
Charter of Independence

in relation to the appointment of the ITA
Adjudicator by The Office of the ITA Limited

1 Background and purpose

- 1 The Company is to appoint a person to perform the role of the ITA Adjudicator for the purpose of the Structural Separation Undertaking and the Plan.
- 2 The purpose of this Charter of Independence is to enshrine the principles by which the ITA Adjudicator will perform his or her functions and exercise his or her powers autonomously and independently of Telstra, Wholesale Customers, NBN Co, the ACCC, government (whether federal, state, or territory), the Company, the Board and the Members.
- 3 This Charter of Independence has been approved by the ACCC in accordance with the Structural Separation Undertaking.

2 Terms of appointment of the ITA Adjudicator

The terms of appointment of the ITA Adjudicator must give effect to, and be consistent with, this Charter of Independence.

3 Functions and powers of the ITA Adjudicator

- (a) The ITA Adjudicator will be required to perform the functions and duties, and will have authority to exercise the powers, of the ITA Adjudicator as set out in the Structural Separation Undertaking and the Plan.
- (b) The ITA Adjudicator will not be given or assume any other functions, duties or powers unless approved by the ACCC.
- (c) The ITA Adjudicator will be required to:
 - (i) comply with the Terms of Appointment, the Structural Separation Undertaking and the Plan;
 - (ii) act in a manner that is consistent with the objectives of the ITA Process as set out in paragraph 3 of Schedule 5 of the Structural Separation Undertaking;
 - (iii) have regard to the law, good industry practice and what is fair and reasonable in the circumstances; and
 - (iv) pursue fair, just economical and expeditious resolution of ITA Disputes;when performing his or her functions and duties and exercising his or her powers.

4 Guaranteed independence of the ITA Adjudicator

4.1 ITA Adjudicator has authority to act independently

The ITA Adjudicator will have authority to make decisions autonomously and independently of the Company, the Board and the Members when performing his or her functions and duties and exercising his or her powers.

4.2 ITA Adjudicator must maintain independence

- (a) The ITA Adjudicator will be required to perform his or her functions and duties and exercise his or her powers independently from:
 - (i) Telstra;
 - (ii) Wholesale Customers;
 - (iii) the Company, the Board and the Members;
 - (iv) NBN Co;
 - (v) the ACCC; and
 - (vi) government (whether federal, state, or territory).
- (b) Except with the consent of the relevant parties, the ITA Adjudicator must not formally or informally consult with or seek guidance from any member of the Board about any ITA Dispute being handled by the ITA Adjudicator.
- (c) The ITA Adjudicator must not disclose any information to the Board about an ITA Dispute other than to the extent strictly necessary for the directors to fulfil their responsibilities under the Constitution or any laws (including the Corporations Act) or in relation to this Charter of Independence.
- (d) The ITA Adjudicator must not be employed by or act as consultant to Telstra or any other service provider during the term of his or her appointment and for a period of at least six months immediately after ceasing for any reason to hold office as the ITA Adjudicator, without the ACCC's prior consent.
- (e) The ITA Adjudicator must disclose to the probity adviser appointed by the Board under rule 5.4 of the Constitution all information necessary for the probity adviser to perform its functions.

4.3 Complaints about the ITA Adjudicator's independence

- (a) If the ITA Adjudicator receives any complaint from a party to an ITA Dispute about the independence of the ITA Adjudicator (**Independence Complaint**), the ITA Adjudicator will be required to:
 - (i) inform the Board and the ACCC of the Independence Complaint as soon as reasonably practicable after it is received; and
 - (ii) provide any information requested by the ACCC for the purposes of investigating the Independence Complaint.
- (b) The ITA Adjudicator has authority to provide information to the ACCC about the Independence Complaint without seeking the prior consent of the Board.
- (c) If the ITA Adjudicator receives a direction from the ACCC to take, or not to take, specified action in relation to the ITA Adjudicator's performance of his or her functions in accordance with this Charter of Independence which the ACCC considers is reasonable or necessary to ensure the independence of the ITA Adjudicator (**Independence Direction**), the ITA Adjudicator will be required to comply with the Independence Direction.

4.4 ITA Adjudicator has authority to deal with the ACCC independently

The ITA Adjudicator will have authority to report to and deal with the ACCC independently of the Board, including to notify the ACCC of any matter relating to the operation of the ITA Process which in the ITA Adjudicator's opinion threatens or may threaten the independence of the role of the ITA Adjudicator.

