Public Competition Assessment

15 February 2013

Seven Group Holdings Limited - proposed acquisition of remaining shares in Consolidated Media Holdings Limited

Introduction

1. On 11 October 2012, the Australian Competition and Consumer Commission (**ACCC**) announced its decision to oppose the proposed acquisition of 74.7% of the shares in Consolidated Media Holdings Limited (**CMH**) by Seven Group Holdings Limited (**Seven**) (the **proposed acquisition**). The ACCC formed the view that the proposed acquisition would have or be likely to have the effect of substantially lessening competition in the market for the supply of free to air television services in Australia, in contravention of section 50 of the *Competition and Consumer Act 2010* (the **Act**).

2. The ACCC made its decision on the basis of the information provided by the merger parties and information arising from its market inquiries. Subject to confidentiality considerations, this Public Competition Assessment outlines the basis on which the ACCC reached its decision in relation to the proposed acquisition.

Public Competition Assessment

3. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all proposed acquisitions where:

   - the proposed acquisition is opposed;
   - the proposed acquisition is subject to enforceable undertakings;
   - the merger parties seek such disclosure; or
   - the proposed acquisition is not opposed but raises important issues that the ACCC considers should be made public.

4. This Public Competition Assessment has been issued because Seven Group Holdings Limited's proposed acquisition of all of the shares in Consolidated Media Holdings Limited it did not already own (74.7%) was opposed by the ACCC.

5. By issuing Public Competition Assessments, the ACCC aims to provide the public with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues. It also alerts the public to circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change.

6. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.

7. Public Competition Assessments outline the ACCC's principal reasons for forming views on a proposed acquisition at the time the decision was made. As such, Public Competition Assessments may not definitively identify and explain all issues that the ACCC considers arise from a proposed acquisition. Further, the ACCC's decisions generally involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information nor its sources.

The parties

The acquirer: Seven Group Holdings Limited (Seven)

8. Seven is a diversified Australian operating and investment group. At the relevant time (at the time of the ACCC's decision), it had interests in a range of non-media and media entities, including:

   - Seven West Media – approximately 32% and a $250m convertible note which does not carry voting rights;
   - Consolidated Media Holdings – 25.3%; and
   - Prime Media Group – approximately 11%.

9. Seven West Media operates the Seven Network, Pacific Magazines, Yahoo7 the West Australian newspaper, and regional newspapers and radio stations in Western Australia. Seven Network owns commercial free to air television networks in each Australian metropolitan city and regional Queensland. Regional affiliates broadcast Seven Network content in Victoria, NSW and Western Australia. Mr Kerry Stokes is the executive Chairman of Seven and the non-executive Chairman of Seven West Media. Three of Seven West Media's nine directors are also directors of Seven.

10. Prime Media Group owns the PRIME7 television network (broadcast as the Golden West Network in Western Australia).

11. The interests and activities of CMH are discussed below.

12. For FY 2011/12, Seven had total revenue of $4.456 billion and EBITDA[1] of $629.8 million.

The target: Consolidated Media Holdings Limited (CMH)

13. CMH is a media investment company, with investments primarily in the subscription television sector. CMH has a 50% shareholding in FOX SPORTS Australia Pty Limited (**FSA**) and, through this shareholding in FSA, has an indirect 25% interest in FOXTEL.

14. At the time that the proposed acquisition was being considered by the ACCC, the largest shareholder in CMH was Consolidated Press Holdings, a family company, which owned 50% of the shares in CMH. Mr James Packer was the Deputy Chairman of CMH and the executive Chairman of Consolidated Press Holdings.

