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Restriction of publication of part claimed for column 2 of the second table in paragraph 2.3, the final sentence in section 4 and Confidential Annexures C and D.

**Application for authorisation under s 88(1) of
the *Competition and Consumer Act 2010* (Cth)**

Lodged by:

**Telco Together Foundation on behalf of itself and its
members**

15 March 2021

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1 Summary

1.1 Background

This application is made by Telco Together Foundation (TTF), on behalf of:

- (a) itself and its trustee; and
- (b) the members of TTF,

(the **Parties**).

The Australian telecommunications industry represents annual revenues of over \$40 billion, employing more than 70,000 people and providing essential connectivity for almost every business, home and consumer in Australia.

TTF is a registered charity that was launched in July 2012, with the objective of providing a platform to enable the telecommunications industry to make important social contributions. TTF currently has 21 member organisations.

TTF's activities focus on the following two key work streams:

- (a) creating strategic community projects that build on telecommunications technology, reach and resources to support the community; and
- (b) promoting community engagement in the industry by increasing social awareness and creating more opportunities for volunteering, fundraising and workplace giving.

1.2 Modern slavery

The term 'modern slavery' describes situations where offenders use coercion, threats or deception to exploit victims and undermine their freedom. Practices that constitute modern slavery can include human trafficking, slavery, servitude, forced labour, debt bondage, forced marriage, and forms of child labour.¹ Under the International Labour Organisation Convention No. 138, 182 and 190, "child labour" is defined as work that deprives children of their childhood, their potential and their dignity and that harms their physical and mental development. A "child" is defined as anyone under 18 years. The convention sets the minimum age for admission to work at 15 years (13 years for light work), and 18 years for hazardous work.²

While the term "modern slavery" does not include practices like substandard working conditions or underpayment of workers, these practices are also harmful and may be present in some situations of modern slavery.³

The United Nations and Walk Free Foundation estimate there are over 40 million victims of modern slavery around the world. Around 25 million of these victims are in the Asia Pacific region, and 16 million are exploited in the private economy.⁴

Following the introduction of the *Modern Slavery Act* in the United Kingdom in 2015, the Australian Government enacted the *Modern Slavery Act 2018 (Cth) (Modern Slavery Act)*, which came into force on 1 January 2019. The Modern Slavery Act establishes a national reporting requirement for entities that have an annual consolidated revenue of more than \$100 million. Reporting entities must prepare annual Modern Slavery Statements, which must set out:

- (a) the risks of modern slavery practices in the global operations and supply chains of the

¹ See, e.g. Australian Department of Home affairs, [Modern Slavery](#) (10 August 2020).

² For further information, please visit <https://www.ilo.org/ipec/facts/iana-en/index.htm>

³ Ibid.

⁴ See, e.g., [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#) (2017).

reporting entity;

- (b) the actions taken by the reporting entity to assess and address those risks, including due diligence and remediation processes; and
- (c) how the reporting entity assesses the effectiveness of such actions.

The Australian Government publishes these Modern Slavery Statements through an online register.

In requiring large organisations to lodge annual statements which explain what businesses are doing to assess and address risks of modern slavery in operations and supply chains, the Modern Slavery Act is designed to (amongst other things) increase business awareness of modern slavery risks and improve transparency across global supply chains.

In addition, the UN Guiding Principles on Business and Human Rights outline that businesses have a responsibility to respect human rights, which includes acting to prevent, mitigate and, where appropriate, remedy modern slavery within operations and supply chains.

1.3 TTF's focus on modern slavery

TTF, as an entity capable of providing a unified platform that brings together 21 of the leading organisations in the Australian telecommunications industry, believes it is well placed to make an important social contribution, by drawing on their core capabilities, strengths and access to technology.

Modern slavery has been identified by TTF's Industry Impact Hub as one of two significant issues confronting the community, along with domestic and family violence. TTF members strongly believe there is no place for modern slavery practices in their day-to-day operations or supply chains, and are committed to taking action to eliminate these practices.

