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Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — 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 *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

N96623 FOX SPORTS Australia Pty Limited (ACN 065 445 418) (**FOX SPORTS**).

- (b) Short description of business carried on by that person:
(Refer to direction 3)

FOX SPORTS is a producer and distributor of sports and sports news audio visual content. FOX SPORTS:

- owns and operates a number of subscription television channels (including the FOX SPORTS channels) and IPTV channels;
- owns and operates foxsports.com.au; and
- produces a range of video, text and statistical content for television, mobile and online delivery.

- (c) Address in Australia for service of documents on that person:

Christina Allen
 General Counsel
 FOX SPORTS Australia Pty Limited
 4 Broadcast Way
 Artarmon NSW 2064

2. Notified arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

Sports and sports news audio visual content.

- (b) Description of the conduct or proposed conduct:

The conduct involves:

- (i) FOX SPORTS making available to customers, on a subscription basis, a content application ('app') that can be downloaded onto a customer's mobile

communications device: *The FOX SPORTS rugby league app*. Features of the FOX SPORTS rugby league app include live streaming of NRL matches, full match replays, in-game highlights clips, extended match highlights, magazine programs, news clips, text articles and statistical information such as team information and results.

(ii) FOX SPORTS supplying the FOX SPORTS rugby league app to customers for no fee (ISP or similar costs may be payable by the customer to the ISP or data provider) on condition that the customer is an existing FOXTEL residential subscription television customer who also subscribes to the FOXTEL sports tier (which includes the FOX SPORTS channels). The offer does not apply to customers of the FOXTEL on T-Box service or the Optus TV featuring FOXTEL service. Customers must have a FOXTEL username and password linked to their subscription accounts.

(iii) All other customers:

- will not be able to acquire the live streaming content, full match replays, magazine programs or in-game highlights clips available in the app; but
- will be able to acquire the news clips, text articles and statistical information content for no fee (ISP or similar costs may be payable by the customer to the ISP or data provider).

(iv) The app will be available on the condition that the customer uses an iPad. Alternative versions of the app may be developed in the future for use on alternative services such as Android tablet devices.

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:
(Refer to direction 5)

Members of the public who are existing or potential subscribers of the FOXTEL residential subscription television service.

- (b) Number of those persons:

- (i) At present time:

Unknown – but greater than 50.

- (ii) Estimated within the next year:
(Refer to direction 6)

Unknown – but greater than 50.

- (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:
(Refer to direction 7)

A number of public benefits arise from the conduct, including:

- an increase in consumer choice in respect of the acquisition of sports and sports news content. In particular:
 - FOXTEL subscribers will have greater choice as to the means by which they access the content they have otherwise subscribed to, for no additional charge; and
 - Non-FOXTEL subscribers will have access to some of the sporting content compiled by FOX SPORTS at no charge; and
- an increase in competition in the relevant markets.

The public benefits significantly outweigh any anti-competitive detriments arising from the conduct.

- (b) Facts and evidence relied upon in support of these claims:

Given that there is no anti-competitive detriment arising from the conduct, FOX SPORTS submits that it is not necessary to demonstrate more than minimal public benefits. In relation to those benefits FOX SPORTS notes that:

- The conduct increases consumer choice:
 - The app provides FOXTEL subscribers who subscribe to the FOXTEL sports tier with a greater opportunity to access the content they are subscribing to, in other words, it offers existing subscribers a value added feature for no additional charge; and
 - For consumers who do not currently subscribe to FOXTEL, or who do not subscribe to the FOXTEL sports tier, it provides those consumers with an opportunity to acquire sports content from FOX SPORTS at no charge.
- The conduct increases competition in the relevant markets. Vigorous competition already exists in these markets and multiple different suppliers compete to supply content (discussed further below in (5)). The availability of the app is likely to encourage other suppliers to

expand their content offerings in Australia (to the extent that they do not already provide similar services), thereby also increasing consumer choice further.

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): *(Refer to direction 8)*

There are two relevant markets:

- (a) the retail market for the supply of sports and sports news content; and
- (b) the retail market for the supply of audio visual content (including sports and sports news content).