15. For the 2011/12 financial year, CMH reported an operating net profit after tax of $97.9m.

Other industry participants

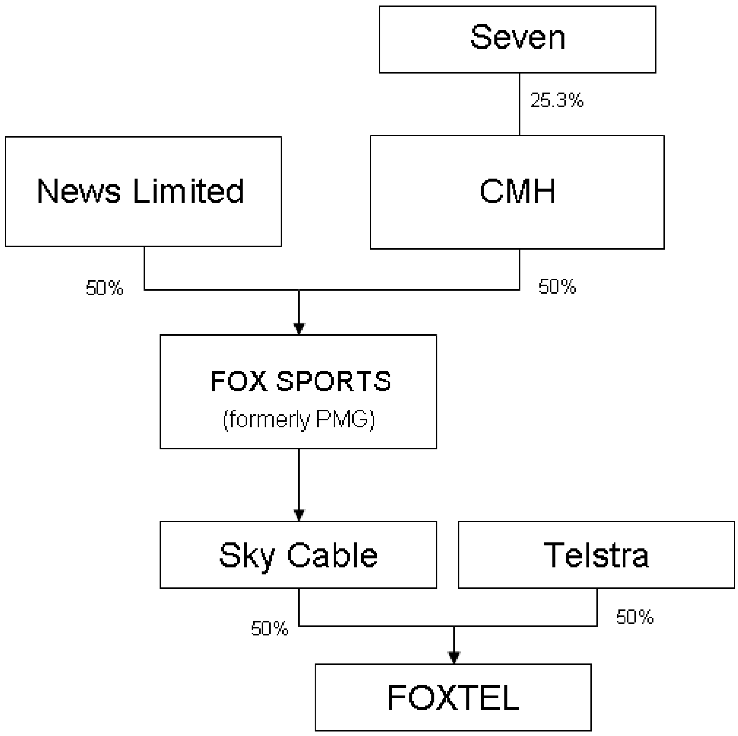
FOXTEL Management Pty Ltd (FOXTEL)

16. FOXTEL's immediate shareholders are Telstra Corporation Ltd (50%) and Sky Cable(a wholly owned subsidiary of FSA) (50%). News Limited and CMH each have a 50% interest in FSA. As set out above, Seven had a 25.3% interest in CMH at the time the proposed acquisition was being considered by the ACCC.

17. The ownership structure of FOXTEL as at October 2012 is depicted in Figure 1.

[1] Profit before depreciation and amortisation, net finance costs and tax, and before significant items.

Figure 1 - FOXTEL ownership structure as at October 2012



18. FOXTEL is Australia's largest subscription television provider delivering audiovisual content to more than 2.3 million residential subscribers in Australia.

19. FOXTEL delivers more than 200 channels, including high definition (**HD**) content, covering news, sport, general entertainment, movies, documentaries, music and children's programming.

20. FOXTEL generated an EBITDA of $558m and EBIT of $241m in the year ended 30 June 2012.

FOX SPORTS AUSTRALIA (FSA)

21. FSA is a sports producer and broadcaster and supplies a number of subscription television sports channels to FOXTEL. FSA compiles and produces the FSA, FSA NEWS, FOX FOOTY, FUEL TV and SPEED subscription TV channels available via and the SPORTS Play and FOOTY Play IPTV channels on Xbox360 and Telstra T-box.

22. FSA also supplies the FSA produced channels including FOX FOOTY, FUEL TV and SPEED to more than 5,100 hotels and licensed venues as well as 180,000 hotel rooms throughout Australia.

News Limited (News)

23. News Limited (News) is a subsidiary of News Corporation.

24. At the time of the ACCC's review, News had made an offer for all the shares in CMH that it did not already own. This acquisition would represent an increase by News of its shareholding in FSA from 50% to 100%, and an increase of its indirect interest in FOXTEL from 25% to 50%.

25. On 2 August 2012, the ACCC announced that it would not oppose the proposed acquisition of CMH by News.

The proposed acquisition

26. Seven proposed to acquire all of the issued shares in CMH which it did not already own. Seven had a 25.3% shareholding in CMH at the relevant time.

27. On 22 June 2012, Seven provided a submission to the ACCC seeking informal clearance from the ACCC. The ACCC commenced an informal review on 22 June 2012.

