Foxtel's clear financial interest, as competitive access to Foxtel's services from a broad range of ISPs would enable Foxtel to negotiate better terms with the ISPs and would also increase consumer demand for Foxtel's service.

##### **4.2 No or minimal per-download charge for consumers**

Foxtel states that Telstra has agreed to waive download charges for customers' use of the Foxtel service, on the condition that Foxtel's agreement with Telstra is an exclusive one. Foxtel claims that this provides a benefit to consumers as their use of the service will be unmetered.

Our Clients do not believe that a third-line forcing arrangement between Telstra BigPond and Foxtel need be a precondition to the provision of unmetered access to customers. We note that Foxtel has withheld as 'Confidential' its response to the ACCC's question regarding

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<sup>6</sup> Exclusive Dealing Notification, p 5.

whether it approached any ISPs other than Telstra to discuss the prospect of entering into unmetered download agreements for the proposed service. We can confirm that none of our clients were approached. However, had they been approached, each would have been eager to discuss the matter with Foxtel and assess whether a business case could be made out to offer its customers unmetered access to the service. We expect that many other ISPs would offer unmetered access in order to be able to supply Foxtel to their customers. Such an outcome would be of far greater benefit to consumers as they would have a range of ISPs to choose from for unmetered access. Some consumers may also choose to remain with their existing ISPs despite their access to the Foxtel service being metered, (for example, customers on plans with very high or 'unlimited' download allowances sufficient to cover Foxtel downloads).

#### **4.3 Enhancement of competition in the market for Pay TV services**

Foxtel argued that a public benefit will arise because the proposed service will encourage competing suppliers to offer similar services – stating that the competing suppliers can “easily develop a competing product to deliver videos on demand to end-users. There are minimal barriers to entry as the majority of online content is supplied on a non-exclusive basis”. Foxtel also submitted that ISPs need not necessarily partner with a content aggregator to provide a competing service as the ISPs can aggregate content themselves.<sup>7</sup>

Foxtel's statements are completely erroneous. Firstly, video on demand has not been the driving force behind pay TV take-up. By volume, the content that is in high demand is quite limited. Premium sports and new release programming drive demand for subscription TV services, not last year's movies or reruns of TV shows. This premium content is largely already sewn up in exclusive agreements by Foxtel and Telstra. What remains attracts extremely high prices and is subject to very significant minimum guarantees for subscriber take-up, making it beyond the economic reach of many companies. Even with regard to less sought after content, the content and rights are owned by a multiplicity of parties in different countries, requiring complex licensing arrangements in order to provide the content as a service to customers. Suggesting that acquiring the rights to that content is 'easy' or can be done at all by ISPs below a certain size is misleading and absolutely incorrect. The reality is that very few ISPs have sufficient market share to buy content, let alone premium content, without entering into an alliance with an aggregator that is able to negotiate supply agreements with content owners.

The content alone is not the only component of the service. The video capable network to deliver the service is not a trivial component of providing such services and neither are the customer support, user interface and billing systems. Foxtel and Telstra have vertically integrated businesses which provide them with considerable advantages in the provision of these services and, importantly, they are incumbents with mature systems already in place.

Together, these factors create very considerable barriers to entry for new entrants. In these circumstances, rather than creating a public benefit by enhancing competition in the provision of similar services, the third-line forcing conduct proposed by Foxtel and Telstra will have the opposite effect, stifling competition and in the medium or long term causing serious detriment to consumers who will miss out on innovative programming, competitive pricing and diverse service offerings from new players that wish to compete with the incumbent and gain market share.

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<sup>7</sup> Foxtel, supplementary submission to the ACCC in response to request for further information, 26 May 2010, p 4.

## 5. PUBLIC DETRIMENT

Foxtel submitted that the market for the provision of broadband is competitive enough that the proposed conduct will not substantially lessen competition. We note that third line forcing conduct is prohibited even if it does not substantially lessen competition. The ACCC must assess third line forcing notifications by applying the public interest test outlined in s.93(3A) of the Act. This test states that the ACCC may revoke a notification if it is satisfied that the likely public benefit will not outweigh the likely public detriment from the conduct. As discussed above, Our Clients consider that the service may offer real public benefits if it were made available to all Foxtel subscribers with internet access, regardless of their broadband provider. However, under the proposed 'tying' arrangement between Telstra and Foxtel, the benefits to the public from the proposed conduct will be minimal and the detriment to consumers may be substantial.