4.5 ITA Adjudicator has authority to seek independent advice

The ITA Adjudicator will have authority to seek independent legal advice or other advice when necessary or appropriate at reasonable cost and without prior approval of the Board.

5 Guaranteed tenure of the ITA Adjudicator

- (a) The term of the ITA Adjudicator's appointment will be two years. This period may only be extended or otherwise varied by agreement between the ACCC and the Company.
- (b) The ITA Adjudicator's appointment must not be terminated prior to the expiry of his or her term other than for the following reasons:
 - (i) death of the ITA Adjudicator;
 - (ii) performance of any act of fraud, dishonesty or gross misconduct by the ITA Adjudicator;
 - (iii) extended absence without leave from the Board, illness or other failure which substantially impairs the ITA Adjudicator's capacity to fulfil the function of the ITA Adjudicator;
 - (iv) breach of this Charter of Independence, an Independence Direction or a Conflict Direction;
 - (v) misuse of confidential information of a person received in the course of the performance of the ITA Adjudicator's functions;
 - (vi) cessation of the ITA Process; or
 - (vii) with the prior approval of the ACCC.

6 Remuneration of the ITA Adjudicator

- (a) The remuneration and other benefits to be provided to the ITA Adjudicator will be determined in accordance with this clause 6.
- (b) Before agreeing the remuneration and other benefits that are to be provided to the ITA Adjudicator the Company will:
 - (i) give to the ACCC a confidential proposal regarding the parameters within which it intends to negotiate the remuneration package for the ITA Adjudicator (**Remuneration Proposal**); and
 - (ii) if requested by the ACCC, provide a briefing to the ACCC about the Remuneration Proposal.

- (c) The Remuneration Proposal:
- (i) will require the Company to have regard to the following factors when agreeing the remuneration and other benefits to be provided to the ITA Adjudicator:
 - (A) the ITA objectives set out in paragraph 3 of Schedule 5 of the Structural Separation Undertaking;
 - (B) market rates for the provision of services similar to those to be provided by the proposed ITA Adjudicator;
 - (C) the technical skill, experience and industry experience of the proposed ITA Adjudicator;
 - (D) the complexity of the industry and the level of senior engagement;
 - (E) performance benchmarks for the performance of the role of ITA Adjudicator consistent with the achievement of the ITA objectives set out in paragraph 3 of Schedule 5 of the Structural Separation Undertaking and this Charter of Independence; and
 - (F) the unique combination of the above factors in an industry specific market.
 - (ii) will prevent the Company from having regard to the following factors when agreeing the remuneration and other benefits to be provided to the ITA Adjudicator:
 - (A) performance objectives other than those of the kind described in clause 6(c)(i)(E), unless otherwise approved in advance by the ACCC; and
 - (B) the proposed Adjudicator's previous employment with a competitor of Telstra;
 - (iii) will prohibit any incentive remuneration or other benefits to be provided to the ITA Adjudicator from being determined or measured by reference to:
 - (A) any matters which are linked to Telstra's performance in any market; and
 - (B) the impacts to Telstra of the decisions made by the ITA Adjudicator in performing his or her role as ITA Adjudicator.
- (d) The Company will have regard to any comments provided by the ACCC in relation to the Remuneration Proposal and, if changes are made, provide a copy of the amended Remuneration Proposal to the ACCC.
- (e) The remuneration and other benefits to be provided to the ITA Adjudicator will be agreed between the Company and the ITA Adjudicator in accordance with the Remuneration Proposal.

7 Conflicts of interest

7.1 Identifying conflicts of interest

For the purpose of this document, a conflict of interest will arise between:

- (a) the performance of the ITA Adjudicator's role; and
- (b) the ITA Adjudicator's personal interests

if the ITA Adjudicator's personal interests influence, or could potentially influence, his or her ability to make decisions when performing the role of ITA Adjudicator which are objective, impartial and unbiased.

7.2 Notifying conflicts of interest when they arise

- (a) The ITA Adjudicator will be required to notify the Board and the ACCC in writing:
 - (i) promptly after becoming aware of any actual or potential conflict of interest which may arise between the performance of the ITA Adjudicator's role and the ITA Adjudicator's personal interests; and
 - (ii) as soon as reasonably practicable after the ITA Adjudicator receives any complaint from a party to an ITA Dispute about a conflict of interest between the performance of the ITA Adjudicator's role and the ITA Adjudicator's personal interests (**Conflict Complaint**).
- (b) The ITA Adjudicator has authority to provide information to the ACCC about the actual or potential conflict of interest without seeking the prior consent of the Board.