Review timeline

28. The following table outlines the timeline of key events in this matter.

Date	Event
22-Jun-2012	ACCC commenced review under the Merger Review Process Guidelines.
13-Jul-2012	Closing date for submissions from interested parties.
24-Jul-2012	ACCC requested further information from the merger parties. ACCC timeline suspended. Former proposed decision date of 2 August 2012 delayed to allow provision of requested information.
24-Aug-2012	ACCC received further information from the merger parties. ACCC timeline recommenced.
13-Sep-2012	ACCC published a Statement of Issues outlining preliminary competition concerns.
27-Sep-2012	Closing date for submissions relating to Statement of Issues.
11-Oct-2012	ACCC announced it would oppose the proposed acquisition.

Market inquiries

29. The ACCC sought submissions from interested parties and conducted market inquiries with a range of industry participants, including competitors and other market participants.

Statement of Issues

30. The ACCC published a Statement of Issues on 13 September 2012 identifying a number of competition issues. In the Statement of Issues the ACCC expressed the preliminary view that the proposed acquisition would raise competition concerns in the market for the supply of free to air television services. Further

submissions were sought from industry participants in relation to the substantive competition issues outlined in the ACCC's Statement of Issues.

With/without test

31. Section 50 of the Act prohibits acquisitions of shares or assets that would have the effect or be likely to have the effect of substantially lessening competition in a market. In assessing a proposed acquisition pursuant to section 50 of the Act, the ACCC considers the likely effect of the acquisition by comparing the likely future competitive environment if the acquisition proceeds (the "with" position) with the likely future competitive environment if the acquisition does not proceed (the "without" position).

32. At the time the proposed acquisition was being considered by the ACCC, the ownership and control of CMH in the absence of the proposed acquisition, and in particular whether News Limited would increase its interest in CMH, was not clear. For the purposes of the ACCC's competition assessment, this did not matter. The ACCC proceeded on the basis that in the absence of the proposed acquisition, there would be no increase in the proportion of CMH which was owned by a free to air network or an entity with interests in a free to air network.

Market definition

33. The ACCC assessed the impact of the proposed acquisition in the context of the national market for the supply of free to air television services in Australia.

Competition analysis

34. The ACCC concluded that the proposed acquisition was likely to have the effect of substantially lessening competition in the market for the supply of free to air television services. This view was reached because the proposed acquisition would put Seven Network in a position of advantage relative to other free to air networks with respect to entering into joint bids and other commercial arrangements with FSA and FOXTEL for acquisition of sports rights. Being able to come to such arrangements with FSA or FOXTEL would enhance Seven Network's ability to acquire the rights to premium sports. Given the importance of premium sporting content to a free to air network's ability to compete strongly with other free to air networks, the ACCC considered that the advantage that Seven Network would gain with respect to the acquisition of such content would be likely to lead to a substantial lessening of competition in the market for the supply of free to air television services.

35. Due to the benefits that premium sports rights can provide to free to air networks, the ACCC considered that the potential impact on the ability of Seven Network's competitors to acquire sports rights jointly with FSA and FOXTEL as a result of the indirect ownership interests and board representation which would be acquired by Seven (as outlined in more detail, below) would have a significant effect on their ability to compete effectively in the free to air television market. The ACCC considered that, as a result, Seven Network's free to air competitors would be less able to engage in direct competition with the Seven Network for viewers and advertisers following the proposed acquisition, potentially leading to a reduction in the quality or choice of free to air television programming available to viewers (for example, with respect to scheduling or production features), and

also potentially enabling the Seven Network to charge increased advertising rates.

