

Investigation Report

File No.	ACMA2024/34
Relevant entities	Telstra Limited ACN 086 174 781 Telstra Corporation Limited ACN 051 775 556 (Collectively, Telstra)
Type of entity	Carrier and carriage service provider (CSP)
Relevant legislation	<i>Telecommunications Service Provider (NBN Service Migration) Determination 2018 (the Determination)</i> <i>Telecommunications Act 1997 (the Act)</i>

Summary of findings

1. The Australian Communications and Media Authority (the **ACMA**) has found that:
 - (a) Telstra Corporation Limited ACN 051 775 556 (**Telstra Corp**) contravened subsection 101(1) of the Act on 276 occasions between 17 January 2022 and 28 December 2022; and
 - (b) Telstra Limited ACN 086 174 781 (**Telstra Ltd**) contravened subsection 101(1) of the Act on 3,761 occasions between 6 February 2023 and 15 December 2023, by failing to comply with the following provisions of the Determination:

Provision	Summary of requirement	Number of breaches	
		Telstra Corp	Telstra Ltd
Subsection 14(2)	Telstra must confirm the maximum attainable speed (MAS) of an NBN service as soon as practicable, and in any event within 20 working days of the service becoming operational, perform, or arrange for the performance of, line capability testing in relation to the service.	267	3,567
Subsection 14(3)	If a consumer's NBN service is found under subsection 14(2) to be not capable of meeting the applicable speed in the plan for the NBN service, within 5 working days of that assessment, Telstra must notify that consumer of the MAS of the part of the network unique to the consumer and if there is a lower speed tier plan offered by Telstra, that they may, at no cost, move to a lower speed tier plan at a lower price that reflects the MAS.	0	34

Subsection 15(1)	Telstra must not charge a consumer for an NBN service unless the service is operational and in relation to that service either: (a) the part of the network unique to the consumer is found under subsection 14(2) to be capable of providing the applicable speed; or (b) 10 working days have passed since the consumer was notified under subsection 14(3) and they have not responded.	9	160
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2. The contraventions are set out at **Attachments A and B**.

Background

3. The Determination requires CSPs that supply NBN broadband and voice services to protect the continuity of services during a migration from a legacy network to the NBN and take certain actions where an NBN migration is not completed smoothly. Among other things, the Determination requires CSPs to check the line speed of next-generation NBN broadband services¹ and provide remedies to the customer if the network is not capable of meeting the speed specified in the consumer's NBN plan.
4. The Determination is made under subsection 99(1) of the Act. As such, it is a service provider rule as defined in section 98 of the Act. CSPs are required to comply with service provider rules under subsection 101(1) of the Act.
5. Both Telstra entities are CSPs for the purposes of the Act because Telstra offers mobile and internet services to the public. Telstra supplies internet and landline services using an NBN ethernet product. As such, Telstra is an NBN CSP as defined by section 5 of the Determination. Therefore, Telstra must comply with the Determination. The Telstra Group completed a restructure on 1 January 2023. Telstra Corp supplied the services and is responsible for compliance prior to the restructure, and Telstra Ltd is responsible for the post-restructure period.
6. On 22 November 2023, Telstra notified the ACMA that it had identified 3 system issues that affected its compliance with the Determination. It advised that the issues caused MAS checks on some NBN services and the issuing of refunds to some customers to be delayed.
7. Telstra described the issues as follows:
 - (a) *CIJ ingestion delays*. Telstra uses a system called the Customer Interaction Journal (**CIJ**) to test the MAS of an NBN connection. Delays in ingesting customer order data from other systems into CIJ prevented MAS testing for some NBN services from being triggered.
 - (b) *Change to Salesforce database fields*. A database field that was used by CIJ to trigger MAS testing was removed. This meant that no MAS checks were conducted between 24 June and 23 October 2023.

¹ Next-generation broadband service is defined by regulation 4.2 of the *Telecommunications Regulations 2001* and generally refers to services that use part of the old copper network. On the NBN, this is FTTN, FTTC and FTTB technology types.

