



1 September 2014

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
23 Marcuse Clarke St
Canberra ACT 2601

By Email: adjudication@accc.gov.au

Dear Sir/Madam,

Notification of Exclusive Dealing

Please find enclosed a Form G notification of exclusive dealing for third line forcing conduct for Foxtel Management Pty Limited on behalf of the Foxtel Partnership ("Foxtel"). The Promotion which Foxtel proposes to commence is outlined in the enclosed notification.

The notification fee of \$100.00 will be paid by credit card.

If you have any questions in relation to this notification, or require any further information, please feel free to contact me on (02) 9813 7566 or via return email at nick.topfer@foxtel.com.au.

Yours Sincerely,

Nick Topfer
Junior Legal Counsel

Foxtel Management Pty Ltd
ABN 65 068 671 983
5 Thomas Holt Drive
North Ryde NSW 2113 Australia
GPO Box 99 Sydney NSW 2001
T: +61 2 9813 6000
foxtel.com.au

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)

N97748 Foxtel Management Pty Ltd (ACN 068 671 938) on behalf of the Foxtel Partnership (“Foxtel”).

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

Foxtel provides audio-visual content services to members of the general public.

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

Nick Topfer
Junior Legal Counsel
Foxtel Management Pty Limited
5 Thomas Holt Drive,
North Ryde, NSW, 2113
Ph: (02) 9813 7120
Fax (02) 9813 7606

2. Notified arrangement

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

The proposed dealing relates to the supply of:

- Foxtel's "Presto" service, which is an internet protocol subscription movie service; and
- the "Family Burger Box" product (the **Eligible Product**), which is a food product offered in quick service restaurants owned and operated by Kentucky Fried Chicken Pty Limited (ABN 79 000 587 780 (**KFC**)).

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

Foxtel proposes to run a promotion from 16 September 2014 to 29 September 2014 (the **Promotion Period**). During the Promotion Period Foxtel will offer a one month free subscription to the Foxtel Presto service (the **Offer**) to all consumers who purchase an Eligible Product up to a total maximum of 75,000 consumers (the **Eligible Customers**). Eligible Customers will be required to redeem the Offer on or before 26 January 2015.

(Refer to direction 4)

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)

Eligible Customers who choose to take up the Offer.

- (b) Number of those persons:

- (i) At present time:

None

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

75,000.

- (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)

The proposed conduct will benefit the public in the following ways:

- by giving Eligible Customers the option to take up a Foxtel Presto subscription at a genuine saving on the price of the service if they were to subscribe in the normal course of business; and
- by increasing the awareness of the Foxtel Presto service and the Eligible Product, the proposed conduct will increase competition in the markets identified in section 5 below.

The proposed conduct will not have any anti-competitive effect, nor will it limit consumer choice for the reasons set out in section 6(a) below.

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

Foxtel submits that, given there will be no anti-competitive effect resulting from the proposed conduct, it is not necessary for Foxtel to demonstrate more than minimal public benefits.

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)

The relevant markets likely to be affected by the proposed conduct are as follows:

- the national market for the retail supply of audio-visual content;
- the national market for the retail supply of quick service restaurant food products.

i) *The National Market for the Retail Supply of Audio-Visual Content*

Foxtel competes against a number of significant alternate suppliers in the market for audio-visual content. These competitors include:

- free to air television and “Freeview” including other broadcasters’ digital multi-channels and online “catch up” services;
- other internet protocol subscription or transactional television services including Fetch TV, iTunes, Bigpond, Quickflix Play and BBC iPlayer; and

- other video content services provided via game consoles or devices such as Apple TV and “Xbox Live”.
- ii) The national market for the retail supply of quick service restaurant food products.

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)

Foxtel considers that no public detriment will result from the proposed conduct for the following reasons:

- consumers will not be required to have or acquire an Eligible Product in order to acquire the Foxtel Presto service. Consumers may still acquire the Foxtel Presto service in the normal course of business;
- the promotion will increase competition in the relevant markets by prompting competitors to both the Foxtel Presto service and the Eligible Product to offer competing benefits to consumers;
- consumers may still acquire an Eligible Product or a competing product without participating in the Offer; and
- there will be no loss of transparency in the pricing of the Foxtel Presto service nor the Eligible Product which would prevent a customer from making an informed decision about the Offer.

The proposed conduct is an optional and complimentary offer, with no additional expenditure required. The effect of the offer will be to increase competition in the relevant markets and benefit consumers.

- (b) Facts and evidence relevant to these detriments:
Not Applicable.

7. Further information

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

Nick Topfer
Junior Legal Counsel
Foxtel Management Pty Limited
5 Thomas Holt Drive,
North Ryde, NSW, 2113

Ph: (02) 9813 7566

Fax (02) 9813 7606

Dated.....1 September 2014.....

Signed by/on behalf of the applicant

.....
.....
(Signature)

.....Nicholas Topfer.....
.....
(Full Name)

.....Foxtel Management Pty Ltd.....
.....
(Organisation)

.....Junior Legal 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.