Importance of joint bids and other commercial arrangements with FSA or FOXTEL in the acquisition of sports rights

36. The ACCC noted that FSA acquires a large number of sporting rights and frequently enters into commercial arrangements with free to air networks in relation to key commercially attractive sporting rights. The ACCC also noted that while FOXTEL acquires sporting rights less frequently, it sometimes entered into commercial arrangements with free to air networks in relation to those rights. There are a number of commercial drivers which led to such arrangements, including that:

- Many sporting rights holders sell a package of rights, the entirety of which is commercially unattractive for a single free to air network to acquire or broadcast. This gives free to air networks an incentive to enter into commercial arrangements with a subscription television network to share the package.
- The operation of the Federal Government's anti-siphoning regime[2] creates an incentive for subscription television networks to involve a free to air network partner in the acquisition of listed events.
- In circumstances where the broadcast rights to a sporting event are likely to be split between free to air and subscription television, the ability to negotiate and present a unified free to air and subscription television bid is advantageous. Bidding in this way enables any potential conflicts between free to air and subscription television scheduling interests to be resolved by the successful bidders, rather than requiring the rights holder to attempt to reconcile inconsistent bids from separate free to air and subscription television networks.
- Commercial arrangements between free to air and subscription television networks may facilitate the implementation of efficiencies and cost savings relating to joint production of the relevant sports broadcasts.

37. Due to these commercial considerations, the ability to jointly bid or enter into commercial arrangements with FSA or FOXTEL in relation to the acquisition of sporting rights may enable free to air networks to submit higher value or otherwise more attractive bids for sporting rights. The ACCC considered that if the consequence of proposed acquisition was that Seven Networks' free to air competitors would be at a disadvantage in their dealings with FSA or FOXTEL, this could make them significantly less competitive in the acquisition of certain sporting rights.

38. The ACCC's inquiries also indicated that other subscription television service providers, including IPTV service providers, are not likely to acquire a significant amount of premium sporting rights in the foreseeable future. Therefore, for the foreseeable future, FSA and Foxtel are effectively the only parties in Australia with whom free to air networks can enter into commercial arrangements in relation to the acquisition of sporting rights packages from rights holders.

[2] The anti-siphoning regime is a component of s115 of the Broadcasting Services Act 1992 (Cth) under which the Minister for Communications may specify an event, or events of a kind, the televising of which should, in the opinion of the Minister, be available free to the general public.

39. The ACCC recognised that, at various times, sporting rights have been acquired by free to air or subscription television networks independently of other content acquirers, rather than through joint bids or other commercial arrangements. However, the ACCC was aware of joint bids or other commercial arrangements between free to air television networks and FSA or FOXTEL being entered into in relation to each of the following premium sporting events:

- Australian Football League domestic season
- National Rugby League domestic season and state of origin
- Australian Open Tennis
- Summer and Winter Olympic Games
- Commonwealth Games
- International Cricket Council World Cup
- Rugby Union (including international tests and the World Cup)

40. In addition to these major events, the ACCC was aware of commercial arrangements being entered into or considered by free to air and subscription television networks in relation to a number of other domestic and international sporting events. The ACCC also considered that there was the possibility that, as the attractiveness to free to air television of certain sports changed over time, there may be other sporting events for which joint arrangements between free to air and subscription television networks might be commercially attractive in the future.

41. Taking into account all of the information available to it, the ACCC considered that there were substantial potential commercial benefits to be gained from joint bids or other commercial arrangements between a free to air network and FSA or FOXTEL in respect of a significant proportion of the premium sporting rights that were likely to be attractive to a free to air television network. Thus, to the extent that Seven's acquisition of the remaining shares in CMH and consequently its increased indirect interest in FSA and FOXTEL would have made it commercially more difficult for free to air networks other than the Seven Network to enter into such arrangements, it would have been likely to have had a substantial impact on the ability of these free to air networks to successfully bid for premium sports rights packages.

Ability and incentive of Seven to influence FSA and/or FOXTEL

42. The proposed acquisition would have resulted in Seven acquiring indirect ownership of 50% of the shares in FSA, and proportional representation on the FSA board. The proposed acquisition would also have given Seven indirect ownership of 25% of the shares in FOXTEL and the ability to appoint directors to the FOXTEL board.

