

## Investigation Report

<b>File No.</b>	ACMA2019/1382
<b>Carriage Service Provider</b>	TPG Telecom Limited (trading as Lebara Australia, Lebara Mobile and Lebara) (ACN: 096 304 620)
<b>Type of Service</b>	Prepaid Mobile Carriage Services
<b>Relevant Legislation/Code</b>	<i>Telecommunications Act 1997</i> <i>Telecommunications (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Determination 2017</i>

### Investigation Findings

The Australian Communications and Media Authority (the **ACMA**) finds that TPG Telecom Limited (formerly Vodafone Hutchison Australia Pty Limited, trading as Lebara Australia, Lebara Mobile and Lebara, ACN: 096 304 620) (**TPG Lebara**) contravened subsection 101(1) of the *Telecommunications Act 1997* (the **Act**), which requires a carriage service provider (**CSP**) to comply with the service provider rules set out in the Act, on 26,323 occasions.

It did this by failing to comply with subsection 2.3(1) of the *Telecommunications (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Determination 2017* (the **Prepaid Determination**), which applies to CSPs in relation to the supply of prepaid mobile carriage services and is a service provider rule under paragraph 98(1)(b) of the Act<sup>1</sup>, on 26,323 occasions by:

- > activating 16,302 prepaid mobile carriage services without complying with the rules in Part 4 of the Prepaid Determination, as required by paragraph 2.3(1)(a)
- > activating 10,021 prepaid mobile carriage services without complying with an approved compliance plan, as required by paragraph 2.3(1)(b).

An analysis of these contraventions is provided below in the ‘Reasons’ section.

### The Prepaid Determination

1. The Prepaid Determination sets out the regulatory framework and rules for the supply of prepaid mobile carriage services by CSPs. It requires CSPs to obtain certain information and verify the identity of customers, before activating a prepaid mobile carriage service, unless an exemption applies under Part 3 or subsection 4.2(2) of the Prepaid Determination.
2. Section 2.1 of the Prepaid Determination relevantly states that the objects of the Determination are to:
  - > assist law enforcement agencies to identify customers in relation to prepaid mobile carriage services
  - > protect the privacy of individuals by ensuring that CSPs obtain, record and keep only the minimum amount of information that is reasonably necessary
  - > provide CSPs with a range of methods which can be used to verify the identity of customers.

<sup>1</sup> The Prepaid Determination is a service provider determination made under section 99 of the Act, and the rules in the Determination are service provider rules in accordance with paragraph 98(1)(b) of the Act.

## Background and relevant facts

3. TPG Lebara is a CSP within the meaning of section 87 of the Act and offers prepaid mobile carriage services to the public as evidenced by its website.<sup>2</sup>
4. TPG Lebara was a member of a group of CSPs that applied for approval of a joint compliance plan (**Compliance Plan**) under Part 5 of the Prepaid Determination. The Compliance Plan<sup>3</sup> set out the process that those CSPs were required to follow to verify the identity of service activators using financial account details from financial institutions that are not authorised deposit-taking institutions (**ADIs**).
5. On 15 January 2020, the ACMA commenced an investigation under subsection 510(1) of the Act into TPG Lebara's compliance with the Prepaid Determination. On that date, the ACMA also gave TPG Lebara a notice under section 521 of the Act (the **section 521 notice**), to provide relevant customer records (documents) and information.
6. TPG Lebara was required to provide customer records for all prepaid mobile carriage services activated using the verification method:
  - > specified in the Compliance Plan since 11 October 2018
  - > described in Item 4 of Schedule 1 to the Prepaid Determination (for the purposes of complying with section 4.5 of the Determination), between 1 July 2019 and 31 December 2019.
7. The customer records included, amongst other things:
  - > the name, date of birth and residential address of the customer and, where relevant, the entity name and address
  - > the prepaid mobile carriage service number, the date of activation and the method of verification
  - > evidence that the verification was undertaken.
8. TPG Lebara provided the information and documents required by the ACMA to undertake the investigation on 21 February 2020.
9. A Preliminary Investigation Report was sent to TPG Lebara on 12 May 2020 with an invitation to provide a submission to the ACMA on the findings contained in that report. TPG Lebara provided its submission on 1 July 2020.
10. TPG Lebara acknowledged that there were certain technical deficiencies resulting in its non-compliance with the Prepaid Determination and the Compliance Plan. It accepted some of the ACMA's findings, but also contested some findings. In brief, TPG Lebara stated that it did not consider that it had:
  - > contravened section 4.3 of the Determination, regarding the collection of customer names (see paragraphs 23 – 29 below)
  - > contravened Table 2, row 3(a) of the Compliance Plan, regarding the collection of customer names (see paragraphs 37 – 39 below)
  - > failed to use a Validation Service as required under the Compliance Plan (see paragraphs 42 – 45 below).
11. The ACMA requested additional information from TPG Lebara on 8 July 2020 regarding its claim of compliance with section 4.3. TPG Lebara provided the information on 16 July 2020.

