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**TRADE PRACTICES ACT 1974**

**UNDERTAKINGS TO THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION GIVEN FOR  
THE PURPOSES OF SECTION 87B**

**GIVEN BY**

**FOXTEL MANAGEMENT PTY LIMITED  
(ACN 068 671 938)  
of Wharf 8 Pyrmont, New South Wales**

**1. Background**

- 1.1 In November and December 1996 Foxtel Management Pty Limited (*FOXTEL*), as part of the promotion of its pay television services (*FOXTEL T.V.*), distributed an advertisement in the form of a special offer known as the "Braveheart Promotion". A copy of the Braveheart Promotion is annexed and marked "A".
- 1.2 The Australian Competition and Consumer Commission ("the Commission") alleges that the Braveheart Promotion contained a number of representations which, in the context of the Promotion, were misleading and deceptive or likely to mislead or deceive and therefore in breach of section 52 of the *Trade Practices Act 1974* (the *Act*).

**2. The Braveheart Promotion**

- 2.1 The Braveheart Promotion appeared in the form of a postcard which was distributed by hand and by mail to a total of 680,000 homes in the metropolitan regions of Sydney, Melbourne, the Gold Coast, Brisbane and Adelaide.
- 2.2 Above the text forming the body of the Braveheart Promotion and in large print (on the reverse side of the postcard) appears the heading "All this plus cheaper local calls". Below this, in the main body of the advertisement, appears the statement "FOXTEL can also offer you the

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convenience of signing up to Telstra Flexi-plan™ discounts. Save on your local, STD and 0011 International calls almost immediately with Telstra. <sup>4</sup>."

- 2.3 A qualification to the statements referred to in paragraph 2.1, in the form of Footnote 4., appears at the base of the postcard, in small print, and states "Telstra Flexi-plans are available to all Telstra customers. They are not restricted to persons accepting this promotion. An additional monthly fee charged by Telstra may also apply."
- 2.4 The Commission was of the view that the size of the print in footnote 4 was not large enough in comparison to the heading "All this plus cheaper local calls" to bring to the reader's attention the fact that Telstra Flexi-Plans are available to all Telstra customers whether or not the customer subscribed to FOXTEL.
- 2.5 The Commission therefore formed the view that the statements used in the Braveheart promotion are in breach of the Act.
- 2.6 For the purposes of satisfying the Commission's concerns with respect to the Braveheart Promotion FOXTEL has agreed to be bound, for the next 2 years, by the following undertakings given for the purposes of Section 87B of the Act.

### **3. Undertakings**

#### **3.1 FOXTEL undertakes that:**

1. It will not repeat the Braveheart Promotion or a substantially similar promotion in that form.
2. Where a qualification is made in any future promotion of FOXTEL's goods or services, by way of additional text which appears separately from the main body of the promotion, it will be clear and legible and in large enough print, close enough to and clearly linked to the statement it qualifies so as to ensure that the reader is fully aware of the qualification.
3. Future FOXTEL promotions will be devised so that they neither mislead by omission of material conditions or limitations, nor seek to rely on subsequent communications, for clarification as to their true meaning.

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4. For a period of 2 years from the date of these undertakings, at least one member of FOXTEL's in-house counsel will review all promotions or advertisements (as described in Schedule 1), to ensure that the promotions or advertisements are not misleading.
  
  5. Where a disclaimer is to be used in an advertisement or promotion, the officer(s) referred to in undertaking 4. shall consider at least the following factors in determining whether or not the advertisement or promotion is misleading:
    - (i) The clarity of the primary message;
    - (ii) the layout of the advertisement;
    - (iii) the proximity of other type;
    - (iv) the placement of the advertisement;
    - (v) the graphics or other devices likely to draw a consumer's attention away from a disclaimer;
    - (vi) any other relevant characteristics or requirements of the promotion or advertisement's audience.
  
  6. The identity of the officer(s) responsible for such review from time to time will be made known to the Commission on each occasion that the identity of the officer(s) may change.
  
