

Investigation Report

Summary	
Entity	Esendex Australia Pty Ltd (Esendex)
ACN / ABN	ACN 113 596 580
Type of entity	Carriage service provider (CSP)
Relevant Legislation	<p><i>Telecommunications Act 1997</i> (Act)</p> <p>Industry Code C555:2020 Integrated Public Number Database (IPND) (IPND Code)</p> <p>Industry Code C661:2022 Reducing Scam Calls and Scam SMs (Scams Code)</p>
Date	15 November 2023

Findings

The Australian Communications and Media Authority (**ACMA**) finds Esendex has, as set out at Table 1 below, contravened the Act, IPND Code and Scams Code.

Table 1: Summary of contraventions

Legislation	Provision	Number of contraventions	Relevant period
Act	Subsection 101(1)	1,942	1 April 2005 to 8 June 2023
IPND Code	Clause 4.2.1	1,213	20 March 2020 to 8 June 2023
Scams Code	Clause 5.2.2	Estimated 6,756,999	12 July 2022 to 8 June 2023
	Clause 6.1.1	2	31 October 2022 and 30 January 2023

Reasons

1. The ACMA's findings are informed by information and documents obtained from:
 - a. Esendex on 22 March, 23 June and 19 July 2023 in response to compulsory notices given by the ACMA under section 521 of the Act (the **Notice**)
 - b. Telstra Ltd in its capacity as the manager of the Integrated Public Number Database (IPND) (the **IPND Manager**) on 1 and 5 April 2023
 - c. Esendex on 6 October 2023, in response to the ACMA's preliminary findings
 - d. traceback emails made by carriers and carriage service providers (**C/CSPs**) across the investigated period under the Scams Code, to which the ACMA is copied in.

Issue #1: IPND compliance

Background to the IPND

2. The IPND is a centralised database of public numbers¹ established in 1998. It is managed by the IPND Manager in accordance with section 10 of the *Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019 (Telstra Licence Conditions)*, and under predecessor instruments before 2019.
3. CSPs must ensure that customer data about carriage services they supply to end users in connection with a public number is provided to the IPND Manager for inclusion in the IPND. Customer data is provided by Data Providers. A CSP can either act as its own Data Provider or have a third-party Data Provider provide the data on the CSP's behalf.
4. IPND data is used for critical purposes by the emergency call service, the emergency alert system, and national security and law enforcement agencies. It can also be used for permitted research and publication of number directories upon authorisation by the ACMA.
5. The maintenance of the IPND by the IPND Manager is supported by regulatory obligations, including:
 - a. a service provider rule, which applies to CSPs (section 86 of the Act). It requires a CSP which supplies a carriage service to an end-user, where the end-user has a public number, to give the IPND Manager such information as it reasonably requires in connection with its obligation to provide and maintain the IPND (subclause 10(2) of Schedule 2 to the Act), and
 - b. the IPND Code, an industry code registered under Part 6 of the Act, which sets out procedures relating to the transfer of information to and from the IPND Manager and the storage of information in the IPND.
6. Further, the IPND Manager has issued the Integrated Public Number Database (IPND) Data Users and Data Providers Technical Requirements for IPND (the **Technical Requirements**) which set out information required by the IPND Manager.
7. As an industry participant to which the IPND Code applies, Esendex also has obligations under the IPND Code.
8. The IPND Code reiterates the requirement for customer data under the Technical Requirements and further sets out what, and how, customer data is to be provided to the IPND Manager (for example, setting out timeframes for provision of data to the IPND, and processes for identifying and rectifying errors in IPND data).
9. The data is defined in the IPND Code as public number customer data, or PNCD, and that term is used in this report.
10. The IPND Manager's Technical Requirements are referenced in the IPND Code, and the associated IPND Data Guideline (G619:2017) and Industry Guidance Note (IGN019) – IPND reconciliation data extract and Data Provider upload validation process.
11. Having regard to the critical uses of IPND data, and the public policy purposes to be served by relevant provisions of the Act, the Telstra Licence Conditions and the IPND Code, the ACMA considers that the IPND Manager requires PNCD from CSPs, since it is essential to the proper functioning of the IPND.
12. For the same reason, PNCD must be accurate, complete and up-to-date. An absence of, or inaccurate or incomplete, PNCD can have potential adverse impacts on the critical activities for which IPND data is used and lead to risks to individuals and public safety.

