



30 November 2010

Mr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

SH ~~Confidential~~

Dear Mr Chadwick

**Submission by Premier Venue Entertainment Pty Limited trading as FOX SPORTS VENUES:
Application for revocation of authorisation A90987 and substitution of new authorisation A91257 by
various divisions of the Australian Hotels Association (AHA)**

This submission is made by Premier Venue Entertainment Pty Limited trading as FOX SPORTS VENUES (FSV) in response to the Application for revocation of authorisation A90987 and substitution of new authorisation A91257 by the AHA Divisions in New South Wales, Victoria, South Australia, Tasmania, Western Australia, Northern Territory, Australian Capital Territory and Queensland (collectively **AHA**).

1. Background

FSV is a wholly owned subsidiary of Premier Media Group Pty Limited (**PMG**) and operates a subscription television narrowcasting service which supplies a number of digital subscription television channels (listed in Attachment A) across the genres of news, documentaries, entertainment, music, kids and sports (**FSV Service**) to licensed commercial venues such as pubs, clubs, hotels, restaurants and cafes (**Licensed Venues**) located in Western Australia and also the metropolitan areas of Sydney (including the Newcastle and Central Coast regions), Canberra (including Queanbeyan and surrounding areas), Melbourne, Adelaide and Brisbane (**Service Areas**).

Of the channels listed in Attachment A, the FOX SPORTS channels, FUEL TV and ESPN are distributed exclusively as part of the FSV Service to Licensed Venues in the Service Areas. The other channels are currently distributed on a non-exclusive basis. FSV also offers pay-per-view events (**PPV**) such as boxing which are purchased separately by subscribers of the FSV Service.

FSV does not currently make the FSV Service available to Licensed Venues located in the Northern Territory, Tasmania or the regional areas of New South Wales, Victoria, South Australia or Queensland. PMG has licensed FUEL TV and the FOX SPORTS channels to AUSTAR on an exclusive basis for distribution to Licensed Venues in those areas. AUSTAR offers those channels together with other sports

and music channels to Licensed Venues in those areas as part of its AUSTAR for Licensed Venues package.

2. Executive Summary

FOX SPORTS has been named as one of the 142 target suppliers in the Application but we presume that FSV is the intended target given that it is the actual entity that supplies services to Licensed Venues.

On that basis, FSV wishes to raise a number of concerns with regards to the Application which are summarised as follows:

- The Application provides no evidence to support the likely public benefits that are claimed to arise from the conduct to be authorised either as it relates to the FSV Service or as to the broad range of other products and services from the other suppliers named in the Application;
- Given the very broad nature of the proposed collective bargaining agreement in terms of the number of potential participants in the AHA bargaining groups and the number and range of suppliers it relates to, any such agreement is likely to reduce competition in the supply of hospitality and related services by AHA members to the public;
- AHA members do compete in the acquisition of television and other entertainment services and it is one of many ways in which they can differentiate their product and compete in the supply of hospitality and related services to consumers;
- FSV competes with a number of suppliers, including the free-to-air television networks and IPTV and Internet TV service providers, to provide television and entertainment services to Licensed Venues which means that AHA members have many options in terms of their overall entertainment spend;
- the proposed collective bargaining agreement is unnecessary and unlikely to achieve more 'equitable dealings' between the parties than is currently the case now and the Application does not provide any evidence of conduct which may amount to inequitable dealings either by FSV specifically or by any of the other suppliers named in the Application;
- the proposed collective bargaining agreement is also unlikely to result in any substantial savings in transaction costs in relation to the FSV Service but rather increase transaction costs for FSV; and
- any benefit gained by the AHA regarding protection from legal challenge is not a public benefit and should not be a factor considered by the ACCC in authorising the proposed conduct.

3. Anti-competitive Detriment

3.1 Competition in market for supply of hotel services

According to publicly available information, the AHA currently represents over 75% of pubs, bars, resorts and three, four and five star accommodation hotels throughout Australia with membership significantly greater in some states compared to others. Financial members of the AHA include small independent family owned venues as well as the larger hotel chains such as the Australian Leisure & Hospitality Group (75% owned by Woolworths Limited and FSV's single largest customer) which operates 286 hotels across Australia and the Spirit Hotels Group (100% owned by Coles) which operates 97 hotels in four states.

