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Dear Interested Party

Re: Request for submissions: Potential joint bid for acquisition of interests in Ten Network Holdings by Birketu and Illyria

The Australian Competition and Consumer Commission (**ACCC**) is seeking your views on the potential joint bid by:

- Illyria Nominees Television Pty Ltd (**Illyria Trustee**) as trustee of Illyria Investment Trust No. 4 (**Illyria Trust**, together with Illyria Trustee, **Illyria**) and
- Birketu Pty. Ltd. (**Birketu**),

to each directly or indirectly acquire a 50% economic and voting interest in the shares of Ten Network Holdings Limited (**Ten**) or the assets or shares in the relevant Ten subsidiaries (**Business**) (the **potential transaction**).

Illyria Trustee is wholly owned by Lachlan Murdoch. Bruce Gordon owns 100% of the shares in Birketu. **Attachment A** contains further details about the potential transaction, the operations of Ten, Birketu and Illyria, and the relevant interests of and positions held by Mr Murdoch and Mr Gordon.

The ACCC's investigation is focused on the impact on competition. In particular, we are seeking your views on:

- the impact of the potential transaction on competition for the acquisition and supply of audio-visual content from content suppliers in light of:
 - Mr Murdoch's position as Co-Chairman of News Corporation, News Corporation's ownership of News Corp Australia, and News Corp Australia's interests in Fox Sports and Foxtel
 - Mr Gordon's control of WIN Corporation and Birketu's shareholding in the Nine Network
- the impact of the potential transaction on competition for the supply of audio-visual content to viewers in light of the facts identified in the previous two sub-bullet points
- the impact of the potential transaction on competition for the supply of advertising opportunities in light of:

- Mr Murdoch's position as Co-Chairman of News Corporation, News Corporation's ownership of News Corp Australia, and News Corp Australia's interests in Fox Sports and Foxtel
 - Illyria Trustee's ownership of the Nova Entertainment Group and Mr Murdoch's position as Executive Chairman of that Group
 - Mr Gordon's control of WIN Corporation and Birketu's shareholding in the Nine Network
- any other way that the potential transaction may increase Ten's ability to control and/or influence the operations of entities owned, controlled or influenced by Illyria and Birketu, or vice versa.

Further issues you may wish to address are set out in **Attachment B**.

This matter is public and you can forward this letter to anybody who may be interested.

The legal test which the ACCC applies in considering the proposed acquisition is in section 50 of the *Competition and Consumer Act 2010*. Section 50 prohibits acquisitions that are likely to have the effect of substantially lessening competition in a market.

Please provide your response by no later than **5pm on Monday 24 July 2017**. Responses may be emailed to mergers@acc.gov.au with the title: *Submission re: Potential joint bid for interests in Ten Network Holdings by Birketu and Illyria - attention Natasha Apostolov/Serena Wong*. If you would like to arrange a time to discuss the matter with ACCC officers, or have any questions about this letter, please contact Natasha Apostolov on (03) 9290 6961 or Serena Wong on (02) 9230 9188.

Updates regarding the ACCC's investigation will be available on the ACCC's Public Mergers Register at ([ACCC mergers register](#)).

Confidentiality of submissions

The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Yours sincerely



Cameron McKean
A/g General Manager
Merger Investigations

Attachment A

The potential transaction

It is envisaged that:

- Illyria and Birketu will own the Business on a 50:50 basis;
- as an equal joint venture arrangement:
 - each of Birketu and Illyria would have equal representation on the board of the joint venture company and all directors would have one vote (as well as a vote for any alternate or absent director they represent). The chairman would not have any casting vote
 - neither Illyria or Birketu will individually have the capacity to control a majority of the board of Ten or the holding company of the Business
 - related party provisions and conflict provisions would apply to dealings between the joint venture company/Ten and the investors and their affiliates
 - except for related party or conflict matters, neither Birketu nor Illyria would be able to implement any decision relating to the business of Ten without the consent of the other (or their representatives on the relevant board).

The ACCC understands that the potential transaction as currently structured would be precluded by the *Broadcasting Services Act 1992* (Cth) but that the Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017 (Cth) (**the Bill**) would vary or remove these restrictions. The Bill is yet to pass Parliament and the next opportunity for the Senate to consider it is in early August. The potential transaction is contemplated on the assumption that the Bill is passed into law.

