

Investigation Report: Dodo Services Pty Ltd

File No.	ACMA2019/1076
Carriage Service Provider	Dodo Services Pty Ltd
Service or Product	Landline, mobile and internet services
Relevant Legislation	<i>Telecommunications Act 1997</i> Telecommunications Service Provider (NBN Service Migration) Determination 2018

Findings

The Australian Communications and Media Authority (**ACMA**) finds that Dodo Services Pty Ltd (ACN 158 289 331) (**Dodo**) contravened the Telecommunications Service Provider (NBN Service Migration) Determination 2018 (the **Service Migration Determination**) 584 times between 1 February and 30 April 2019 (**the relevant period**).

The number of contraventions for each provision is set out in the table below.

Provision	Number of contraventions	Total contraventions
subsection 9(1)	385	584
section 11	3	
subsection 16(2)	165	
subsection 16(5)	31	

As Dodo contravened the Service Migration Determination, it also contravened subsection 101(1) of the *Telecommunications Act 1997*.

Background

- On 4 June 2019, the ACMA gave Dodo a notice under subsection 521(2) of the Act (the **First Notice**) requiring the provision of information and documents about its compliance with the Telecommunications (NBN Continuity of Service) Industry Standard 2018 and the Service Migration Determination (collectively the **service continuity rules**). Dodo responded to the First Notice on 28 June 2019 and provided an amended response on 19 July 2019.
- On 9 October 2019, the ACMA opened an investigation into Dodo's compliance with the service continuity rules. On that same day the ACMA gave Dodo a second notice under subsection 521(2) of the Act (the **Second Notice**). The Second Notice sought additional information about Dodo's responses to the First Notice.
- Dodo responded to the Second Notice on 25 October 2019. This response was incomplete. It also contained inconsistencies with previously supplied information. On 22 November 2019, Dodo responded to the ACMA's requests to provide outstanding information and clarify inconsistencies in data. Dodo also gave the ACMA additional information and made amendments to previously supplied data.
- On 16 December 2019, the ACMA gave Dodo its preliminary findings. On 10 January 2020, Dodo responded to the preliminary findings. With the exception of the information discussed at paragraphs 8 – 10, none of the information supplied by Dodo challenged the ACMA's preliminary findings.

Relevant Facts

5. Dodo supplies internet, landline and mobile services to the public. As such, it is a carriage service provider (**CSP**) as defined in the Act. Dodo supplies internet and landline services to consumers, using among other things, an NBN ethernet product. As such, Dodo is an NBN CSP within the meaning of the service continuity rules.
6. The Service Migration Determination is a determination made under subsection 99(1) of the Act. As a CSP and an NBN CSP, Dodo must comply with the Service Migration Determination in accordance with subsection 101(1) of the Act.
7. The information and documents Dodo supplied in response to the First Notice and the Second Notice (collectively the **Notices**) relate to services supplied in the relevant period to '**relevant customers**'. Relevant customer is defined in the Notices as:
 - a consumer:*
 - (a) whose premises are in an area which has been declared ready for service by NBN Co
 - (b) who has entered into a consumer contract with Dodo for the supply of an NBN service to their premises.

Dodo's response to the preliminary findings

8. In its response to the ACMA's preliminary findings Dodo stated that it did not think section 11 of the Service Migration Determination was applicable. It asked that the ACMA remove the three alleged instances of non-compliance with section 11 because:
 - (a) the customers were already captured under the preliminary findings of non-compliance with section 9
 - (b) Dodo does not provide interim services, so it is not able to provide information about interim services
 - (c) Dodo focuses on agreeing alternative arrangements with affected customers which is an exception to the requirement to supply an interim service.
9. The ACMA does not agree with Dodo's assertion that section 11 did not apply in these cases. This is because:
 - (a) failure to offer an interim service does not negate the obligation to provide such a service where none of the exceptions listed in subsection 9(2) applies
 - (b) Dodo was unable to demonstrate that any such exception applied for the three specified customers
 - (c) as the obligation to supply an interim service was applicable in these circumstances, the obligation to provide the customer with the appropriate information as required by section 11 also applied.
10. Accordingly, the ACMA has not removed the contraventions of section 11 of the Service Migration Determination.

Findings and Reasons

11. The ACMA is satisfied that Dodo contravened the Service Migration Determination 584 times in the relevant period for the reasons set out below.

Section 9 of the Service Migration Determination: Requirement to supply an interim service

12. Part 3 of the Service Migration Determination sets out rules about the supply of interim services to consumers who experience problems migrating to the NBN.
13. Under subsection 9(1) of the Service Migration Determination an NBN CSP must, subject to limited exceptions, supply an interim service where:

