

Investigation Report

File No	ACMA2022/740-15
Carriage service provider	GigaComm Pty Ltd
CAN	630 583 998
Scope of Investigation	Compliance with clauses 10.1.1(b) and 10.4 of the Telecommunications Consumer Protections Code C628:2019 (the TCP Code)

Findings

The Australian Communications and Media Authority (the **ACMA**) finds GigaComm Pty Ltd (ACN 630 583 998) (**GigaComm**) contravened:

- clause 10.1.1(b) of the TCP Code because it did not register with Communications Alliance within one month after it first acquired customers; and
- clause 10.4 of the TCP Code because it did not provide Communications Compliance Ltd (**CommCom**) with prescribed statements regarding code compliance by the applicable date specified in clause 10.8 of the TCP Code.

Background

1. On 21 December 2022, the ACMA commenced an investigation under section 510(c) of the *Telecommunications Act 1997* to determine whether GigaComm was complying with clauses 10.1.1(b) and 10.4 of the TCP Code.
2. On 23 February 2023, the ACMA sent its preliminary findings to GigaComm and invited it to respond.
3. On 7 March 2023, GigaComm responded to the ACMA and did not dispute that it had not met its obligations under clauses 10.1 and 10.4 of the TCP Code. In its response, GigaComm confirmed that it has now registered with Communications Alliance, as required by clause 10.1.1(b) of the TCP Code, and has employed a General Counsel to ensure that GigaComm meets its regulatory obligations moving forward.

Reasons for findings

4. The table below sets out the ACMA's findings and the reasons for those findings. In making its findings, the ACMA has considered GigaComm's response of 7 March 2023.

TCP Code clause	Requirement	Reasons and finding
10.1	Suppliers with one or more customers must implement and comply with the Code Compliance Framework and register with Communications Alliance for compliance purposes.	GigaComm is a carriage service provider (CSP) providing telecommunications services to residential consumers and small business consumers who do not have reasonable opportunity to negotiate the terms of their customer contract. It is therefore a 'supplier' under

<p>10.1.1(a)</p> <p>10.1.1(b)</p>	<p>A Supplier must take the following actions to enable this outcome:</p> <p>Code Compliance Framework: implement and comply with the obligations applicable to them contained in the Code Compliance Framework set out in this Chapter (that is, Chapter 10 of the TCP Code)</p> <p>Registration by Supplier with Communications Alliance: within one month after the Supplier first acquires customers, supply the following information in writing to Communications Alliance:</p> <ul style="list-style-type: none"> (i) a statement that the Supplier is providing this information in accordance with clause 10.1.1 of this Code (and in so doing the Supplier accepts that Communications Alliance will forward this information to CommCom to facilitate CommCom's performance of its functions which may include publication of the information in clause (ii) below); (ii) the legal name, the ACN or ABN, and all relevant business names, or the Supplier and the URL of the home page of the website of each of its relevant businesses; (iii) contact details for a nominated staff member of the Supplier (including name, title, address, telephone number and email address) 	<p>the TCP Code.</p> <p>On 5 December 2022, Communications Alliance provided the ACMA with a list of suppliers that are registered with it in accordance with clause 10.1.1(b) of the TCP Code. GigaComm was not on that list.</p> <p>TIO complaints data available to the ACMA indicates that GigaComm was the subject of consumer complaints to the TIO during the period 1 November 2021 to 31 October 2022. The ACMA is satisfied that this indicates GigaComm had customers during that period.</p> <p>As GigaComm had customers during the period 1 November 2021 to 31 October 2022 and was not registered with Communications Alliance by 30 November 2022, it has not complied with clause 10.1.1(b) of the TCP Code to register with Communications Alliance within one month after first acquiring customers.</p> <p>On 7 March 2023, GigaComm confirmed that it had since submitted its registration form to Communications Alliance and registered in the CommCom CSP portal.</p> <p>This further indicates that GigaComm had not previously registered with Communications Alliance within one month after first acquiring customers as required by clause 10.1.1(b).</p>
<p>10.4</p>	<p>Suppliers must provide to CommCom prescribed statements regarding compliance with the TCP Code in the manner set out in this clause 10.4 and at the times set out in clause 10.8.</p>	<p>As GigaComm had one or more customers on 1 April 2022, it was required under clause 10.4 to provide CommCom with the prescribed statements regarding compliance with the TCP Code in accordance with the timeframes specified</p>

10.4.1(a)	<p>A Supplier must: Compliance Attestation: provide to CommCom 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 10.8.1 and in the form required by CommCom.</p>	<p>in clause 10.8.1 of the TCP Code.</p>
10.8	<p>Suppliers must meet the timeframes set out in this clause if they have one or more customers on 1 April each year.</p>	<p>On 16 November 2022, CommCom provided the ACMA with a list of suppliers that had lodged the prescribed statements regarding TCP Code compliance for 2022. GigaComm was not on that list.</p> <p>In its response to the ACMA on 7 March 2023, GigaComm did not dispute that it had not met this obligation.</p>
10.8.1	<p>Date for provision of attestation statements: If the supplier is a small supplier as at 1 April, the supplier must provide the statements prescribed in clause 10.4.1 by the following dates:</p> <ul style="list-style-type: none"> (a) 1 April in the same year, or the following working day; or (b) If the supplier has submitted an attestation deferral notice, 1 September in the same year, or the following working day. <p>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.</p>	<p>Therefore, the ACMA is satisfied that GigaComm did not comply with clause 10.4 of the TCP Code.</p>
10.8.2	<p>Date for provision of Compliance Attestation for all other suppliers: If the supplier is not a small supplier as at 1 April, 1 September in the same year, or the following working day.</p>	