  7. FOXTEL will place an advertisement, in the form of Schedule 2, which will appear in the following places:
    - (i) in quarter page size on the right hand side of one of the first eight pages (whether tabloid (11cm x 20cm) or broadsheet (17.1 cm x 28 cm)) in the Early General News section of each of the major Metropolitan Daily Newspapers listed in Schedule 3, to be published on two separate days in one week in any of the Monday - Friday editions within 21 days from the date of these Undertakings;

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- (ii) in "FOXTEL Magazine" (the monthly programming guide to FOXTEL T.V. which is also available to members of the public who do not subscribe to FOXTEL T.V.) to be placed in the Editorial Section of the first edition available to be published following the date of these Undertakings, in a size of equal proportion to the version to appear in the Newspapers referred to in Schedule 2; and
  - (iii) in one quarter of the screen on FOXTEL's Web page "All About FOXTEL" (<http://www.foxtel.com.au>) for 1 week commencing no later than two weeks after the execution of these Undertakings;

which will make it clear that telephony services and discounts from Telstra are not dependent on subscription to FOXTEL T.V.

8. FOXTEL shall broadcast an educational advertisement ("the Infomercial"), in a form to be agreed between FOXTEL and the Commission (but will be not longer than two minutes duration), the production costs of which will be met by a party other than FOXTEL. A draft of a proposed script of the Infomercial appears in Schedule 4.
9. The Infomercial shall be broadcast approximately 300 times in total, consisting of screenings on 6 FOXTEL Channels (as listed in Schedule 5) throughout two separate periods, to be shown approximately 210 times for six weeks finishing on Sunday 29 June 1997 ("the First Period"), and approximately 84 times for four weeks, commencing by Monday 25 August 1997 ("the Second Period"), in accordance with the following timetable:

(i) The First Period

FOXTEL will screen the Infomercial approximately 210 times in total during this period.

FOXTEL will screen the Infomercial once on each of the six channels approximately 126 (60%) times during The Peak Hours (4 p.m - 12 midnight) and approximately 84 (40%) times during Non-Peak Hours (6 a.m - 4 p.m).

(ii) The Second Period

FOXTEL will screen the Infomercial approximately 84 times in total during this period.

FOXTEL will screen the Infomercial once on each of the six channels approximately 50 (60%) times during the Peak Hours and approximately 34 (40%) times during Non-Peak Hours.

10. In the event that there is an abridged version of the Infomercial lasting no longer than 60 seconds (the Abridged Infomercial), FOXTEL shall broadcast the Abridged Infomercial on CNN in addition to the remaining FOXTEL Channels listed in Schedule 5.
11. In the event that the Abridged Infomercial is available for broadcast, FOXTEL shall broadcast the Abridged Infomercial no more than 50 times in total, each screening being deemed to be a screening of the Infomercial for the purposes of Undertaking 9.
12. In the event that the production of the Infomercial and the Abridged Infomercial is delayed, or the screening of the Infomercial or the Abridged Infomercial prior to 1 July 1997 is not lawful, FOXTEL agrees that it shall broadcast the Infomercial (and the Abridged Infomercial if available) during alternative screening periods, which will be between four and seven weeks after the First and Second Periods respectively ("the Alternative First and Second Periods") on the condition that the Commission provide FOXTEL with two weeks notice of such delay.
13. FOXTEL shall use its best efforts to ensure that the total number of screenings of the Infomercial (and the Abridged Infomercial if available) are spread evenly throughout the Peak and Non-Peak Hours of both the First and Second Periods or the Alternative First and Second Periods as the case may be.
14. FOXTEL shall provide the Commission with a written transmission report at the end of the month following the end of the first and second periods respectively which specifies the times at which the Infomercial (and the Abridged Infomercial if available) were broadcast.

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15. Within three months of signing these undertakings FOXTEL will develop and submit for consideration by the Commission a draft Trade Practices Compliance program ("the Draft Compliance Program") with the following characteristics and objectives:

(a) Aim

To create a culture of compliance within FOXTEL and to prevent, as far as is reasonably possible, any contravention of the Act by FOXTEL, its directors, employees or agents;

(b) Group Policy

To adopt or reaffirm formally a written company policy of strict compliance with both the letter and spirit of the Act within FOXTEL and to adopt or reaffirm and enforce sanctions against any director, employee or agent who is knowingly or recklessly concerned in a contravention of the Act;

(c) Compliance Infrastructure

To appoint one of FOXTEL's in-house Counsel or Senior Executives as the Compliance Officer who shall have the overall responsibility to ensure compliance with the Act;

