

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)

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.

- (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 the following services:

- Foxtel's '*Foxtel for Business*' subscription audio-visual content services; and
- The promotion of, and provision of services to, member boarding schools by Australian Boarding Schools' Association (**ABSA**); not limited to promoting the interests and well-being of boarders,

boarding staff, boarding parents and boarding institutions in Australia through the fostering of collegiality, professionalism and best practice at a regional, state and federal level; and the facilitation of communication between schools, educational bodies and governments.

(b) Description of the conduct or proposed conduct:

Foxtel proposes, in the period from 10 May 2016 to 30 June 2016 (**Promotional Period**), to offer consumers certain subscription television packages at a discounted rate, on the condition those consumers are ABSA members and acquire services directly from ABSA.

Foxtel will not, during the Promotional Period, offer consumers certain subscription television packages at a discounted rate, unless those consumers are ABSA members and acquire services directly from ABSA.

(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 members/customers of ABSA.

(b) Number of those persons:

(i) At present time:

180.

(ii) Estimated within the next year:

(Refer to direction 6)

180, or greater than 180.

(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:

- eligible members/customers of ABSA will be provided with access to certain 'Foxtel for Business' subscription television packages at a significantly discounted rate when compared to the standard

monthly subscription fees that otherwise apply to those packages in the ordinary course of business;

- the proposed conduct will lead to increased consumer awareness of Foxtel's 'Foxtel for Business' services, and the services provided by ABSA; and
- the proposed conduct may encourage competitors of Foxtel and ABSA to offer their customers/subscribers/members 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 markets likely to be affected by the proposed conduct include the national markets for the supply of:

- audio-visual content services; and
- Australian boarding school support and promotional services.

Market for the Supply of Audio-Visual Content Services

Foxtel competes against a significant number of alternative suppliers in the market for audio-visual content services. 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;
- 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".

Market for the supply of Australian boarding school support and promotional services

The market for the supply of Australian boarding school support and promotional services is characterised by a small number of active market participants.

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 involves a short term, discount offer which does not otherwise affect the rights of consumers to acquire Foxtel's '*Foxtel for Business*' subscription audio-visual content services in return for the payment of Foxtel's standard '*Foxtel for Business*' monthly subscription fees;
- eligible members/customers of ABSA's services are under no obligation to redeem Foxtel's '*Foxtel for Business*' discount offer;
- the proposed conduct will increase competition in the relevant markets by encouraging competing participants in those markets to offer equivalent or similar benefits to consumers; and
- the proposed conduct will draw the attention of consumers to the standard pricing charged for Foxtel's '*Foxtel for Business*' subscription audio-visual content services, thereby assisting consumers to make informed decisions about whether or not to acquire Foxtel's '*Foxtel for Business*' subscription audio-visual content services during or in the period after the Promotional Period.

- (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 23 March 2015

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



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(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 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.