

Investigation Report:

Investigation No.	2018-19-TEL-22
Carriage Service Provider	M2 Commander Pty Ltd
ACN	136 950 082
Scope	<i>Telecommunications Consumer Protections Code C628:2015, Chapter 7 Changing Suppliers</i>

Findings

1. The Australian Communications and Media Authority (**ACMA**) finds that M2 Commander Pty Ltd (ACN 136 950 082) (**M2 Commander**) has contravened clause 7.1 of the *Telecommunications Consumer Protections Code C628:2015 (2015 TCP Code)* by not taking the steps specified in clause 7.1.1(a) to ensure that a Consumer who was the subject of a Transfer had provided consent to the Transfer.

Background

2. On 3 December 2018, the ACMA commenced an investigation under paragraph 510(1)(c) of the *Telecommunications Act 1997* (the **Act**) into M2 Commander's compliance with Chapter 7 (customer transfer) of the 2015 TCP Code.
3. On the same day, the ACMA gave M2 Commander a statutory notice under subsection 521(2) of the Act requiring the production of information and copies of documents relating to the transfer to M2 Commander of twelve Telecommunications Services.
4. On 15 April 2019, the ACMA sent its preliminary findings report to M2 Commander and invited it to respond. On 6 May 2019, 8 May 2019 and 28 May 2019, M2 Commander provided submissions in response to the ACMA.
5. At the time that the relevant conduct occurred, the 2015 TCP Code was registered under Part 6 of the Act. The 2015 TCP Code contains rules about how Suppliers deal with their residential and small business customers.
6. Chapter 7 of the 2015 TCP Code places obligations on Suppliers and gaining Suppliers when consumers seek to change their current Supplier of a Telecommunications Service to an alternative Supplier.
7. The 2015 TCP Code defines Transfer as "the transfer of all or part of a Consumer's Telecommunications Service from one Supplier to the Gaining Supplier".
8. M2 Commander is an Australian company that provides internet and phone services to business (including small business) customers. It is therefore a carriage service provider within the meaning of the Act and a Supplier for the purposes of the 2015 TCP Code.

9. In the course of this investigation, the ACMA considered:
- information provided by the Telecommunications Industry Ombudsman (**TIO**) on 11 October 2018 and 14 November 2018, in response to a notice issued under subsection 522(2) of the Act; and
 - information provided by M2 Commander on 21 January 2019, 6 May 2019, 8 May 2019 and 28 May 2019.

Findings and Reasons

10. Having assessed the evidence and information before it, the ACMA has found that M2 Commander contravened clause 7.1 of the 2015 TCP Code. Details of the contravention are set out below.

Clause 7.1 Obtaining Consent

11. Clause 7.1 requires a gaining Supplier to use reasonable endeavours to ensure that a consumer is only the subject of a Transfer to a gaining Supplier if the consumer has provided their consent to such a Transfer. Clause 7.1.1 states that a gaining Supplier must take the steps in paragraphs (a) and (b) to enable this outcome. Relevantly, clause 7.1.1(a) states the gaining Supplier must ensure that the Consumer provides consent to the Transfer.
12. For the purpose of clause 7.1.1(a), the ACMA considers that it is not enough to merely have a consumer say they consent to a transfer: it must also be the case that the consumer's consent is based on an understanding of the relevant offer, as explained by the gaining Supplier. For example, providing misleading or inaccurate information in a sales offer may invalidate any purported consent that is obtained on the basis of that information.
13. For the reasons set out in **Attachment A**, the ACMA is satisfied that M2 Commander contravened clause 7.1 of the 2015 TCP Code in relation to one customer transfer when the Consumer, Account holder A, was Transferred to M2 Commander, and M2 Commander failed to take steps to ensure the Consumer provided consent to the Transfer as specified in clause 7.1.1(a).
14. Given the above finding, consideration has not been given to whether M2 Commander as the gaining Supplier also used its reasonable endeavours to ensure the person requesting the Transfer is the rights of use holder, or an authorised representative of that person, as required by clause 7.1.1(b).

Compliance with the consent obligations under the 2015 TCP Code

2015 TCP Code requirement	ACMA findings and reasons	Date of contravention
<p>7.1 Obtaining Consent</p> <p>A Gaining Supplier must use reasonable endeavours to ensure that a Consumer is only the subject of a Transfer by a Gaining Supplier if the Consumer has provided their consent to such Transfer.</p> <p>7.1.1 A Gaining Supplier must take the following steps to enable this outcome:</p> <p>(a) Consent: the Gaining Supplier must ensure that the Consumer provides consent to the Transfer;</p>	<p>Account holder A</p> <p>On the basis of the information obtained from the TIO, it was clear that Account Holder A lodged a complaint with the TIO about their landline service which they advised had been transferred to M2 Commander without consent. Account Holder A had received a number of bills from M2 Commander with outstanding amounts.</p> <p>On 3 December 2019, the ACMA gave M2 Commander a statutory notice under subsection 521(2) of the Act. On the basis of information obtained it was apparent that the M2 Commander sales agent did not obtain a consent to transfer from Account Holder A.</p> <p>M2 Commander has acknowledged that the code requirement to ensure that the consumer has provided their consent to the transfer, had not been met.</p>	23 January 2017
	<p>The ACMA is satisfied that M2 Commander contravened clause 7.1 of the 2015 TCP Code in relation to one customer transfer when the Consumer, Account holder A, was Transferred to M2 Commander, and M2 Commander failed to take steps to ensure the Consumer provided consent to the Transfer as specified in clause 7.1.1(a).</p>	