7.3 Register of conflicts

- (a) The Company will maintain a register of all conflicts of interest notified by the ITA Adjudicator under clause 7.2.
- (b) The Company will make a copy of the register available to a party to an ITA Dispute on request on a confidential basis.
- (c) If a party to an ITA Dispute receives a copy of the register:
 - (i) that party will be authorised to disclose its contents to its professional advisers solely for the purpose of providing advice to that party in relation to the relevant ITA Dispute,

provided that, prior to making such disclosure:
 - (ii) each person to whom the register is disclosed gives a written undertaking in favour of the ITA Adjudicator that they will not disclose its contents to any other person and will not use it for any purpose other than to providing advice in relation to the relevant ITA Dispute; and
 - (iii) a copy of that undertaking is given to the ITA Adjudicator.
- (d) The ITA Adjudicator will be required to consent to the collection of his or her personal information in the conflicts register and the disclosure of that information under clause 7.3(b) and 7.3(c).

7.4 Complying with Conflict Directions

If the ITA Adjudicator receives a direction from the ACCC to take, or not to take, specified action in relation to the ITA Adjudicator's performance of his or her functions in accordance with this Charter of Independence which the ACCC considers is reasonable or necessary to ensure the conflict of interest (**Conflict Direction**), the ITA Adjudicator will be required to comply with the Conflict Direction.

8 Reporting requirements

8.1 Annual ITA Report

- (a) The ITA Adjudicator will be required to prepare an annual report (**Annual ITA Report**) no later than 90 Business Days after the last Business Day of each Financial Year, in respect of that Financial Year.
- (b) The Annual ITA Report will include for the relevant Financial Year, a summary of (to the extent applicable):
 - (i) the ITA Adjudicator's assessment of the general operation and effectiveness of the ITA Process and his or her views about how it could be improved;
 - (ii) the ITA Adjudicator's assessment of Telstra's compliance with the ITA Process and his or her views about whether Telstra has acted consistently with the objectives of the ITA Process as set out in clause 3 of Schedule 5;
 - (iii) the ITA Adjudicator's views about whether Telstra and the Company has acted in accordance with the principles of independence set out in this Charter of Independence;
 - (iv) the number of complaints received, investigated and determined by the ITA Adjudicator;
 - (v) the number of complaints that were resolved by the parties to the ITA Dispute prior to the ITA Adjudicator making a final determination; and
 - (vi) details of any Independence Complaints and Conflicts Complaints received and the steps take to resolve these complaints.
- (c) The ITA Adjudicator will be required to provide a copy of the Annual ITA Report to the Board and the ACCC on a confidential basis as soon as reasonable practicable after the relevant report has been finalised.

8.2 ACCC information requests

- (a) The ITA Adjudicator will have authority to provide information, or reports, to the ACCC in respect of the following without the prior consent of the Board:
 - (i) the general operation and effectiveness of the ITA Process;
 - (ii) general or specific information about ITA Disputes that it has received;
 - (iii) any dealings between the ITA Adjudicator and the Board or between the ITA Adjudicator and the Members; and
 - (iv) any other matter reasonably requested by the ACCC which relate to an ITA Dispute or the ITA Process.
- (b) The ITA Adjudicator will be required to provide information of the kind referred to in clause 8.2(a) if it is requested by the ACCC.

8.3 Information disclosure

Nothing in this Charter of Independence requires a person to disclose information to another person (including the ACCC) where such disclosure would constitute a breach of

law or an obligation of confidence owed to another person, or where the information is privileged.

9 Defined terms and interpretation

9.1 Definitions in the Dictionary

A term or expression in this Charter of Independence starting with a capital letter:

- (a) which is defined in clause 9.3, has the meaning given to it in clause 9.3; and
- (b) which is defined in the Structural Separation Undertaking, but is not defined in the Dictionary, has the meaning given to it in the Structural Separation Undertaking.

9.2 Interpretation

The interpretation clause in Schedule 1 of the Structural Separation Undertaking sets out rules of interpretation for this Charter of Independence.

9.3 Dictionary

In this Charter of Independence:

Board means the board of directors of the Company.

Company means The Office of the ITA Limited (ACN 158 274 232).

Constitution means the constitution of the Company.

Member means a member of the Company.

Plan has the meaning given in the Structural Separation Undertaking.

Structural Separation Undertaking means the Structural Separation Undertaking given by Telstra to the ACCC under section 577A of the *Telecommunications Act 1997* (Cth).

Terms of Appointment means the terms on which the ITA Adjudicator is engaged by the Company to perform the role of the ITA Adjudicator.