**Final Investigation Report**

**iTalkBB Australia Pty Ltd’s (ACN 155 687 399) compliance with the *Telecommunications Consumer Protections Code C628:2015***

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| File No | ACMA2016/119 |
| Carriage Service Provider | iTalkBB Australia Pty Ltd |
| ACN | 155 687 399 |
| Type of Services or Products | Broadband, iTalkBB SIM |
| Scope of Investigation report | *Telecommunications Consumer Protections Code C628:2015* clauses 5.7, 8.1 and 8.4 |

**Findings**

The Australian Communications and Media Authority (the **ACMA**) is of the view that iTalkBB Australia Pty Ltd (ACN 155 687 399) (**iTalkBB Australia**) contravened the following clauses of the *Telecommunications Consumer Protections Code C628:2015* (**TCP Code**):

* clause 5.7.1: by offering direct debit as a payment facility for a telecommunications service and not obtaining appropriate customer authorisations from two customers allowing it to make direct debit transactions from their accounts between 3 December 2015 and 26 August 2016;
* clause 5.7.1(c): by failing to provide customers with at least 10 working days to check their bill before the associated direct debit transaction occurred, on 43 occasions, on 8 December 2015;
* clause 8.1.1(b): by failing to document its complaints handling process and make it available to staff, consumers, former customers and other stakeholders in a summary form that is in accordance with clause 8.1.1(b)(i), between 3 December 2015 and 4 April 2017; and
* clause 8.4: by failing to take action set out in clauses 8.4.1(a) and 8.4.1(b) to make and keep, for at least two years, systematic records of three complaints lodged between
3 December 2015 and 3 March 2016.

**Background**

1. The TCP Code is registered under Part 6 of the *Telecommunications Act 1997* (the **Act**) and came into effect on 3 December 2015, replacing the 2012 version of that code. The TCP Code contains rules about how carriage service providers (**CSPs**) should deal with residential and small business customers.
2. iTalkBB Australia is an Australian registered company. iTalkBB Australia has advised the ACMA that it supplies carriage services in the nature of Broadband and SIM only services as an Optus reseller. Its website at <http://www.italkbb.com.au/> states that it provides Home Phone, Broadband, NBN, iTalkBB SIM and ITalkBB APP services to residential consumers.
3. iTalkBB Australia is a CSP within the meaning of the Act and a ‘supplier’ as defined in the TCP Code. iTalkBB Australia is therefore subject to the provisions of the TCP Code.
4. This report sets out the findings of an investigation conducted by the ACMA into iTalkBB Australia’s compliance with certain billing, credit management and complaint handling provisions of the TCP Code.
5. On 5 April 2016, the ACMA commenced an investigation into iTalkBB Australia’s compliance with clauses 5.5, 5.7, 6.7, 6.9, 8.1, 8.2 and 8.4 of the TCP Code, and on the same day, the ACMA gave iTalkBB Australia a statutory notice (the **Notice**) under subsection 521(2) of the Act requiring the production of specified information and copies of documents.
6. On 24 May 2016, iTalkBB Australia provided its response to the Notice.
7. On 29 July 2016, the ACMA sought information from iTalkBB Australia that remained outstanding from iTalkBB Australia’s response to the Notice, clarification regarding its Terms and Conditions documents, and details regarding its provision of carriage services. The ACMA also sought further clarification regarding iTalkBB Australia’s customer numbers and contractual arrangements.
8. On 26 August 2016, iTalkBB Australia provided a response.
9. On 9 May 2017, the ACMA provided iTalkBB Australia with a preliminary investigation report outlining its preliminary findings.
10. On 5 June 2017 and 20 June 2017, iTalkBB Australia provided the ACMA with its submissions in response to those preliminary findings.