Current interests in Ten

Ten is an ASX listed media company. It is the ultimate holding company of certain subsidiaries which operate Free to Air (**FTA**) television stations and hold commercial television broadcasting licences in Sydney, Melbourne, Brisbane, Adelaide and Perth with affiliate networks extending the network to cover additional regional areas. Ten operates three FTA channels (Ten, Eleven and One) as well as Tenplay, a multiplatform online catch up service for certain programs. Ten also has a 24.99% interest in Multi Channel Network, an advertising business that sells advertising services across a number of subscription television channel suppliers, and acts as Ten's advertising sales representative.

Trading in Ten's quoted ordinary shares was suspended on 14 June 2017 following the appointment of administrators to Ten. On 1 July 2017, Mr Christopher Hill, Mr Phil Carter and Mr David McEvoy of PPB Advisory were appointed as receivers and managers to Ten.

Birketu and Birketu Investments Pty Ltd are the registered holders of approximately 15% of the shares in Ten. Birketu is the registered holder of the majority of those shares. Bruce Gordon owns the whole issued share capital of both Birketu and Birketu Investments.

Illyria Nominees Television Pty Ltd (**Illyria Trustee**) as trustee of Illyria Investment Trust No. 4 (**Illyria Trust**, together with Illyria Trustee, **Illyria**) holds 7.44% of the ordinary shares in Ten. Lachlan Keith Murdoch (**Mr Murdoch**) owns 100% of the shares in Illyria Trustee and is the Chairman of Illyria Pty Ltd, an Australian proprietary limited investment company.

Ten's current substantial shareholders are:

- Birketu (14.96%)

- Foxtel Management Pty Ltd (13.84%)
- Mrs Georgina Hope Rinehart and Hancock Prospecting Pty Ltd (**HPPL**) and subsidiaries of HPPL (8.25%)
- Illyria Trustee (7.44%)
- Aidem Holdings Pty Limited (7.44%).

Other relevant interests of Mr Gordon

Mr Gordon controls WIN Corporation (**WIN**), a private Australian media company, which owns commercial television broadcasting licences across the non-metropolitan areas of Queensland, New South Wales, Victoria, Tasmania, South Australia, Western Australia and the Australian Capital Territory.

WIN acquires programming content via an affiliation agreement with Ten and broadcasts content across the following channels: WIN, One, Eleven and WIN HD. WIN has acquired from Southern Cross Media Group Limited (**SCA**) its northern NSW television assets and operations which also broadcast the Ten signals. Until 30 June 2016, WIN had a program supply agreement with the Nine Network.

As part of its television broadcasting services, WIN also airs two datacasting channels, GOLD and TVSN across its markets. WIN also owns two FM radio stations in New South Wales, being i98FM Wollongong and C91.3FM Macarthur.

Birketu and WIN hold 14.97% of the issued capital in Nine Entertainment Co. Holdings Limited (**Nine**). Nine operates four business divisions, being FTA television, digital publishing, video-on-demand (advertising and subscription) and content production.

Other relevant interests of Mr Murdoch

Mr Murdoch is Co-Chairman of News Corporation and Executive Chairman of 21st Century Fox. Mr Murdoch was previously a Chairman and Director of Ten.

Mr Murdoch holds less than a 1% interest in the voting shares of US-listed News Corporation, which owns 100% of News Corp Australia. News Corporation, through News Corp Australia, owns all of Fox Sports Australia (previously known as Premier Media Group) and 50% of Foxtel. Mr Murdoch also holds less than a 1% interest in the voting shares of US-listed 21st Century Fox, which in turn holds a 50% interest in Endemol Shine. Endemol Shine produces and distributes entertainment content on a number of platforms.

Fox Sports Australia is a producer of sports television coverage. It compiles and produces seven sports subscription television channels that are available via the Foxtel subscription television platform. It also operates a general sports website.

Foxtel is Australia's largest subscription television provider. It delivers subscription television content across Australia. It also operates the Foxtel Play multiplatform subscription audio-visual content service (which allows subscribers to view Foxtel's television stations online via a tablet or smartphone device) and the Presto subscription video on demand service. The Presto subscription video on demand (**SVOD**) service enables subscribers to stream audio-visual content from an online library via the internet when purchased with a monthly subscription. Presto TV is a joint venture between Foxtel and Seven West Media.

Mr Murdoch, through Illyria Trustee, is the owner of Nova Entertainment Group, an Australian entertainment company which operates a radio network across metropolitan Australia, talk stations, digital radio stations, and a range of digital assets across social, mobile and online platforms. Mr Murdoch is also the Executive Chairman of Nova Entertainment Group.

