



Australian
Competition &
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NEWS RELEASE

ACCC TO NOT OPPOSE FOXTEL AND TEN ACQUISITIONS

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The Australian Competition and Consumer Commission has announced that it will not oppose the proposed acquisitions by Foxtel Management Pty Ltd (Foxtel) and Ten Network Holdings Ltd (Ten) (ASX: TEN).

The ACCC's decision is limited to Foxtel's proposal to acquire up to 15 per cent of Ten, Ten's proposal to acquire a 24.99 per cent stake in Foxtel's advertising agency Multi-Channel Network (MCN), and Ten's option to acquire 10 per cent of Presto (a joint venture between Foxtel and the Seven Network).

"While the acquisitions will lead to a greater alignment of Foxtel's and Ten's interests, and will increase the degree of influence Foxtel has over Ten, the ACCC considers that the proposed acquisitions, on their own, are unlikely to result in a substantial lessening of competition," ACCC Chairman Rod Sims said.

"The ACCC has not found sufficient evidence to establish a link between these minority acquisitions and the competition concerns raised by market participants. We will, however, closely examine any future increases in these shareholdings, including where this is made possible through changes to the existing media diversity and control rules."

In reaching its decision, the ACCC investigated whether the acquisitions would substantially reduce competition in the acquisition of sports rights and other types of content, with related effects in the free-to-air and broader television viewing markets.

"The ACCC considers the other free-to-air television networks, pay television providers and on-line service providers will continue to have sufficient alternatives to allow them to obtain content that is attractive to their viewers," Mr Sims said.

"Foxtel and Ten will continue to face competition from the remaining free-to-air networks, and streaming services are also likely to become increasingly important to the sale of sports rights."

"The ACCC took into account the anti-siphoning regime and considered that it reduced competition concerns with this transaction. With a near monopoly pay TV provider in Foxtel, the anti-siphoning regime could well currently have a positive effect on competition in the market for television viewing," Mr Sims said.

In relation to premium non-sport content, there are a large number of content producers competing to sell compelling content. In-house production by the major free-to-air television networks also plays an important role in the market.

In respect of advertising, the ACCC concluded that the MCN acquisition is likely to increase the incentives for Ten and Foxtel to offer bundled advertising packages across their platforms, and to integrate their advertising strategies, but that the acquisition itself will not lead to a substantial lessening of competition.

The ACCC has not, however, provided clearance for Ten's agreement with MCN in relation to managing Ten's advertising sales, which is not subject to the merger provisions of the *Competition and Consumer Act 2010* (the Act).

"More broadly, any future regulatory reform should promote greater competition in the media industry. Existing regulations may no longer be effective, and may have unintended competition effects, as a result of technological developments that are reshaping the industry," Mr Sims said.

"For example, the 'reach rule' continues to limit a person from controlling television broadcasting licences that reach over 75 per cent of the population even while commercial free-to-air television networks are now able to stream their services nationally."

Unlike most acquisitions reviewed by the ACCC which result in the target becoming a subsidiary of the acquirer, these acquisitions do not result in the merger parties becoming related parties, and so any arrangements between them are subject to the competition provisions of the Act. While noting the dynamic nature of this market, the ACCC will look closely at the effect of current and future arrangements between Foxtel and Ten which may raise competition concerns, including the MCN agreement.

A Public Competition Assessment will be published in due course.

Further information is available at www.accc.gov.au

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