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Mergers Branch
ACCC
GPO Box 520
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Dear Sir/Madam

ACCC REVIEW: FOXTEL - PROPOSED ACQUISITION OF AUSTAR UNITED COMMUNICATIONS LIMITED

Free TV Australia represents all of Australia's commercial free-to-air television broadcasters. In 2011 commercial free-to-air television is the most popular source of entertainment and information for Australians, with our members providing nine channels of content across a broad range of genres, as well as rich online and mobile offerings, all at no cost to the public.

Free TV welcomes the opportunity to comment on the ACCC's Informal Review of the proposed acquisition by Foxtel of Austar United Communications Limited.

Free TV's members have agreements in place with Foxtel in relation to the retransmission of commercial free-to-air services on the Foxtel cable and satellite platform. Free TV's members also have agreements in place with Foxtel and Austar in relation to the position of commercial free-to-air services on the Foxtel and Austar electronic program guides (EPGs).

This submission asks the ACCC to note the potential impact of the proposed acquisition on these existing arrangements and the consequent impact on television viewers.

The provision of commercial free-to-air services on Foxtel and Austar

As noted above, commercial free-to-air broadcasters have arrangements in place with Foxtel for the retransmission of their services (including digital multi-channels) in metropolitan areas. This ensures that Foxtel viewers are able to view free-to-air television through a single device (their Foxtel set-top box).

However, similar arrangements have not been entered into with Austar for the retransmission of regional commercial free-to-air services in Austar's service areas. The number of regional commercial free-to-air television services substantially exceeds the number of metropolitan services and it would be prohibitively expensive to provide for the retransmission of these services on the Austar satellite platform.

Austar viewers are, however, able to receive their local free-to-air television services via the digital terrestrial television tuner which is included in the Austar Myster set-top box. The current range of Foxtel set-top boxes does not include this 'dual tuner' capability.

Free TV is concerned that if the proposed acquisition goes ahead, Foxtel may seek to replace the current population of Austar Myster set-top boxes with a Foxtel-supplied set-top box. This would have a detrimental impact on existing Austar subscribers who would need to purchase additional

digital television reception equipment in order to continue to receive their local commercial free-to-air television services.

As noted above, it would not be feasible to enter into satellite retransmission arrangements for the full range of regional commercial free-to-air services.

The positioning of free-to-air television services on Foxtel and Austar electronic program guides

Commercial free-to-air broadcasters have also entered into separate agreements with Foxtel and Austar in relation to the positioning of their services on the Foxtel and Austar electronic program guides.

The positioning of services on the EPGs is of commercial importance. The ease with which individual channels can be found through the EPG plays a role in an individual's viewing choices.

Under an agreement with Austar, all local commercial free-to-air services (including the digital multi-channels) are grouped together on the EPG in a single sub-menu (ie, they are clearly distinguished and easy to find).

This differs to the arrangement relating to Foxtel's EPG whereby only the free-to-air broadcaster's primary channels are grouped together in a single sub-menu. The viewer must navigate through the full channel-listing of the 'entertainment' sub-menu to locate the free-to-air digital multi-channels.

There would be a detrimental impact on viewers and commercial free-to-air broadcasters if, as a result of the proposed acquisition, the Foxtel EPG supplanted the Austar electronic program guide in subscribers' homes.

Free TV asks the ACCC to note these potential impacts. Thank you for the opportunity to comment on these issues.

Yours sincerely


per Julie Flynn
CEO