**Attachment A**

**Investigation Report**

|  |  |
| --- | --- |
| File No | ACMA2018/1039 |
| Carriage service provider | Red Broadband Pty Ltd (**Red Broadband**) |
| ACN | 164 117 462  |
| Scope of Investigation | Compliance with clause 9.4 of the Telecommunications Consumer Protections Code C628:2015 (**the TCP Code**) |

**Findings**

The Australian Communications and Media Authority finds that Red Broadband contravened clause 9.4 of the TCP Code because it did not provide Communications Compliance with prescribed statements regarding code compliance by 1 September 2018.

**Background**

1. On 21 May 2019, the ACMA commenced an investigation under section 510 of the *Telecommunications Act 1997* to determine whether Red Broadband was complying with clause 9.4 of the TCP Code.
2. On the same day, the ACMA sent its preliminary findings report to Red Broadband and invited Red Broadband to respond.
3. On 21 May 2019, Red Broadband responded to the ACMA and did not dispute that it had not met its obligation under clause 9.4 of the TCP Code.

**Reasons for findings**

1. The table below sets out the ACMA’s findings and the reasons for those findings. In making its findings, the ACMA has considered Red Broadband’s response of 21 May 2019.

|  |  |  |
| --- | --- | --- |
| **Clause** | **Requirement in TCP Code 2015** | **Reasons** |
| 9.1  | ***Supplier obligations to comply and register*** Suppliers with one or more Customers must implement and comply with the Code Compliance Framework and register with Communications Alliance for compliance purposes.  | Red Broadband was a carriage service provider providing telecommunications services to residential and/or small business consumers. It was therefore a ‘Supplier’ under the TCP Code.  |
| 9.49.4.1(a)  | ***Code compliance statements***Suppliers must provide to Communications Compliance prescribed statements regarding compliance with the TCP Code in the manner set out in this clause 9.4 and at the times set out in clause 9.8 A Supplier must:1. Compliance Attestation: provide to Communications Compliance a Compliance Attestation which has been endorsed by the chief executive officer or a senior manager of the Supplier, by the date each year specified in clause 9.8.1 and in the form required by Communications Compliance.
 | The ACMA is satisfied that Red Broadband had one or more customers on 1 April 2018 as it was the subject of TIO complaints prior to 1 April 2018. This indicates Red Broadband had one or more customers on 1 April 2018.In March 2018, Communications Compliance advised industry via an email to suppliers registered in its online portal, and a statement on its website, that it would be deferring all lodgements for 2018 to the second lodgement window ending 1 September 2018. Therefore, all carriage service providers, including Red Broadband, were required to provide a Compliance Attestation, to Communications Compliance by 1 September 2018. |
| 9.8.1 | **Date for provision of attestation statements**: A supplier, if it has one or more Customers on 1 April each year, must provide the statements prescribed in clause 9.4.1 by the following date:1. If the Supplier is a Small Supplier as at 1 April and has not by 1 April submitted to Communications Compliance an Attestation Deferral Notice: 1 April in the same year;
2. If the Supplier is a Small Supplier as at 1 April and has by 1 April submitted to Communications Compliance an Attestation Deferral Notice: 1 September in the same year;
3. If the Supplier is not a Small Supplier as at 1 April: 1 September in the same year.

Note: A ‘Small Supplier’ is defined in clause 2.1 of the TCP Code to mean a supplier with fewer than 3,000 services in operation.  | On 25 October 2018, Communications Compliance confirmed that Red Broadband did not provide its compliance attestation to it by 1 September 2018. Red Broadband did not dispute that it had not met this obligation in its response of 21 May 2019. Therefore, Red Broadband did not comply with clause 9.4 of the TCP Code. |

September 2019