

## Investigation Report

<b>File No.</b>	ACMA2023/393
<b>Carriage Service Provider</b>	BSC WA Pty Ltd trading as Star Telecom
<b>ACN</b>	162 881 601
<b>Relevant Legislation</b>	<i>Telecommunications Consumer Protection Code C628:2019</i>

### Findings

The Australian Communications and Media Authority (**ACMA**) finds that BSC WA Pty Ltd (ACN 162 881 601) trading as Star Telecom (**Star Telecom**) has contravened the following clauses of the Telecommunications Consumer Protection Code C628:2019 (the **TCP Code**):

- Clause 9.1.1(a) – failed to ensure that 2 consumers provided consent to transfer their services to Star Telecom between 28 April 2021 and 3 November 2022.
- Clause 9.7.1(b) – failed on 8 occasions to create and retain auditable records establishing that transfers to Star Telecom were undertaken in accordance with Chapter 9 of the TCP Code between 2 February 2021 and 24 May 2023.

### Background

1. This report sets out the findings of an investigation conducted by the ACMA into whether Star Telecom contravened the customer transfer requirements in the TCP Code.
2. The investigation follows the Telecommunications Industry Ombudsman (**TIO**) notifying the ACMA on 30 June 2023 of concerns it had with Star Telecom's customer transfer and selling practices.
3. On 23 October 2023, the ACMA gave Star Telecom a notice under subsection 521(2) of the Act (the **Notice**), requiring Star Telecom to provide information and documents relating to the selling and transfer of 11 telecommunication services to Star Telecom. All account holders for these 11 services had lodged complaints with the TIO about Star Telecom. Star Telecom responded to the Notice on 13 November 2023.
4. The TCP Code is registered under Part 6 of the Act and sets out rules that apply to all carriage service providers (**CSPs**) that supply telecommunications products to residential and small business consumers.
5. Chapter 9 of the TCP Code places obligations on suppliers when consumers seek to change their current supplier of a telecommunications service to an alternative supplier.

6. Star Telecom sells landline, internet and mobile services to business and residential consumers. It is therefore a CSP within the meaning of section 87 of the Act and a supplier for the purposes of the TCP Code.
7. On 30 November 2023, the ACMA provided its preliminary findings report to Star Telecom and invited it to respond. On 15 December 2023, Star Telecom provided the ACMA with a submission in response.
8. In the course of the investigation, the ACMA examined information provided by:
  - (a) the TIO
  - (b) Star Telecom.

### **Findings and Reasons**

9. Having assessed the evidence and information before it, the ACMA finds that Star Telecom contravened clauses 9.1.1(a) and 9.7.1(b) of the TCP Code. Details of the contravention are set out below and in **Attachment A**.

#### ***Clause 9.1 Obtaining Consent***

10. Clause 9.1 requires a Gaining Supplier to use reasonable endeavours to ensure that a consumer is only the subject of a transfer to a Gaining Supplier if the consumer has provided their consent to such a transfer. Relevantly, clause 9.1.1(a) states the Gaining Supplier must ensure that the consumer provides consent to the transfer.
11. For the reasons set out in **Attachment A**, the ACMA finds that Star Telecom contravened clause 9.1.1(a) of the TCP Code in relation to 2 customer transfers when the consumers, Account holders 2 and 8, were transferred to Star Telecom. Both customers disputed that they had consented to the transfer.

#### ***Clause 9.7 Records regarding transfers***

12. Clause 9.7 requires a Gaining Supplier to keep records to enable a consumer to verify that the transfer process was undertaken in accordance with Chapter 9 of the TCP Code. Specifically, clause 9.7.1 states:

The Gaining Supplier must create, and retain for a minimum of 2 years after the completion of the Transfer or as required by law, auditable records establishing that:

- (a) **Authorisation**: the person who authorised the Transfer advised the Gaining Supplier that they were authorised to do so; and
  - (b) **Compliance with requirements**: the Transfer was undertaken and advised to the customer in accordance with this chapter.
13. The ACMA sought all documents from Star Telecom that related to the transfer of the telecommunications services to Star Telecom for 11 customers who made complaints to the TIO identified in Schedule C of the Notice, including all documents evidencing the consumer's consent to the transfer.
  14. In 2 cases (Account Holder 5 and 10), Star Telecom disputes that the transfer took place. We accept Star Telecom's statements in relation to these cases.