TTF is focusing on modern slavery because the Australian telecommunications industry has extensive and complex supply chains across the country, as well as in the Asia Pacific region, where it is understood that a significant proportion of modern slavery occurs.⁵ The industry's operations and supply chains have a significant environmental, economic and social footprint.

The nature and extent of modern slavery means there is a risk that it may be present in the telecommunications industry's operations and supply chains, such as in the working conditions of some contracted labour or the manufacturing and distribution processes of some products.

For the Australian telecommunications industry, the modern slavery risks in its supply chains will inevitably include suppliers that have operations in jurisdictions with developing economies and less-sophisticated employment laws, including many parts of the Asia Pacific and south-east Asian regions.

The legislative regime established via the Modern Slavery Act has given important statutory recognition to, and raised awareness of, the modern slavery risks facing Australian businesses. However, TTF and its members are firmly of the view that this regime needs to be supplemented by proactive and meaningful engagement with the risks by all business groups.

1.4 Industry Statement

On 2 December 2020, TTF published a leadership statement on human rights and modern slavery (**Industry Statement**) that has been signed by 6 founding members, being:

- Telstra;

⁵ See, e.g., [Explanatory Memorandum](#). Modern Slavery Bill 2018, para 4.

- Optus;
- TPG Telecom (formerly Vodafone Australia);
- Vocus;
- Aussie Broadband; and Amaysim.

The intention behind the Industry Statement is for TTF members to share information and work cooperatively to identify and address modern slavery practices in their operations and supply chains.

A copy of the Industry Statement is included at Annexure A. It is anticipated that more TTF members may sign the Industry Statement in due course.

A copy of the media release accompanying the release of the Industry Statement is included at Annexure B of this submission.

Clear public commitment

The publication of the Industry Statement coincided with the United Nation's International Day for the Abolition of Slavery. TTF targeted this date in recognition that was an important symbolic occasion, and with the intention that the release of the Industry Statement would assist in underlining (and publicising) the commitment that TTF and its members want to make in advancing of the cause of addressing and extinguishing modern slavery practices within the industries that support telecommunications in Australia.

1.5 Implementation of TTF's objectives

Governance

TTF's policy initiatives to support the objectives set out in the Industry Statement to combat modern slavery will be conducted principally by each of its members, with overall coordination of the initiatives being guided by the TTF Modern Slavery Roundtable (**Roundtable**).

The Roundtable will be comprised of a representative from TTF and one from each of the founding TTF members that are signatories to the Industry Statement (**Roundtable Members**). [For completeness, any TTF member that agrees to the Competition Protocol can become a Roundtable Member.](#)

The Roundtable will meet on a quarterly basis to discuss matters relating to modern slavery issues and to coordinate some activities of TTF members, including the information gathering exercise (see below), [the development of non-binding TTF policies \(Policies\)](#), and any matter that involves any Proposed Conduct.

Beyond the initial information-gathering exercise, it is anticipated that the Roundtable would coordinate any further projects or initiatives (such as a more targeted supplier education campaign) on behalf of TTF and its members in the future.

Information gathering exercise

With the publication of the Industry Statement, in 2021 TTF and its members will move to the next phase of their policy objectives, which will include practical actions such as the use of information gathering measures to better identify and understand the areas of potential modern slavery risk within the telecommunications supply chain.

[In particular, and as noted above, there is a recognition that within the telecommunications supply chain there are a number of suppliers located in, or sourcing materials from, jurisdictions with developing economies and less-sophisticated employment laws, including many parts of the](#)

[Asia Pacific and south-east Asian regions.](#)

[Some of these businesses rely on outputs or services that are sourced or supplied via a low-skilled workforce. These are the kinds of circumstances that lead to an increased risk that the supply chain includes illegal forms of exploitation, such as the use of forced labour or child labour. For example:](#)

[informal or “artisanal” mining for commodities such as cobalt, which is a key input into mobile phone batteries;⁶ or](#)

