

Investigation Report

File No.	ACMA2021/249
Entity	Telstra Corporation Limited
ACN	051 775 556
Relevant Legislation, Codes, instrument	<p><i>Telecommunications Act 1997</i></p> <p>C628: 2019 Telecommunications Consumer Protections Code</p> <p>C628: 2015 Telecommunications Consumer Protections Code</p> <p>Direction given to Telstra Corporation Limited under subsection 121(1) of the <i>Telecommunications Act 1997</i>, directing it to comply with clause 5.5.1 of the C628: 2019 Telecommunications Consumer Protections Code.</p>

Findings

The Australian Communications and Media Authority (**ACMA**) holds the view that:

- > Between 2 July 2018 and 31 July 2019 (when the Telecommunications Consumer Protections Code 2015 (the **TCP Code 2015**) applied) Telstra Corporation Limited (**Telstra**) was not able to provide, verify and demonstrate Billing Accuracy for 2,684 customers, in contravention of clause 5.5.1 of the TCP Code 2015.
- > Between 1 August 2019 and 1 October 2021 (when the Telecommunications Consumer Protections Code 2019 (the **TCP Code 2019**) applied), Telstra was not able to provide, verify and demonstrate Billing Accuracy for 9,540 customers, in contravention of clause 5.5.1 of the TCP Code 2019.
- > Between 21 September and 1 October 2021 (when the direction given to Telstra under subsection 121(1) of the *Telecommunications Act 1997* (the **Telecommunications Act**) to comply with clause 5.5.1 of the TCP Code 2019 applied), Telstra breached clause 5.5.1 of the TCP Code 2019 at least 4,423 times in contravention of the direction and, as a consequence, has contravened subsection 121(2) of the Telecommunications Act at least 4,423 times.

Background

1. This report presents the findings of an investigation conducted by the ACMA into whether Telstra contravened:
 - > the billing accuracy requirements under clause 5.5.1 of the TCP Code 2019, which commenced on 1 August 2019, and clause 5.5.1 of the TCP Code 2015, which applied between 3 December 2015 and 31 July 2019 (the **TCP Codes**).
 - > subsection 121(2) of the Telecommunications Act by not complying with a direction, given to Telstra by the ACMA under subsection 121(1) of the Telecommunications Act on 21 September 2020, requiring Telstra to comply with the Billing Accuracy requirements under clause 5.5.1 of the TCP Code 2019 (**the Direction**).
2. The investigation focuses on three separate billing issues reported to the ACMA between 30 November 2020 and 15 July 2021.
3. In making these findings the ACMA examined:
 - (a) Information voluntarily reported to the ACMA by Telstra in correspondence dated 30 November 2020, 1 March 2021 and 15 July 2021.

- (b) Information obtained from Telstra on 27 August 2021 and 19 October 2021 in response to notices issued under subsection 521(2) of the Telecommunications Act.
- (c) Information provided by Telstra on 18 August 2021, 19 October 2021, 28 October 2021 and 29 October 2021 in response to email requests made by the ACMA. These requests were to obtain new information additional to that required by the two compulsory notices, and to clarify or expand on information already given.
- (d) Telstra's submission in response to the ACMA's preliminary findings investigation report, which was received on 3 December 2021.

Telstra's response to preliminary findings

- 4. In its response to the ACMA's preliminary findings, Telstra acknowledged that it had contravened the billing accuracy requirement in clause 5.5.1 of the 2015 and 2019 TCP Codes, and had contravened the Direction. It also accepted the ACMA's view that 11,670 customers were impacted by the billing incidents that are the subject of this investigation, and that at least 4,423 of these customers were impacted after the Direction was issued.
- 5. Telstra submitted that the incorrect billing of these customers was the result of six underlying system errors and/or process failures (three leading to incorrect billing of interim Customer Service Guarantee services, one leading to incorrect billing of a casual plan fee for Telstra broadband services, and two leading to incorrect billing of Belong customers for disconnected NBN services). Telstra argued that each of these underlying failures should be regarded as a single course of conduct.
- 6. Telstra also viewed clause 5.5.1 of the TCP Codes as being directed at requiring suppliers to provide billing accuracy at a general level and relates to a supplier's billing practices broadly, noting there is no reference to individual consumers in the clause or in the definition of "Billing Accuracy".
- 7. Accordingly, Telstra submitted that the six underlying system errors and/or process failures should represent the contraventions of TCP Codes 2015 and 2019 and the Direction in respect of the customers impacted.