Sports and sports news content is increasingly available to end-users across a number of platforms. Traditional providers of audio visual content include free to air television and subscription television broadcasters. Audio visual content, including sports content, is now also available over the internet (including IPTV services) and using mobile wireless technology.

In relation to (a), FOX SPORTS competes in a highly competitive market. The services to be supplied in the app compete against services including:

- sports and sports news content offered by free to air television broadcasters (such as the broadcast of sporting matches, highlights packages and sports news programmes which are currently available on the free to air television broadcasters' free to air network, on their websites in the form of 'catch up TV' services e.g. Nine Network's Wide World of Sports content available on Nine's website) as well as via apps available for download on iTunes such as "Yahoo!7 Sport" and "TEN Sport";
- sports and sports news content offered by other subscription television channels (such as the broadcast of sporting matches, highlights packages and sports news programmes) which are currently available on the FOXTEL platform such as Sky News and ESPN, on their websites e.g. ESPN 360) as well as via apps available for download on iTunes such as "ESPN ScoreCenter" and "ESPN cricinfo";

- sports and sports news content offered by online publishers such as news.com.au, smh.com.au, theage.com.au, theheraldsun.com.au as well as via their associated apps available for download on iTunes;
- content provided by sports rights holders (such as the publication of scores and ladders and the provision of highlights packages on the rights holders' websites e.g. NRL video highlights on the NRL website, and the supply of apps by rights holders such as the "Official NRL App", which will provide live streams and extended highlights of NRL matches to mobile devices, and the "AFL Live Official App by Telstra" apps available for download on iTunes);
- content provided by IPTV suppliers (such as the live broadcasts of baseball and ice hockey available on Apple's Apple TV, and the sports and sports news content provided by BigPond TV on its TV linear channels including BigPond Sport, AFL and NRL); and
- mobile television offerings from mobile networks such as Telstra, Optus and Vodafone (such as the Optus A-league football app which provides video highlights and live scores and the Optus Premier League app which provides live scores and real time match updates, and the Vodafone Cricket Live app which provides content including live match video streaming).

In relation to (b), the retail market for the supply of audio visual content is highly competitive. FOX SPORTS competes against services including:

- content offered by free to air television broadcasters (including the commercial and national broadcasters' digital multichannels, websites and online 'catch up TV' services);
- audio-visual content services provided by online publishers and internet-enabled television (including services provided by content providers such as News Limited and Fairfax Media and television manufacturers such as Sony Internet TV which includes over 20 channels);
- IPTV services including FetchTV, Apple's Apple TV and iTunes store, BigPond TV, TiVo and Quickflix's WatchNow service;
- video content services provided via games consoles such as Sony's Playstation Store and Xbox's Zune store;
- mobile television offerings (such as the mobile television channels provided by Optus which include news, comedy, kids and sports channels such as Sky Racing); and

- rental (including online rental such as Quickflix, online download rental and rental machines such as Oovie) and sale of DVDs.

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:

(Refer to direction 9)

The conduct results in no public detriment in either of the relevant markets:

- The offer will not substantially lessen competition in either market. FOX SPORTS will continue to compete against the many other content service providers in the market(s). In particular, the app will assist FOX SPORTS to compete more vigorously against other competitors in the sports and sports news content market.
- Consumers are not compelled to acquire the app and will otherwise continue to have access to a large variety of other sports and sports news content.
- Consumers can acquire the app (subject to the limitations outlined above) without having to subscribe to FOXTEL.
- Each of the relevant markets is highly competitive for the reasons described in (5) above.

- (b) Facts and evidence relevant to these detriments:

See above.

7. Further information

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

Melissa Quinn
Senior Legal Counsel
FOX SPORTS Australia Pty Limited
4 Broadcast Way
Artarmon NSW 2064
Telephone: 02 9776 2593

Dated 21 February 2013

Signed by/on behalf of the applicant(s)


.....
(Signature)

Christina Allen
(Full Name)

FOX SPORTS Australia Pty Limited
(Organisation)

General Counsel
(Position in Organisation)

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.