

1 December 2014



The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

By Email: adjudication@accc.gov.au

Dear Sir/Madam

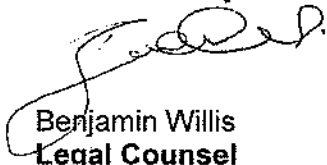
Notification of Exclusive Dealing

Please find enclosed a Form G notification of exclusive dealing for Foxtel Management Pty Ltd, on behalf of the Foxtel Partnership.

The notification fee of \$100.00 was paid by credit card on Wednesday, 26 November 2014.

Please do not hesitate to contact me directly should you wish to discuss the enclosed notification, or require any further information, on (02) 9813 7717 or via return email at ben.willis@foxtel.com.au.

Yours sincerely



Benjamin Willis
Legal Counsel

Foxtel Management Pty Ltd
ABN 65 069 674 936
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North Ryde NSW 2113 Australia
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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)

N98016 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:

Ben Willis
Legal Counsel
Foxtel Management Pty Ltd
5 Thomas Holt Drive
North Ryde NSW 2113
Ph: (02) 9813 7717
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 conduct relates to supply of the following services:

- Foxtel's 'Presto' service (**Presto**), an internet protocol subscription movie service; and
- The 'Daily Newsletter' email service offered by News Limited (ABN 47 007 871 178) (**News**), through its online subscription news service 'www.news.com.au'.

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

Foxtel proposes, in the period from 10 December 2014 to 10 January 2015 (**Promotional Period**), to offer consumers a free one month subscription to the Presto service provided consumers sign up to the Daily Newsletter service offered by News and consumers retain their Presto subscription for the length of the free month the subject of the offer.

(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 consumers 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)

Approximately - 740

- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

No applicable.

4. Public benefit claims

- (a) Arguments in support of notification:

(Refer to direction 7)

The proposed conduct will benefit the public in circumstances where:

- eligible consumers will have the option of acquiring a Presto monthly subscription at a significant and genuine saving on the standard monthly subscription fee for the service which would otherwise apply to consumers wishing to acquire a Presto subscription in the ordinary course of business; and
- the offer will increase awareness of the Presto service offered by Foxtel and the Daily Newsletter service provided by News, thereby increasing competition in the markets identified in section 5 below.

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

Foxtel submits that, given no anti-competitive effects are likely to result from the proposed conduct, it is not necessary for Foxtel to demonstrate more than the public benefits identified in (a) above.

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 include:

- The national market for the retail supply of audio-visual content; and
- The supply of digital news services.

The National Market for the Retail Supply of Audio-visual Content

Foxtel competes against a number of significant alternative suppliers in the market for audio-visual content. Those competitors include, but are not limited to:

- free to air television and “Freeview” broadcasters, including alternative, competing broadcasters’ digital multi-channel and online “catch up” services;
- other internet protocol subscription or transactional television services, including Fetch TV, Apple TV, iTunes, Bigpond, Quickflix Play and BBC iPlayer; and
- other video content services provided via games consoles such as “Xbox Live”.

The Supply of Digital News Services

The market for the supply of digital news services is an intensely competitive market, characterised by a large number of active market participants and the availability of myriad substitutes to the Daily Newsletter service associated with the proposed conduct.

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 detriments will result from the proposed conduct, for reasons including, but not limited to the fact that:

- consumers will not be obligated to acquire the Daily Newsletter service offered by News in order to acquire a Presto subscription during and in the period after the Promotional Period. Presto subscriptions will remain available for purchase by consumers in the ordinary course of business at standard subscription prices;
- the proposed conduct will increase competition in the relevant markets by prompting competing participants in those markets to offer equivalent or similar benefits to consumers;
- consumers will remain able to acquire the Daily Newsletter service offered by News without participating in the proposed conduct;
- the proposed conduct will draw the attention of consumers to the standard pricing charged for the Presto service, thereby assisting consumers to make an informed decision about whether or not to acquire a Presto subscription during or in the period after the Promotional Period;
- the proposed conduct is an optional, complimentary offer which does not affect the rights of consumers to otherwise acquire the Presto service offered by Foxtel, or the Daily Newsletter service offered by News.

(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:

Ben Willis

Legal Counsel

Foxtel Management Pty Ltd

5 Thomas Holt Drive

North Ryde NSW 2113

Ph: (02) 9813 7717

Fax: (02) 9813 7606

Dated..... 1 December 2014.....

Signed by/on behalf of the applicant

[Handwritten Signature]
.....
(Signature)

Benjamin Willis
.....
(Full Name)

Foxtel
.....
(Organisation)

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.