
FOXTEL SECTION 87B UNDERTAKING

SCHEDULE 1:

Analogue Access Undertaking and FOXTEL Analogue Access Agreement

Analogue Access Undertaking

ACCESS UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION

PURSUANT TO SECTION 152BS OF THE TRADE PRACTICES ACT 1974

BY

FOXTEL MANAGEMENT PTY LIMITED (ACN 068 671 938) FOR AND ON BEHALF OF THE
FOXTEL PARTNERSHIP AND FOXTEL CABLE TELEVISION PTY LTD (ACN 069 008 797)

1. Background

- 1.1 FOXTEL is in the business of supplying a Subscription Television Service.
- 1.2 FOXTEL owns and/or leases analogue Set Top Units which are used to provide Subscription Television Services.

2. Interpretations and Definitions

- 2.1 In this undertaking, the singular includes the plural and vice versa.
- 2.2 In this undertaking, unless the context otherwise requires:

Act means the *Trade Practices Act 1974* (Cth) as amended from time to time.

Commission means the Australian Competition & Consumer Commission.

Declared Analogue Service means the analogue subscription television broadcast carriage service via line links gazetted by the Commission on 8 September 1999.

FOXTEL means FOXTEL Management Pty Limited (ACN 068 671 938) for and on behalf of the FOXTEL Partnership (which is the partnership established between Telstra Media Pty Limited (ACN 069 279 027) and Sky Cable Pty Limited (ACN 069 799 640), FOXTEL Cable Television Pty Limited (ACN 069 008 797) and any wholly-owned subsidiary of FOXTEL Management Pty Limited and FOXTEL Cable Television Pty Ltd.

HFC Network means a hybrid fibre co-axial network.

Set Top Unit (STU) means conditional access customer equipment (as defined in Part XIC of the Act) for receiving a Subscription Television Service.

Subscription Television Service means a content service that provides television programs to consumers where the service is:

- (a) a subscription broadcasting service; or
- (b) a subscription narrowcasting service.

Subscription broadcasting service, subscription narrowcasting service and television programs have the meanings given by the BSA from time to time.

Telstra means Telstra Multimedia Pty Ltd (ACN 069 279 072).

Analogue Access Undertaking

3. Undertaking

31. FOXTEL undertakes to the Commission that it will comply with the terms and conditions specified in the attached Analogue Access Agreement in satisfaction of any applicable standard access obligations imposed on FOXTEL as a carriage service provider or any other obligations which may be imposed on FOXTEL under Part XIC of the Act relating to the Declared Analogue Service, including the provision of access by FOXTEL to its analogue Set Top Units.
- 3.2 FOXTEL has no obligation to negotiate an agreement in accordance with the attached FOXTEL Analogue Access Agreement with an access seeker unless:
- (a) the access seeker has arranged for the carriage of its analogue Subscription Television Services on the Telstra HFC Network; or
 - (b) the access seeker has provided:
 - (i) an application to Telstra for carriage of its Subscription Television Services on the Telstra HFC Network (which application has been accepted by Telstra);
 - (ii) a bank guarantee to Telstra as required pursuant to the application to Telstra for carriage of its Subscription Television Services on the Telstra HFC Network (which bank guarantee has been accepted by Telstra);
 - (iii) an executed confidentiality agreement to FOXTEL in the form of Annexure C to the undertaking given by FOXTEL to the Commission under section 87B of the Act on 21 November 2002;
 - (iv) a bank guarantee to FOXTEL as required pursuant to the FOXTEL Analogue Access Agreement; and
 - (v) a deposit of \$50,000, in cleared funds, to FOXTEL which amount will be applied towards the access seeker's fees once it commences acquiring the STU Services or, if the access seeker does not commence acquiring the STU Services and asks FOXTEL to terminate negotiations, will be refundable to the access seeker with interest after FOXTEL deducts any reasonable costs incurred by FOXTEL,
- and the access seeker has provided to FOXTEL, if requested, such proof of the access seeker's compliance with (a) or (b)(i) and (ii) (as the case may be), as FOXTEL may require.

4. Commencement and Expiry

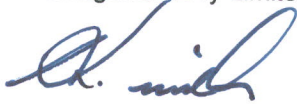
- 4.1 This undertaking comes into effect immediately after the Commission provides FOXTEL with written notice under s152BU(3) of the Act that the undertaking has been accepted (*Undertaking Commencement Date*).
- 4.2 This undertaking expires 3 years after the Undertaking Commencement Date.

Analogue Access Undertaking

EXECUTED on

for and on behalf of

FOXTEL Management Pty Limited



Kim Williams
Director

Date

22/12/03

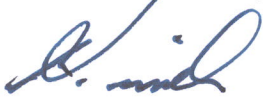


Witness

Date

22.12.03

FOXTEL Cable Television Pty Limited



Kim Williams
Director

Date

22/12/03



Witness

Date

22.12.03