There are 142 suppliers across 19 industries currently named in the Application and FSV submits that AHA members would make up a very large proportion of Licensed Venues purchasers in any one of those wholesale markets targeted by the Application. As the size and composition of the relevant AHA bargaining group will vary in each state and territory, the AHA's proposed conduct is likely to have different outcomes and effects depending on the composition of the bargaining group. In addition, FSV submits that the AHA bargaining groups would be significantly different to the composition and size of the Liquor Stax bargaining group authorised by the Commission in October 2010 which comprised around 200 liquor merchants and hotels all of which were small businesses.¹

If the Application is successful, the AHA would be able to collectively bargain for significant key inputs across a very broad range of industries and suppliers which FSV submits has the potential to reduce competition between AHA members in supplying goods and services to consumers as many of those goods and services are the basis for differentiation between Licensed Venues (particularly those that are located within close proximity of one another). Competition between the suppliers of those inputs is also likely to be affected both in relation to the nature and quality of the goods and services they supply and the price at which those goods and services are supplied as AHA members will be more inclined to look to fewer suppliers to acquire the relevant goods and services.

3.2 Supply of television and entertainment services

The AHA claims that AHA members do not generally compete against each other. However, consistent with the ACCC's previous Determination², FSV submits that Licensed Venues including AHA members do compete in a number of markets. This includes the market for the provision of hospitality and related services to consumers within various geographic areas and various markets for the acquisition of good and services such as entertainment and television services which enable venues to differentiate their product and compete with each other in the overall provision of hospitality services to consumers.

Like any other entertainment offering, FSV believes the FSV Service assists Licensed Venues in attracting and retaining patrons which in turns results in increased sales and usage of other products at the venue such as on-premise food and beverages, poker machines, liquor and tobacco. The availability of the sports channels included in the FSV Service may also boost wagering turnover for those Licensed Venues that also have wagering facilities.

FSV supplies the FSV Service to Licensed Venues in the Service Areas according to a tiered pricing structure which is applied according to the size and earning potential of different Licensed Venues as well as the extent of benefits derived by them from having the FSV Service. As part of FSV's sales strategy, FSV also offers many Licensed Venues including the smaller independent hotels incentives and other benefits such as discounts on PPVs, additional equipment necessary to receive the FSV Service, tickets to sporting events and promotional merchandise.

Over the past 6 months, FSV has been actively working (in conjunction with the AHA) on revised packaging and pricing options which is intended to offer AHA members more flexibility in determining the services they wish to acquire and supply to their customers in order to add value to their overall entertainment spend. FSV submits that the delivery and implementation of such revised options can be achieved without the need for ACCC authorisation for AHA members to collectively bargain.

¹ Determination by the ACCC of the application for authorisation by Liquor Stax Australia Pty Limited dated 6 October 2010

² Determination by the ACCC of the application for authorisation by certain divisions of the AHA A90987 dated 1 March 2006

Licensed Venues also have a number of competing options in terms of their acquisition and supply of entertainment services which may include, in addition to the FSV Service, Sky Racing, TVN, TAB, Setanta, FetchTV, Telstra T-Box, Nightlife Music, Satellite Music, internet TV providers such as Apple TV and LG, live bands, live DJs, third party sound systems, live performance (eg. Comedy), trivia, digital signage, Keno and function hire. In light of the numerous options available, FSV estimates that it currently captures only a small proportion of annual spend on entertainment in most venues. FSV also believes that because of the extensive range of entertainment options now available to Licensed Venues, there is considerable confusion in the market about which products or services represent the best overall value in terms of entertainment spend for a venue.

There are also a number of free substitutes for the FSV Service, including the current 16 digital free-to-air channels. As we move closer towards analogue switch-off, free-to-air television continues to be a major competitive threat to the FSV Service in the Licensed Venues market and will be increasingly so, once the changes to the anti-siphoning scheme recently announced by Senator Stephen Conroy are implemented which will allow certain sports events included on the anti-siphoning list to be premiered on each of the free-to-air multi-channels instead of on the main free-to-air channel.

Given the broad range of available entertainment and television options for Licensed Venues, and that AHA members out of all Licensed Venues are the predominant acquirer of the FSV Service, FSV does not believe that there is currently any inequality of bargaining power between AHA members and FSV that needs to be addressed. Indeed, FSV is concerned that the authorisation may give AHA members too much market power in the acquisition of services from FSV particularly as certain members of the AHA are owned by large companies including the supermarket majors which the AHA ironically claims are the main competitors of its members. If there is greater bargaining power in the hands of the larger AHA members, there will be diminished competition between them in the supply of hotel services.

FSV is also concerned with the bargaining groups being organised along state and territory lines. The FSV Service does not differentiate between Licensed Venues in the Service Areas based on their location. As previously mentioned, the price payable by a Licensed Venue for the FSV Service is determined based on the size, earning potential of the venue and benefits derived from having the FSV Service and this is reflected in our sales strategy in offering appropriate incentives to our customers, including the smaller AHA members.

