

Investigation Report: TPG Internet Pty Ltd

File No.	ACMA2019/1074
Carriage Service Provider	TPG Internet 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 TPG Internet Pty Ltd (ACN 068 383 737) (**TPG**) contravened the Telecommunications Service Provider (NBN Service Migration) Determination 2018 (the **Service Migration Determination**) 1,308 times in the period 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)	628	1,308
section 11	630	
subsection 16(2)	21	
subsection 16(5)	3	
paragraph 18(a)	26	

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

Background

- On 4 June 2019, the ACMA gave TPG 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**). TPG responded to the First Notice on 27 June 2019.
- On 10 October 2019, the ACMA opened an investigation into TPG's compliance with the service continuity rules. On that same day the ACMA gave TPG a second notice under subsection 521(2) of the Act (the **Second Notice**). The Second Notice sought additional information about TPG's response to the First Notice.
- On 13 November and 20 November 2019, TPG gave the ACMA information and documents in response to the Second Notice. In responding to the Second Notice, TPG advised that there was some variation between the records provided in response to the First and Second Notices due to an IT issue resulting in some data being lost.
- On 23 December 2019, the ACMA gave TPG its preliminary findings. On 31 January 2020, TPG responded to the preliminary findings.

Relevant Facts

5. TPG supplies internet, landline and mobile services to the public. As such it is a carriage service provider (**CSP**) as defined in the Act. TPG supplies landline and internet services to consumers under consumer contracts using NBN ethernet products. As such it is an NBN CSP as defined in the Service Migration Determination.
6. The Service Migration Determination is a determination made under subsection 99(1) of the Act. As a CSP, TPG must comply with the Service Migration Determination in accordance with subsection 101(1) of the Act.
7. The information and documents TPG 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; and*
 - (b) *who has entered into a consumer contract with TPG for the supply of an NBN service to their premises.*

Findings and Reasons

8. The ACMA is satisfied that TPG contravened the Service Migration Determination 1,308 times for the reasons set out below.

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

9. 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.
10. Under subsection 9(1) of the Service Migration Determination an NBN CSP must, subject to limited exceptions, supply a consumer with 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**).
11. 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)).
12. Subsection 9(2) of the Service Migration Determination includes exceptions to the requirement to supply an interim service. These include where:
 - (a) the NBN CSP and the consumer agree on an alternative arrangement;
 - (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.

13. In response to the First Notice, TPG advised that it provided an interim service to eight relevant customers. It also provided information indicating that a further 723 relevant customers were eligible to be provided with an interim service during the relevant period. This is because:
 - (a) the preconditions in section 8 of the Service Migration Determination (described in paragraph 11) applied in relation to the customers;
 - (b) the customers had experienced an unsuccessful migration event or a non-working NBN service event and the information provided by TPG indicated that no exception in subsection 9(2) applied in relation to these customers.
14. Under the Second Notice, the ACMA sought information to establish whether TPG had a reasonable basis for failing to supply an interim service to the 723 customers.
15. In response to the Second Notice, TPG provided information relating to 697 services that were eligible for the supply of an interim service under subsection 9(1). It was unable to supply information for 26 customers due to the data loss discussed at paragraph 3.
16. After reviewing TPG's responses, the ACMA is satisfied that TPG breached subsection 9(1) in relation to 628 of these customers in the relevant period. This is because TPG stated that it did not supply an interim service to:
 - (a) 185 of these customers due to the customer's data service working. However, TPG had identified these customers as eligible to receive an interim service. An interim service is defined in the Service Migration Determination as a voice or broadband service, or both. TPG's response to the Second Notice indicated that the interim services it offers to customers do not come with any voice component. If this is the case, in order to discharge the obligation in subsection 9(1), TPG was required to supply these customers with an NBN backup service or agree with them on an alternative arrangement under subsection 9(2).
 - (b) 324 of these customers because of a staff or process issue. This is not an exception to the requirement to supply an interim service specified in subsection 9(2).
 - (c) 118 of these customers as it expected the fault rectification would be within three working days. As it ended up being longer, the requirement to supply an interim service was triggered once those three working days had passed. Nor did TPG's response indicate that an exception in subsection 9(2) applied. The ACMA is therefore satisfied that TPG was required to supply these customers with an interim service.
 - (d) one customer due to an internal wiring issue. This is not one of the exceptions to the requirement to supply an interim service specified in subsection 9(2).
17. For the remaining customers, the ACMA makes no finding of a contravention of subsection 9(1). This is because there was insufficient information to make a finding or TPG was unable to contact the customer to offer the supply of an interim service.