- (c) *Refund delays.* System errors prevented refunds being issued to some customers who elected to downgrade their plan or disconnect after receiving a MAS notification letter.
8. On 8 January 2024, the ACMA commenced an investigation under section 510 of the Act into Telstra Corp and Telstra Ltd's compliance with the Determination and Act, in relation to the issues noted in the 22 November 2023 letter.
9. On 25 September 2024, the ACMA provided its preliminary findings to Telstra and invited it to respond. Telstra responded on 9 October 2024. In its response Telstra stated it did not have any specific comments on the ACMA's preliminary findings and reasonings.
10. In reaching these findings, the ACMA has considered information provided by Telstra on 22 November 2023, 20 December 2023, 20 March 2024, 22 April 2024 and 9 October 2024.

Findings and reasons – Compliance with the Determination

Subsection 14(2) of the Determination

11. Subsection 14(2) of the Determination requires that as soon as practicable, and in any event within 20 working days, after a next-generation NBN broadband service becomes operational, the NBN CSP supplying the service must either:
- (a) confirm the MAS of the service identified in the line capability data relating to the service; or
 - (b) perform, or arrange for the performance of, line capability testing in relation to the service.
12. In its 22 November 2023 letter, Telstra reported that the customers affected by the 3 issues described above (in paragraph 7) are subject to the Determination. Therefore, the ACMA considers that the relevant services are next-generation NBN broadband services.
13. On 20 March 2024, Telstra provided details about the NBN services that did not have the MAS confirmed, or line capability testing undertaken, within 20 working days of the service becoming operational, because of the CIJ ingestion delays and the change to Salesforce database field issue. As shown in Attachments A and B, this relates to:
- (a) 267 services that were supplied by Telstra Corp prior to 1 January 2023; and
 - (b) 3,567 services that were supplied by Telstra Ltd on or after 1 January 2023.²
14. Therefore, the ACMA finds that:
- (a) Telstra Corp contravened subsection 14(2) of the Determination on 267 occasions between 20 January 2022 and 28 December 2022; and
 - (b) Telstra Ltd contravened subsection 14(2) of the Determination on 3,567 occasions between 6 February 2023 and 20 November 2023,

² We note that for the sake of simplicity the ACMA has removed some services from further consideration in the investigation where the timing of the obligations under subsections 14(2), 14(3) and 15(1) straddle the date of the Telstra Group restructure.

by failing to confirm the MAS of a next-generation NBN broadband service within 20 working days of the service becoming operational.

Subsection 14(3) of the Determination

15. Subsection 14(3) of the Determination states that if the line capability data referred to in paragraph 14(2)(a) or the line capability testing referred to in paragraph 14(2)(b) indicates that the part of the network unique to the consumer is not capable of providing the applicable speed, then the NBN CSP must, as soon as practicable, and in any event within 5 working days of the date that assessment occurred (**‘the subsection 14(2) assessment date’**)³, advise the consumer:
- (a) of the MAS of the part of the network unique to the consumer; and
 - (b) if there is a lower speed tier plan offered by the NBN CSP, that they may, at no cost, move to a lower speed tier plan at a lower price that reflects the MAS; and
 - (c) that they are free to exit the consumer contract which the NBN CSP has entered into with the consumer, without cost.
16. The information provided by Telstra on 20 March 2024 included details about the NBN services where the MAS indicated that the service was not capable of supporting the maximum speed of the plan chosen by the consumer. As shown in **Attachment B**, Telstra Ltd indicated that it failed to advise consumers within 5 working days of the subsection 14(2) assessment date of the information required by subsection 14(3) of the Determination in relation to 34 services.
17. Therefore, the ACMA finds that Telstra Ltd contravened subsection 14(3) of the Determination on 34 occasions on 15 December 2023, by failing to notify a consumer of the MAS and remediation options within 5 working days of the subsection 14(2) assessment date.