[factories producing electronic components that use foreign contract workers from poor or disadvantaged backgrounds that have been engaged by unregulated recruiting agencies.⁷](#)

[To emphasise the nature of the risks, according to the Global Slavery Index produced by the Walk Free Foundation, in 2018 the products with highest import value into Australia \(more than US\\$7m in total\) that posed a risk of modern slavery in the supply chain were electronic and telecommunications equipment such as mobile phones, laptops and computers.⁸](#)

~~The~~ [Accordingly, the](#) goal of the information gathering exercise will be to:

- support the identification of modern slavery risks;
- foster collaborative efforts between suppliers and organisations to address these risks;
- improve transparency; and
- identify areas for further due diligence.

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. The questionnaire, which will be issued confidentially to each supplier, will seek information from every respondent about their approach to modern slavery practices. The questions posed to each supplier will cover areas such as:

- the supplier’s current approach to policies and training on modern slavery risks in its own business;
- the extent of any due diligence a supplier conducts on the upstream supply chains for its core materials;
- whether the supplier has procedures in place to ensure child labour is not being used within its organisation or supply network;
- whether the supplier engages in any practices that could indicate a risk of forced labour, bonded labour or human trafficking;
- the employment conditions (both legal and practical) that the supplier has in place for its employees; and
- what grievance mechanisms, reporting requirements or other measures a supplier has in place for concerns to be addressed.

[A copy of the current draft of the questions to be put to suppliers under the self-assessment](#)

⁶ See, for example, <https://www.amnesty.org/en/latest/campaigns/2016/06/drc-cobalt-child-labour/>

⁷ See, for example, https://www.verite.org/wp-content/uploads/2016/11/ElectronicsMalaysia_MigrantWorkers_WhitePaperFINAL3.pdf

⁸ <https://www.globalslaveryindex.org/2018/findings/country-studies/australia/>

[questionnaire is set out as Confidential Annexure C.](#)

The suppliers' responses to each questionnaire will be received by the Roundtable Member that issued the questionnaire to the supplier. To the extent that information from the supplier responses is shared with other Roundtable Members during the initial information gathering exercise, this will only be done:

- (a) on a de-identified basis (i.e. so the identity of the supplier is not disclosed to other Roundtable Members); and
- (b) in accordance with the Competition Protocol that will govern all TTF members' actions in connection with its modern slavery initiatives (as set out in Annexure E).

Following receipt of the supplier responses, it is anticipated that the Roundtable will meet to discuss the responses before Roundtable Members will individually and unilaterally determine what (if any) further action to take in response to any aspects of concern flowing from the responses.

Focus on constructive engagement

Importantly, as a matter of policy, TTF and its members are seeking to work with their suppliers constructively to build awareness of the risks relating to modern slavery practices and, where applicable, encourage suppliers and other service providers to build in appropriate commercial processes and other measures to counter this risk.

TTF and its members acknowledge that adopting a positive and constructive approach with suppliers is far more likely to be effective in achieving their objectives. In fact, there is a recognition amongst TTF and its members that a decision to act punitively against a supplier ~~(such as via a collective boycott)~~ would carry a significant risk of making any modern slavery issues associated with that supplier much worse, and that such action would amount to punishment for an already affected community.

~~The Proposed Conduct would be a last resort~~

~~Accordingly, although the ability to be able to take collective action is part of the Proposed Conduct, TTF and its members acknowledge and agree that any such conduct:~~

~~(c) — may only be implemented in compliance with the Competition Protocol that has been developed to govern the way in which TTF and its members will manage all aspects of the Proposed Conduct (as set out as Annexure E); and~~

~~(d) — would only be used sparingly (if ever) as a means of trying to achieve meaningful change for businesses that supply the telecommunications industry in Australia.~~

A full description of the Proposed Conduct in relation to the Industry Statement is set out in section 3. It will be a condition for each of TTF and any of its members to have executed a form of the Competition Protocol before they may participate in the Proposed Conduct.