**Findings and Reasons**

**Discussion**

1. The ACMA has considered iTalkBB Australia’s compliance with the TCP Code having regard to:
	1. iTalkBB Australia’s submission of 24 May 2016, in response to the Notice;
	2. iTalkBB Australia’s further submission of 26 August 2016;
	3. information from iTalkBB Australia’s website at <http://www.italkbb.com.au/au/en/index.html>, including iTalkBB Australia’s online Terms & Conditions dated 26 July 2016[[1]](#footnote-1) and 12 December 2016[[2]](#footnote-2) and iTalkBB Australia’s complaints handling process document dated 4 April 2017[[3]](#footnote-3);
	4. information provided by the Telecommunications Industry Ombudsman (TIO) on 25 January 2016, regarding complaints received from iTalkBB Australia customers; and
	5. the submissions provided by iTalkBB Australia on 5 and 20 June 2017 in response to the preliminary findings.
2. Having assessed the evidence and information before it, the ACMA is of the view that iTalkBB Australia has contravened clauses 5.7.1, 5.7.1(c), 8.1.1(b) and 8.4 of the TCP Code. Details of the contraventions are set out below.

**Clause 5.7.1 – Direct Debit payment**

1. Clause 5.7.1 of the TCP Code provides that a supplier offering direct debit as a payment facility for a telecommunications service must comply with a customer’s authorisation. It also sets out other measures the supplier must take where a direct debit payment facility is offered.
2. In its response to the Notice, iTalkBB Australia provided Customer Authorisation Forms for four complainants. Two of the Customer Authorisation Forms had an ‘iTalkBB’ header and referenced ‘iTalk Australia Pty Ltd ACN 135 891 271’. iTalk (Australia) Pty Ltd (ACN 135 891 271) was a company deregistered on 14 January 2015, according to the Australian Company Register maintained by the Australian Securities and Investments Commission (ASIC). It is also noted that one of these two customer authorisations was given by the customer on a date *after* the company was deregistered, meaning that the customer does not appear to have at any point given an authorisation to the correct legal entity providing the service.
3. A pre-condition for complying with clause 5.7.1 is that a supplier has an authorisation in place before it activates a direct debit facility and takes payment. However, the authorisations that iTalkBB Australia relied upon for these two customers to take payments using direct debit have been given to a different company that was at that time a deregistered company, not iTalkBB Australia.
4. In its submission of 26 August 2016, iTalkBB Australia was unable to provide further evidence of the legal basis on which it had obtained payments from these two complainants. iTalkBB Australia stated that the authorisation form is ‘*a mistake made by the accounting staff/agent of iTalkBB Australia’, and the staff will be instructed to correct company name and ACN*’, however it did not advise that it would obtain new authorisations.
5. Based on the information above, the ACMA is satisfied that iTalkBB Australia contravened clause 5.7.1 of the TCP Code in relation to two of its customers between 3 December 2015 and 26 August 2016. In the ACMA’s view, these two customers had not provided iTalkBB Australia with a valid customer authorisation allowing itto make direct debit transactions from their accounts.

**Clause 5.7.1(c) - 10 working day rule**

1. Clause 5.7.1(c) of the TCP Code states that a supplier must allow its customers not less than 10 working days to check their bill or if no bill is required, all applicable charges, before the associated direct debit transaction occurs, except where clause 5.2.1(a) applies, or where otherwise agreed between the supplier and a customer (the ’10 working day rule’).
2. iTalkBB Australia issues a bill online to each of its customers, and although customers pay by direct debit and the charges for the billing period are often for the same fixed amount, the customer and supplier have not agreed that although a charge for that fixed amount will be payable by the customer, a bill will not be issued unless the total amount payable in that bill is more than 10% higher than that fixed amount.
3. Importantly, iTalkBB has not provided any submissions, or evidence, that clause 5.2.1(a) applies to the customers that are the subject of this investigation, or that it had otherwise agreed with its customers to depart from the requirements in clause 5.7.1(c) of the TCP Code.
4. In these circumstances, the ACMA is of the view that the 10 working day requirement in clause 5.7.1(c) applies to iTalkBB Australia’s customers.
5. Prior to its submission of 26 August 2016, iTalkBB Australia had four different Terms & Conditions documents[[4]](#footnote-4), for Home Phone, Chinese TV, Broadband and Sim services. None of these agreements identified iTalkBB Australia Pty Ltd (ACN 155 687 399) as the company with whom the end user was making an agreement.
6. In its submission of 26 August 2016, iTalkBB Australia provided 56 invoices, for customers paying by direct debit relating to the relevant period in the Notice, being from 3 December 2015 to 3 March 2016. Of these invoices, 43 invoices[[5]](#footnote-5) show payments were due to iTalkBB Australia in less than 10 working days after the invoice date; one invoice showed a payment was due on the invoice day and 42 invoices show payments were due the next day.
7. In its submission of 26 August 2016, iTalkBB Australia provided a document from Ezidebit Pty Ltd (ABN 67 096 902 813), a third party direct debit provider, confirming when monies were direct debited from the accounts of iTalkBB Australia customers, for the period between 8 to 10 December 2015.
8. The third party provider document confirms that iTalkBB Australia direct debited 41 of its customers’ accounts for payment of 43 invoices, where the customers were given less than 10 working days to check their bill before the monies were debited from the customer’s account on 8 December 2015.
9. The ACMA is therefore satisfied that iTalkBB Australia has contravened clause 5.7.1(c) of the TCP Code on 43 occasions on 8 December 2015, regarding the invoices identified above, by not providing customers with at least 10 working days to check their bill before an associated direct debit transaction occurred.

