

2 November 2023

Investigation Report

File No.	ACMA2023/421
Entities	Telstra Corporation Limited (ACN 051 775 556) Telstra Limited (ACN 086 174 781)
Relevant Legislation, Codes, instrument	<i>Telecommunications Act 1997</i> C628: 2019 Telecommunications Consumer Protections Code C628: 2015 Telecommunications Consumer Protections Code C628: 2012 Telecommunications Consumer Protections Code C628: 2007 Telecommunications Consumer Protections Code September 2020 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

Findings

The Australian Communications and Media Authority (**ACMA**) finds there are reasonable grounds to believe that:

- > Between 1 August 2019 and 31 December 2022 (when the Telecommunications Consumer Protections Code C628:2019 (the **TCP Code 2019**) was in force), Telstra Corporation Limited (ACN 051 775 556) (**TCL**) was not able to provide, verify and demonstrate Billing Accuracy for 6,415 customers, in contravention of clause 5.5.1 of the TCP Code 2019.

Of these 6,415 contraventions, 4,914 occurred between 21 September 2020 and 31 December 2022, which was a period during which TCL was subject to a direction under subsection 121(1) of the *Telecommunications Act 1997* (the **Act**) to comply with clause 5.5.1 of the TCP Code 2019 (the **Direction**). Accordingly, these contraventions are also contraventions of the Direction and, as a consequence, contraventions of the civil penalty provision at subsection 121(2) of the Act.

Of the 6,415 customers mentioned above, a subset of these were affected by contraventions of previous iterations of the TCP Codes:

- > Between 16 April 2012 and 31 August 2012 (when the Telecommunications Consumer Protections Code C628:2007 (the **TCP Code 2007**) was in force), TCL was not able to verify and demonstrate Billing Accuracy for 5,371 customers, in contravention of clause 6.4.1 of the TCP Code 2007.
- > Between 1 September 2012 and 2 December 2015 (when the Telecommunications Consumer Protections Code C628:2012 (the **TCP Code 2012**) was in force), TCL was not able to provide, verify and demonstrate Billing Accuracy for 6,370 customers, in contravention of clause 5.5.1 of the TCP Code 2012.
- > Between 3 December 2015 and 31 July 2019 (when the Telecommunications Consumer Protections Code C628:2015 (the **TCP Code 2015**) was in force), TCL was not able to

provide, verify and demonstrate Billing Accuracy for 6,370 customers, in contravention of clause 5.5.1 of the TCP Code 2015.

The ACMA also holds the view that:

- > Between 2 January 2023 and 28 August 2023 (when the TCP Code 2019 applied), Telstra Limited (ACN 086 174 781) (**Telstra Limited**) was not able to provide, verify and demonstrate Billing Accuracy for 989 customers, in contravention of clause 5.5.1 of the TCP Code 2019.

Background

1. On 1 January 2023, as part of a corporate restructure, carriage service provider (**CSP**) functions (including billing accuracy obligations) transferred from TCL to Telstra Limited.
2. This report sets out the findings of an investigation conducted by the ACMA into whether:
 - (a) TCL contravened:
 - > the Billing Accuracy requirements under the TCP Code 2019 and its precursor codes (the **TCP Codes**)
 - > subsection 121(2) of the Act by not complying with the Direction, given to TCL by the ACMA under subsection 121(1) of the Act on 21 September 2020, requiring TCL to comply with the Billing Accuracy requirements under clause 5.5.1 of the TCP Code 2019
 - (b) Telstra Limited contravened the Billing Accuracy requirements under the TCP Code 2019.
3. In making these findings the ACMA examined:
 - (a) information reported to the ACMA by Telstra Group Limited (**Telstra**) in correspondence dated 27 July 2023
 - (b) information obtained by the ACMA from Telstra on 31 August 2023 in response to a request for information made on 7 August 2023
 - (c) Telstra's 25 September 2023 submission in response to the ACMA's preliminary findings investigation report provided to Telstra on 8 September 2023
 - (d) information provided by Telstra on 13 October 2023 and 17 October 2023.

