



21 July 2021
Tom Lyle
ACCC
Level 17
2 Lonsdale Street
Melbourne Vic 3000 By email: exemptions@accg.gov.au

Dear Tom,

Re: **AA1000555 – Telco Together Foundation – submission**

This short and non-confidential submission is made by Dr Rob Nicholls. I am an Associate Professor at the UNSW Business School.

I support the efforts of the Telco Together Foundation (TTF) and its members to eliminate modern slavery from their operations and supply chains. However, **the authorisation timetable in its current form must be amended** on process grounds. I set out my rationale and propose a solution for the problem created by TTF in its application.

TTF originally made a claim for confidentiality over a Ministerial Statement which was provided on a confidential basis as Annexure D (the **Secret Annexure**).

Section 89(5A)(b) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) provides:

the Commission may, if it is satisfied that it is desirable to do so by reason of the confidential nature of the matters contained in the document or the part of the document, or in the submission or the part of the submission, exclude the document or the part of the document, or particulars of the submission or of the part of the submission, as the case may be, from that register

The Commission excluded the Secret Annexure from the register until after the closing date for submissions from interested parties. The ACCC made a decision not to publish a redacted version of the Secret Annexure.

In my view, the ACCC could not reasonably be satisfied that it is desirable to exclude from the register an entirely benign general letter of support, consistent with public Commonwealth Government policy. Doing so has created a procedural problem with the authorisation application.

The problem is that TTF relied on the Secret Annexure in its claims of public benefit. As interested parties were unable to access the Secret Annexure, they were unable to determine whether the proposed authorisation has the claimed public benefits. If a redacted version of the Secret Annexure had been published, then interested parties would know which Minister had provided the statement and could have sought clarification from that Minister's office.

On 20 July 2021, TTF withdrew its claim for confidentiality over the Secret Annexure and a revised version of the public version of the TTF submission was published on the register. In respect of this revised version:

- (a) the first page revised version of the public version of the document entitled "Application Received" claims confidentiality over Annexure D; and
- (b) revised version of the public version of the document entitled "Application Received" is said to be dated 26 May 2021 despite the contents changing on 20 July.

The submissions of interested parties was required by 9 July 2021. Under s.90(6A) of the CCA, the ACCC must take submissions into account if they are received before the required submission date. However, the ACCC need not take submissions into account otherwise. The effect is that the ACCC's decision to exclude the Secret Annexure and then publish it after the date which submissions were due has resulted in interested parties not being given an appropriate opportunity to make comments on the application. This is not a minor issue. TTF relies heavily on the Secret Annexure in its claim of public benefits. As set out above, the absence of the Secret Annexure means that no interested party could comment in detail on the public benefit claims by TTF.

The solution to this issue is simple. The ACCC should "stop the clock" and then ask all interested parties if they wish to make a further submission taking into account the revised public version of the TTF application. This process would take no longer than a week and would not adversely affect the other dates set out in the register.

In the interim, the ACCC should ask TTF to change the claim of confidentiality over the Secret Annexure on page 1 of the revised version of the public version which was on the register at the date of this submission. The ACCC should make clear on the register that the version published on 20 July can be distinguished from the original

Interested parties would then have an opportunity to make informed comment on the proposed authorisation in its current. This authorisation is not related to COVID-19 and the short delay that would result from this approach should be acceptable to TTF.

If you would like to discuss the content of this letter with me, please email me on [REDACTED] or call me on [REDACTED]

Yours sincerely,

[REDACTED]

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