**Clauses 8.1.1(b) – document the complaint handling process**

1. Clause 8.1.1(b) of the TCP Code provides that a supplier must document their complaint handling process and make it available to staff, consumers and former customers and other stakeholders in a summary form that is: (i) concise but as a minimum sets out the matters specified in clause 8.1.1(a); and (ii) free of charge.
2. In its response to the Notice, iTalkBB stated it did not have a documented complaint handling process to make available to customers and former customers and other stakeholders in a summary form between 3 December 2015 and 3 March 2016.
3. In its response to the Notice, iTalkBB also outlined its complaints handling process, and advised it would make a document setting out its complaint handling process available to customers on 13 May 2016. ACMA staff observe this document is now available on iTalkBB Australia’s website.[[6]](#footnote-6)
4. The ACMA notes, however, that the document on iTalkBB’s website would not appear to comply with clause 8.1.1(b)(i) of the TCP Code, as it does not provide, at a minimum, all the matters as specified in clause 8.1.1(a) of the TCP Code. It:
	1. does not specify the response times for individual steps in the management of complaints;
	2. is not accessible, by not:
		1. allowing a complaint to be made in person in store, even though iTalkBB Australia has a retail operation;
		2. providing assistance to a consumer (or former customer) to formulate, lodge and progress a complaint, including to consumers or former customers with disabilities, consumers or former customers suffering financial hardship and consumers or former customers from non-English speaking backgrounds;
		3. allowing consumers or former customers to use an authorised representative or an advocate to make a complaint; or
		4. setting out the circumstances in which a complaint will be treated as urgent and how the management of urgent complaints differs from other complaints;
	3. does not require all complaints to be escalated and managed under the supplier’s internal escalation process if requested by the consumer, or former customer;
	4. does not provide for investigation of complaints to an extent commensurate with the seriousness of the complaint, while acknowledging that suppliers may choose to resolve a complaint commercially to the satisfaction of the consumer or former customer without an investigation;
	5. is not transparent, including by not:
		1. providing an internal prioritisation process which is clear and accessible to consumers or former customers;
		2. providing an internal escalation process which is clear and accessible to consumers or former customers;
		3. providing clear and accessible information about options for external dispute resolution including the TIO;
		4. requiring consumers or former customers to be advised of the resolution of their complaint; and
		5. prohibiting a supplier from cancelling a consumer’s telecommunications service only because, being unable to resolve a complaint with their supplier, that consumer pursued their options for external dispute resolution.
5. The ACMA also notes that the requirement in clause 8.1.1(b) of the TCP Code requires a summary form of the document of iTalkBB Australia’s complaint handling process to be made available to staff, consumers, former customers and other stakeholders. iTalkBB Australia stated in response to the Notice it would only provide the document to its customers.
6. On the basis of the above information, the ACMA is satisfied that iTalkBB Australia contravened clause 8.1.1(b) of the TCP Code between 3 December 2015 and 4 April 2017, by failing to document its complaint handling process in a summary form that, in accordance with clause 8.1.1(b)(i), sets out the matters specified in clause 8.1.1(a) of the TCP Code, and make it available to staff, consumers and former customers and other stakeholders.

