

Investigation Report: Telstra Corporation Limited

File No.	ACMA2019/1073
Carriage Service Provider	Telstra Corporation Limited
Service or Product	Landline, mobile and internet services
Relevant Legislation	<i>Telecommunications Act 1997</i> Telecommunications (NBN Continuity of Service) Industry Standard 2018 Telecommunications Service Provider (NBN Service Migration) Determination 2018

Findings

The Australian Communications and Media Authority (**ACMA**) finds that Telstra Corporation Limited (ACN 051 775 556) (**Telstra**) contravened:

- > the Telecommunications Service Provider (NBN Service Migration) Determination 2018 (the **Service Migration Determination**) 2,296 times between 1 February and 30 April 2019 (the **relevant period**)
- > the Telecommunications (NBN Continuity of Service) Industry Standard 2018 (the **Service Continuity Standard**) 1,843 times in the relevant period.

The contraventions relate to the conduct of both Telstra and its Belong Broadband (**Belong**) business. The number of contraventions for each provision for each business is specified in the table below.

Legislation	Provision	Contravention Telstra conduct	Contravention Belong conduct	Total contraventions
Service Migration Determination	subsection 9(1)	0	23	2,296
	section 11	0	43	
	subsection 16(2)	1,838	23	
	subsection 16(5)	369	0	
Service Continuity Standard	subsection 23(1)	1,362	7	1,843
	subsection 23(4)	474	0	

As Telstra contravened the Service Migration Determination, it also contravened subsection 101(1) of the *Telecommunications Act 1997*. Similarly, because Telstra contravened the Service Continuity Standard it also contravened subsection 128(1) of the Act.

Background

1. On 4 June 2019, the ACMA gave Telstra a notice under subsection 521(2) of the Act (the **First Notice**) requiring it to provide information and documents about its compliance with the Service Continuity Standard and the Service Migration Determination (collectively the **service continuity rules**). Telstra responded to the First Notice on 20 June 2019, giving separate submissions for Telstra and its Belong business.

2. On 10 October 2019, the ACMA opened an investigation into Telstra's compliance with the service continuity rules. On the same day the ACMA gave Telstra a second notice under subsection 521(2) of the Act (the **Second Notice**). The Second Notice sought additional information about the responses to the First Notice. Telstra responded to the Second Notice on 31 October 2019, once again including a separate response for Belong. It also gave additional information about Belong on 19 November 2019.
3. On 13 December 2019, the ACMA gave Telstra its preliminary findings in the investigation. On 24 January 2020, Telstra responded to the ACMA's preliminary findings with separate submissions for Telstra and its Belong businesses.

Relevant Facts

4. Telstra supplies internet, landline and mobile services to the public. The Belong business supplies internet and mobile services. As such, Telstra is a carriage service provider (**CSP**) as defined in the Act in relation to both businesses.
5. The Service Migration Determination is a determination made under subsection 99(1) of the Act. As such, it is a service provider rule as defined in section 98 of the Act. As a CSP, Telstra must comply with the service provider rules set out in the Service Migration Determination in accordance with subsection 101(1) of the Act.
6. The Service Continuity Standard is registered under Part 6 of the Act and applies to participants in the telecommunications industry, including CSPs. As a CSP, Telstra must comply with the Service Continuity Standard under subsection 128(1) of the Act.
7. The service continuity rules apply to CSPs that supply a service to a consumer using an NBN ethernet product. Both the Telstra and Belong businesses supply services to consumers using NBN ethernet products and therefore Telstra is an NBN CSP for the purpose of the service continuity rules.
8. The information and documents supplied in response to the First Notice and the Second Notice (collectively the **Notices**) relate to services supplied during the relevant period to '**relevant customers**'. Relevant customer was defined in the First Notice 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 Telstra for the supply of an NBN service to their premises.

Telstra's Response to Preliminary Findings

9. In its response to the ACMA's preliminary findings, Telstra submitted that the exception under subsection 16(7) of the Service Migration Determination or subsection 23(6) of the Service Continuity Standard (as applicable) applied to 2,668 customers for whom a remedial plan had not been prepared, and 606 for whom a technical audit was not conducted. This was because these customers experienced an unsuccessful migration due to issues on the customer's side of the telecommunications boundary.
10. The ACMA accepts Telstra's submission that the exception under subsection 23(6) of the Standard or subsection 16(7) of the Determination applied to the 3,274 identified customers identified by Telstra.
11. We have accepted Telstra's submission that one of the preliminary findings was not a contravention of subsection 9(1) as the customer had not experienced an unsuccessful migration event. In this case, the customer's NBN service was activated and usage was detected, but as a result of a faulty modem, the customer was experiencing connection dropouts.

Findings and Reasons

12. The ACMA is satisfied that Telstra contravened the Service Migration Determination 2,296 times and the Service Continuity Standard 1,843 times. The reasons for the ACMA's findings are set out below.

