

9 July 2021



Tom Lyle
Australian Competition and Consumer Commission
via email: exemptions@acc.gov.au

Dear Mr Lyle,

Re: Telco Together Foundation & Ors application for authorisation AA1000555

The Australian Communications Consumer Action Network (ACCAN) thanks the Australian Competition and Consumer Commission (ACCC) for the opportunity to comment on the Telco Together Foundation (TTF) application for authorisation.

ACCAN is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards communications services that are trusted, inclusive and available for all. We represent the views of our broad and diverse membership base, which includes groups such as community legal centres, disability advocacy organisations, indigenous organisations, farmers' federations, financial counsellors, parents' groups, regional organisations, seniors organisations, and other individual members.

While ACCAN is supportive of the efforts of TTF and its members to reduce instances of modern slavery practices in their operations and supply chains, we have a number of concerns with the authorisation application. We outline our concerns below and make some suggestions for how these could be addressed to ensure future action on this topic appropriately prevents anti-competitive conduct and protects the long-term interests of consumers.

Parties to the Proposed Conduct

ACCAN understands that this application extends to both current and future TTF members. We note that the application anticipates that more TTF members may sign the Australian Telecommunications Leadership Statement on Human Rights and Modern Slavery (Industry Statement) in due course, which we assume means that these members would be invited to participate in the governance of TTF's work in this space.

However, the application doesn't explicitly state this, with the Roundtable Members appearing to be only those who are both founding TTF members and signatories to the Industry Statement.¹ If the collaborative action to reduce instances of modern slavery

¹ As outlined in section 1.5 (p3) of the authorisation application.

practices in the telecommunications industry is to be comprehensive, surely all telecommunications providers (including those who are not TTF members) should be invited to participate in the information gathering exercise which currently appears limited to Roundtable Members. If the Roundtable is limited to Telstra, Optus, TPG Telecom, Vocus, Amaysim and Aussie Broadband, this would in turn limit the information gathered about potential modern slavery risks within the broader telecommunications supply chain.

In addition, ACCAN is concerned that ‘the information gathering exercise will be carried out via a “self-assessment” questionnaire that will be issued by each Roundtable Member to a selected suite of their respective suppliers’.² In this, there is no guarantee that *all* suppliers will be engaged in this process, which could undermine the efforts of this group. ACCAN’s view is that all suppliers used by the telecommunications industry must be involved in this process. We are concerned that excluding them from this assessment could lessen competition and lead to consumer detriment.

Finally, while page 4 of the authorisation application outlines that responses to the Roundtable-administered self-assessment questionnaire will be shared with other Roundtable Members on a de-identified basis, we are concerned that Roundtable Members may share suppliers and may receive almost identical reports, allowing them to possibly (through processes of elimination and knowledge of their competitors) identify other suppliers discussed in that forum. If this information is not to be shared with the broader TTF membership (except under the last resort Proposed Conduct), this could create inequities of information between Roundtable Members and broader TTF membership. We are concerned this may increase the risk of anti-competitive conduct, which in turn could adversely affect consumers. ACCAN does not feel that this risk has been adequately explored in the authorisation application.

Reporting commitments

To ensure that this work does not lessen competition, it will be important for the ACCC to monitor the work of the Roundtable closely. ACCAN suggests that an ACCC representative be required to attend each Roundtable meeting as an observer. While the Competition Protocol included as Annexure E appears comprehensive, adherence to this Protocol is essential, and requiring an observer to be present at Roundtables would help ensure Roundtable participants are adhering to these rules.

Term of authorisation sought

Although we share TTF’s hope that removing modern slavery practices from the telecommunications industry operations and supply chains will be complete within 5 years, ACCAN acknowledges that the efforts of TTF members will likely extend beyond this period. As such, we believe that if this authorisation is to be granted, it should be granted for an initial

² As per p4 of the authorisation application.

one-year period, after which a mandatory review would be required. After the successful completion of this review at the one-year mark, ACCAN would support a rolling three-year extension of the authorisation, with mandatory reviews at the end of each extension period. We believe these reviews would facilitate transparency about TTF's work in this space and would allow TTF and its members the flexibility that may be required to respond to emerging issues in the future.

Public benefits and detriments

The public benefits listed in TTF's authorisation application are quite high level, and some of them appear to relate directly to benefits gained by those involved in the collaborative action, rather than the benefits that will be realised for consumers and the general public. As such, ACCAN would like more specific information about how the different parts of the Proposed Conduct incorporates a public benefit requirement, particularly given that the Proposed Conduct would be a last resort.³

Additionally, ACCAN queries whether the goals of TTF members could be achieved without this authorisation application being granted. Given the amount of work that each proposed Roundtable Member is currently doing, as outlined in their respective reports to the *Modern Slavery Act 2018* register,⁴ we question whether the authorisation is necessary above and beyond their existing efforts (noting of course that some telecommunications providers referenced their ongoing work with TTF in their *Modern Slavery Act 2018* statements).

ACCAN believes it is vital that all telecommunications providers continue doing their due diligence when it comes to their supply chains and continue to progress their individual efforts to reduce modern slavery in their sphere of influence. Given the authorisation application mentions that this work will supplement providers' obligations under the *Modern Slavery Act 2018*,⁵ we feel that the TTF work should also supplement the efforts of smaller providers who are not currently obliged to report under the *Modern Slavery Act 2018*.

Finally, ACCAN suggests greater specificity around the type of information that may be shared under the Proposed Conduct. If this is not possible, our view is that the ACCC should assess the types of information that TTF members want to exchange and the purpose this sharing would serve, with the potential to place limits on this. This would help protect consumers by reducing the risk of anti-competitive conduct.

Confidential Annexures

We assume that Annexure D is a statement from Minister Paul Fletcher, however, we are unsure of this given that publication of this statement has been restricted. Given the existence of the *Modern Slavery Act 2018*, the international human rights instruments to which

³ As per p5 of the authorisation application.

⁴ Available: <https://modernslaveryregister.gov.au/>

⁵ As per p2 of the authorisation application.

Australia is party, and Minister Fletcher's endorsement of the Industry Statement, we believe it is highly likely that the Minister has used the statement to support efforts to remove modern slavery from the communications industry. Regardless, ACCAN is concerned as to why this statement has been kept confidential. We feel it is quite unusual for the Minister's statement to not be published and consequently query why this has occurred and request greater transparency regarding the contents of the statement.

ACCAN thanks the ACCC for the opportunity to provide our feedback on this matter. Please do not hesitate to contact us should you require clarification or additional information on any of the issues raised in our response.

Yours sincerely,

Meredith Lea
Policy Manager