TCL's response to preliminary findings

4. In its response to the ACMA's preliminary findings, Telstra accepted that TCL contravened the Billing Accuracy requirements in the TCP Codes, and that it had contravened the Direction.
5. Notwithstanding this, Telstra submitted that an underlying process failure impacting multiple customers should be viewed as a single course of conduct, giving rise to a single contravention.
6. Telstra reiterated its view that the billing accuracy requirements in the TCP Codes are limited to a supplier's billing practices generally, and not to the accuracy of individual customers' bills.¹
7. Accordingly, Telstra argued that the ACMA should view the process failure in this matter as a single course of conduct when determining the number of contraventions and its enforcement action.

¹ Telstra acknowledged in its submission dated 25 September 2023 that the ACMA had previously disagreed with this interpretation of clause 5.5.1 of the TCP Code.

Findings and Reasons

8. The TCP Codes were all registered under Part 6 of the Act and set out rules that applied to all CSPs that supply telecommunications products to residential and small business consumers during the codes' respective effective periods. CSPs are defined as, and referred to as, 'suppliers' in the TCP Codes.
9. Between 16 April 2012 and 31 December 2022, TCL was an Australian company that provided mobile phone and broadband services (listed carriage services²), to residential and small business customers. During that time, TCL was therefore a CSP within the meaning of section 87 of the Act and a supplier for the purposes of the TCP Codes.
10. From 1 January 2023, Telstra Limited is a CSP within the meaning of section 87 of the Act and a supplier for the purposes of the TCP Code 2019.
11. Having assessed the evidence and information before it, the ACMA is of the view that:
 - (a) TCL has contravened:
 - > clause 6.4.1 of the TCP Code 2007
 - > clause 5.5.1 of the TCP Code 2012, TCP Code 2015, and TCP Code 2019
 - > subsection 121(2) of the Act.
 - (b) Telstra Limited has contravened clause 5.5.1 of the TCP Code 2019.

Details of the contraventions are set out below.

TCP Code provisions: Verifying charges – supplier verification

12. Clause 5.5.1 of the TCP Code 2019 requires a supplier 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.
13. 'Billing Accuracy' is defined in the TCP Code 2019 to mean the validity of Charges and the correctness of the calculation of the Charges. 'Charge' is defined to mean the tariff or fee which a Supplier levies for the provision of a Telecommunications Product or a related transaction. Clause 5.5.1 was included in identical terms and with the same clause number in the TCP Code 2015 and TCP Code 2012. 'Billing Accuracy' and 'Charge' are defined identically in all three codes.
14. Clause 6.4.1 of the TCP Code 2007 required a supplier 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 their 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.

² As defined in section 16 of the Act.

15. 'Billing Accuracy' was defined in the TCP Code 2007 to mean the correctness of Charges, and 'Charges' was defined to mean the tariff or fee levied by a supplier for the provision of a Telecommunications Product or transaction.
16. On 27 July 2023, Telstra reported that TCL had continued to charge customers for inactive ADSL services in error between 2012 and 2022. In subsequent information provided by Telstra on 13 October 2023 and 17 October 2023, Telstra advised that, between 16 April 2012 and 31 December 2022, TCL charged 6,415 customers³ a total of \$14,852,917 for inactive ADSL services in error. Telstra further advised that:
 - > 5,371 TCL customers were charged for an inactive service when the TCP Code 2007 applied
 - > 6,370 TCL customers were charged for an inactive service when the TCP Code 2012 applied
 - > 6,370 TCL customers were charged for an inactive service when the TCP Code 2015 applied
 - > 6,415 TCL customers were charged for an inactive service when the TCP Code 2019 applied.Note: the above customer numbers should not be read cumulatively. That is, the customers charged for inactive ADSL services when the TCP Code 2007, TCP Code 2012 and TCP Code 2015 applied are a subset of the 6,415 TCL customers that were charged for inactive ADSL services when the TCP Code 2019 applied.
17. On 13 October 2023, Telstra reported that Telstra Limited charged 989 customers a total of \$2,214,425 for inactive ADSL services in error between 2 January 2023 and 28 August 2023.
18. Telstra explained that the inaccurate billing was caused by a failure to follow a series of steps in the ADSL service deactivation process.

