



18 June 2010

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

Dear Dr Chadwick

Submission regarding the exclusive dealing notification N94674, lodged by FOXTEL Management Pty Limited

We refer to your letter of 1 June 2010 regarding the abovementioned notification and make the following submission.

By way of background, Quickflix Limited (ASX:QFX) is a rapidly growing online movie subscription company and leading proponent of online DVD rental in Australia in which movie and TV show content is delivered to consumers in DVD and Blu-ray formats. Quickflix is preparing for the launch of an on-demand digital download and streaming service thereby increasing the options by which its subscribers can access content. Quickflix is a new and independent entertainment company in Australia and aspires to be the internet brand of choice to discover, enjoy and share movies, TV shows and all great feature length content. Providing the best search, browse and recommendations across a comprehensive range of content, our technology roadmap is to make our fans' personalised movie selection available on-demand through all popular internet-connected devices. Quickflix will provide hybrid delivery across packaged media (DVD and Blu-ray) and digital delivery (download and streaming) a proposition which allows us to flexibly and profitably transition with consumers.

It should also be noted that Telstra operates BigPond Movies – a direct competitor of Quickflix. Telstra has been able to subsidise the start-up of this competitive service from its other profitable businesses with a view to the future moving the established customer base over to its new digital services including the recently launched T-Box.

In the notification referenced above, FOXTEL proposes to supply customers with the ability to purchase and download videos and all associated services delivered via the internet on condition that the customer uses a Telstra BigPond broadband connection for the carriage of those services. Furthermore, Telstra has agreed that the service will be "unmetered" for Telstra BigPond customers (no data download charges) on the condition that the FOXTEL agreement is "an exclusive one".

It is Quickflix's understanding that, of the Internet Service Providers (ISPs), Telstra BigPond has a market share of approximately 50%. Quickflix notes that Telstra has recently increased its vigour in marketing "bundled" products and services supplied by Telstra, Telstra BigPond and FOXTEL.

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While Quickflix makes no comment as FOXTEL's Proposed Service only being made available to Telstra BigPond customer, Quickflix is concerned with Telstra allowing the Proposed Service to be "unmetered". By allowing the Proposed Service to be "unmetered", it appears that Telstra BigPond would be encouraging its customers who may wish to obtain audiovisual content to do so either by:

- FOXTEL's Proposed Service (noting that Telstra is a 50% shareholder of FOXTEL);
- Telstra's "BigPond Movies" service in the form of mail order subscription for DVDs or Blu-Ray discs (being the same delivery channel currently used by Quickflix); or
- Telstra's "BigPond Movies" service over "BigPond TV", being an online, on demand service, available to:
 - Telstra BigPond customers from the Telstra BigPond website;
 - purchasers of televisions manufactured by LG that include the "NetCast" feature; and
 - Telstra BigPond customers who own a Telstra T-Box.

For any other supplier, or potential supplier, of audiovisual content over the Internet, its competing service would be "metered" for Telstra BigPond customers (i.e. there would be data download charges) unless Telstra either:

- unilaterally elected to make such content "unmetered"; or
- enters into a commercial arrangement with the content supplier for the content to be "unmetered".

A commercial arrangement that exclusively unites Telstra BigPond, the market leader in broadband internet services with FOXTEL, the dominant market leader in the subscription TV segment and the dominant purchaser of programming content (for itself and Austar) in both the pay-TV and other program release windows, has the potential to have an adverse impact on competition and emerging innovation in the nascent digital delivery segment.

In Quickflix's opinion, there would appear to be no incentive for Telstra BigPond, the dominant ISP, to enter into any equivalent "unmetered" arrangement with any supplier of content that may otherwise compete with BigPond Movies or FOXTEL's Proposed Service in the supply audiovisual content to Telstra BigPond customers.

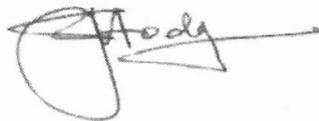
Quickflix, and other content service providers in the digital delivery segment could be significantly disadvantaged in establishing and growing a competing digital delivery service if they are precluded from entering a similar commercial deal with Telstra for the delivery of content to Telstra BigPond customers, particularly in light of Telstra BigPond commanding a dominant position in the ISP market. Permitting two large players such as FOXTEL and Telstra to benefit from their exclusive arrangements would contribute to public detriment by:

- facilitating a lessening of competition in the ISP market;
- facilitating a lessening of competition in the market for provision of digital delivery audio visual content; and
- preventing innovation and development of competing services on a level playing field.

It is Quickflix's submission that, if the ACCC intends not to oppose FOXTEL's notification, it should be a condition of the ACCC's approval that it be possible for other digital delivery audiovisual content suppliers to enter into "unmetered" arrangements with Telstra BigPond on terms no less favourable to the content suppliers than those available to the FOXTEL Proposed Service and BigPond Movies/BigPond TV.

Thank you for the opportunity to make a submission on this matter. We would be pleased to elaborate on the discussion points raised in this letter if required and await with interest the outcomes of the review process. Should you have any questions please do not hesitate to contact me on 08 9347 4900.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Hodge', with a long horizontal line extending to the right from the end of the signature.

Simon Hodge
Managing Director