43. The ACCC considered that the proposed acquisition would have given Seven the ability (by reason of indirect ownership interests in FSA and FOXTEL and the ability to appoint directors to both boards),to make it more difficult for other free to air networks to enter into joint bids or other commercial arrangements with FSA or FOXTEL in relation to the acquisition of sports rights, notwithstanding the statutory and fiduciary duties imposed on the directors appointed by Seven. Seven's indirect interest in FSA and FOXTEL as well as its ability to appoint

directors to the FSA and FOXTEL boards would in practice have allowed Seven to veto any decision by the board of FSA (for example in favour of a joint bid with another free to air network). Alternatively Seven may have been able to influence the board of FSA and FOXTEL to accept a proposal from Seven Network in circumstances where an offer to FSA or FOXTEL in relation to a joint bid or commercial arrangement from the Seven Network was commercially realistic, and capable of being regarded as in the interests of FSA or FOXTEL. The ACCC also considered that Seven would have a clear incentive to favour the Seven Network over other free to air networks in such circumstances, due to its significant shareholding in Seven West Media.

Access to information

44. The ACCC found that in order to enter into a joint bid or other commercial arrangement with FSA or FOXTEL in relation to sports rights, the relevant free to air network was required to share confidential information about their bid with FSA or FOXTEL in order to properly coordinate the joint arrangement. Such information included the free to air network's bid amount as well as event or game preferences.

45. Based on the information available to it, the ACCC considered that there was a significant likelihood that the directors of FSA or FOXTEL appointed by Seven would gain access to such confidential information. While the ACCC acknowledged that there were likely to be legal obligations which could have limited the ability of the Seven appointed directors to disclose that confidential information to Seven, the ACCC also considered that there were likely to be certain types of information about FOXTEL's business (including information about FOXTEL's own commercial strategies and objectives in respect of sports rights acquisitions) which could (and would be likely to) be properly communicated to Seven as a significant ultimate shareholder in FOXTEL. The ACCC concluded that such information could provide a direct advantage to Seven either in direct negotiations with the relevant sport rights holder, or in dealings with FSA or FOXTEL if Seven was also seeking to negotiate or into enter joint arrangements with FSA or FOXTEL.

46. Even given the legal restrictions on disclosure outlined above, the potential risk of such commercially sensitive information being communicated to Seven and/or the Seven Network may have acted as a deterrent to other free to air networks negotiating or entering into joint arrangements with FSA or FOXTEL. Due to the importance of such arrangements to free to air networks in the acquisition of sports rights, this could have enhanced the advantage that Seven Network may have gained from the proposed acquisition over other free to air networks in the acquisition of sporting rights.

47. The ACCC assessed the impact of the proposed acquisition in the context of the national market for the supply of free to air television services in Australia.

Importance of premium sports to free to air television competition

48. Based on the information available to it, the ACCC considered that premium sports are an extremely important part of a free to air network's program offering. Premium sports provide a free to air network with a high degree of ratings certainty, as viewer interest in major sports is generally consistent over many years, whereas interest in other programs or formats fluctuates more rapidly over

time. The consistent ratings of major sports enable free to air networks to implement cross promotion and lead in strategies around sporting events, leading to a ratings 'halo' effect whereby broadcasting premium sports increases the network's ratings overall. These benefits cause free to air networks to spend a significant proportion of their programming budgets on the acquisition of premium sports rights.

49. The ACCC considered that the benefits to free to air networks of having the rights to premium sporting events were unlikely to decrease in the foreseeable future. In fact, the ACCC considered that these benefits had the potential to increase as ratings for live sporting events were unlikely to be affected by other forms of audiovisual distribution such as 'on demand' viewing over the internet.

Conclusion

50. Accordingly, the ACCC formed the view that the proposed acquisition by Seven of the remaining shares it did not hold in CMH would be likely to have the effect of substantially lessening competition in the market for the supply of free to air television services in Australia, in contravention of section 50 of the Act.