- (a) the migration at the consumer's premises has been unsuccessful, and is unlikely to be successful within three working days of the NBN CSP becoming aware of the unsuccessful migration (**unsuccessful migration event**); or
 - (b) the migration at the consumer's premises has been successful, but an operational NBN service has not been supplied to the consumer and cannot be supplied to that consumer within three working days of the NBN CSP becoming aware that the consumer's NBN service is not operational (**non-working NBN service event**).
14. Section 8 of the Service Migration Determination sets preconditions for when this obligation applies. For this investigation the relevant preconditions are that:
- (a) the area in which the consumer's premises is located has been declared ready for service by NBN Co (paragraph 8(a)); and
 - (b) an NBN CSP has entered into a consumer contract with the consumer for the supply of an NBN service to the premises (paragraph 8(b)); and
 - (c) the migration at the consumer's premises is not a parallel migration (paragraph 8(c)(i)).
15. Subsection 9(2) of the Service Migration Determination includes exceptions to the requirements to supply an interim service. These include where:
- (a) the NBN CSP and the consumer agree on an alternative arrangement; or
 - (b) the consumer does not consent to the supply of an interim service and has agreed upon an alternative arrangement with the NBN CSP; or
 - (c) the NBN CSP is supplying an NBN backup service to the consumer.
16. In response to the First Notice, Dodo provided information indicating that 1425 relevant customers were eligible to be provided with an interim service during the relevant period. This is because:
- (a) the preconditions in section 8 (described in paragraph 14) applied in relation to these customers; and
 - (b) these customers had experienced an unsuccessful migration event or a non-working NBN service event and the information provided by Dodo indicated that no exception in subsection 9(2) applied to these customers.
17. Under the Second Notice, the ACMA sought information to establish whether Dodo had a reasonable basis for failing to supply an interim service to these 1,425 customers. Dodo's responses to the Second Notice provided revised information showing that the number of relevant customers that were eligible to be provided with an interim service during the relevant period was 1,321, not 1,425 as Dodo had previously advised.
18. Dodo's response to the Notices advised that it did not provide interim services to 936 of these 1,321 customers as they had a working legacy service. Dodo did not provide a reason for its failure to supply an interim service to the remaining 385 of these customers. The ACMA is satisfied that Dodo was required to supply these 385 customers with an interim service for the reasons outlined at paragraph 16 and 17. Therefore, the ACMA finds that Dodo contravened subsection 9(1) for these 385 customers in the relevant period.

Section 11 of the Service Migration Determination: Requirement to advise a consumer

19. Where an NBN CSP must supply an interim service to a consumer, the NBN CSP must advise the consumer of specified information about the interim service (see section 11 of the Service Migration Determination). The information includes timeframes for the supply of the service, details of the key features and limitations and any associated fees and charges. The NBN CSP must advise the consumer of this information as soon as possible after becoming aware of the unsuccessful migration event or non-working NBN service event and before obtaining the consumer's consent to the supply of the service.
20. The Second Notice required Dodo to advise whether it had provided the information required in paragraphs 11(a) and (b) of the Service Migration Determination (the **section 11 information**) to specified customers.

21. The ACMA has considered the information provided by Dodo in its response to the Notices and the ACMA's preliminary findings and is satisfied that Dodo contravened section 11 of the Service Migration Determination in relation to three customers in the relevant period. This is because:
- (a) The ACMA is satisfied that these three customers were eligible to receive an interim service under subsection 9(1). Dodo provided information showing that no exception in subsection 9(2) applied to any of these three customers. Consequently, Dodo was required to provide them with the section 11 information.
 - (b) Dodo stated that the provision of section 11 information was not applicable for these three customers. The ACMA infers from this response that Dodo did not provide the section 11 information to these customers.

Section 16 of the Service Migration Determination: Requirements where there is an unreasonable delay in the supply of an operational NBN service

22. Section 16 of the Service Migration Determination sets out the steps an NBN CSP must take where there is a delay in the supply of an operational NBN service. Section 16 applies where section 8 of the Determination applies.
23. Under subsection 16(2) of the Service Migration Determination, if a service is not operational 20 working days after an unsuccessful migration or non-working NBN service event, the NBN CSP must, within 2 working days, prepare a plan (a **remedial plan**) to get the NBN service working as soon as possible. Under subsection 16(3) the NBN CSP must send the remedial plan to the consumer within 2 working days of its being prepared.
24. If a service is still not operational a further 20 working days after the period mentioned in paragraph 23, under subsection 16(5) of the Service Migration Determination the NBN CSP must arrange for a technical audit to be completed within 10 working days.
25. An NBN CSP does not need to prepare a remedial plan and arrange for a technical audit to be completed where the service is not operational due to an issue on the customer's side of the network boundary.¹
26. Dodo's responses to the Notices indicated 179 NBN services were non-operational after the 20-working day trigger for remedial plans and 54 NBN services were non-operational after the 40-working day trigger for technical audits. The ACMA has considered the information Dodo provided for these services and is satisfied that Dodo contravened:
- (a) subsection 16(2) of the Service Migration Determination on 165 occasions.
 - (b) subsection 16(5) of the Service Migration Determination on 31 occasions.
27. In making this finding the ACMA notes:
- (a) The preconditions in section 8 (described in paragraph 14) applied in relation to all these customers.
 - (b) Dodo's response to the First Notice advised that it had not prepared any remedial plans or completed any technical audits in accordance with the requirements of section 16 of the Service Migration Determination.
 - (c) Dodo's response to the Second Notice confirmed that it had not prepared any remedial plans or completed any technical audits. It stated that this was because it 'provided the required information well before 20-day timeframe'. Provision of information required under a remedial plan before the 20 working-day trigger is not an exception to the requirement to prepare the remedial plan or complete a technical audit.
 - (d) For the remaining customers, the ACMA makes no finding of a contravention of section 16. This is because the service was connected after the 20 or 40 working day trigger but

¹ See subsection 16(7) of the Service Migration Determination.

within the time allowed to prepare and provide a remedial plan or conduct a technical audit.

Contraventions of subsection 101(1) of the Act

28. Under subsection 101(1) of the Act, Dodo must comply with the Service Migration Determination.
29. Dodo has not complied with applicable requirements of the Service Migration Determination as set out above. Therefore, the ACMA is satisfied that Dodo has contravened subsection 101(1) of the Act on 584 occasions during the relevant period because it did not comply with the Service Migration Determination.