## Reasons

### **Compliance with the Act**

12. Subsection 101(1) of the Act requires that service providers must comply with the service provider rules that apply to them. Subsection 98(1) of the Act provides that the service provider rules include those set out in service provider determinations in force under section 99 of the Act.
13. The Prepaid Determination is a service provider determination made under section 99 of the Act.

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<sup>2</sup> <https://www.lebara.com.au/terms-and-conditions/>

<sup>3</sup> The ACMA approved the Compliance Plan on 11 October 2018 for use by 21 CSPs for a period of two years. TPG Lebara commenced using the Compliance Plan on 12 October 2018. The plan expired on 12 October 2020.

14. The ACMA finds that TPG Lebara contravened subsection 101(1) of the Act on 26,323 occasions by failing to comply with subsection 2.3(1) of the Prepaid Determination, a service provider rule that applies to it.
15. The ACMA's reasons for these findings are set out below. The first section considers TPG Lebara's compliance with sections 4.3, 4.5 and item 4 of Schedule 1 to the Prepaid Determination when activating 16,302 prepaid mobile carriage services. The second section considers TPG Lebara's compliance with section 4.3 of the Prepaid Determination and the Compliance Plan when activating 10,021 prepaid mobile carriage services.

#### **Compliance with Part 4 of the Prepaid Determination**

16. Subsection 2.3(1) of the Prepaid Determination requires a CSP that supplies a prepaid mobile carriage service to comply with the rules set out in Part 4 of the Prepaid Determination, or an approved compliance plan, before activating the service.
17. Subsection 2.3(2) provides exceptions where the rule in subsection 2.3(1) does not apply, but these are not applicable to any of the prepaid mobile carriage services that are the subject of this investigation.
18. Subsection 4.2(1) of the Prepaid Determination provides that a CSP must not activate a prepaid mobile carriage service unless it has done both of the following:
  - a. obtained information from the customer in accordance with section 4.3
  - b. verified the identity of the customer in accordance with section 4.4 (if the customer is a purchaser) or section 4.5 (if the customer is a service activator), whichever is applicable.
19. Subsection 4.2(2) of the Prepaid Determination sets out two exceptions to subsection 4.2(1), but these do not apply to the mobile carriage services identified in TPG Lebara's records.

#### **Section 4.3**

20. Section 4.3 of the Prepaid Determination specifies the information a CSP must obtain from a customer before activating a prepaid mobile carriage service. The information differs depending on whether the customer is a purchaser<sup>4</sup> or service activator<sup>5</sup>.
21. TPG Lebara provided 16,302<sup>6</sup> customer records (equating to 16,302 prepaid mobile carriage services) where the services were activated using the method described in Item 4 of Schedule 1 to the Prepaid Determination, and in relation to which the customers were all service activators.
22. Where the customer is a service activator, section 4.3 requires that a CSP must obtain the name and date of birth of the customer, and:
  - > if the customer is seeking to activate the service on their own behalf (i.e. not on behalf of an entity), a CSP must obtain the customer's residential address; or
  - > if the customer is seeking to activate the service on behalf of an entity, a CSP must obtain the customer's business address of the entity.
23. The ACMA made a preliminary finding that TPG Lebara did not obtain the customer's name for 429 of the 16,302 prepaid mobile carriage services. In these instances, the customer name recorded by TPG Lebara appeared to be a made-up or fictional name (for example, the name of a super-hero), or a series of random letters and symbols (what is sometimes referred to as a keyboard smash entry).
24. TPG Lebara contested this finding in its submission to the Preliminary Investigation Report. It stated that:
  - > It considered that it had satisfied the obligation under section 4.3, as it required each customer to provide their name and other relevant information as part of the online activation process, and each customer did so.

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<sup>4</sup> The purchaser is the person who pays for the service at the time of sale or the person who accepts an invitation from a CSP to use a service at no charge.

<sup>5</sup> The service activator is the person seeking to have a prepaid mobile carriage service activated by the carriage service provider that supplies the service.