1.6 ~~1.6~~ Application for authorisation

The Parties are seeking authorisation under section 88(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) to engage in the Proposed Conduct, as described in section 3 of this application.

2 Parties to the Proposed Conduct

2.1 Applicant

Name, address (registered office), telephone number and ACN	Contact person's name, position, telephone number and email address	Short description of business carried out by applicant
Telco Together Foundation (Trustee for the Telco Together Fund: ABN 91 256 972 804) 452 Flinders Street Melbourne VIC 3000 (03) 9699 5644	Warren Sainsbury General Manager [REDACTED]	Registered charity providing a platform for the telecommunications industry to make important social contributions

2.2 Address in Australia for service of documents

Simon Cooke
Partner, King & Wood Mallesons
Level 27, Collins Arch
447 Collins Street, Melbourne VIC 3000
T [REDACTED]
M [REDACTED]
[REDACTED]

2.3 Other persons who propose to engage (or may engage) in the Proposed Conduct

In addition to TTF, authorisation is sought in respect of the members of TTF, which may change from time to time. The current members of T⁶TF are as follows:

Name	Name
Telstra Corporation Limited	Globe Telecom
Optus	Ignite Telecom
Vodafone Australia	MATE
Vocus Group	More Telecom
Amaysim	NBN Co

⁹ The member list is accurate as at the date of this application. A full list of membership details is available via the following section of TTF's website <https://www.telcotoaether.org/about-us/our-members/>

~~⁶ The member list is accurate as at the date of this application. A full list of membership details is available via the following section of TTF's website <https://www.telcotoaether.org/about-us/our-members/>~~

.au Domain Administration	Next Business Telecom
Aussie Broadband	Next Telecom
Axicom	Skybridge
Cisco	Boomerang
Commander	Mint Telecom
Ericsson	MNFP Group

The TTF members that will be the initial signatories to the Industry Statement are as follows:

Name, address (registered office), telephone number and ACN	Contact person's name, position, telephone number and email address	Short description of business carried out by applicant
Telstra Corporation Limited ACN 051 775 556 Level 41, 242 Exhibition Street, Melbourne, 3000		Telecommunications provider
Optus		Telecommunications provider
TPG Telecom		Telecommunications provider
Vocus Group		Telecommunications provider
Amaysim		Telecommunications provider
Aussie Broadband		Telecommunications provider

3 Proposed Conduct

3.1 Description of conduct for which authorisation is sought

The Parties seek authorisation to discuss, enter into or give effect to any contract, arrangement or understanding, or engage in any conduct, for the purpose of cooperating to identify and address modern slavery practices in their operations and supply chains, ~~including to~~ [by way of the following](#):

- (a) share information about modern slavery risks identified in respect of specific suppliers;

- (b) collectively approach suppliers that are suspected of engaging in conduct that involves or supports modern slavery practices, for the purpose of indicating that ~~the~~ TTF members ~~may not acquire goods or services from~~ will expect the supplier ~~if they do not to~~ address those concerns; and

~~(c) — as a last resort measure, decide not to acquire goods or services from a particular supplier or group/class of suppliers, where the supplier has not taken sufficient action to address these concerns.~~

- (c) develop non-binding Policies in relation to modern slavery risks and practices in their operation and supply chains that TTF members could refer to in order to guide their own individual responses to these risks.

(the **Proposed Conduct**).

The Proposed Conduct:

- (a) may only be carried out by TTF and its members in accordance with the Competition Protocol (as set out in Annexure E) that has been prepared specifically in order to govern the way in which the Proposed Conduct is undertaken;
- (b) will not involve collective decisions relating to the price at which the Parties acquire or supply goods or services; and
- (c) will not be compulsory for TTF Members, who will each be encouraged to make their own decision as to whether or not to become involved with TTF's efforts.