¹ Public numbers are numbers specified in the Telecommunications Numbering Plan 2015 and includes most numbers such as geographic, freephone, local rate, premium rate, and international numbers.

Compliance with the IPND service provider rule

13. Subsection 101(1) of the Act requires that service providers, including CSPs, comply with the service provider rules that apply to them. Subsection 101(3) states that subsection 101(1) is a civil penalty provision.
14. Subsection 98(1) of the Act provides that the service provider rules include those set out in Schedule 2 to the Act.
15. Clause 1 of Schedule 2 to the Act provides that service providers must comply with the Act.
16. Clause 10 of Schedule 2 requires that if a CSP supplies a carriage service to an end-user, and the end-user has a public number, the CSP must give the IPND Manager such information as it reasonably requires to fulfil its obligation to provide and maintain the IPND.
17. The ACMA has considered whether Esendex complied with the service provider rule at clause 10 of Schedule 2 to the Act by addressing the questions set out in Table 2 below.

Table 2: Assessing compliance with the service provider rule

Is Esendex a CSP?	Yes. Esendex is a CSP as defined at section 87 of the Act as it supplies carriage services to the public. Accordingly, it must comply with the service provider rules that apply to it.
Did Esendex supply the carriage services to end-users with public numbers?	Yes. Esendex supplies or supplied the carriage services under investigation to end-users with public numbers. Based on information obtained from Esendex, Esendex has issued 1,942 numbers to end-user business customers and supplies or supplied carriage services to them in the period 1 April 2005 to 8 June 2023.
Did Esendex give the IPND Manager such information as the IPND Manager reasonably requires to provide and maintain the IPND, in relation to the carriage services?	No. On 23 June 2023, Esendex stated it had not given PNCD to the IPND. Between 1 April 2005 to 8 June 2023, Esendex failed to provide the IPND Manager information it reasonably requires to provide and maintain the IPND on 1,942 occasions (in relation to SMS services supplied to business customers).

18. Accordingly, the ACMA finds that Esendex contravened subsection 101(1) of the Act on 1,942 occasions by failing to comply with the service provider rule at clause 10 of Schedule 2 to the Act.

Compliance with the IPND Code

Clause 4.2.1 – provision of PNCD to the IPND Manager

19. Clause 4.2.1 of the IPND Code provides that:

Each CSP that provides a Carriage Service to a Customer using a Number must provide the IPND Manager the relevant PNCD, including transaction updates [such as changes to PNCD], in respect of each Carriage Service it supplies, that occur on one Business Day, by the end of the next Business Day. This includes all transactions relating to connections or disconnections.

20. The ACMA has considered whether Esendex complied with clause 4.2.1 of the IPND Code by addressing the questions set out in Table 3 below.

Table 3: Assessing compliance with the IPND Code upload obligation

Is Esendex a CSP?	Yes - refer to Table 2 above.
Does or did Esendex supply the carriage services to customers with public numbers?	Yes - refer to Table 2 above.
Did Esendex provide the IPND Manager the relevant PNCD, including transaction updates, for the carriage services which it supplies or supplied, that occurred on one business day, by the end of the next business day (including all transactions relating to connections or disconnections)?	No. On 23 June 2023, Esendex stated it did not provide the IPND Manager relevant PNCD within the required timeframe on 1,213 ² occasions for carriage services under investigation which Esendex supplies or supplied. Specifically, between 20 March 2020 to 8 June 2023, Esendex failed to provide to the IPND Manager, within the required timeframe, any PNCD on 1,213 occasions (in relation to SMS and voice services supplied to business customers).