Findings and Reasons

- 8. The TCP Codes were both registered under Part 6 of the Telecommunications Act and set out rules that apply to all carriage service providers (**CSPs**) that supply telecommunications products to residential and small business consumers.
- 9. Telstra is an Australian company that provides mobile phone and broadband services (listed carriage services¹) to residential and small business customers. It is therefore a CSP within the meaning of section 87 of the Telecommunications Act and is a supplier for the purposes of the TCP Codes.
- 10. Having assessed the evidence and information before it, the ACMA is of the view that Telstra has contravened:
 - > clause 5.5.1 of the TCP Code 2015 and TCP Code 2019
 - > subsection 121(2) of the Telecommunications Act.

Details of the contraventions are set out below.

¹ As defined in section 16 of the Telecommunications Act.

Clause 5.5.1: Verifying charges – supplier verification

11. Clause 5.5.1 of the TCP Codes² require a supplier (CSP) to ensure it provides, and must be able to verify and demonstrate, Billing Accuracy except for inaccuracies caused by:
- (a) the supplier's reliance on information provided by a person who is not its director, employee or agent;
 - (b) an action or failure of another person who is not the supplier's director, employee or agent; or
 - (c) an accident, mistake or any matter beyond the supplier's control, where the supplier took reasonable care and precautions to avoid the inaccuracy.
12. 'Billing Accuracy' is defined in clause 2.1 of the TCP Codes to mean the validity of charges and the correctness of the calculation of the charges. 'Charge' is defined in clause 2.1 of the TCP Codes to mean the tariff or fee which a supplier levies for the provision of a telecommunications product or a related transaction.

Interim services billing issue

13. On 30 November 2020 and 1 March 2021, Telstra reported to the ACMA that it had incorrectly charged customers for interim services it provided under the *Telecommunications (Customer Service Guarantee) Standard 2011 (CSG Standard)*.
14. In subsequent information provided by Telstra on 27 August 2021 and 28 October 2021, Telstra confirmed that it overcharged:
- > 36 customers between 26 February 2020 and 5 February 2021. In this case, the amount charged for the interim service was more than the amount these customers would have been charged for the requested CSG service.³ Telstra explained that the overcharging was due to its Customer Relationship Management system incorrectly migrating some customers to a new plan which had charging associated with that plan and some customers being charged for call usage on the HomeLine Reach plan used for interim services. Telstra advised that the total value of this overcharging was \$1,808.30;
 - > 88 customers by charging for both an interim service provided under the CSG Standard and their requested CSG service between 1 January and 31 August 2021; and
 - > 12 customers between 1 January and 31 August 2021. In this case, the amount charged for the interim service was more than the amount these customers would have been charged for the requested CSG service.

Telstra explained that the overcharging of these two latter groups of customers was due to staff following out-of-date work instructions that did not specify the correct product code to be used for interim services. Telstra advised that the value of the overcharging was \$30,965.80.

15. As all 136 customers were overcharged in respect of their interim service between 26 February 2020 and 31 August 2021, the TCP Code 2019 applied.

Casual Plan billing issue

16. On 15 July 2021, Telstra advised the ACMA that it had incorrectly charged 3,506 customers a set-up fee of \$120.00 on NBN and non-NBN broadband services between 1 February 2019 and 18 June 2021. The set-up fee was for customers who chose a fixed internet service on a casual plan

² Clause 5.5.1 is in the same terms in the TCP Code 2015 and the TCP Code 2019.

³ A CSG service is defined in section 4 of the CSG Standard.

(month-to-month), rather than signing up to a 24-month plan. The customers affected were incorrectly charged a total of \$410,385.

17. Of the 3,506 customers affected:
 - > 460 customers were incorrectly billed between 1 February 2019 and 31 July 2019, some more than once. For this period the TCP Code 2015 applied.
 - > 3,046 customers were incorrectly billed between 1 August 2019 and 18 June 2021, some more than once. For this period the TCP Code 2019 applied.
18. Telstra advised that the incorrect billing was caused by data transfer errors between their legacy customer relationship management system and its relevant billing system.

