

Investigation Report

File No	ACMA2022/29
Carriage service provider	New Sprout Pty Ltd
ACN	144 879 121
Scope of Investigation	Compliance with clauses 10.1.1(b) and 10.4 of the Telecommunications Consumer Protections Code C628:2019 (the TCP Code)

Findings

- The Australian Communications and Media Authority (the **ACMA**) finds that New Sprout Pty Ltd (ACN 144 879 121) (**New Sprout**) contravened:
 - clause 10.1.1(b) of the TCP Code because it did not register with Communications Alliance (**CA**) within one month after it first acquired customers; and
 - clause 10.4 of the TCP Code because it did not provide Communications Compliance Ltd (**CommCom**) with prescribed statements regarding code compliance by the applicable date specified in clause 10.8 of the TCP Code.

Background

- On 30 March 2022, the ACMA commenced an investigation under section 510(c) of the *Telecommunications Act 1997* to determine whether New Sprout was complying with clause 10.1.1(b) and 10.4 of the TCP Code.
- On the same day, the ACMA sent its preliminary findings report to New Sprout and invited New Sprout to respond.
- On 30 March and 31 March 2022, New Sprout responded to the ACMA and did not dispute that it had not met its obligations under clause 10.1.1(b) and 10.4 of the TCP Code.

Reasons for findings

- The table below sets out the ACMA's findings and the reasons for those findings. In making its findings, the ACMA has considered New Sprout's responses of 30 March and 31 March 2022.

TCP Code rule	Requirement	Reasons
10.1	Supplier obligations to comply and register Suppliers with one or more Customers must implement and comply with the Code Compliance Framework and register with Communications Alliance (CA) for compliance purposes.	New Sprout is a carriage service provider providing telecommunications services to residential and small business consumers. It is therefore a 'supplier' under the TCP Code.
10.1.1(b)	A Supplier must take the following actions to enable this outcome: Registration by Supplier with Communications Alliance: within one month after the Supplier first	On 12 January 2022, CA provided the ACMA with a list of suppliers that are registered with it in accordance with 10.1.1(b) of the TCP Code. New Sprout was not on that list. TIO complaint data indicates that New Sprout had been the subject of TIO complaints over the period 31 October 2020 to 31 October 2021. This indicates that New Sprout had

	<p>acquires Customers supply the following information in writing to CA:</p> <p>(i) a statement that the Supplier is providing this information in accordance with Clause 10.1.1 of this Code (and in so doing the Supplier accepts that CA will forward this information to Communications Compliance to facilitate Communications Compliance's performance of its functions which may include publication of the information in paragraph (ii) below;</p> <p>(ii) the legal name, the ACN or ABN, and all relevant business names, of the Supplier and the URL of the home page of the website of each of its relevant businesses;</p> <p>(iii) contact details for a nominated staff member of the Supplier (including name, title, address, telephone number and email address).</p>	<p>customers during this period.</p> <p>As New Sprout had customers in the 12 months to 31 October 2021 and was not registered with Communications Alliance by 30 November 2021, it did not comply with clause 10.1.1(b).</p> <p>On 31 March 2022, New Sprout confirmed that it had since submitted its registration form to CA and registered in the Communications Compliance CSP portal.</p> <p>This further indicates that New Sprout had not previously registered with CA within one month after first acquiring customers as required by clause 10.1.1(b).</p>
<p>10.4</p> <p>10.4.1(a)</p>	<p>Code compliance statements</p> <p>Suppliers must provide to CommCom prescribed statements regarding compliance with the TCP Code in the manner set out in this clause 10.4 and at the times set out in clause 10.8.</p> <p>A Supplier must:</p> <p>(a) Compliance Attestation: provide to CommCom a Compliance Attestation which has been endorsed by the chief executive officer or a senior manager of the Supplier, by the date each year specified in clause 10.8.1 and in the form required by CommCom.</p>	<p>The ACMA is satisfied that New Sprout had one or more customers on 1 April 2021 on the basis of evidence that it was the subject of TIO complaints prior to 1 April 2021.</p> <p>As New Sprout had one or more customers on 1 April 2021 it was required under clause 10.4 to provide CommCom with the prescribed statements regarding compliance with the TCP Code in accordance with the timeframes specified in clause 10.8.1 of the TCP Code.</p>
<p>10.8</p> <p>10.8.1</p>	<p>Supplier obligations to meet compliance attestation timeframes</p> <p>Suppliers must meet the timeframes set out in this clause if they have one or more customers on 1 April each year.</p> <p>Date for provision of attestation statements: If the supplier is a small supplier as at 1 April, the supplier must provide the statements prescribed in clause 10.4.1 by the following dates:</p> <p>(a) 1 April in the same year, or the</p>	<p>On 1 December 2021, CommCom provided the ACMA with a list of suppliers that had lodged the prescribed statements regarding TCP Code compliance for 2021. New Sprout was not on that list.</p> <p>In its response to the ACMA on 30 March 2022, New Sprout did not dispute that it had not met this obligation.</p> <p>Therefore, the ACMA is of the view that New Sprout did not comply with clause 10.4 of the TCP Code.</p>

10.8.2	<p>following working day; or</p> <p>(b) If the supplier has submitted an attestation deferral notice, 1 September in the same year, or the following working day.</p> <p>Note: A 'Small Supplier' is defined in clause 2.1 of the TCP Code to mean a supplier with fewer than 3,000 services in operation.</p> <p><i>Date for provision of Compliance Attestation for all other suppliers:</i> If the supplier is not a small supplier as at 1 April, 1 September in the same year, or the following working day.</p>	
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