
**VARIATION TO UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974**

BY

**FOXTEL MANAGEMENT PTY LIMITED
(FOR AND ON BEHALF OF THE FOXTEL PARTNERSHIP)**

AND

FOXTEL CABLE TELEVISION PTY LIMITED

1. Background

- 1.1 On 21 November 2002 the Australian Competition and Consumer Commission (***the Commission***) accepted an undertaking given by FOXTEL Management Pty Limited (ACN 068 671 938) for and on behalf of the FOXTEL Partnership (which is the partnership established between Telstra Media and Sky Cable) and FOXTEL Cable Television Pty Limited (ACN 069 008 797) (together ***FOXTEL***) pursuant to section 87B of the Trade Practices Act 1974 (Cth) (***the Act***) (***the Undertaking***).
- 1.2 Clause 4.1 of the Undertaking requires FOXTEL to commence supplying Digital Set Top Unit Services from the date it commences supplying Commercial retail digital cable Subscription Television Services in accordance with the terms in Schedule 2 to the Undertaking.
- 1.3 Clause 5.1 of the Undertaking requires FOXTEL to commence supplying a Commercial retail digital cable Subscription Television Service and a Commercial retail digital satellite Subscription Television Service no later than 12 months after both FOXTEL and Telstra Multimedia obtain Final Orders as therein defined.
- 1.4 Clause 5.2 of the Undertaking requires FOXTEL to apply for a Final Order in relation to the digital cable and digital satellite Subscription Television Services within 28 days of the Revised Legislation (as defined in the Undertakings) commencing. FOXTEL lodged an application for individual anticipatory exemption with the Commission on 23 December 2002 pursuant to section 152ATA(1) of the Act (***Exemption Order***).
- 1.5 The Commission has granted the Exemption Order subject to a number of conditions one of which is that the Undertaking is varied (***the Condition***).
- 1.6 FOXTEL lodges this variation to the Undertaking under section 87B(2) in satisfaction of the Condition.

2. Definitions

- 2.1 The terms and definitions referred to in this variation have the same meaning as in the Undertaking, except as otherwise defined.

3. Commencement of Variation of Undertaking

3.1 This variation comes into effect on the last of the following dates:

- (a) the date the variation is executed by FOXTEL; and
- (b) the date the Commission consents to the variation so executed.

4. Variation to Undertaking

4.1 Clause 4.11 is amended to read:

FOXTEL undertakes that it will not enter into any arrangements or vary existing arrangements with suppliers for the supply of the equipment, software or other relevant rights for the STS Network if those arrangements will require FOXTEL to seek any further consents from those suppliers to permit access seekers wishing to gain access to the STS Network to provide a Subscription Television Service or Related Service.

4.2 The following clause 4.12 is inserted into the Undertaking after clause 4.11:

From the date on which FOXTEL obtains a Final Order which satisfies the requirements of paragraph 5.1(a) of FOXTEL's section 87B undertaking, FOXTEL will not engage in conduct for the purpose of preventing or hindering an access seeker's access to Digital Set Top Unit Services in accordance with the terms in Schedule 2 to this undertaking. For the purposes of this undertaking, the term 'purpose' is to be interpreted in accordance with section 4F of the *Trade Practices Act 1974*.

4.3 Clause 15.1 is amended to read:

The undertakings in Clauses 3, 6, 7, 8, 10, 11 and 12 will terminate on the earlier of the expiry of the CSA (31 December 2010) or earlier termination of the CSA.

4.4 The definition of Related Service is amended to read:

Related Service means a service that is related to a Subscription Television Service that delivers content where the sole purpose of the transmission of the content is to enhance a television program, but does not include Interactive Services.

4.5 The following definition is inserted into the Undertaking after the definition of Infrastructure Set Top Units:

Interactive Service means a carriage service and services provided by the modem and associated software in the Subscriber's digital Set Top Unit which carry or facilitate the carriage of signals from a Subscriber's digital Set Top Unit to the subscription television service provider or another person, the critical features of which are that:

- (i) the signals are sent from the Subscriber's premises; and
- (ii) the signals are being sent using the digital Set Top Unit.

4.6 Schedule 2 to the Undertaking is replaced by Schedule 2 to this variation.

5. Acknowledgements

- 5.1 FOXTEL acknowledges that the Commission will make this variation available for public inspection.
- 5.2 FOXTEL acknowledges that the Commission may issue a media release about this variation and may from time to time publicly refer to this variation.
- 5.3 FOXTEL acknowledges and accepts that the Undertaking and this variation in no way derogate from the rights and remedies available to any person other than FOXTEL arising from FOXTEL's conduct.
- 5.4 Each of FOXTEL Management Pty Ltd and FOXTEL Cable Television Pty Ltd will be jointly and severally liable for FOXTEL's performance of this variation.

EXECUTED by

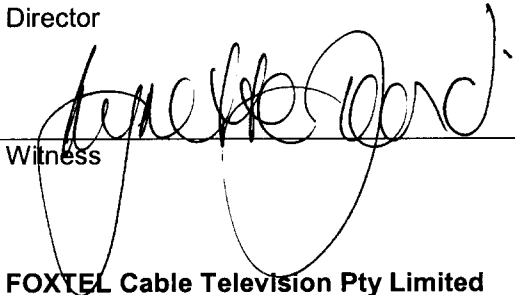
FOXTEL Management Pty Limited (for and on behalf of the FOXTEL Partnership)



Kim Williams
Director

16.12.03 .

Date



Witness

16.12.03 .

Date

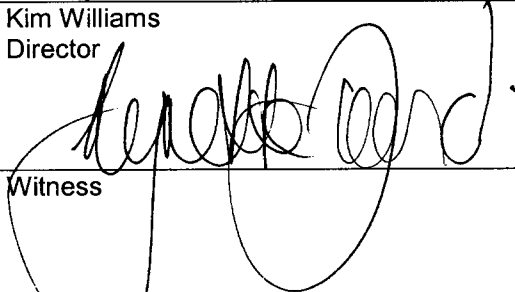
FOXTEL Cable Television Pty Limited



Kim Williams
Director

16.12.03

Date



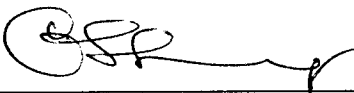
Witness

16.12.03

Date

Accepted by

Australian Competition & Consumer Commission



Graeme Julian Samuel
Chairman
Australian Competition & Consumer Commission

Dated: 18th December 2003