(d) Coverage

The Compliance Program shall cover all directors, employees and agents of FOXTEL whose duties could result in them being concerned in conduct that might breach the Act ("the Relevant Staff");

(e) Education

To develop and implement an education program designed to ensure that the Relevant Staff attain a sufficient understanding of the Act so that:

- (i) Relevant Staff can avoid obvious contraventions and can refer potential Trade Practices Problems to the Compliance Officer;

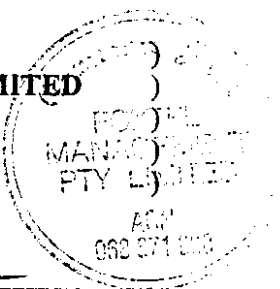
- (ii) the Compliance Officer can address more complex Trade Practices issues and identify those issues which require referral to the legal advisers of FOXTEL.
16. FOXTEL shall make whatever changes to the Draft Compliance Program that the Commission may reasonably require.
17. FOXTEL shall implement the Trade Practices Compliance Program within three months of these Undertakings or, if required, within one month of the Commission requesting any reasonable changes to the Draft Compliance Program.
18. The Compliance Program shall remain in force for the duration of these Undertakings.
19. Within three months of signing these undertakings FOXTEL will adopt a complaints handling system that complies with Australian Standard AS 4269-1995 (Complaints handling).
20. At the end of the first and second twelve month period from the date of these undertakings, FOXTEL will provide the Commission with a report, prepared by the officer(s) referred to in undertaking no. 4, detailing FOXTEL's compliance with these undertakings, including the implementation of the Trade Practices Compliance program and the operation of the complaints handling procedure.
21. If, following the submission of FOXTEL's reports described in undertaking no.18, the Commission is of the view that further changes to the Compliance Program and the Complaints handling system are required, FOXTEL shall adopt any such reasonable changes suggested by the Commission.

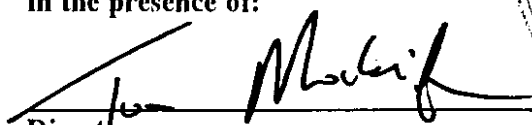
4. Acknowledgments

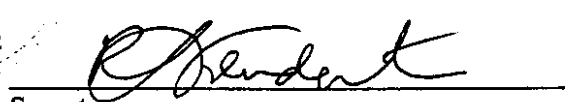
- 4.1 FOXTEL acknowledges that the Commission will make these undertakings available for public inspection and that the Commission may from time to time publicly refer to these undertakings, including by way of press release.
- 4.2 FOXTEL acknowledges and accepts that this undertaking in no way derogates from the rights and remedies which may be available to any other person arising from the alleged conduct.

IN WITNESS OF THESE UNDERTAKINGS

THE COMMON SEAL of  
FOXTEL MANAGEMENT PTY LIMITED  
was hereunto affixed by authority  
of the board of Directors  
in the presence of:

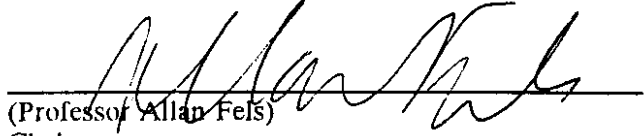


  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Secretary

This        day of        1997

ACCEPTED BY THE TRADE PRACTICES COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974.

  
\_\_\_\_\_  
(Professor Allan Fels)  
Chairman

This 25<sup>th</sup> day of June 1997



## SCHEDULE 1

1. All promotions or advertisements other than those telecast on FOXTEL T.V.
2. Promotions or advertisements telecast on FOXTEL T.V. that contain references to :
  - (a) The cash price of FOXTEL's goods or services or special offers; or
  - (b) Telephony offers;
  - (c) a comparison of the benefits of subscribing to any FOXTEL T.V package or any of FOXTEL's associated services on the one hand with similar offers made by FOXTEL's competitors on the other.

# CORRECTION



In November 1996, FOXTEL sent a brochure to potential subscribers promoting the movie *Braveheart*. Part of that brochure stated that FOXTEL could also offer you cheaper calls by connecting you to Telstra Flexi-Plans.

The Australian Competition and Consumer Commission (ACCC) has expressed concern to FOXTEL that this brochure may have misled consumers in breach of the *Trade Practices Act*.