Our Clients agree that the market for the provision of broadband is becoming increasingly competitive<sup>8</sup> and that Telstra

"has recorded a decline in the number of retail and wholesale broadband services provided over its own fixed line equipment, while at the same time, broadband services through alternative providers have increased."<sup>9</sup>

Our Clients submit that Telstra has been losing market share as a result of its excessive and uncompetitive pricing, low download limits and poor product support. Rather than addressing these issues, Telstra is now attempting to leverage its relationship with Foxtel to insulate itself from competitive pressures by creating artificial demand for its services in an otherwise increasingly competitive market and by creating a potential avenue through which Telstra can maintain its dominant market power.

As discussed above, whereas Foxtel's primary motivation in seeking the exemption for third-line forcing conduct is to weaken the ability of prospective market entrants to gain a foothold in the pay TV market, Telstra's prime motivator is to entice Foxtel subscribers to switch from other ISPs to Telstra BigPond for their broadband. Once customers are lured across to Telstra BigPond, they will be locked in to lengthy bundled contracts for pay TV, broadband and often also telephony. Increasing the cost of disengagement will reduce customer willingness to churn to an alternative supplier, regardless of how uncompetitive the Telstra access service is.

This conduct will clearly have an adverse impact on consumers in terms of the price and the product offerings available to them in the long term. Telstra BigPond's broadband offerings are already the most expensive retail propositions in Australia. For example, although Telstra recently cut broadband bundles by between \$12 and \$42 per month, this still left it 20 to 25 per cent more expensive than competitors.<sup>10</sup> It is also the most expensive provider of high-usage broadband services - at \$100 dearer than TPG for 200 gigabyte-per-month plans.<sup>11</sup> If Telstra is permitted to misuse its interest in Foxtel to protect itself from competition, there will

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<sup>8</sup> with the exception of the market for the provision of ADSL2+ services in many regional areas, and for customers on pair gains and RIM technology, for which Telstra is still the monopoly provider.

<sup>9</sup> ACCC, *ACCC publishes data on take-up of broadband access services*, 2009, quoted in Foxtel exclusive dealing notification, p 15.

<sup>10</sup> Battersby, Lucy "Optus download plans leave Telstra flailing", *Sydney Morning Herald*, 29 April 2010; <http://www.smh.com.au/business/optus-download-plans-leave-telstra-flailing-20100428-tsfh.html> (Attachment 1)

<sup>11</sup> *Ibid.*

be nothing constraining Telstra from continuing to charge premium rates and little incentive for Telstra to invest in future technologies or to continue to improve performance. As Telstra is the dominant broadband provider, this can only be to the detriment of consumers.

## 6. NBN

Section 152AX of the exposure draft of the *Telecommunications Legislation Amendment (NBN Measures – Access Arrangements) Bill 2010 (NBN Access Bill)* provides that NBN Co will have a standard access obligation (**SAO**) not to discriminate between access seekers. In effect, NBN Co will be obliged to provide equal access to services on a standard set of terms and conditions. However, the NBN Access Bill provides exceptions from NBN Co's non-discrimination SAO, meaning that NBN Co will be able to negotiate with access seekers to vary the standard terms, which will give some access seekers advantages over others. Significantly, NBN Co will be allowed to discriminate in favour of a particular access seeker on the basis that it aids efficiency. The NBN Access Bill does not define 'efficiency' or give any indication what it involves. This isn't surprising, as the Government's intention is not to limit the concept but rather to allow NBN Co and access seekers to search for efficiencies. The Explanatory Memorandum to the NBN Access Bill gives some idea as to the meaning of efficiency<sup>12</sup> and explains that it includes volume based discounts. As such, it is likely that over the next several years the telecommunications industry will experience major efforts by service providers to increase market share in order to be well placed to obtain advantageous terms from NBN Co. Where this occurs as a result of vigorous competition, then it will be to the benefit of consumers. However, it should not be allowed to occur as a result of anti-competitive third line forcing arrangements, such as those contained in Foxtel's notification.

