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Australian Communications and Media Authority

Investigation Report

File No.	ACMA2020/186-20
Carrier	Telstra Corporation Limited ACN 051 775 556
Service	Local Number Portability
Relevant legislation, instrument and code	*Telecommunications Act 1997* Telecommunications Numbering Plan 2015 Industry Code C540:2013 Local Number Portability
Date	4 March 2021

Findings

1. The Australian Communications and Media Authority (**ACMA**) finds that, by suspending its Local Number Portability (**LNP**) activities, carrier[1] Telstra Corporation Limited ACN 051 775 556 (**Telstra**) has contravened the Telecommunications Numbering Plan 2015 (**Numbering Plan**) because:
   - between 25 March 2020 and 20 July 2020, as a carrier that is involved with providing portable services to customers, it failed to ensure that customers were able to exercise their rights in relation to number portability, in contravention of subsection 111(1)
   - between 25 March 2020 and 16 October 2020, it failed to do everything that is necessary to port customers' numbers to another Carriage Service Provider (CSP) or carrier where the other CSP or carrier asked, at the customers' request for the number to be ported, in contravention of subsection 111(2)
   - it failed to port numbers at a time agreed with the customer or the new CSP or carrier, or otherwise in the timeframes set out in subsection 111(3), in contravention of that subsection.
2. As Telstra has not complied with the obligations noted at paragraph 1 (above), it has contravened subsection 462(1) of the *Telecommunications Act 1997* (the **Act**), which requires a carrier to comply with the Numbering Plan. It is a condition of a carrier licence that a carrier comply with the Act (see section 61 and clause 1 of Schedule 1 to the Act). Failure to comply with a carrier licence condition is a contravention of subsection 68(1) of the Act, which is a civil penalty provision.
3. The ACMA also finds that Telstra has contravened the Industry Code (C540:2013) Local Number Portability (**LNP Code**), registered under Part 6 of the Act, because it failed:
   - as a losing carrier[2], to process the Pre-Port Number Validation (**PNV**[3]) requests and provide a response to the gaining carrier[4] within required timeframes (80% in three business days and 99% in five business days), in contravention of clause 4.3.9
   - to process a Complex Notification Advice (**CNA**[5]) Confirmation Advice, at the Batch level, to the gaining carrier for all CNAs successfully validated within five Business Days of the receipt of the

[1] Telstra is also a CSP. The ACMA has chosen to assess Telstra's conduct in respect of its obligations as a carrier, but it is noted that it has substantively the same obligations (albeit in some cases arising under different provisions) in its capacity as a CSP.

[2] A losing carrier means the carrier *from which* a telephone number has been or is to be ported.

[3] A PNV means an inter-carrier validation process used primarily for Category C ports to facilitate the efficient porting of local numbers. A PNV requires the losing carrier and the losing CSP to share and confirm the service information related to a single end customer's telephone number to the gaining carrier in order to facilitate the efficient porting of the telephone number.

[4] A gaining carrier means the carrier *to which* a telephone number has been or is to be ported.

[5] A CNA means an advice contained within an electronic transfer of information between a gaining and losing carrier which provides the initial details for each telephone number to be ported using the Category C process outlined in the LNP Code.

CNA, in contravention of clause 4.4.6.

Background

4. The purpose of the LNP regulatory framework is to permit customers to retain their telephone number when changing carrier networks and/or CSPs. The objectives are to promote competition, any-to-any connectivity and efficient use and investment in infrastructure in telecommunications markets.[6]

5. Telstra holds a carrier licence issued under Division 3 of Part 3 of the Act, and as such, has regulatory obligations regarding LNP under the Act and Numbering Plan, and is an industry participant to which the LNP Code applies.

6. On 24 March 2020, Telstra advised the ACMA that it was suspending all LNP activities from 25 March 2020 (except for certain urgent porting requests relating to priority assistance or emergency services)[7] because of the impact of the COVID-19 pandemic on its offshore operations where its LNP functions are performed.

