

From: [Cooke, Simon \(AU\)](#)
To: [Lyle, Tom](#); [Jack, Gabrielle \(AU\)](#)
Cc: [Channing, Darrell](#); [Kolacz, Miriam](#); [Haly, Anthony](#)
Subject: RE: AA1000555 – Telco Together Foundation & Ors – additional issues [SEC=OFFICIAL]
Date: Friday, 27 August 2021 7:26:19 PM
Attachments: [TTF Member legal entity names.xlsx](#)

Hi Tom

Apologies for the delayed timing of our response this evening.

Please see the responses from our client to each of your questions in the table below, and the attached information list which is responsive to question 6.

Further information to assist in assessing the application		TTF Response
<p>1. Description of the Proposed Conduct</p>	<p>We note the Proposed Conduct at section 3.1 is very broad (“<i>discuss, enter into or give effect to <u>any</u> contract, arrangement or understanding, or engage in <u>any</u> conduct ...</i>”). There is a narrower (subset) list of conduct, however as drafted these serve as examples of what the Applicants may do under the Proposed Conduct.</p> <p>Please clarify in more detail exactly the type of conduct for which TTF and its members seek authorisation, particularly what (if any) conduct they may engage in beyond the subset of conduct outlined in 3.1(a)-(c), and why this is necessary. Depending on this response, TTF may wish to consider narrowing the Proposed Conduct, for example specifying if the subset of items is intended to be an exhaustive list.</p>	<p>The description of the Proposed Conduct and the examples provided at 3.1(a)-(c) of the Application cover the field of the contemplated conduct.</p> <p>While there may be other initiatives the Parties wish to engage in specifically in relation to modern slavery as the projects progress, any such initiatives will not be outside the scope of the examples provided. Accordingly, the examples can be treated as exhaustive.</p> <p>In this regard, please also note the intended application of the Competition Protocol to conduct which does not fall within the scope of the Proposed Conduct (discussed further at question 4 below).</p>
<p>2. Future with vs without the Proposed Conduct</p>	<p>In applying the authorisation test, the ACCC compares the likely future with the conduct that is the subject of the authorisation, to the likely future without the conduct.</p> <p>We note the obligations under the <i>Modern Slavery Act 2018</i> (Cth) for relevant entities.</p>	<p>The Proposed Conduct will lead to public benefits that go beyond what can be achieved by the Modern Slavery Act requirements.</p> <p>For simplicity, and in the interests of reflecting the public process the ACCC has undertaken, TTF refers to the Australian Border Force (ABF) submission dated 6 July 2021, which observes:</p> <p style="text-align: center;"><i>“...guidance material developed by the ABF to support reporting entities to</i></p>

Please explain what TTF submits that the future without the Proposed Conduct would be (for example, whether the status quo would be maintained).

Please also clearly explain how the Proposed Conduct will lead to public benefits that are not already met by the Modern Slavery Act requirements. For example, if the Applicant's goal is to "*collectively approach suppliers that are suspected of engaging in conduct that involves or supports modern slavery practices*" (at section 3.1), please make clear how this will lead to a public benefit.

*comply with the Act encourages entities to 'consider how to engage with multistakeholder initiatives focused on addressing risks in particular sectors or geographic regions' as part of collaborative efforts to address modern slavery risks. **Businesses are encouraged to work together to share expertise and good-practice, increase their leverage with suppliers and pool resources where appropriate.***

Unlike the reporting requirements, entities are not required to follow these practical recommendations in order to comply with the Act, however they are considered best practice recommendations in advancing the policy intent behind the Act.

On this basis, the ABF considers TTF's proposed conduct is consistent with the objective of the Act, although not required by it. It is also consistent with Guidance materials developed by the ABF for reporting entities." (emphasis added)

TTF also refers to the Anti-Slavery Australia submission dated 9 July 2021, which notes that:

*"To assist entities with their obligations under the Modern Slavery Act 2018 (Cth), the Commonwealth Government has published Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities (Commonwealth Guidance) which draws from the United Nations Guiding Principles on Business and Human Rights (UNGPs) and recommends that entities collaborate with suppliers, civil society and other entities that are required to report under the Modern Slavery Act 2018 (Cth). **In order to address modern slavery, there will need to be collaboration across and among stakeholders...***

...The Commonwealth Guidance specifically outlines that, in addressing modern slavery, collaboration among entities can help entities to exchange information and enhance their leverage in order to effect change." (emphasis added)

As recognised by the above submissions, the Proposed Conduct directly aligns with the Commonwealth Guidance, which expressly encourages businesses to work together to