3.2 Reporting commitments

If the ACCC authorises the Proposed Conduct for the duration of the authorisation, the Parties will commit to:

- (a) providing a report to the ACCC:
 - (i) following each meeting of the Roundtable (in the form of minutes from the Roundtable meeting); and
 - (ii) otherwise not less than 10 business days prior to the Parties taking any material actions which involve the Proposed Conduct; and
- (b) providing any information that the ACCC reasonably requests (through a contact person nominated by the Parties) about any proposed or implemented Proposed Conduct.

The Parties acknowledge that authorisation is a public process, and that material submitted by the Parties pursuant to this authorisation (including the reporting contemplated by this section 3.2) shall be required to be placed on the public register. However, the Parties anticipate that some of the materials reported to the ACCC will contain confidential or commercially sensitive information which the Parties may need to request be withheld from the publication, in accordance with the ACCC's usual processes for protecting confidential information.

3.3 Term of authorisation sought

The Parties seek authorisation to engage in the Proposed Conduct for a period of 5 years. This term reflects that the process of eliminating modern slavery practices from supply chains is complex and is not likely to be achieved in one single action. Addressing modern slavery is likely to require continuing efforts over a number of years, as well as ongoing vigilance to ensure that modern slavery practices do not re-enter supply chains.

3.4 Provisions of the CCA which might apply to the Proposed Conduct

TTF members compete in supplying telecommunications goods and services to consumers in Australia. As a result, there may be circumstances where two or more TTF members compete in respect of the acquisition of goods or services from upstream suppliers, for example where those goods or services are essential inputs in the goods or services supplied downstream. Absent the authorisation, the Proposed Conduct may contravene sections 45AF, 45AG, 45AJ, 45AK, and/or 45 of the CCA.

4 Public benefits

The Parties consider that the Proposed Conduct will likely result in the following public benefits:

- (a) **Protecting and promoting human rights:** In passing the Modern Slavery Act, the Australian legislature recognised that modern slavery practices are “major violations of human rights and serious crimes”.⁷⁹ The Proposed Conduct seeks to stamp out the occurrence of modern slavery practices in TTF members’ supply chains, and in doing so, seeks to protect workers within the supply chain from human rights violations of this nature.
- (b) **Allowing TTF members to take more effective action to address modern slavery:** The Proposed Conduct directly supports the primary objective of the Modern Slavery Act, which is to “assist the business community in Australia to take proactive and effective actions to address modern slavery”.⁸¹⁰ Through the Proposed Conduct, TTF members will take proactive steps to identify and address modern slavery in their supply chains. Suppliers are more likely to take action to address modern slavery risks in their own operations and supply chains if the Parties can collectively approach suppliers and jointly indicate that TTF members may not deal with the supplier if they do not take sufficient action to address those risks.
- (c) **Efficiencies in sharing information:** The supply chains involved in the telecommunications industry can be complex, and identifying modern slavery risks throughout these supply chains is challenging and resource intensive. Allowing the Parties to share information about modern slavery risks identified in respect of specific suppliers creates efficiencies and cost savings. This in turn will allow TTF members to take more effective and comprehensive action to address modern slavery in their supply chains, in circumstances where some TTF members may otherwise lack the resources to do so.
- (d) **Raising supply chain standards within the Australian telecommunications industry and more generally:** The Proposed Conduct has the potential to reduce the extent to which modern slavery is involved in supply chains to the telecommunications industry, including by setting an example for other telecommunications providers, and by incentivising suppliers to the industry to examine their operations and improve their workplace practices. This may have the flow-on benefit of reducing the incidence of modern slavery practices in operations that are related to the telecommunications industry supply chain.
- (e) **Greater transparency and improved consumer confidence in the telecommunications industry supply chain:** The Proposed Conduct will allow Australian consumers to have greater confidence about the integrity of the TTF members’ supply chains. The Proposed Conduct may also enable TTF members to provide more specific information in their annual Modern Slavery Statements about the risks of, and actions taken to address, modern slavery within their supply chains. This, in

⁷⁹ [Explanatory Memorandum](#), Modern Slavery Bill 2018, para 3.