ACMA's view

19. The ACMA has considered Telstra's submission to the preliminary findings and subsequent correspondence it provided on 13 October 2023 and 17 October 2023.
20. Based on the available information, the ACMA is of the view that the inaccurate billing was caused by TCL and Telstra Limited. The ACMA is also of the view that the exemptions in paragraphs 6.4.1(a), (b) and (c) of the TCP Code 2007, and paragraphs 5.5.1(a), (b) and (c) of the TCP Code 2012, TCP Code 2015, and TCP Code 2019 do not apply.
21. The ACMA does not accept Telstra's broad interpretation that the billing accuracy requirements in the TCP Codes are limited to providing billing accuracy in a supplier's billing practices generally, and not to the accuracy of individual customers' bills. While individual customers are not referred to in the applicable clauses (nor in the definition of Billing Accuracy in the TCP Codes), the ACMA is of the view that the billing accuracy requirements in the TCP Codes are clearly intended to apply to individual bills.
22. 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.⁴

³ Telstra advised that impacted customers included consumers, small business customers, and enterprise customers captured by the TCP Codes.

⁴ This wording also appeared at the beginning of the Billing chapters in the TCP Code 2012 and the TCP Code 2015. On the basis that all iterations of the TCP Code after the 2007 Code included this wording, the ACMA is of the view that the 2007 Code's billing accuracy requirements may be understood in the same context as that provided for by this wording in subsequent codes.

The wording here implies that the chapter addresses actions regarding specific bills and charging information to 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.

23. The ACMA has not previously interpreted the billing accuracy requirements in the TCP Codes as only requiring billing accuracy more generally rather than for individual customers, and considers that such an interpretation would also be inconsistent with the clear intent of the Chapter and its specific requirements.
24. Consequently, while the ADSL deactivation process issue identified by Telstra appears to have led to the total number of times that customers were inaccurately billed, the ACMA does not consider that the failure itself characterises the total number of contraventions of the applicable TCP Codes. Rather, the ACMA considers that each customer that was incorrectly billed by TCL and Telstra Limited constituted a separate contravention of the applicable TCP Code.
25. Therefore, it is the ACMA's view that from 1 August 2019 (when the TCP Code 2019 commenced) to 31 December 2022, TCL was not able to provide, verify and demonstrate Billing Accuracy for 6,415 customers, in contravention of clause 5.5.1 of the TCP Code 2019. The ACMA is also of the view that TCL was not able to verify and demonstrate Billing Accuracy for:
 - > 5,371 customers between 16 April 2012 and 31 August 2012 (when the TCP Code 2007 applied) in contravention of clause 6.4.1 of the TCP Code 2007
 - > 6,370 customers between 1 September 2012 and 2 December 2015 (when the TCP Code 2012 applied), in contravention of clause 5.5.1 of the TCP Code 2012
 - > 6,370 customers between 3 December 2015 and 31 July 2019 (when the TCP Code 2015 applied), in contravention of clause 5.5.1 of the TCP Code 2015.
26. The ACMA is also of the view that from 2 January 2023 to 28 August 2023 (when the TCP Code 2019 applied), Telstra Limited was not able to provide, verify and demonstrate Billing Accuracy for 989 customers, in contravention of clause 5.5.1 of the TCP Code 2019.

Compliance with the Direction

27. Subsection 121(2) of the Act requires that a person must comply with a direction given under subsection 121(1) of that Act.
28. As the ACMA gave TCL the Direction on 21 September 2020, TCL was required to comply with the Direction from that date.
29. Telstra has advised that, of the 6,415 customers who TCL incorrectly billed for an inactive ADSL service while the TCP Code 2019 applied, 4,914 of these customers were charged on or after 21 September 2020.
30. Therefore, the ACMA is of the view that by breaching clause 5.5.1 of the TCP Code 2019 between 21 September 2020 and 31 December 2022 on 4,914 occasions, TCL has breached the Direction 4,914 times.
31. The ACMA is also of the view that, by not complying with the Direction, TCL has contravened subsection 121(2) of the Act 4,914 times.