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

13. 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.
14. 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**).
15. 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)).
16. 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.
17. In response to the First Notice, Telstra provided information indicating that Belong had 2,084 relevant customers that were eligible for an interim service in the relevant period. This is because:
 - (a) the preconditions in section 8 described above in paragraph 15 applied in relation to the customers
 - (b) these customers had experienced an unsuccessful migration event or a non-working NBN service event and the information provided by Telstra indicated that no exception in subsection 9(2) applied to these customers.
18. Under the Second Notice, the ACMA sought information to establish whether Belong had a reasonable basis for failing to supply an interim service to these 2,084 relevant customers.
19. After reviewing Telstra's responses, the ACMA is satisfied that Telstra contravened subsection 9(1) of the Service Migration Determination in relation to 23 of these customers in the relevant period. This is because Telstra stated in its Belong response that the agent did not follow the correct process to supply the interim service for 26 customers. (The unique identifiers of three of these customers were duplicates and have not been included in the findings, leaving 23 unique customers.)
20. For the remaining customers, the ACMA makes no finding of a contravention of subsection 9(1). This is because Telstra advised that these customers had a working legacy service, the customer was uncontactable or the NBN order was withdrawn.

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

21. 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.

22. In response to the First Notice, Telstra identified 20 Belong customers who were supplied with an interim service during the relevant period. Additionally, as described in paragraph 19 above, the ACMA has formed the view that Telstra failed to supply interim services to 23 Belong customers when it was required to do so.
23. The Second Notice asked whether Belong had provided the information specified in paragraphs 11(a) and (b) of the Service Migration Determination (**the section 11 information**) to each of these 43 customers.
24. After reviewing Telstra's responses about its Belong business, the ACMA is satisfied that Telstra contravened section 11 of the Service Migration Determination in relation to 43 Belong customers in the relevant period. These contraventions consisted of:
 - (a) 20 cases where Telstra stated that Belong agents did not provide the section 11 information to customers who were supplied with an interim service.
 - (b) 23 cases described in paragraph 19, where Telstra also stated Belong agents did not provide the section 11 information.

Section 16 of the Service Migration Determination and section 23 of the Service Continuity Standard: Requirements where there is an unreasonable delay in the supply of an operational NBN service

25. Section 16 of the Service Migration Determination and section 23 of the Service Continuity Standard set out the steps an NBN CSP must take where there is a delay in the supply of an operational NBN service.
26. Section 16 of the Service Migration Determination applies where section 8 of that Determination applies. Section 23 of the Service Continuity Standard applies where a relevant customer experienced an unsuccessful migration event or non-working NBN service event and section 16 of the Service Migration Determination does not apply.
27. Under subsection 16(2) of the Service Migration Determination and subsection 23(1) of the Service Continuity Standard, if a service is not operational 20 working days after an unsuccessful migration or a 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) of the Service Migration Determination and subsection 24(2) of the Service Continuity Standard, the NBN CSP must send the remedial plan to the consumer within 2 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 26, under subsection 16(5) of the Service Migration Determination and subsection 23(4) of the Service Continuity Standard (as applicable), the NBN CSP must arrange for a technical audit to be completed within 10 working days.
29. 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 consumer's side of the network boundary.¹
30. Telstra responded to the Notices indicating that there were 5,922² NBN services non-operational after the 20-working day trigger for remedial plans and 1,449 NBN services non-operational after the 40-working day trigger for technical audits. The ACMA has considered the information provided about these 7,371 services and is satisfied that, in the relevant period, Telstra contravened the rules in relation to 4,073 of these services.
31. In making this finding the ACMA notes:
 - (a) Telstra provided information indicating that it did not prepare a remedial plan for 5,908 customers for remedial plans and 1,449 customers for technical audits.

¹ See subsection 16(7) of the Service Migration Determination and subsection 23(6) of the Service Continuity Standard.

² These are revised figures provided by Telstra in response to the Second Notice.

- (b) All of these customers had experienced either an unsuccessful migration event or a non-working NBN service event.
 - (c) The ACMA accepts Telstra's submission that 3,274 of these services were exempt from the requirement to prepare remedial plans or conduct technical audits due to issues on the consumer's side of the network boundary.
 - (d) There was insufficient information to determine whether the Standard or the Determination applied for 10 of these customers.
 - (e) 14 customers were connected after the 20-working day trigger but before the 2 working day timeframe to prepare the remedial plan expired.
32. Of the 5,922 NBN services that were non-operational after the 20-working day trigger for remedial plans Telstra contravened:
- (a) subsection 16(2) of the Service Migration Determination 1,861 times. This is because 1,861 services were not parallel migrations, so section 8, and consequently subsection 16(2) of the Service Migration Determination applied to these services.
 - (b) subsection 23(1) of the Service Continuity Standard 1,369 times. This is because the Service Migration Determination did not apply to 1,369 services that were parallel migrations where Telstra was also the legacy CSP. Therefore subsection 23(1) of the Service Continuity Standard applied.
33. Of the 1,449 NBN services that were non-operational after the 40-working day trigger for technical audits Telstra contravened:
- (a) subsection 16(5) of the Service Migration Determination 369 times. This is because 369 services were not parallel migrations, so section 8, and consequently subsection 16(5) of the Service Migration applied to these services
 - (b) subsection 23(4) of the Service Continuity Standard 474 times. This is because the Service Migration Determination did not apply to 474 services that were parallel migrations where Telstra was also the legacy CSP.

Contraventions of subsections 101(1) and 128(1) of the Act

34. As set out in paragraphs 4 and 5, Telstra must comply with the service continuity rules.
35. For the reasons set out above, the ACMA has formed the view that Telstra has not complied with the applicable requirements of the service continuity rules. Therefore, the ACMA is satisfied that Telstra has contravened:
- (a) subsection 128(1) of the Act 1,843 times during the relevant period because it did not comply with the Service Continuity Standard
 - (a) subsection 101(1) of the Act 2,296 times during the relevant period because it did not comply with the Service Migration Determination.