<sup>6</sup> These services were activated over a six-month period.

- > The Prepaid Determination only requires a CSP to obtain information from the customer, it does not require a CSP to also verify the information provided – except for the purposes of paragraph 4.2(1)(b), when a CSP relies on a verification method that checks the name, amongst other information, as part of the identity verification process.
  - > It is impractical for CSPs to decide the legitimacy of a name given by a customer, particularly for customers from diverse ethnic backgrounds.
  - > The ACMA's preliminary finding implied that CSPs are required to take additional steps to also verify the name of the customer when using the real time financial transaction (RTFT) method.
25. The ACMA notes that section 4.3 of the Prepaid Determination requires CSPs to obtain the service activator's or purchaser's name, it does not simply require that text or any name be included in the name field.
26. Although section 4.3 does not itself deal with verification, its purpose is to ensure that particular information about a customer is collected by a CSP as part of a regime intended to aid identity verification. Where section 4.3 refers to a customer's name, the provision must be read as requiring the CSP to obtain information from a customer which has the semblance or character of an actual name, as opposed to information which is not by its character capable of being a name such as a patently fictitious name or nonsensical text. Any other interpretation would be inconsistent with the clear purpose and intent of section 4.3, which is that information of a specific character be obtained. Furthermore, any other meaning attributed to the term 'name' would be inconsistent with the purpose of the Prepaid Determination (as set out in its Explanatory Statement) which is to inhibit the use of anonymous prepaid mobile services.<sup>7</sup>
27. While the ACMA accepts that some customers may have atypical or unique names, it notes that in the majority of the 429 instances identified by the ACMA, the names recorded were clearly not actual names given that they were either entries with random letters or symbols or fictional names. Some examples include 'Cat Lover', 'Ahah ha Ahahah' 'Shshsh Shshsh', 'Testing Bonus' and 'Black Knight'. Collecting customer names that are obviously not real is inconsistent with the purpose of the Prepaid Determination. In the ACMA's view, TPG Lebara failed to make reasonable efforts to ensure that the information collected could reasonably be considered to be a name.
28. In its submission to the ACMA, TPG Lebara advised that it sought to "re-collect and re-verify" the names of service activators that the ACMA had identified as not being valid. The ACMA has accepted the customer names of nine service activators TPG Lebara provided as being correct. The ACMA has also reviewed the remaining 420 records identified as contraventions in the preliminary findings and removed those where the name resembles an actual name.
29. Accordingly, the ACMA finds that TPG Lebara did not obtain all of the information required by section 4.3 prior to activating 318 of the 16,302 prepaid mobile carriage services and by failing to do so, contravened paragraph 4.2(1)(a) and paragraph 2.3(1)(a) of the Prepaid Determination.

#### *Section 4.5*

30. Section 4.5 of the Prepaid Determination requires a CSP to verify the identity of a service activator using one of the verification methods set out in column B of Schedule 1.
31. In its response to the section 521 notice, TPG Lebara advised the ACMA that it used item 4 of Schedule 1, RTFT, to verify the identity of customers, before activating 16,302 prepaid mobile carriage services.
32. While subitem 4(1) permits a CSP to use the RTFT method to verify the identity of the service activator, subitem 4(2)(a) makes clear a CSP is only taken to have verified the identify of a service activator if the service activator using the RTFT method gives the CSP information identifying the service activator as the holder of an existing specified financial account. A specified financial account is defined in the Prepaid Determination as being either of the following:
- (a) an account with an ADI

<sup>7</sup> See <https://www.legislation.gov.au/Details/F2017L00399/Explanatory%20Statement/Text>

- (b) a credit account made available to a person by a licensed credit provider in accordance with a credit card contract between the person and the provider.

The note to the definition provides that “A specified financial account does not include monetary value that is accessible through a “stored value card” as defined in the Anti-Money Laundering and Counter-Terrorism Financing Act 2006”.

33. In information TPG Lebara provided to the ACMA on 21 February 2020, it stated that it did not have the ability to determine whether an account used to verify identity is an account with an ADI. In its submission to the Preliminary Investigation Report, TPG Lebara acknowledged that it had deficiencies in its previous systems which could not distinguish between ADI and non-ADI accounts, at the time at which the verification of identity was undertaken. Accordingly, TPG Lebara did not comply with the requirements of item 4 of Schedule 1 when verifying the identity for all 16,302<sup>8</sup> of its customers because the service activator had not given to TPG Lebara information identifying the service activator as the holder of an existing specified financial account.