7. Telstra stated no new port in or out requests could be submitted to it and all scheduled porting activity from 25 March 2020 until (at least) 6 April 2020 would be cancelled.

8. Telstra did not make an application to the ACMA under Part 3 of Chapter 10 of the Numbering Plan for an exemption from its obligations under the Numbering Plan.

9. Telstra's decision was made unilaterally, with little notice and had a direct and immediate impact on consumers wishing to port their services to and from Telstra, as well as on the rest of the market, as it prevented other CSPs and carriers from legitimately porting services from and to Telstra.

10. Telstra subsequently advised the ACMA that on:

    > 6 April 2020, it had resumed accepting and processing Category A requests. These are ports for telephone services which are largely automated and involve single numbers. These typically involve residential services. It also resumed Category C Third party ports[8].

    > 1 June 2020, it had resumed accepting 100% of new Category C port requests. These are ports for telephone services which usually involve multiple numbers and relate to business services. Telstra advised that it is the port out of Category C ports that is largely dependent on manual processes undertaken by Telstra's offshore staff.

    > 20 July 2020, it had resumed processing 100% of Category C booking cutover date[9] requests.

    > 16 October 2020, it had cleared the backlog of Category C ports affected by its suspension of LNP activities.

11. Following clearance of the backlog of affected ports, the ACMA moved to finalise its investigation under section 510 of the Act, providing Telstra with preliminary findings on 7 December 2020.

12. Telstra responded to the preliminary findings, admitting that it had breached the relevant obligations. However, Telstra argued that the contraventions were caused by matters out of its control.[10]

13. Contraventions as a result of Telstra's suspension of its LNP activities are set out at **Attachment A.**[11]

14. **Attachment B** sets out the ACMA's estimates of the broader number of ports that were likely impacted by Telstra's suspension of LNP (in addition to the contraventions in **Attachment A**).

    > Based on information provided by Telstra about the average number of ports it usually processes,

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[6] ACCC Directions on Number Portability and Explanatory Statement

[7] The ACMA is not aware of any impact on these services as a consequence of Telstra's LNP suspension.

[8] Third party porting means ports of a complex service where the donor carrier (the carrier to which a telephone number is allocated under the Numbering Plan) is not the gaining carrier or losing carrier.

[9] Cutover date means the date on which a porting cutover is to be actioned as specified in the relevant advice (the advice sent from the gaining carrier to the losing carrier which provides the cutover of service details).

[10] For completeness, the ACMA notes that although Telstra did not seek an exemption from its Numbering Plan requirements, it did ask the ACMA to exercise forbearance in relation to the contraventions, and that request was declined. Telstra argued that the contraventions were caused by matters out of its control and that its business continuity plan catered for the loss of one of its two main partner sites offshore, but it did not address the loss of both major sites given the distance between them (600kms), and the loss of other offshore sites.

[11] Based on information in daily and weekly reports provided by Telstra to the ACMA during the suspension period, and on 24 November 2020.

the ACMA estimates that 13,558 port-out requests could not be actioned during Telstra's suspension of LNP activities (Table 1).

> The ACMA also estimates 3,041 ports expired during that period (Tables 2-4). However, Telstra has been unable to identify which ports expired or were withdrawn due to the suspension of LNP services and which ports expired or were withdrawn by carriers as part of their business-as-usual processes.

While the ACMA has confined its contravention findings to those which are readily ascertainable, the estimates indicate that the impact of Telstra's suspension of its LNP activities was likely much broader than the found contraventions.

Contraventions of the Numbering Plan

15. Part 2 of Chapter 10 of the Numbering Plan sets out carrier (and CSP) obligations to provide number portability.

Exercise of customer rights

16. Subsection 111(1) of the Numbering Plan requires that a CSP or carrier that is involved with providing a portable service to a customer must ensure that the customer is able to exercise the customer's right in relation to number portability.