## 7. CONCLUSION

The proposed conduct will not provide any particular public benefit that is not easily achievable without resorting to third line forcing. It is best characterised as a blatant attempt by Foxtel and Telstra to entrench their dominance in the markets for residential subscription TV and broadband services. This will allow Foxtel to hinder the development of competition from IPTV providers, which in turn will assist Telstra to retain and gain broadband market share by limiting the lure of IPTV services provided by competitive ISPs. Further, it is clearly designed as a means for Telstra to take Foxtel customers away from other ISPs. Combined with their ability to bundle services and tie customers into lengthy fixed term contracts, Foxtel and Telstra can actively reduce churn to more competitive service providers. Foxtel has claimed that its ability to provide the download service relies on Telstra providing free data transmission in return for exclusivity. We are not aware of any evidence that Foxtel is unable to obtain this benefit from other service providers. Though free data transmission allows Foxtel to increase its margins, there is no indication that this benefit will be passed on to Foxtel's customers in lower prices. These are all benefits to Foxtel and Telstra. They are not benefits to the public. In the medium and long term, these 'benefits' will damage competition and result in considerable public detriment caused by underdevelopment in the emerging market for subscription TV over the internet as well as damage to the market for broadband. This is particularly concerning in the lead-up to the NBN, when increased public awareness of the services offered by a range of providers is essential to ensure on-going competitive growth in telecommunications markets and the benefits that this brings to consumers.

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<sup>12</sup> NBN Access Bill EM, p. 14

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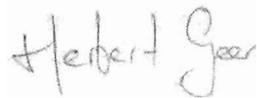
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Foxtel has only described the public benefit in terms of the benefit of the product that it is offering. It has failed to address the most important issue that is necessary for the ACCC to evaluate its notification, i.e. the public benefit that is actually derived from the third line forcing itself. Our Clients submit that Foxtel has failed to address this issue because there simply is no public benefit from the proposed conduct. There is no justification to suggest that the public benefits claimed by Foxtel would not be available but for the exclusive dealing arrangement with Telstra.

We strongly urge the ACCC to regard the proposed conduct for what it is, an unreasonable and illegal arrangement by two dominant players designed to damage competition in their respective markets that will cause considerable public detriment. Accordingly, we request that the ACCC withdraws the legal protection conferred on Foxtel and Telstra BigPond by the exclusive dealing notification as a matter of urgency.

Please call Kimberley Lloyd on (03) 9641 8772 if you wish to discuss any aspect of this letter.

Yours faithfully



**HERBERT GEER**

cc (by email) Jasmine Tan, Senior Project Officer, Adjudication Branch, ACCC  
Simon Hackett, Managing Director, Internode  
Steve Dalby, General Manager, Regulatory, iiNet  
Scott Hicks, Managing Director, Adam Internet

## Optus download plans leave Telstra flailing

LUCY BATTERSBY

April 29, 2010

TELSTRA'S BigPond is being left behind in a broadband pricing war, with Optus becoming the latest provider to increase download limits without raising prices.

The move has left BigPond as the most expensive provider of high-usage broadband services - at \$100 dearer than the market leader TPG for 200 gigabyte-per-month plans.

Nor does Telstra offer unlimited plans, which allow users to download as much data as they like every month. These are offered by Optus, TPG and AAPT, although AAPT's plan is the only one that does not slow down once customers reach 200 gigabytes of downloads.

"We are continually monitoring the market to ensure we are competitive in the market place," the executive director of Telstra Consumer, Peter Jamieson, said yesterday.

"It is not just about prices or included data ... it is about innovation, it is about providing services that meet the needs of a broad range of people."

Mr Jamieson said Telstra would adjust prices whenever necessary.

But industry analysts say Telstra has not kept up with the competition over the years and Optus's latest move has left it further behind. Internode and iinet also recently boosted download data limits.

"At the investor conference [Telstra's chief executive] David Thodey made it clear [Telstra] wants to maintain its broadband market share," said Nathan Burley, a senior analyst at the telecommunications research firm Ovum. "We believe in order to do that it has to cut its fixed broadband prices. [Telstra's] pricing at the moment is above market rates, especially following the Optus reduction."

TPG continues to benefit from its purchase of Pipe Networks, which owns a fibreoptic submarine cable to the US. Owning the backhaul infrastructure allows TPG to charge less, Mr Burley said.

But the fixed-broadband market in Australia had reached saturation point and this was changing the landscape, although the wireless market continued to grow, said a Goldman Sachs JBWere analyst, Christian Guerra. "Operators now face a market-share game as opposed to a market-growth game." Mr Guerra said Telstra would not meet its profit guidance this year because of decreasing market share.

Telstra recently cut broadband bundles by between \$12 and \$42 per month, but this still left it 20 to 25 per cent more expensive than competitors, Mr Guerra said.

For \$50 per month, people can now choose between 25 gigabytes of data downloads per month on BigPond, or 20 gigabytes on AAPT, 30 gigabytes on iiNet, 65 on Primus, 50 gigabytes on Optus or 70 gigabytes on TPG.

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