Attachment B

1. Please provide a brief description of your business or organisation and any relationship you have with Birketu, Illyria or Ten (such as whether you are a competitor, customer or supplier of products or services to these parties).

Acquisition of audio-visual content, including sports

2. Please outline the extent to which FTA networks and other platforms such as subscription television networks and SVOD services compete with Ten for the acquisition of audio-visual content including sports, general entertainment and news. In your response, please identify:
 - a. the relevant acquirers of such audio-visual content
 - b. the extent to which audio-visual content suppliers could switch to other acquirers, if Ten offered content suppliers unfavourable price and/or non-price terms.
3. Please identify potential entrants in relation to the acquisition of audio-visual content and address the likelihood of such new entry post-transaction.
4. In relation to bids to acquire audio-visual content in Australia, to what extent do content owners (including sporting organisations) have requirements of bidders in terms of:
 - a. actual or potential audience reach
 - b. access to specific technology delivery platforms
 - c. in relation to sports content, a FTA broadcaster partnering or entering into other commercial arrangements with a subscription television provider (or vice versa)?
5. Please describe the strength of the negotiating position of audio-visual content suppliers when negotiating with content acquirers, taking into account factors including their ability to transmit coverage through a number of platforms such as FTA television networks, subscription television networks, SVOD services and other emerging platform options.
6. In relation to the acquisition of audio-visual content (including sports content), please explain:
 - a. the extent to which the potential transaction is likely to enhance Ten's ability to enter into favourable arrangements with any of 21st Century Fox, Endemol Shine, Fox Sports, Foxtel and/or WIN
 - b. the extent to which the potential transaction would affect the negotiating position of content suppliers with any of Ten, 21st Century Fox, Endemol Shine, Foxtel, Fox Sports, Nine and WIN
 - c. how these effects would impact on competition in the acquisition of audio-visual content between FTA broadcasters and subscription broadcasters.

Supply of audio-visual content to viewers

7. To what extent do FTA networks, subscription television networks and SVOD services compete in the supply of audio-visual content, including sports, general entertainment and news, to consumers?

Relevant factors may include their product and service offerings, and how they respond to each other's competitive activities.

8. Please identify potential entrants in relation to the supply of audio-visual content and address the likelihood of such new entry post-transaction.

Supply of advertising opportunities

9. Please outline the extent to which FTA networks, subscription television networks, SVOD services and other advertising platforms currently compete with Ten for the supply of advertising opportunities. In your response, please also explain the extent to which acquirers of advertising opportunities might substitute between:
 - a. television advertising—please distinguish between FTA, subscription services and SVOD services
 - b. radio advertising
 - c. print advertising, such as magazines and newspapers
 - d. online advertising
 - e. out of home advertising, such as billboards.

Please provide examples where possible. If possible, please also provide examples of different types of advertising platforms (for example, television and radio) being bought and/or sold together.

10. In relation to the supply of advertising opportunities, please explain the extent to which the Potential Transaction is likely to provide Ten and/or Multi Channel Network with an increased ability or incentive to supply bundles of advertising services across different platforms or networks together, in light of:
 - a. Mr Murdoch's involvement with News Corp, News Corp Australia, 21st Century Fox, Endemol Shine, Fox Sports, Foxtel and Nova Entertainment.
 - b. Mr Gordon's control of WIN and interests in Nine.

Similarly, please also consider the extent to which the Potential Transaction is likely to provide any of the entities listed in 10(a) and (b) with an increased ability or incentive to bundle their services with those offered by Ten and/or Multi Channel Network.

In responding to this question, please take into account the various platforms of advertising opportunities offered by Ten and the entities identified in question 10(a) and (b).

11. What (if any) impact will the potential transaction have on the ability of acquirers of advertising opportunities to negotiate favourable commercial arrangements with suppliers of advertising opportunities?

In responding to this question, please consider:

- a. the extent to which acquirers of advertising opportunities have negotiating power when negotiating with suppliers of advertising opportunities
- b. where that negotiating power comes from (for example, whether acquirers are able to bypass suppliers by producing content in-house)
- c. whether that power would change post-transaction.

Other information or competition issues

12. Please provide any additional information or comments, or identify other competition issues, that you consider relevant to the ACCC's consideration of the potential transaction under section 50 of the Act.