#### *Findings*

34. For the reasons above, the ACMA finds that by activating 16,302 prepaid mobile carriage services without complying with the rules in Part 4 of the Prepaid Determination, TPG Lebara failed to comply with section 4.2 and therefore, paragraph 2.3(1)(a) of the Prepaid Determination on 16,302 occasions.

#### **Compliance with the Compliance Plan**

35. The Compliance Plan allowed TPG Lebara to use alternative ways of verifying identity where a customer provided a credit or debit card that had not been issued by an ADI, as evidence of identity. The Compliance Plan stipulated that the CSPs it applied to – including TPG Lebara – would develop business processes and build IT infrastructure to comply with the Compliance Plan. It also stated that before activating a prepaid mobile carriage service, a CSP must check that the activation would not result in the customer having activated more than five services using the method of identity verification specified in the Compliance Plan, as this method could only be used to activate a maximum of five services per individual customer.<sup>9</sup>
36. The Compliance Plan set out the process that TPG Lebara had to follow to verify the identity of customers under the Plan.<sup>10</sup> In brief, the Compliance Plan stated that CSPs must:
- > obtain customer information including:
    - > full name
    - > residential address
    - > date of birth
    - > entity name, and business address if the prepaid mobile service is for a business
  - > check if the activation of the service will result in the customer having more than five activated services using the same method of identity verification.
  - > confirm the credit or debit card being used is a valid card, by checking that the bank identification number (BIN) of the credit or debit card exists on a Validation Service<sup>11</sup>
  - > make a financial transaction using the details of the credit or debit account to verify that the account is active either in real-time (for credit cards) or time-delay (for debit cards). The CSPs must complete the transaction in a way that does not financially disadvantage the service activator.

<sup>8</sup> These are the same customer records referred to in paragraph 21 above.

<sup>9</sup> See pages 2, 4, 8 and 10 of the Compliance Plan.

<sup>10</sup> See pages 10 – 13 of the Compliance Plan.

<sup>11</sup> A Validation Service is defined in the Compliance Plan and is a recognised service that validates BINs against a trusted database. The Validation Service provides a registered proxy service for the issuing financial institution, and it generally provides the registration data to external parties on a subscription fee basis.

37. TPG Lebara provided 10,021<sup>12</sup> customer records (equating to 10,021 prepaid mobile carriage services) for which it advised that it used the real time international financial transaction (**RTIFT**) method under the Compliance Plan to verify the customer's identity.
38. The ACMA made a preliminary finding that TPG Lebara did not obtain the customer's name in 274 instances. In these cases, the recorded name appears to be a made-up, incomplete or fictional name (for example, 'Aqua Man' and 'Dirty Whore'), or a series of random letters and symbols (for example, 'Jajas jajwjwjwj', 'qq wq').
39. TPG Lebara contested this finding in its submission to the Preliminary Investigation Report and made similar arguments to those set out in paragraph 24 above. It stated that:
- > It considered that it had satisfied the obligation under the Compliance Plan, as it required each customer to provide their name (first, middle and last name) and other relevant information as part of the online activation process, and each customer did so.
  - > The Prepaid Determination only requires CSPs to obtain information from the customer, it does not require a CSP to also verify the information provided.
  - > The ACMA's preliminary finding implies that CSPs are required to take additional steps to also verify the name of the customer when using the RTIFT method.
40. Given that the Compliance Plan contained similar provisions to section 4.3 of the Prepaid Determination in relation to the requirement to obtain a customer name, consistent with the reasons set out in paragraphs 23 - 26 above, the ACMA does not accept TPG Lebara's argument that it met its obligations. However, the ACMA notes that TPG Lebara provided details of ten prepaid mobile carriage services where it had re-verified the name as legitimate. The ACMA has also reviewed the remaining 264 records identified as contraventions in the preliminary findings and removed those where the name resembles an actual name. The ACMA therefore finds that TPG Lebara did not obtain the customer's name in 97 instances.
41. The ACMA also finds that nine customers were allowed to activate more than five services using the RTIFT method of identity verification, in spite of the Compliance Plan being restricted to a maximum activation of five services. This resulted in an additional 54 services being activated.
42. In its submission to the Preliminary Findings Investigation Report, TPG Lebara accepted that it did not ask its customers if the activation of the service would result in the customer having more than five activated services. It also acknowledged that additional services were activated in error. This means that all of the 10,021 services were not activated in accordance with the Compliance Plan.
43. The ACMA made a preliminary finding that TPG Lebara only used a validation service to determine whether a credit or debit card was issued by a legitimate issuing financial institution in 2,692 instances of the total 10,021 services activated. This means that it did not use a validation service in 7,329 instances. Instead, these activations were processed through MYOB.
44. In its submission to the Preliminary Investigation Report, TPG Lebara advised that it did not consider that it failed to use a validation service "having regard to the objects of the Determination and the substantive practical outcome of [its] actions". It stated that:
- > For all purchases made using the MYOB payment processing service as part of verification by RTFT (sic), only the Visa or Mastercard payment networks were used.
  - > When processing a transaction, Visa or Mastercard and the issuing bank will not approve and therefore allow a transaction to proceed without obtaining / confirming the following information: the BIN number of the card; that the BIN number is valid; that the BIN number is associated with an authorised and known bank; that the BIN has been approved by Visa/Mastercard; and the type of card.
  - > Whilst the MYOB payment processing service does not itself constitute or include a separate and distinct 'validation service' as defined in the Compliance Plan, the Visa and Mastercard schemes themselves verify the legitimacy of the institution purporting to issue the relevant card.