15. Star Telecom provided the ACMA with 1 copy of a Customer Authority Form (**CAF**)<sup>1</sup> (Account Holder 3). In the remaining 8 cases, Star Telecom did not dispute that the transfer took place but was unable to produce a record of a CAF in relation to the 8 transfers that took place between 2 February 2021 and 24 May 2023 (Account Holders 1,2,4,6,7,8,9 and 11). Star Telecom explained that these CAFs were misplaced when it moved office in early 2020 and again at the end of 2022. Star Telecom did not advise that it intentionally destroyed any of its CAF after 2 years.
16. In its submission to the ACMA's preliminary findings, Star Telecom advised it had provided the ACMA with a copy of the Service Application form for Account Holders 2, 4 and 8. The ACMA acknowledges that Star Telecom provided copies of these application forms but notes that Star Telecom was not able to produce copies of the CAF for these 3 Account Holders or for the 5 other Account Holders mentioned in paragraph 15 above.
17. Therefore, the ACMA finds that on, 8 occasions, Star Telecom failed to keep records for a minimum of 2 years that would enable a customer to verify that the transfer process was undertaken in accordance with Chapter 9 of the TCP Code. The contraventions occurred between 2 February 2021 and 24 May 2023.

Dated 21 December 2023

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<sup>1</sup> In Star Telecom's response to the Notice, Star Telecom advised that it uses a Customer Authority Form (**CAF**) to obtain consent from its customers to the transfer of their existing services to Star Telecom.

**Compliance with the consent obligations under the TCP Code**

TCP Code requirement	Account Holder	ACMA findings and reasons	Date of contravention
<p><b>9.1 Obtaining Consent</b>                      A Gaining Supplier must use reasonable endeavours to ensure that a consumer is only the subject of a transfer by a Gaining Supplier if the Consumer has provided their consent to such transfer.</p> <p>9.1.1(a) <b>Consent:</b> the Gaining Supplier must ensure that the Consumer provides consent to the transfer;</p>	<p>Account Holder 2                      [REDACTED]</p> <p>Account Holder 8                      [REDACTED]</p>	<p>On 23 October 2023, the ACMA gave Star Telecom a statutory notice under subsection 521(2) of the Act requiring Star Telecom to provide, among other things, evidence of the transfer of 11 telecommunications services to Star Telecom.</p> <p>In 2 cases (Account Holder 5 and 10), Star Telecom disputes that the transfer took place. We accept Star Telecom's statements in relation to these cases.</p> <p>In Star Telecom's response to the Notice, the ACMA was informed that Star Telecom uses a Customer Authority Form (CAF) to obtain consent from its customers to the transfer of their existing services to Star Telecom. Star Telecom explained that it posts the CAF to prospective customers and asks them to complete the form and post it back to Star Telecom if they want their services transferred from their existing provider to Star Telecom.</p> <p>Star Telecom advised that the CAF was posted to Account Holders 2 and 8 on 2 June 2022 and 10 March 2021 respectively. Star Telecom further advised that neither Account Holder 2 or Account Holder 8 returned the CAF to Star Telecom.</p> <p>In its submission to the ACMA's preliminary findings, Star Telecom advised that it had provided the ACMA with a copy of the Service Application forms for Account Holders 2 and 8. The ACMA acknowledges that Star Telecom provided copies of these application forms to the ACMA but notes Star Telecom's advice that neither Account Holder 2 or Account Holder 8 returned the CAF to Star Telecom.</p>	<p>3 November 2022</p> <p>28 April 2021</p>
<p><b>Finding</b></p>		<p>The ACMA therefore finds that Star Telecom contravened clause 9.1.1(a) of the TCP Code in relation to 2 customer transfers when the consumers, Account holders 2 and 8 were transferred to Star Telecom, and Star Telecom failed to take steps to ensure the consumer provided consent to the transfer.</p>	<p>Between 28 April 2021 and 3 November 2022</p>