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

18. 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.
19. TPG's response to the First Notice identified eight customers who were supplied with an interim service and 723 customers eligible for the supply of an interim service who did not receive one.

20. The Second Notice required TPG to advise whether it had provided the information specified in paragraphs 11(a) and (b) of the Service Migration Determination (**the section 11 information**) to each of these 731 customers.
21. TPG's response to the Second Notice provided this information for the eight customers it supplied with an interim service. As discussed at paragraph 15, due to an IT issue resulting in data loss, TPG was only able to provide information in relation to 697 of the customers eligible for the supply of an interim service who did not receive one.
22. The ACMA has considered the information provided by TPG and is satisfied that TPG contravened section 11 of the Service Migration Determination in relation to 630 of these customers in the relevant period. These contraventions consisted of:
 - (a) Five cases where TPG stated it attempted to contact the customers but did not provide them with the section 11 information.
 - (b) 625 cases where TPG did not provide the section 11 information and made no attempt to contact the customers to provide it.
23. For the remaining customers, the ACMA makes no finding of a contravention of section 11. This is because there was insufficient information to make a finding or TPG was unable to contact the customer.

Section 18 of the Service Migration Determination: Requirement to keep records

24. Under section 18 of the Service Migration Determination an NBN CSP must keep records to demonstrate its compliance with, among other things, the requirements for supplying an interim service.
25. The ACMA has considered the information provided by TPG and finds that TPG contravened paragraph 18(a) of the Service Migration Determination on 26 occasions. TPG was unable to produce records for 26 customers as discussed at paragraphs 15 and 21. The ACMA is satisfied that TPG did not keep records demonstrating its compliance with the requirements of sections 9 and 11 for these 26 customers.

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

26. 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 that Determination applies.
27. 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 two 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 two working days of its being prepared.
28. If a service is still not operational a further 20 working days after the period mentioned in paragraph 27, 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.
29. An NBN CSP does not need prepare a remedial plan or arrange for a technical audit to be completed where the service is not operational due to an issue on the customer side of the network boundary¹.
30. TPG's response to the First Notice indicated that 37 NBN services were non-operational after the 20-working day trigger for remedial plans and three NBN services were non-operational after the 40-working day trigger for technical audits. TPG's response to the Second Notice, gave information for 24 of these customers. It did not provide records for 16 of these customers due to the IT issues referred to at paragraph 3.

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

31. The ACMA has considered the information provided by TPG for the 24 services and is satisfied that, during the relevant period, TPG contravened:
 - (a) subsection 16(2) of the Service Migration Determination on 21 occasions.
 - (b) subsection 16(5) of the Service Migration Determination on 3 occasions.

32. In making this finding the ACMA notes:
 - (a) the preconditions in section 8, (described in paragraph 11) applied to the customers of all 24 services
 - (b) all 24 services were for relevant customers who had experienced an unsuccessful migration event or a non-working NBN service event and either the 20-working day or 40-working day trigger occurred in the relevant period
 - (c) TPG's responses to the Notices stated that it had not prepared any remedial plans or arranged for any technical audits to be completed in accordance with the requirements of section 16 of the Service Migration Determination
 - (d) TPG's responses to the Notices did not make any submissions that the exception in subsection 16(7) of the Service Migration Determination for issues on the customer's side of the network boundary applied.

Contraventions of subsection 101(1) of the Act

33. Under subsection 101(1) of the Act, TPG must comply with the Service Migration Determination.

34. TPG has not complied with the applicable requirements of the Service Migration Determination as set out above. Therefore, the ACMA finds that TPG has contravened subsection 101(1) of the Act on 1,308 occasions during the relevant period because it did not comply with the Service Migration Determination.