⁸¹⁰ [Explanatory Memorandum](#), Modern Slavery Bill 2018, para 2.

turn, would mean that consumers may be better informed about the modern slavery risks in telecommunications goods and services in Australia.

In relation to the overall public benefit of the parties' initiatives and the Proposed Conduct, [enclosed as Annexure D is a letter of support for the Industry Statement and the Parties' objectives from the Hon Paul Fletcher MP, the Federal Minister for the Telecommunications, Cyber Security and the Arts.](#)

5 Public detriments

The Parties submit that the Proposed Conduct is likely to result in minimal, if any, public detriments, having regard to the following:

- (a) The Proposed Conduct relates only to the acquisition of upstream inputs from suppliers and will not reduce any incentives for TTF members to compete vigorously in downstream markets for the supply of telecommunications goods or services to Australian consumers.
- (b) The Proposed Conduct does not extend to any agreements about the price at which the Parties will acquire or sell any goods or services.
- (c) Participation in any Proposed Conduct will be entirely voluntary for TTF members.
- (d) The Competition Protocol in Annexure E will apply to ensure information sharing between the Parties is limited to sharing information that it is reasonably necessary for, and relates to, the Proposed Conduct. The Parties will not, for example, share commercially sensitive information relating to downstream pricing, customers, or operational costs.

6 Interested parties

The Parties have identified the following entities who may be relevant interested parties for the purposes of this application:

Party	Contact details
Australian Communications (02) 9288 4000 / info@accan.org.au	
Consumer Action Network (ACCAN)	PO Box 639 Broadway NSW 2007
Australian Mobile	(02) 8920 3555 / contact@amta.org.au
Telecommunications Association (AMTA)	PO Box 115 Dickson ACT 2602
Australian Industry Group (Ai Group)	1300 55 66 77 / info@aigroup.com.au Level 2/441 St Kilda Road Melbourne VIC 3004
UN Global Compact (Australia)	+61 491 234 061 / secretariat@unglobalcompact.org.au
	15 Lygon St Carlton VIC 3053
International Labour Organisation (ILO)	+41 (0) 22 799 6111 / ilo@ilo.org 4 Route des Morillons CH-1211 Geneve 22 Switzerland
Global Enabling Sustainability Initiative (GeSI)	+32 2 331 15 31 / info@gesi.org Scotland House Rond Point Schuman 6 1040 Brussels Belgium
Australian Border Force, Modern Slavery Business Engagement Unit	slavery.consultations@abf.gov.au GPO Box 241 Melbourne VIC 3001
Walk Free Foundation	+61 8 6460 4949 / info@walkfree.org PO Box 3155, Broadway Nedlands WA 6009
Anti-Slavery Australia	+61 2 9514 9660 / antislavery@uts.edu.au University of Technology Sydney Faculty of Law PO Box 123 Broadway NSW 2007

7 Declaration by applicant(s)

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).

Signature of authorised person Name:Warren Sainsbury

Position title:General Manager - Telco Together Foundation

Date:

Telco Together Foundation

MS Competition Law Protocol

Arrangements to support human rights and combat modern slavery

1 Introduction

The Telco Together Foundation (**TTF**) is proposing to publish an Industry Statement on human rights and modern slavery to be signed by its members (**the Parties**).

The Parties have sought authorisation from the Australian Competition and Consumer Commission (**ACCC**) under section 88(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) to engage in the Proposed Conduct, including sharing information and working cooperatively to identify and address modern slavery risks in their operations and supply chains.

This Protocol seeks to minimise the risk of the Parties engaging in conduct that breaches the CCA when:

- engaging in the Proposed Conduct, which is described in clause 6.1 below; and
- participating in meetings or other activities of the TTF.

2 Preliminary

2.1 Commencement

The Parties acknowledge and agree that no Proposed Conduct described in this Protocol may be undertaken unless, and until, the ACCC authorisation referred to in section 1 of this Protocol has been obtained.