**Clauses 8.4 and 8.4.1 – systematic record keeping and record retention**

1. Clause 8.4 of the TCP Code states that suppliers must keep records of complaints which include identification of the consumer or former customer making the complaint, the nature of the complaint, the steps taken to address the complaint and the resolution, if any, of the complaint.
2. The supplier must take a range of actions set out in clause 8.4.1 to enable this outcome. Relevantly, clause 8.4.1(a) of the TCP Code states that the supplier must make and keep a systematic record of each complaint including the relevant information set out in clauses 8.4.1(a)(i) to (xi).
3. The term ‘systematic’ is not defined in the TCP Code. However, the Online Macquarie Dictionary[[7]](#footnote-7) defines it as ‘*having, showing, or involving a system, method, or plan’*.
4. Clause 8.4.1(b) of the TCP Code provides that without limiting the supplier’s obligations at law, including under the *Privacy Act 1988* (Cth), the supplier must retain this information for at least two years.
5. In the Notice, the ACMA requested complaint records relating to iTalkBB Australia actioning a request to cancel a direct debit authorisation or direct debiting a disputed amount between 3 December 2015 and 3 March 2016, and for each complaint record, information relating to iTalkBB Australia’s management and resolution of the complaint.
6. In its response to the Notice, iTalkBB Australia provided information for four complaints, but provided a complaint record for only one of these complaints. In its submission of 20 June 2017 in response to the preliminary findings, iTalkBB Australia provided additional information which included a complaint record for another one of the four complaints. This complaint record was not assessed as part of this investigation and did not relate to a complaint received between 3 December 2015 and 3 March 2016.
7. The complaint record provided in response to the Notice has a title that references the TIO, and its first process log also refers to the TIO, and appears to have been created on 15 January 2016, *after* the complainant went to the TIO on 14 January 2016, not at the time of the initial complaint to iTalkBB Australia[[8]](#footnote-8). Importantly, the complaint record does not include all the relevant information set out in clauses 8.4.1(a)(i) to (xi) of the TCP Code, which would be indicative of systematic record keeping processes. In particular, it does not include:
8. the requested resolution (iii);
9. the due date for a response (iv);
10. the results of any investigation (v);
11. the proposed resolution including any associated commitments and the date this is communicated to the consumer (vi);
12. the supplier’s reasons for proposing its resolution (vii);
13. the consumer’s response to the proposed resolution, any reasons given by the consumer and if the consumer has requested the resolution in writing (viii);
14. the implementation of any required actions (ix);
15. the underlying cause of the complaint (x); and
16. copies of any correspondence sent by or to the consumer (xi).
17. As such, this would indicate that iTalkBB Australia had not made or kept the relevant records of complaint in relation to three complaints lodged by (former) customers.
18. On the basis of the above, the ACMA is satisfied that iTalkBB Australia does not have a system, method or plan for documenting complaints and has contravened clause 8.4 by not taking action set out in clauses 8.4.1(a) and 8.4.1(b) of the TCP Code to make and keep, for at least two years, systematic records of three complaints lodged between 3 December 2015 and 3 March 2016.
1. Investigation Report Attachment 1 – iTalkBB Australia’s Terms and Conditions dated 26 July 2016 [↑](#footnote-ref-1)
2. Investigation Report Attachment 2 – iTalkBB Australia’s Broadband and SIM Terms and Conditions dated 12 December 2016 [↑](#footnote-ref-2)
3. Investigation Report Attachment 3 – iTalkBB Australia’s complaint handling process dated 4 April 2017 [↑](#footnote-ref-3)
4. Attachment 1 above [↑](#footnote-ref-4)
5. Investigation Report Attachment 4 – Table of 43 Invoices issued by iTalkBB Australia with payments due in less than 10 working days [↑](#footnote-ref-5)
6. Investigation Report Attachment 3 – iTalkBB Australia’s complaint handling process dated 4 April 2017 [↑](#footnote-ref-6)
7. <https://www.macquariedictionary.com.au/features/word/search/?word=systematic&search_word_type=Dictionary> [↑](#footnote-ref-7)
8. Where Complaint means, as per the definition in the TCP Code ‘*an expression of dissatisfaction made to a Supplier in relation to its Telecommunications Products or the complaints handling process itself, where a response or Resolution is explicitly or implicitly expected by the Consumer’*. [↑](#footnote-ref-8)