



Australian
Competition &
Consumer
Commission

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NEWS RELEASE

ACCC TO CONSULT MARKET ON PROPOSED FOXTEL UNDERTAKING

The Australian Competition and Consumer Commission today commenced market consultation on the proposed undertaking offered by FOXTEL Management Pty Limited (for and on behalf of the FOXTEL Partnership) in respect of its proposed acquisition of Austar United Communications Limited.

"The proposed undertaking has been offered by FOXTEL to address the harm to competition which is likely to arise as a result of the proposed acquisition," ACCC chairman Rod Sims said. "However it is not intended to resolve competition or structural issues that may already exist in the relevant markets and are unrelated to the proposed acquisition."

The ACCC's main areas of concern with the proposed acquisition arise in the national market for the retail supply of subscription television services (particularly at the entry level) and a number of regional markets for the supply of fixed broadband and fixed voice telephony products.

"The proposed acquisition would bring together the two main subscription TV industry players in Australia each with a substantial customer base and significant access to key content. This would in turn give Telstra, FOXTEL's largest shareholder, greater market power in fixed broadband and telephony markets," Mr Sims said.

According to the terms of the undertaking, FOXTEL will be prevented from entering into exclusive content agreements to acquire internet protocol television (IPTV) rights for a range of attractive content to allow that content to be made available to existing and future competitors of FOXTEL and Telstra. By reducing content exclusivity, the proposed undertaking aims to lower barriers to entry and promote new and effective competition in telecommunications and subscription television markets.

The ACCC expects that as telecommunications networks develop, the undertaking will create opportunities for new and existing competitors to develop differentiated and more affordable subscription television offerings. These differentiated products would be likely to improve competition in both subscription television and telecommunications markets as retailers increasingly seek to bundle IPTV services with other telecommunications products.

The ACCC considers that to the extent that FOXTEL's (and its shareholders') ownership of exclusive sports rights may raise competition concerns, these concerns exist independently of the proposed acquisition. While premium domestic sport is therefore not offered as part of the undertaking the ACCC considers that the package of content that will be made available will be sufficient to address the competitive harm that is likely to arise as a result of the proposed acquisition.

The ACCC is conscious that any remedy must balance the need to reduce barriers to entry without dampening incentives for content suppliers or subscription television operators to be innovative and competitive.

In addition, the proposed undertaking aims to further lower barriers by requiring FOXTEL to provide necessary signal access to linear channels distributed by independent content suppliers (and which FOXTEL itself distributes to its subscribers) to third parties.

The proposed undertaking will also extend FOXTEL's Special Access Undertaking (given by FOXTEL to the ACCC in 2006) so that content suppliers can gain access to Austar subscribers as well as FOXTEL subscribers as is presently the case.

The ACCC now seeks views from market participants to assist its consideration of the proposed undertaking and in determining whether the proposed undertaking would be likely to alleviate the ACCC's potential competition concerns.

The ACCC's competition concerns and the objectives of the proposed undertaking in resolving them are explained in the undertaking documentation, along with the details of how the proposed undertaking is intended to operate.

Following market consultation, the ACCC will decide whether to accept or reject the proposed undertaking.

The proposed undertakings will be available on the ACCC website
<http://www.accc.gov.au/content/index.phtml?itemId=975742>

Parties wishing to make submissions should do so by 20 March 2012. The ACCC has set a tentative final decision date on the proposed undertakings for 29 March 2012. The ACCC notes that the timing of its final decision on the proposed undertaking may vary depending on the nature and extent of any concerns raised during the market consultation process and the ability of FOXTEL to respond to these concerns in a timely manner.

Media inquiries

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General inquiries

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