

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)

N99327 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:

Cameron Stewart
Senior Legal Counsel
Foxtel Management Pty Ltd
5 Thomas Holt Drive
North Ryde NSW 2113
Ph: (02) 9813 7171
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 the following services:

- Foxtel's '*Presto*' service, a subscription video on demand (SVOD) movie and TV service (**Presto**); and

- Broadband products and services offered by ACN Pacific Pty Ltd (ACN 108 535 708) including its subsidiaries and related bodies corporate (together, **ACN**).

(b) Description of the conduct or proposed conduct:

Foxtel proposes, from 8 October 2016 until 7 January 2017 (**Promotional Period**), to supply subscriptions to the Presto service to customers of ACN (**Customers**).

(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)

ACN customers.

(b) Number of those persons:

(i) At present time:

None.

(ii) Estimated within the next year:

(Refer to direction 6)

Substantially more 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)

The proposed conduct will benefit the public in circumstances including, but not limited to, the fact that:

- Customers will be provided with access to a Presto subscription on purchasing a ACN product or service;
- the proposed conduct will lead to increased consumer awareness of the Presto service offered by Foxtel; and
- The offer may encourage competitors of Presto, Foxtel and ACN, including other internet protocol subscription movie, broadband service providers and TV service providers to offer their customers/subscribers access to similar benefits.

- (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 market likely to be affected by the proposed conduct includes the national market for the retail supply of *audio-visual content*.

Market for the Supply of Audio-Visual Content Services

- As retail supplier of *audio-visual content*, Foxtel competes against a significant number of alternative suppliers in the retail 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, SVOD and internet protocol subscription or transactional television services, including Fetch TV, Apple TV, NetFlix, Stan, iTunes, Bigpond, Quickflix Play and BBC iPlayer; and
 - other video content services provided via games consoles such as “Xbox Live” and “PlayStation 3”.

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:

- the proposed conduct does not otherwise affect the rights of consumers to acquire the Presto service in return for the payment of Presto’s standard subscription fees;

- consumers purchasing ACN products or services are under no obligation to redeem or access any subscription to the Presto service;
- the proposed conduct will increase competition in the relevant market by encouraging competing participants in those markets to offer, or continue to offer, equivalent or similar benefits to consumers; and

(b) Facts and evidence relevant to these detriments:

Not applicable.

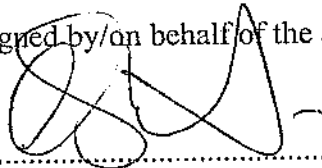
7. Further information

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

Cameron Stewart
Senior Legal Counsel
Foxtel Management Pty Ltd
5 Thomas Holt Drive
North Ryde NSW 2113
Ph: (02) 9813 7171
Fax: (02) 9813 7606

Dated 14 September 2016

Signed by/on behalf of the applicant, Foxtel Management Pty Ltd



.....
(Signature)

Cameron Stewart

(Full Name)

Foxtel Management Pty Ltd

(Organisation)

Senior 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 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.