Belong billing issue

19. On 15 July 2021, Telstra advised the ACMA that between 2 July 2018 and 30 April 2021, Telstra, trading as Belong, had continued to charge 9,790 Belong customers for a broadband service after their service had been disconnected.
20. In further information from Telstra about this incident, and following a closer assessment of its records, the number of Belong customers affected was revised to 8,028. Information provided by Telstra on 29 October 2021 indicates that:
 - a. 2,224 Belong customers had continued to be charged for a broadband service after the service had been disconnected between 1 February 2019 and 31 July 2019. For this period the TCP Code 2015 applied.
 - b. 6,358 Belong customers had continued to be charged for a broadband service after the service had been disconnected between 1 August 2019 and 1 October 2021. For this period the TCP Code 2019 applied.
21. For some Belong customers the time period during which they were charged for a broadband service after it had been disconnected spanned both TCP Codes.
22. Telstra advised that Belong incorrectly charged \$1,286,662 in total across all affected customers.
23. Telstra explained that the inaccurate billing occurred when customers were not disconnected in the Belong billing system when their service ceased. This was due to billing system misalignments resulting from manual processing errors, and customer records missing from reports from another Telstra system used to identify customers who had been disconnected from Belong.

ACMA's view

24. The ACMA has considered Telstra's submission on the preliminary findings, dated 3 December 2021.
25. Based on the available information, the ACMA is of the view that the inaccurate billing was caused by Telstra (trading across its Telstra and Belong brands) and that the exemptions in paragraphs 5.5.1(a), (b) and (c) of the TCP Codes do not apply.
26. The ACMA does not accept Telstra's broad interpretation that clause 5.5.1 in TCP Codes 2015 and 2019 is limited to providing billing accuracy to a supplier's billing practices generally, and not to the accuracy of individual customers' bills. While individual customers are not referred to in this clause (and by extension, in the definition of Billing Accuracy), the ACMA is of the view that this clause is clearly intended to apply to individual bills.
27. The following words appear at the beginning of the TCP Code 2019's Chapter 5 (Billing):

This Chapter sets out what Suppliers must do in relation to Billing and providing information about Bills and Charges to Customers arising out of the supply of Telecommunications Products.

The wording here implies that the chapter addresses actions regarding specific bills and charging information for individual customers. Requirements throughout the Billing chapter are also clearly intended to apply to the billing of individual customers rather than billing practices more broadly.

28. The ACMA has not previously interpreted clause 5.5.1 as only requiring billing accuracy more generally rather than for individual customers and considers it would also be inconsistent with the clear intent of how the requirements in Chapter 5 (Billing) should apply to provide consumer protection.
29. Consequently, while the six underlying system errors and process failures identified by Telstra in its response to the preliminary findings report appear to have led to the total number of times that customers were inaccurately billed, the ACMA does not consider that these six failures characterise the total number of contraventions of clause 5.5.1 of the applicable TCP Codes. Rather, the ACMA considers that each customer that was incorrectly billed by Telstra constituted a separate contravention of the applicable TCP Code.
30. Therefore, taking into account all three billing issues, it is the ACMA's view that:
 - a. Between 2 July 2018 and 31 July 2019 (when the TCP Code 2015 applied), Telstra was not able to provide, verify and demonstrate Billing Accuracy for 2,684 customers, in contravention of clause 5.5.1 of the TCP Code 2015.
 - b. From 1 August 2019 (when the TCP Code 2019 commenced) to 1 October 2021, Telstra was not able to provide, verify and demonstrate Billing Accuracy for 9,540 customers, in contravention of clause 5.5.1 of the TCP Code 2019.

Compliance with the Direction

31. Subsection 121(2) of the Telecommunications Act requires that a person must comply with a direction given under subsection 121(1) of that Act.
32. As the ACMA gave Telstra the Direction to comply on 21 September 2020, Telstra was required to comply with the Direction from that date.
33. Telstra has advised that:
 - > Of the 136 customers who Telstra overcharged for interim services provided under the CSG Standard while the TCP Code 2019 applied, all were overcharged after 21 September 2021.
 - > Of the 3,046 customers who Telstra incorrectly billed a \$120 casual plan set-up fee for fixed broadband services while the TCP Code 2019 applied, 1,306 of these customers were charged this fee on or after 21 September 2020, some more than once.
 - > Of the 6,358 customers who Belong incorrectly billed for a disconnected NBN broadband service while the TCP Code 2019 applied, 2,981 of these customers were charged on or after 21 September 2021, some more than once.
34. Therefore, the ACMA is of the view that by breaching clause 5.5.1 of the TCP Code 2019 on or after 21 September 2021 at least 4,423 times, Telstra has breached the Direction to comply at least 4,423 times.
35. The ACMA is also of the view that, by not complying with the Direction to comply Telstra has contravened subsection 121(2) of the Telecommunications Act at least 4,423 times and, consequently, the service provider rule set out at clause 1 of Schedule 2 to the Telecommunications Act.