

## **COMPETITION AND CONSUMER ACT 2010**

Undertaking to the Australian Competition and Consumer Commission given for  
the purposes of section 87B

by

Foxtel Management Pty Limited (in its own right and for and on behalf of the Foxtel  
Partnership)

ACN. 068 671 938

### **Person giving this undertaking**

- (1) This undertaking is given to the Australian Competition and Consumer Commission (**the ACCC**) by Foxtel Management Pty Limited (ACN 068 671 938) in its own right and for and on behalf of the Foxtel Partnership (the partnership established between Telstra Media Pty Limited (ACN 069 279 027) (**Telstra Media**) and Sky Cable Pty Limited (ACN 069 799 640) (**Sky Cable**)) (collectively, **Foxtel**) for the purposes of section 87B of the *Competition and Consumer Act 2010* (**the Act**).
- (2) References to Foxtel in this undertaking refer to Foxtel Management Pty Ltd in its own right and the Foxtel Partnership, and not to Telstra Media and Sky Cable in their individual capacities.
- (3) Foxtel Management Pty Ltd has all necessary authorities to act for and on behalf of the Foxtel Partnership in the giving of this undertaking.

### **Background**

- (4) Foxtel is a supplier of subscription television services. Foxtel is also in the business of acquiring subscription television channels and acquiring and compiling subscription television programming to include as part of its subscription television service.
- (5) The conduct investigated by the ACCC relates to a free 22 inch neoniQ LCD television offer (**Free Television Offer**) made available by Foxtel during the period from 12 February 2012 to 28 April 2012.
- (6) The Free Television Offer entitled customers who subscribed to a 12 month plan during the relevant period to receive a free 22 inch neoniQ television with a free set-top box installation and the first month of Foxtel's Get Started pack free. To claim the Free Television Offer, customers were required to contact Foxtel's customer call centre and subscribe directly.

- (7) Foxtel advertised the Free Television Offer through various media, including: television advertisements in Foxtel serviceable metropolitan areas, a specific landing page on its website, door-to-door drops cards in its field sales footprint and at its kiosk at the Sydney Royal Easter Show.
- (8) Prior to 5 April 2012, Foxtel's call centre staff advised customers that the free televisions would be despatched to them within ten days of installation of the Foxtel service. However, free televisions were not despatched within ten days of installation of the Foxtel service to approximately 3,264 current customers who signed up to the Free Television Offer between 12 February 2012 and 5 April 2012.
- (9) In addition, for a period of time certain of Foxtel's advertising materials for the Free Television Offer stated that the offer was limited to 1,500 free televisions. However, the number of customers who subscribed to the Free Television Offer and received a free television was approximately 8,400.
- (10) The ACCC considers that Foxtel has contravened sections 18, 32(2) and 36(4) of the Australian Consumer Law (*ACL*), comprising Schedule 2 of the Act.
- (11) Foxtel acknowledges the ACCC's concerns. In resolution of this matter, Foxtel has given this undertaking to the ACCC and the ACCC has accepted this undertaking pursuant to section 87B of the Act.

#### **Commencement of undertaking**

- (12) This undertaking comes into effect when:
  - (i) the undertaking is executed by Foxtel; and
  - (ii) the ACCC accepts the undertaking so executed.
- (13) Upon the commencement of this undertaking, Foxtel undertakes to assume the obligations set out in paragraphs (14) to (18) below.

#### **Undertakings**

- (14) Subject to paragraph 15, Foxtel undertakes for the purposes of section 87B of the Act that, for a period of three years from commencement of this undertaking:
  - (a) where it offers a rebate, gift, prize or other free item in connection with the promotion by any means of the supply or use of goods or services, Foxtel will, within the time specified in the offer (or if no time is specified within a reasonable time after making the offer), provide the rebate, gift, prize or other free item in accordance with the offer; and
  - (b) where Foxtel offers a free television in connection with the promotion by any means of the supply of the Foxtel subscription television service, Foxtel will ensure that:
    - (i) any representation as to:

(A) a time for delivery of the free televisions; and

(B) the number of available free televisions,

that is communicated in such an offer is accurate to the best of its knowledge; and

(ii) prior to the commencement of such offer it is able to fulfil the delivery of the relevant number of free televisions in the time stipulated in the offer.

(15) Foxtel will not breach the obligations set out in paragraphs (14)(a) and (14)(b)(ii) of this undertaking if:

(a) Foxtel:

(i) fails to provide a rebate, gift, prize or other free item in accordance with an offer due to the act or omission of another person, or to some other cause beyond Foxtel's control; and

(ii) took reasonable precautions and exercised due diligence to avoid the failure; or

(b) Foxtel offers to its customers a different rebate, gift, prize or other free item as a replacement and the customers agree to receive the different rebate, gift, prize or other free item.

(16) Foxtel undertakes for the purposes of section 87B of the Act that it will use its best endeavours to ensure that, within two months from the commencement of this undertaking, customers:

(a) who subscribed to the Free Television Offer during the period 12 February 2012 to 5 April 2012;

(b) to whom a free television was not despatched within ten business days of installation of the Foxtel service; and

(c) who continued to have a Foxtel subscription as at 1 May 2013,

receive a credit of one month's subscription fees based on their subscription package as at the date of this undertaking (**Subscription Credit**).

(17) Foxtel undertakes for the purposes of section 87B of the Act that it will, within three months from the commencement of this undertaking, notify the ACCC of:

(a) the number of customers who received a Subscription Credit within two months from the date of this Undertaking coming into effect;

(b) the number of customers who satisfied the requirements set out in subparagraphs (16)(a), (16)(b) and (16)(c) above and did not receive a Subscription Credit within two months from the date of this Undertaking coming into effect.

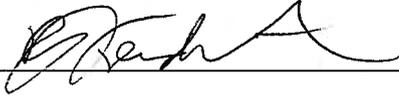
- (18) Foxtel undertakes for the purposes of section 87B of the Act that it will, within three months of the commencement of this undertaking, appoint a qualified compliance professional with expertise in trade practices issues (**the Compliance Advisor**). Foxtel shall instruct the Compliance Adviser to conduct a Competition and Consumer Act risk assessment and prepare a report (within four months of the date of this Undertaking coming into effect) in accordance with subparagraphs (a) to (d) below:
- (a) identify the areas where Foxtel is at risk of breaching Parts 2-1 and 3-1 of the Australian Consumer Law;
  - (b) assess the likelihood of these risks occurring and the consequences of the risks to the business operations of Foxtel should they occur;
  - (c) identify where there may be gaps in Foxtel's existing procedures for managing these risks; and
  - (d) provide recommendations for action having regard to the assessment.

#### **Acknowledgments**

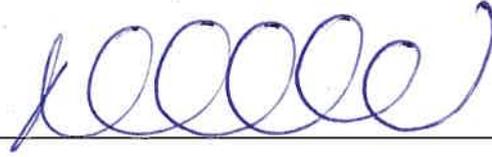
- (19) Foxtel acknowledges that:
- (i) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of s. 87B undertakings on its website;
  - (ii) the ACCC will, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications; and
  - (iii) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

**Executed as an undertaking**

Executed by Foxtel Management Pty limited (ACN 068 671 938) pursuant to section 127(1) of the *Corporations Act 2001*.



Signature of director



Signature of ~~director~~/company secretary

RICHARD FREUDENSTEIN

Name of director (print)

LYNETTE IRELAND

Name of ~~director~~/company secretary (print)

3 MAY 2013

Date

3 MAY 2013

Date

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE *COMPETITION AND CONSUMER ACT 2010* on:



And signed on behalf of the Commission

Date

15 May 2013

Chairman

Date