Subsections 15(1) of the Determination

18. Subsection 15(1) of the Determination requires that an NBN CSP must not charge a consumer for an NBN service unless:
- (a) the service is operational; and
 - (b) in relation to a next-generation NBN broadband service, either:
 - i. the MAS identified in the line capability data relating to the service under paragraph 14(2)(a) or the line capability testing under paragraph 14(2)(b) indicates that the part of the network unique to the consumer is capable of providing the applicable speed; or
 - ii. 10 working days have passed since the NBN CSP advised the consumer of the matters set out in subsection 14(3) and the consumer has not requested that the NBN CSP provide an available remedy.
19. Subsection 15(2) of the Determination states that an NBN CSP does not contravene subsection (1) if it promptly provides a refund or credit to a consumer for an amount specified in a bill issued to the consumer for the NBN service.

³ In this report, ‘subsection 14(2) assessment date’ means the date the MAS of the NBN service was confirmed under paragraph 14(2)(a) of the Determination or the line capability testing referred to in paragraph 14(2)(b) of the Determination was performed or arranged to be performed, whichever is applicable.

20. On 22 April 2024, Telstra provided details about a group of customers whose part of the network was assessed under subsection 14(2) of the Determination as not capable of providing the applicable speed. These customers received a MAS notification letter under subsection 14(3) of the Determination and elected to downgrade their plan or disconnect in response within 10 working days. Despite having already been charged for their existing plans, the refunds due to them after making this election were subsequently delayed due to Telstra's system issues. As shown in Attachments A and B:
- (a) refunds to 6 customers were delayed by Telstra Corp prior to 1 January 2023; and
 - (b) refunds to 6 customers were delayed by Telstra Ltd on or after 1 January 2023.
21. The ACMA considers that although their services were operational, because neither subparagraph 15(1)(b)(i) or (ii) of the Determination was made out in relation to these customers and their services, Telstra contravened subsection 15(1) of the Determination by charging them. Subsection 15(2) of the Determination does not apply to relieve Telstra from its contravention of subsection 15(1) in relation to these customers because the refunds were not provided promptly. The refunds were delayed for several months, with the shortest timeframe being 4 months from the date the customer selected the remedy.
22. The information provided on 20 March 2024 included details of customers who were entitled to refunds after the MAS testing of their service was delayed because of the CIJ ingestion delays and Salesforce database field issue. Telstra had charged these customers for NBN services before advising them of the matters set out in subsection 14(3) of the Determination. As shown in Attachments A and B, this relates to:
- (a) 3 customers of Telstra Corp prior to 1 January 2023; and
 - (b) 154 customers of Telstra Ltd on or after 1 January 2023.
23. The ACMA also considers that although their services were operational, because neither subparagraph 15(1)(b)(i) or (ii) of the Determination was made out in relation to these customers and their services, Telstra contravened subsection 15(1) of the Determination by charging them. Subsection 15(2) of the Determination does not apply to relieve Telstra from that contravention either because the refunds were not promptly provided to these customers. The shortest timeframe within which Telstra provided a refund to one of these customers is 2 months after the date the service became operational.
24. Therefore, the ACMA finds that:
- (a) Telstra Corp contravened subsection 15(1) of the Determination on a total of 9 occasions between 17 January 2022 and 7 December 2022; and
 - (b) Telstra Ltd contravened subsection 15(1) of the Determination on 160 occasions between 16 February 2023 and 18 October 2023,

by charging consumers for an NBN service in circumstances where it was not permitted.

Findings and reasons – Compliance with subsection 101(1) of the Act

25. As a CSP, Telstra must comply with the Determination under subsection 101(1) of the Act.
26. The ACMA finds that, by failing to comply with the Determination as set out above:

- (a) Telstra Corp has contravened subsection 101(1) of the Act on 276 occasions between 17 January 2022 and 28 December 2022; and
- (b) Telstra Ltd has contravened subsection 101(1) of the Act on 3,761 occasions between 6 February 2023 and 15 December 2023.