

## Investigation Report

<b>File No</b>	ACMA2020/337
<b>Entity</b>	Netlogyx Technology Specialists Pty Ltd
<b>ACN</b>	169 427 721
<b>Scope of Investigation</b>	Compliance with subsection 128(1) of the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>
	The service provider rule at clause 1 of Schedule 2 to the <i>Telecommunications Act 1997</i>

## Findings

The Australian Communications and Media Authority (the **ACMA**) finds that Netlogyx Technology Specialists Pty Ltd (ACN 169 427 721) (**Netlogyx**) has contravened:

- (a) subsection 128(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the **TCPSS Act**);
- (b) the service provider rules set out at clause 1 of Schedule 2 to the *Telecommunications Act 1997* (the **Telecommunications Act**); and
- (c) subsection 101(1) of the *Telecommunications Act*,

by failing to join the Telecommunications Industry Ombudsman (**TIO**) scheme.

## Background

1. On 30 June 2021, the ACMA received a referral from the TIO alleging that Netlogyx had failed to join the TIO scheme in accordance with subsection 128(1) of the TCPSS Act.
2. The TIO became aware that Netlogyx may be providing carriage services following an email it received from a member of the TIO scheme on 25 March 2021.
3. The TIO contacted Netlogyx by email on 26 March 2021 to inform it that it was required to become a member of the TIO scheme. Netlogyx did not respond to the TIO's email. The TIO contacted the Director of Netlogyx by telephone on 16 April 2021. The Director advised the TIO that he planned to phase out the selling of telecommunications products by 30 December 2021.
4. The TIO contacted Netlogyx on a number of occasions by email and phone between 19 April 2021 and 24 May 2021 to reiterate Netlogyx's obligations to join the TIO scheme in accordance with the requirements under the TCPSS Act.
5. The ACMA investigated the TIO referral and on 11 August 2021 sent its preliminary findings report to Netlogyx, inviting it to respond by 25 August 2021.
6. On 9 September 2021, Netlogyx confirmed that it submitted a membership application form to the TIO.
7. The TIO confirmed that Netlogyx became a member of the TIO scheme on 10 September 2021.

## Legislative framework

8. Under paragraph 510(1)(aa) of the *Telecommunications Act*, the ACMA may investigate a potential contravention of the TCPSS Act, where it has reason to suspect that a person may have contravened that Act.
9. Subsection 128(1) of the TCPSS Act requires each carrier and eligible carriage service provider (**CSP**) to enter into a scheme known as the TIO scheme. For the purpose of Part 6 of the TCPSS

Act, an 'eligible CSP' includes a CSP who supplies carriage services that enable end-users to access the internet (subparagraph 127(a)(iii) of the TCPSS Act).

10. When a CSP contravenes subsection 128(1) of the TCPSS Act it also contravenes the service provider rule set out at clause 1 of Schedule 2 to the Telecommunications Act and subsection 101(1) of the Telecommunications Act.

### Findings and reasons

11. Netlogyx states on its webpage at <https://netlogyxit.com.au/about/> that it provides fast internet (among other services) to small, medium and large businesses located on the Gold Coast. **Attachment A** is an extract of Netlogyx's website which the ACMA accessed on 11 August 2021.
12. Netlogyx also states on its webpage at <https://netlogyxit.com.au/fast-internet/> that:
  - > it gives its customers unlimited data, and
  - > provides faster typical speeds on its NBN service as it has less people using its connections (see **Attachment A**).
13. As Netlogyx supplies carriage services that enable end-users to access the internet it is an 'eligible CSP' (subparagraph 127(a)(iii) of the TCPSS Act). Netlogyx was an eligible CSP from at least 11 August 2021, being the date the ACMA accessed the entity's website as described in paragraph 11. However, it is likely that Netlogyx was an eligible CSP much earlier than this, noting that the TIO contacted Netlogyx by email on 26 March 2021 to inform it that it was required to become a member of the TIO scheme
14. As an eligible CSP, Netlogyx was required to join the TIO scheme in accordance with subsection 128(1) of the TCPSS Act. Despite being an eligible CSP from at least 11 August 2021, Netlogyx did not join the TIO scheme until 10 September 2021. Consequently, the ACMA finds that Netlogyx contravened subsection 128(1) of the TCPSS Act from at least 11 August 2021 to 9 September 2021. Accordingly, Netlogyx contravened the service provider rule set out at clause 1 of Schedule 2 to the Telecommunications Act, and subsection 101(1) of the Telecommunications Act.