17. By suspending its LNP activities on 25 March 2020, Telstra failed to ensure that customers were able to exercise their rights in relation to number portability. Telstra cancelled 895 scheduled ports (see Table 1 of **Attachment A**) and unilaterally advised other CSPs it was not accepting new LNP port requests and that CSPs should cease sending requests related to new landline porting activity.

18. On this basis, the ACMA finds Telstra contravened subsection 111(1) on 895 occasions.

Porting on request

19. Subsection 111(2) of the Numbering Plan requires that a CSP or carrier must do everything that is necessary to port the customer's number to another CSP or carrier if the other CSP or carrier asks, at the customer's request, for the number to be ported.

20. Between 25 March 2020 and 16 October 2020, Telstra cancelled 895 scheduled ports that had been requested.

21. On this basis, the ACMA finds that, between 25 March 2020 and 16 October 2020, Telstra contravened subsection 111(2) on 895 occasions.

Porting at the agreed time

22. Paragraph 111(3)(a) of the Numbering Plan requires that a CSP or carrier must port the number, if a time is agreed with the customer or the new CSP or carrier – at the agreed time, or otherwise in accordance with the timeframes referenced in subsection 111(3) the Numbering Plan[12].

23. Based on information provided by Telstra, it cancelled 895 scheduled ports following its suspension of LNP.

24. Accordingly, the ACMA finds Telstra contravened subsection 111(3)(a) of the Numbering Plan on 895 occasions.

Contraventions of the Act

25. Subsection 462(1) of the Act requires a person who is a carrier or a CSP to comply with the Numbering Plan.

26. As the ACMA has found that Telstra contravened three provisions of the Numbering Plan on 895 occasions each, the ACMA also finds that Telstra has contravened subsection 462(1) of the Act on 2,685 instances across the same periods noted above.

27. By contravening subsection 462(1) the Act, Telstra has also failed to comply with the standard carrier licence condition in clause 1 of Schedule 1 of the Act (imposed by section 61 of the Act) which requires that a carrier must comply with the Act. A failure to comply with a carrier licence condition is a contravention of the civil penalty provision at subsection 68(1) of the Act, which requires that a carrier

[12] A carrier or CSP must port a number at the time agreed with the customer or gaining carrier or CSP. If no time has been agreed, the number must be ported within the period set out in the LNP Code: generally, 30 calendar days for Category A ports and 120 calendar days for Category C ports.

must not contravene a condition of its carrier licence.

28. Accordingly, the ACMA finds Telstra has contravened subsection 68(1) of the Act on 2,685 occasions.

Contraventions of the LNP Code

Pre-Port Number Validation processing timeframes

29. Clause 4 of the LNP Code sets out the standard porting process for Category C ports.

30. Clause 4.3.9 requires that the losing carrier process a PNV request and provide a response to the gaining carrier within the following timeframes:

    (i) 80% in three Business Days; and

    (ii) 99% in five Business Days.

31. Based on information provided by Telstra, it did not process PNV requests in the required timeframes for 275 ports (see Table 2 at **Attachment A**).

32. Accordingly, the ACMA finds that Telstra has contravened clause 4.3.9 of the LNP Code on 275 occasions between 1 June 2020 to 16 September 2020.

Complex Notification Advice processing timeframes

33. Clause 4.4.6 requires Telstra to provide a CNA Confirmation Advice, at the Batch level, to the gaining carrier for all CNAs successfully validated under clause 4.4.5[13] within five Business Days of the receipt of the CNA.

34. Based on information provided by Telstra, it did not process CNA requests within the required timeframes for 502 ports (see Table 2 at **Attachment A**).

35. Accordingly, the ACMA finds that Telstra has contravened clause 4.4.6 of the LNP Code on 502 occasions between 1 June 2020 and 11 November 2020.

[Attachments redacted]

[13] Under Clause 4.4.5, the losing carrier is required to validate that the telephone number meets a number of requirements, including that the number; is issued, has not already ported to another carrier, is not disconnected, batch number is valid and that the customer authorisation is not more than 90 calendar days old.

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