To correct any misleading impression the brochure may have created, FOXTEL would like to make the following announcement:

FOXTEL wishes to make it clear that Telstra Flexi-Plans are available to everybody. They are not restricted to FOXTEL subscribers, nor are they restricted to persons responding to any FOXTEL promotion.

If you would like further information about a Telstra Flexi-Plan, please call Telstra on 13 22 00.

This notice has been published with the permission of the ACCC.



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Australian  
Competition &  
Consumer  
Commission

## **SCHEDULE 3**

### **NEWSPAPER PUBLICATION LIST**

1. The Sydney Daily Telegraph  
and  
The Sydney Morning Herald
2. The Melbourne Herald Sun  
and  
The Melbourne Age
3. The Brisbane Courier Mail
4. The Adelaide Advertiser
5. The Australian

## SCHEDULE 4

Time	Video	Audio
0:15	Stock footage: 'Global marketplace' montage. People getting information (home shopping, Internet, direct fax) and sharing information (mobile telephone, video conference) Studio. 100% first presenter (P1)	Music and V/O: <i>It's a different world nowadays. New ways of learning ... new ways of talking to people... new ways to get information ... new ways of doing business.</i> 100% P1 (who also does V/Os) <i>The many innovations that have made this new and exciting world grew out of competition. And in that world, the spirit of competition is alive and well.</i>
0:25	Stock footage: collage of international sporting scenes.	Music and V/O: <i>Competition for customers in Australia and across the world. Competition against the best the world can offer.</i>
0:35	Stock footage: collage of 'mainstream sports' with examples of rule-breaking (Maradona handball, 'chucking' in cricket) and punishment (send-offs, tennis umpire's warning etc). Studio. 100% P1	Music and V/O: <i>But you can't have a competition without rules. Rules to ensure that spectators get a square deal, and that the best team wins.</i>
0:45	P1 displays Act	100% P1 <i>And it's the same in business. The rules of business ensure that customers get a square deal, and that products and services which genuinely meet customers' needs - at the right price - win a bigger share of the market. In Australia, the Trade Practices Act is a major chapter of the business rulebook. Breaking the rules is embarrassing and expensive for the company involved.</i>
0:55	Series of dummy newspapers with headlines like "\$10m penalty for concrete price fix", etc, ending in "Multi-million dollar refunds in consumer scam" hit a desk	Music, resounding thumps.
1:00		

SCHEDULE 4

Time	Video	Audio
	Studio. 100% P1	100% P1 <i>So if you want to play the business game, you'd better know the rules. This is especially true when your product involves new and confusing technology, because it's easier to mislead the public about these products - and that means that industry watchdogs are especially alert to these abuses. To confirm this, and give us some understanding of what the rules are, I am pleased to introduce P2.</i>
1:05	Camera pulls back to reveal second presenter (P2)  Studio, two-shot, P1 & P2	<i>Interview-style dialogue, P1 &amp; P2</i> <i>P2: Thanks P1, and you're absolutely right; cutting-edge industries like telecommunications and broadcasting are under the spotlight right now, and will be for some time to come. Getting competition right in these markets is so important that we can't afford to ease up.</i> <i>P1: What sort of problems do you see cropping up in, say, telecommunications?</i> <i>P2: Generally, it comes down to misleading the public: not with outright lies necessarily but with half-truths or exaggerations. Some specific issues we've come across involve ...</i>
1:20	<i>Building exterior</i> <del>Street</del> location. Person (T1) walking, using mobile phone conversation. S/he stops, takes phone from ear, looks at it, hits it,	Music, V/O by P2: <i>V/O: ... claims of national coverage that doesn't exist. or service standards that can't be met ...</i>
1:30	swears at it - connection has dropped out.	