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<sup>12</sup> These services were activated over a fourteen-month period.

45. The ACMA does not accept TPG Lebara's arguments. The Compliance Plan was an approved document under subsection 5.5(1) of the Prepaid Determination. The Compliance Plan was developed by a group of CSPs of which TPG Lebara was a part. The CSPs determined the process that they would use to obtain information from a customer and verify their identity (see paragraph 35). A key requirement of the Compliance Plan was that a validation service, which was expressly defined in the Plan<sup>13</sup>, is used to check the legitimacy of a financial account. It did not include a process for this validation to be undertaken by Mastercard or Visa or the issuing financial institution directly. MYOB is not a validation service within the meaning of the term in the Compliance Plan.
46. The ACMA therefore finds that TPG Lebara did not use a validation service when verifying identity under the Compliance Plan, in 7,329 instances.
47. The customer name entered by TPG Lebara for one prepaid mobile carriage service was 'gift card holder'. The ACMA concluded that this represented the type of identity document used to activate the service, not the customer's name. The Compliance Plan required that a specified financial account must be used as evidence of identity to activate a prepaid mobile carriage service. A specified financial account is an account linked to a credit card<sup>14</sup> or debit card<sup>15</sup> issued to the Customer from a financial institution that is not an ADI. A prepaid or virtual card—such as a gift card—is not a specified financial account. The ACMA therefore finds that TPG Lebara activated this service without verifying the identity of the customer in accordance with the requirements of the Compliance Plan. When responding to the ACMA's preliminary report, TPG Lebara accepted this finding.

#### *Findings*

48. The ACMA finds that TPG Lebara did not comply with the requirements of the Compliance Plan by:
  - > failing to obtain a valid customer name for 97 of the 10,021 services activated
  - > failing to check if the activation of the service would result in the customer having more than five services activated for all 10,021 prepaid mobile carriage services
  - > activating one prepaid mobile carriage service without using a specified financial account
  - > activating more than five prepaid mobile carriage services for nine customers resulting in an additional 54 prepaid mobile carriage services being activated
  - > failing to use a validation service to determine whether a credit or debit card was issued by a legitimate issuing financial institution for 7,329 of the 10,021 services activated.
49. Hence, the ACMA finds that TPG Lebara activated 10,021 prepaid mobile carriage services without verifying the identity of the customer in accordance with the requirements in the Compliance Plan. By doing so, the ACMA also finds that TPG Lebara contravened:
  - > paragraph 2.3(1)(b) of the Prepaid Determination on 10,021 occasions
  - > subsection 101(1) of the Act on 10,021 occasions by failing to comply with a service provider rule that applies to it.

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<sup>13</sup> A validation service is defined as: A recognised and trusted validation service, that validates BINs against a trusted database. The Validation Service provides a registered proxy service for the issuing financial institution and it generally provides the registration data to external parties on a subscription fee basis. The information provided generally contains: card BIN range number; financial institution or payment program assigned to the BIN range; contact details of that financial institution or payment program; date of registration and expiration of card range; and purpose of card range.

<sup>14</sup> A credit card (or credit card contract) has the same meaning as in section 133BA of the *National Consumer Credit Protection Act 2009*.

<sup>15</sup> A debit card has the same meaning as in subsection 39(6) in Schedule 2 to the *Competition and Consumer Act 2010*.