4. Public benefits claimed by AHA

The AHA has listed a number of claimed public benefits that would flow from the authorisation of the Application. FSV only proposes to deal with some of these public benefits in more detail below. Any failure by FSV to specifically address any of the claimed public benefits should not be regarded as FSV supporting the AHA's claims in this regard.

4.1 Promotion of equitable dealings

For the reasons outlined above, FSV submits that the AHA's proposed collective bargaining arrangements are unlikely to result in the further promotion of equitable dealings. The AHA submits that the collective bargaining arrangements will reduce the likelihood of contract terms and conditions that are unfair or unreasonable to members of the AHA by allowing for a greater level of input by AHA members which have a weaker bargaining position in their contractual negotiations with FSV.

In our view, this is unlikely to be the case as the authorisation is more likely to reduce competition between AHA members and result in greater representation in the AHA bargaining group by larger AHA members

who already have significant bargaining power making it unlikely that the smaller members will have much input into negotiating the terms and conditions of the collective contracts. In our view, smaller members of the AHA and non-AHA members are likely to have more input into contract terms and conditions by negotiating independently and directly with FSV.

In addition, FSV already has high-level discussions about its pricing and packaging with the AHA, which represents the views of its members, without needing to arrive at an agreement with the AHA on a collective basis. Further, if the AHA wishes to obtain legal or financial advice for its members about FSV's contract terms, it is free to do so in the absence of authorisation of the Application.

4.2 Transaction cost savings

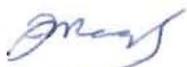
FSV also submits that it is unlikely that transaction costs will be significantly lower by reason of authorisation of the Application. Any savings in transaction costs for AHA members would at best be minimal in practice and therefore, unlikely to be passed onto the consumer.

FSV submits that transaction costs are currently minimised as a result of the use of standard form contracts for all Licensed Venues located in the Service Areas. Collective negotiation by the AHA is more likely to increase costs for FSV as it will be required to prepare different contracts for AHA members and non-members across the 5 different potential bargaining groups in the Service Areas. FSV is concerned that different contracts for AHA members and non-AHA members may need to be negotiated more often than is currently the case now given that the AHA's membership is constantly changing with "members joining and leaving the Divisions".

5. Conclusion

For the reasons set out above, FSV submits that the proposed collective bargaining arrangements have the potential to lessen competition in the supply of hospitality and related services to consumers and are not necessary in order to achieve efficient and equitable supply of television and entertainment services or any other services to AHA members. FSV does not support the Application as the anti-competitive detriment outweighs any legitimate public benefit likely to flow from authorisation of the Application.

Yours sincerely



Jon Marquard
Chief Operating Officer

Attachment A

FOX SPORTS PREMIUM PACKAGE

SPORT

FOX SPORTS 1
FOX SPORTS 2
FOX SPORTS 3
FOX SPORTS NEWS*
FUEL TV*
ESPN*
EUROSPORT NEWS*

MUSIC

CHANNEL [V]*
[V] HITS*
VH1*
CMC COUNTRY MUSIC CHANNEL*

ENTERTAINMENT

TV1*
UKTV*
ARENA
LIFESTYLE CHANNEL*
LIFESTYLE FOOD CHANNEL*
FOX8*
111 HITS*
THE COMEDY CHANNEL*
FOX CLASSICS
W*
UNIVERSAL CHANNEL
BIO
HOW TO CHANNEL
E!*
FASHION TV*
SCI-FI
TVSN
EXPO
AUSTRALIAN CHRISTIAN CHANNEL
AURORA
TCM
MTV

NEWS

SKY NEWS NATIONAL*
SKY NEWS BUSINESS
THE WEATHER CHANNEL*
FOX NEWS
CNN

BLOOMBERG TELEVISION
BBC WORLD NEWS
CNBC AUSTRALIA

DOCUMENTARIES

NAT GEO ADVENTURE
HISTORY CHANNEL
DISCOVERY CHANNEL
NATIONAL GEOGRAPHIC CHANNEL
ANIMAL PLANET
CRIME & INVESTIGATION NETWORK
DISCOVERY SCIENCE
DISCOVERY HOME & HEALTH
TLC
BBC KNOWLEDGE*

KIDS

NICKELODEON
NICK JR
CARTOON NETWORK*
BOOMERANG
CBEBBIES*

* denotes also available as part of the Café Package

FOX SPORTS HD PACKAGE

The Premium Package plus

FOX SPORTS 1 HD
FOX SPORTS 2 HD
FOX SPORTS 3 HD
ESPN HD