		<p>share expertise and leverage their positions with suppliers where appropriate.</p> <p>Through the Proposed Conduct, the Parties will adopt the ABF’s “best practice recommendations”, which will further advance the objectives of the Modern Slavery Act, and which are expected to have a greater impact in addressing modern slavery risks than can be achieved through the Act’s reporting requirements alone.</p> <p>In a future without the Proposed Conduct, the Parties would continue reporting on an individual annual basis where required to do so under the Modern Slavery Act.</p> <p>However, the ability of the Parties to reduce modern slavery in the telecommunications industry operations and supply chains would be limited if each Party is constrained to acting solely an individual basis. The Parties would not have the ability to collaborate to share relevant information and enhance their leverage with suppliers, which are strategies recognised by the Commonwealth Government, ABF and other stakeholders as necessary to address modern slavery in a meaningful way.</p>
<p>3. Public benefits</p>	<p>We note the stated public benefits in section 4 appear drafted on the assumption that TTF and its members <i>will</i> identify and take action to reduce modern slavery in their operations and supply chains. However, the Proposed Conduct as drafted is voluntary and much broader, and does not appear to necessarily lead to the stated public benefits.</p> <p>Please advise what public benefits will arise directly from Proposed Conduct and could not be achieved in the absence of authorisation.</p>	<p>The Proposed Conduct is a necessary pre-condition to achieving the public benefits outlined in section 4 of the Application. Evidently, the Parties cannot identify and take action to reduce modern slavery risks in their operations and supply chains if they are not aware that those risks exist. The information sharing aspect of the Proposed Conduct will allow the Parties to gather more comprehensive information about those risks. Further, collaboration between entities in addressing modern slavery is the recommended “best practice” to enhance the effectiveness of those actions, as recognised by the ABF and Anti-Slavery Australia submissions. The collective action aspects of the Proposed Conduct are consistent with this best practice recommendation.</p> <p>Accordingly the anticipated result of the Proposed Conduct will be that the Parties are in a better position (and much better equipped) to identify and address modern slavery risks in a more effective collaborative manner. This same level of joint coordination and collaboration could not be achieved in the absence of authorisation, and certainly not via the Modern Slavery Act individual reporting requirements alone.</p> <p>In a scenario where the Parties engaged in the Proposed Conduct and do not identify <i>any</i> modern slavery risks to address (which the Parties consider unlikely, given the nature and</p>

		<p>extent of modern slavery as outlined at section 1.3 of the Application), the public benefits in section 4 would still be achieved. For example, human rights will be promoted through the information gathering exercise, and an example will be set for supply chain standards generally, which may prompt other industry participants to examine their own operations. Furthermore, the efforts of TTF could also be expected to serve as a deterrent to the risks of future modern slavery conduct.</p>
<p>4. Competition Protocol</p>	<p>We note that <i>“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”</i> (section 1.5) and that the Proposed Conduct <i>“may only be carried out by TTF and its members in accordance with the Competition Protocol”</i> (section 3.1).</p> <p>Please clarify the status of the Competition Protocol vis-à-vis what is authorised. Is the Competition Protocol intended to be a requirement under authorisation (either as a condition of authorisation or that the conduct must remain consistent with the Competition Protocol to be authorised)?</p>	<p>The Parties will only engage in the Proposed Conduct to the extent it is authorised; conduct outside the scope of authorisation will not be undertaken. The Competition Protocol will govern the way in which TTF and its members will manage all aspects of the Proposed Conduct in order to ensure this is the case.</p> <p>The Competition Protocol acts as a safeguard to ensure TTF’s activities do not lead to any other competition concerns, which TTF considers is a prudent step given:</p> <ul style="list-style-type: none"> • The parties are (or may be) competitors; and • The Proposed Conduct has been framed narrowly, for the sole purpose of achieving the participant’s objectives in pursuing the public benefits outlined above.
<p>5. Roundtable members</p>	<p>We note that the TTF Modern Slavery Roundtable only includes representatives from TTF and each of the <i>‘founding TTF members that are signatories to the Industry Statement’</i> (section 1.5).</p> <p>Please confirm whether additional members of TTF will be invited to join the Roundtable, and if so, in what circumstances.</p>	<p>The Roundtable will be open to any TTF member who agrees to the Competition Protocol and becomes a signatory to the Industry Statement.</p> <p>As part of the reporting commitments outlined at 3.2 of the Application, TTF would expect to include details of any new members that have joined the Roundtable within the relevant reporting period in its report to the ACCC.</p>
<p>6. Parties to the Proposed Conduct</p>	<p>We note the list of other persons who propose to engage (or may engage) in the Proposed Conduct at section 2.3.</p> <p>Please provide the legal names of these parties.</p>	<p>Please see the attached spreadsheet in response to this question.</p> <p>The spreadsheet includes every current listed TTF member including one – Ignite Corporation – that has yet to formally execute the membership documents.</p> <p>We also note that two of these members,</p>

		Southern Phones and Hubify, have joint TTF since the original application was lodged.
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We would be happy to answer any further questions or discuss any aspect of the application if you'd like to.

Have a great weekend.

Regards

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