2.2 Agreements and requirements

(a) The Parties agree to comply with each of:

- (i) the CCA;
 - (ii) this Protocol; and
 - (iii) the terms of the ACCC authorisation,
- when engaging in the Proposed Conduct.

(b) Prior to engaging in any Proposed Conduct, each Party must:

- (i) execute a copy of this Protocol; and
- (ii) ensure any representatives that may be engaged in any Proposed Conduct:
 - (A) are briefed on competition law risks associated with the Proposed Conduct;

- (B) are provided with a copy of this Protocol; and
- (C) have executed a copy of the Undertaking set out in **Schedule 1** to this Protocol,

before they attend any meeting or activity that relates to the Proposed Conduct.

3 Competition law obligations

The CCA prohibits anti-competitive conduct, including:

- (a) **Cartel conduct:** arrangements between competitors to:
 - (i) fix prices;
 - (ii) restrict the supply or acquisition of goods or services by parties to the arrangement;
 - (iii) allocate customers or territories; or
 - (iv) rig bids.
- (b) **Concerted practices:** other cooperation between competitors which has the purpose, effect or likely effect of substantially lessening competition, in particular, sharing Competitively Sensitive Information with competitors such as future pricing intentions.
- (c) Any **contract, arrangement or understanding** which has the purpose, effect or likely effect of substantially lessening competition.
- (d) Any **conduct by a company with market power** which has the purpose, effect or likely effect of substantially lessening competition.
- (e) **Collective boycotts:** where a group of competitors agree not to acquire goods or services from, or not to supply goods or services to, a business with whom the group is negotiating, unless the business accepts the terms and conditions offered by the group.

A contravention of the CCA could result in significant penalties for the Parties and their respective employees. Cartel conduct may also result in criminal sanctions, including jail terms for individuals.

In this Protocol, **Competitively Sensitive Information** means confidential information relating to a Party which if disclosed to a competitor could affect its current or future commercial strategies, such as pricing information, customer terms and conditions, supply terms and conditions, sales, marketing or procurement strategies, product development, margins, costs, capacity or production planning.

4 Guiding Principles

4.1 Permitted activities

The Parties may do the following:

- (a) the Parties **may** discuss industry-wide developments and challenges such as regulatory and government policy changes or international developments, provided that no Competitively Sensitive Information is discussed or shared between the Parties;
- (b) the Parties **may** prepare joint submissions for industry inquiries, market studies or parliamentary committees, provided that no Competitively Sensitive Information is shared between the Parties;
- (c) the Parties **may** commission reports or analysis on matters of importance to the telecommunications industry, provided that no Competitively Sensitive Information is shared between the Parties;
- (d) the Parties **may** consult with government on policies or public concerns relevant to the telecommunications industry; and
- (e) the Parties may engage in the Proposed Conduct, subject to the terms of any ACCC authorisation and this Protocol.

4.2 Restricted conduct

The Parties must not do the following (except where it is reasonably necessary for, or related to, the Proposed Conduct):

- (a) Competitively Sensitive Information **must not** be shared between the Parties;
- (b) the Parties **must not** discuss or agree on:
 - (i) the price or terms of customer contracts;
 - (ii) the customers or geographic areas to be supplied;
 - (iii) suppliers or terms of supply contracts; or
 - (iv) production planning; and
- (c) the Parties **must not** enter into an agreement or arrangement which could have an impact on competition, without first seeking legal advice:
 - (i) except where the agreement or arrangement forms part of the Proposed Conduct; and
 - (ii) subject to ACCC authorisation being obtained for the Proposed Conduct.

5 Compliance procedures for meetings

5.1 At a meeting

Discussions at meetings should be limited to those topics identified in the agenda. If the discussion veers into the “must not do” areas above, the Parties should say that they want the discussion to stop and, if it does not, leave the meeting.

Depending on the nature of the topics that will be discussed at a meeting, a lawyer may attend as an observer.