Time	Video	Audio
1:40	Office foyer location. Irrate person (T2) in a 'complaints' section with employee (T3) behind desk; T2 points to the body text of a press advertisement, T3 looks offensively smug, shakes head, points to tiny disclaimer at bottom	Music. V/O by P2: <i>... exceptions and disclaimers written in super fine print at the bottom of ads ...</i>
Here →	<del>Second street</del> location. Person (T4) with mobile phone opens envelope, clearly a bill; T4 looks aghast, throws phone to ground, stamps on it until it is destroyed.	Music, V/O by P2: <i>... or incredibly cheap deals which conceal the true cost of owning and operating a phone..</i>
1:45	Studio, two-shot, P1 & P2 (opening with CU on P2 then pulling back)	Interview-style dialogue, P1 & P2 P2: <i>Any one of these tactics risks alienating the customer for life, and is therefore bad business. But in addition, it might bring court action from the customers concerned or the Australian Competition and Consumer Commission; which in turn may lead to a substantial penalty or an obligation to pay large sums in damages.</i> P1: <i>That's a very scary prospect. Can an employee of a company be called into court if they're responsible for these things?</i> P2: <i>Not just called to give evidence. Individuals can be made to pay substantial personal penalties as well; it's actually a criminal matter.</i> P1: <i>It pays to learn the rules, and stick to them?</i> P2: <i>Absolutely. And we've tried to make the rules accessible to everyone in business, especially the telecommunications business, with free publications to read and Websites to provide the very latest information to those who need it.</i>
1:50		

Time	Video	Audio
	Previous scene continues (studio two-shot)	Interview-style dialogue, P1 & P2 <i>P1: So there's really no excuse for not knowing and following the rules</i> <i>P2: None whatsoever. The Trade Practices Act isn't about stifling business, it's about helping ethical and effective businesses to win the markets they deserve, and helping Australian consumers get what they've paid for. If you're in business, and don't know the rules, it's about time you learned.</i> Music?
1:58	Dissolve (cut?) to graphic. It shows URLs for ACCC and 'Fair Call' websites, names Fair Call brochure, ends in 'or contact the Australian Competition and Consumer Commission in your capital city'	



## **SCHEDULE 5**

**FOXTEL Channels on which the Infomercial will be shown:**

1. UK TV;
2. Sky News;
3. FOX;
4. Hallmark;
5. fX;
6. FOX Soap/Talk/Travel/History.

WINNER OF  
4 ACADEMY AWARDS  
AUSTRALIAN TV PREMIERE DECEMBER 7

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BRAVEHEART ON FOXTEL

HANDS UP IF YOU WANT  
REAL ENTERTAINMENT ON YOUR TV.





Legends of the Fall

Aust TV Premiere Nov



Little Women

Aust TV Premiere Dec



Casper

Aust TV Premiere Nov



Cricket

Aust/India/S. Africa Exclusively LIVE Nov



Rugby Union

Wallabies UK Tour Nov/Dec



Super League

Super League coming next season



The X-Files

The complete uncult files Nov/Dec



Twin Peaks

David Lynch's masterpiece Nov/Dec



Blackadder

Blackadder Fest in Nov



USA40

USA40: LIVE in the New Sth Africa Nov

# ALL THIS PLUS CHEAPER LOCAL CALLS.

Call FOXTEL on 1800 067 507 before 25 November and, when you connect, we'll give you the ultimate Braveheart Movie Pack including the Braveheart soundtrack on CD and Making of Braveheart video.

Connection is still only \$29.95<sup>1</sup>, so if you want to experience the thrill of 31 incredible channels<sup>2</sup> every time you sit down to watch TV, now's the best time to get FOXTEL.

FOXTEL can also offer you the convenience of signing up to Telstra Flexi-Plan<sup>3</sup> discounts. Save on your local, STD and 0011 International calls almost immediately with Telstra<sup>4</sup>.

If you're curious to see the whole range of fantastic programmes on FOXTEL during November, call now to get your FREE copy of the FOXTEL Magazine worth \$3.95.



## CALL 1800 067 507 24 HOURS

<sup>1</sup> Installation fee of \$29.95 applies to standard installation only. We reserve the right to quote an off-peak rate from 9pm to 5am. <sup>2</sup> FOXTEL Entertainment Plus (30 channels) includes your choice of 3 pay-per-view channels. <sup>3</sup> FOXTEL Entertainment Plus (30 channels) includes your choice of 3 pay-per-view channels. <sup>4</sup> Telstra Flexi-Plan discounts are available for an additional fee. Offer open to new subscribers to FOXTEL. For more information, please call 1800 067 507. <sup>5</sup> Offer open one month only to all Telstra customers. The offer is subject to certain conditions. An additional monthly fee may apply. <sup>6</sup> Trademark of Telstra Corporation Limited. ACN 051 775 536

BVE/AP/1

If undelivered please return to:  
FOXTEL, Locked Bag 888  
Moonee Ponds VIC 3039



POSTAGE PAID

AUSTRALIA

Special offer code: **BVE**