21. Accordingly, the ACMA finds that Esendex contravened clause 4.2.1 of the IPND Code on 1,213 occasions.

Issue #2: Scams Code compliance

Background to the Scams Code

22. The Scams Code places obligations on all C/CSPs to protect consumers from harms caused by scams and to disrupt scam activity in Australia.
23. Among the obligations, the Scams Code places requirements on C/CSPs to not originate SM traffic on their networks using Alphanumeric Sender IDs without taking steps to confirm that the A-Party has a valid use case. The Scams Code also places obligations on C/CSPs to report blocked scam calls and scam SMS to the ACMA quarterly.

Compliance with the Scams Code

Clause 5.2.2 – improving number and Alphanumeric Sender ID accuracy

24. Clause 5.2.2 of the Scams Code states:

If a SM uses an Alphanumeric Sender ID, Originating C/CSPs must only originate SMS on their Telecommunications Network using an Alphanumeric Sender ID where:

- a) it does not present as a Number; and*
- b) the Originating C/CSP has been provided evidence by the A-Party confirming that the A-Party has a valid use case for the Alphanumeric Sender ID.*

25. Clause 2.2 of the Scams Code states Alphanumeric Sender ID means a personalised identifier (for example, the shortened name of a business or organisation) instead of a Number.
26. The ACMA has considered whether Esendex complied with clause 5.2.2 of the Scams Code by addressing the questions set out in Table 4 below.

² This figure is different to the figure at paragraph 18 above because certain occasions which breached the service provider rule do not breach clause 4.2.1 of the IPND Code, as they occurred before the IPND Code was in force.

Table 4: Conditions for originating SMS using Alphanumeric Sender ID

Is Esendex a CSP?	Yes – refer to Table 2 above. Accordingly, Esendex must comply with clause 5.2.2 of the Scams Code.
Has Esendex originated SMS on its telecommunications network using Alphanumeric Sender IDs where it does not present as a number?	Yes. Information obtained from Esendex on 22 March 2023 indicates that it allowed A-Parties to use Alphanumeric Sender IDs to send SMS originated on its telecommunications network during the period 12 July 2022 to 8 June 2023.
Was Esendex provided evidence by the A-Party confirming that the A-Party had a valid use case for the Alphanumeric Sender ID?	No. Between 12 July 2022 and 8 June 2023 Esendex originated an estimated 6,756,999 SMS using Alphanumeric Sender IDs, where Esendex did not obtain evidence from the A-Party confirming it had a valid use case. Of these SMS, at least 99,000 were identified as scam SMS.

27. Accordingly, the ACMA finds that Esendex did not comply with clause 5.2.2 of the Scams Code on an estimated 6,756,999 occasions. On at least 99,000 of these occasions, Esendex’s non-compliance was used by scammers to send SMS scams.

Clause 6.1.1(b) – reporting scam calls and scam SMS

28. Clause 6.1.1(b) of the clause states:

C/CSPs must, within 20 Business Days of the end of each calendar quarter, report to the ACMA:

[...]

b) For Scam SMS, in the format and detail specified in Appendix E.

29. The ACMA has considered whether Esendex complied with clause 6.1.1(b) of the Scams Code by addressing the questions set out in Table 5 below.

Table 5: Reporting obligations

Is Esendex a CSP?	Yes – refer to Table 2 above. Accordingly, Esendex must comply with clause 6.1.1(b) of the Scams Code.
Did Esendex, within 20 Business Days of the July to September and October to December 2022 and calendar quarters, report to the ACMA the number of scam calls and scam SMS it blocked?	The ACMA did not receive reports from Esendex on the number of scam calls or scam SMS blocked for the 1 July to 30 September 2022 quarter or the 1 October to 31 December 2022 quarter, within the requisite timeframes. Esendex acknowledged that it had not provided reports to the ACMA and it would ensure timely submission in the future. The ACMA received reports from Esendex for the 1 January to 31 March 2023 quarter within the requisite time period.

30. Accordingly, the ACMA finds Esendex did not comply with clause 6.1.1(b) of the Scams Code on two occasions due to the lack of provision of its report for the quarters July to September 2022 and 1 October to 31 December 2022, within 20 Business Days after each respective quarter (specifically 31 October 2022 and 30 January 2023).