5.2 After a meeting

Formal minutes of meetings may be taken as appropriate which will be circulated to the Parties for confirmation.

5.3 If the Parties have any concerns

If any of the Parties have any concerns regarding the competition law implications of any issue being discussed at any meeting, the Parties must raise the matter immediately.

6 Proposed Conduct

6.1 Terms of authorisation sought

The Parties have sought authorisation from the ACCC under section 88(1) of the CCA to discuss, enter into or give effect to any contract, arrangement or understanding, or engage in any conduct, for the purpose of cooperating to identify and address modern slavery practices in their operations and supply chains, including to:

- (a) share information about modern slavery risks identified in respect of specific suppliers;
- (b) approach suppliers that are suspected of engaging in conduct that involves or supports modern slavery practices, for the purpose of indicating that Parties ~~may not acquire goods or services from~~ will expect the supplier ~~if they do not to~~ address those concerns; and
- (c) develop non-binding TTF policies (**Policies**) in relation to modern slavery risks and practices in their operation and supply chains that TTF members could refer to in order to guide their own individual responses to these risks, as a last resort measure, and subject to the principles in clause 6.4, ~~decide not to acquire goods or services from a particular supplier or group/class of suppliers, where the supplier has not taken sufficient action to address those concerns.~~

6.2 Guiding principles for the Proposed Conduct

The approach of the Parties when engaging in the Proposed Conduct will be principally based on the goal of constructive collaboration with suppliers in order to build awareness of the risks relating to modern slavery practices and, where applicable, encourage suppliers and other service providers to establish appropriate processes and other measures to counter this risk.

6.3 Information sharing

Information sharing between the Parties as described in clause 6.1(a) above must be limited to information that is reasonably necessary for, and relates to, the Proposed Conduct. For the avoidance of doubt, the Parties must not share confidential and commercially sensitive pricing information, marketing or procurement strategies, product development, margins, costs, capacity or production planning.

6.4 Independent decision making ~~Principles in relation to any supplier boycott~~

While TTF may develop Policies in relation to how to deal with modern slavery risks and practices in their operation and supply chains for TTF members in accordance with 6.1(c), each of the Parties shall ensure that:

- (a) no TTF Policy shall be (or be treated as) binding, or requiring any collective action by any one or more of the Parties other than in relation to Proposed Conduct;
- (a) any action taken by each of them in relation to whether or the following principles are observed prior to making any decision not to acquire (or continue to acquire) goods or services from a particular supplier or group/class of suppliers must be made, as described in clause 6.1(c) above (Supplier Boycott):
 - ~~(b) any form of Supplier Boycott is acknowledged a last resort measure only;~~
 - ~~(c) without limiting clause 6.4(a) a Supplier Boycott would only be a measure to consider;~~
 - ~~(d) in response to a demonstrated failure by a supplier to address a material concern regarding modern slavery risks; and~~
 - ~~(e) where the Parties have raised those concerns with the supplier, and after being given reasonable opportunities to do so, the supplier has failed to address those concerns; and~~
 - (b) in the limited circumstances outlined above, each of the Parties acknowledges and agrees to unilaterally and independently, and on consider and decide whether or not their own business will undertake a Supplier Boycott, and an entirely any such decision is entirely voluntary basis; and
- ~~(f)~~(c) no Party shall make or give effect (or attempt to make or give effect) to any contract, arrangement or understanding with any other Party in relation to any decision of a kind referred to in clause 6.4(b).

Signing page

(Party)

understands, accepts, and agrees to comply with and observe, all of the provisions of this Competition Protocol.

Signature of authorised representative of Party

Name and title of authorised representative of Party

Date

Schedule 1

Competition Protocol Undertaking

I have read, understand and undertake to comply with the Competition Protocol in the course of carrying out any activity that involves Proposed Conduct (as that term is defined in the Competition Protocol).

Dated: _____

Signature: _____

Name: _____

Position: _____

Company: _____