

Final Investigation Report: Compliance with the Telecommunications Consumer Protections Code C628:2012 by Live Connected Pty Ltd

File No.	ACMA2013/878
Carriage Service Provider	Live Connected Pty Ltd
ACN	140 094 113
Type of Service of Product	Mobile services
Scope	Telecommunications Consumer and Protections Code C628:2012, including clause 5.7.1, 6.9.1 and 8.2.1

Final Findings

The Australian Communications and Media Authority (the **ACMA**) holds the view that Live Connected Pty Ltd (ACN 140 094 113) (**Live Connected**) contravened the following clauses of the *Telecommunications Consumer Protections Code C628:2012 (TCP Code)*¹ on two occasions, on 8 December 2012 and 8 February 2013:

- 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; and
- clause 6.9.1(a) and clause 8.2.1(a)(v): by taking credit management action in relation to specified disputed amounts which were the subject of unresolved complaints.

Background

1. This report presents the findings of an investigation conducted by the ACMA into Live Connected's compliance with certain billing, credit management and complaint handling provisions of the TCP Code.
2. On 26 June 2013, in response to concerns raised by the Telecommunications Industry Ombudsman (**TIO**), the ACMA commenced an investigation under paragraph 510(1)(c) of the *Telecommunications Act 1997* (the **Act**) into Live Connected's compliance with clauses 5.7.1(c), 6.9.1(a) and 8.2.1(a)(v) of the TCP Code.
3. As part of this investigation, the ACMA obtained evidence from two former Live Connected customers, to be known as Customer A and Customer B, both who had complained to the TIO about Live Connected's billing, credit management and complaint handling practices. Specifically, both consumers claimed that they were

¹ <http://www.commsalliance.com.au/Documents/all/codes/c628>.

billed for excess data usage, disputed the charges with Live Connected and had their bank accounts debited before their complaints were resolved.

4. On 4 October 2013, the ACMA provided Live Connected with a copy of its preliminary investigation report and invited Live Connected to comment on the preliminary findings. The ACMA's preliminary view was that Live Connected had contravened clauses 5.7.1(c), 6.9.1(a) and 8.2.1((a)(v)). In response, Live Connected told the ACMA that:
 - a. Live Connected was acquired by Vaya Pty Ltd (**Vaya**) in May 2013 and from July 2013, the entire business was being managed by Vaya; and
 - b. it confirms that "since July 2013, all of the issues raised have been addressed and confirmed as being fully compliant".
5. Live Connected did not dispute the contravention findings set out in the preliminary report.

Relevant facts

6. The TCP Code is registered under Part 6 of the Act. The TCP Code contains rules about how carriage service providers (**CSP**) should deal with residential and small business customers.
7. The rules apply to a range of CSP business practices, including billing, credit management and complaint handling.
8. Live Connected is a CSP within the meaning of the Act and is also a supplier as defined in the TCP Code. Live Connected is therefore required to comply with the provisions of the TCP Code as it applies to Live Connected's dealings with residential and small business customers.
9. Live Connected is an Australian registered company. Its website www.liveconnected.com.au indicates that it provides mobile telephone services to residential customers through the Optus network.

Findings and Reasons – *compliance with the TCP Code*

10. Having assessed the evidence and information before it, the ACMA has formed the view that Live Connected contravened clauses 5.7.1(c), 6.9.1(a), and 8.2.1(a)(v) of the TCP Code on 8 December 2012 and 8 February 2013

Discussion

11. The ACMA has considered the following documents in assessing Live Connected's compliance with the TCP Code:
 - a. a statement provided by Customer A;
 - b. a statement provided by Customer B;
 - c. Live Connected bills issued to Customer A on 3 December 2012 and Customer B on 4 February 2013 respectively;

- d. bank statements provided by Customer A and bank statements provided by Customer B confirming the dates the direct debits were made by Live Connected in relation to the bills mentioned in subparagraph 10c;
- e. transcripts of online conversations between Live Connected and Customer A and emails between Live Connected and Customer B about their respective disputed data usage charges; and
- f. Live Connected's Terms and Conditions, which have been in place from December 2009.

Clause 5.7.1(c) – providing customers with at least 10 working days to check their bill before a direct debit occurs

- 12. Clause 5.7.1(c) of the TCP Code relevantly states that a supplier must provide its customers with not less than 10 working days to check their bill before the associated direct debit transaction occurs.
- 13. Clause 5.7.1(c) also specifies that the 10 working day timeframe applies unless the supplier and a customer 'otherwise agree.'²

Evidence provided by Customer A about Live Connected's compliance with clause 5.7.1(c)

- 14. Customer A had three mobile services with Live Connected in November 2012. On 3 December 2012, Customer A received a bill from Live Connected consisting of the November 2012 charges for all three mobile services, totalling \$327.26. This amount included excess data charges for mobile service number [REDACTED] totalling \$544.29, along with a credit adjustment of \$245 which Live Connected gave Customer A in relation to the excess disputed usage charges. The bill stated that \$327.26 would be debited on 8 December 2012.
- 15. On 8 December 2012, Customer A's bank account was direct debited by Live Connected for \$327.26.
- 16. Having considered this evidence, it is the ACMA's view that Live Connected did not allow Customer A at least 10 working days to check the bill before the direct debit occurred.

Evidence provided by Customer B about Live Connected's compliance with clause 5.7.1(c)

- 17. Customer B had a mobile service with Live Connected in January 2013. On 4 February 2013, Customer B received a bill from Live Connected totalling \$1433.05 for charges incurred in January 2013. This amount included excess data usage charges of \$1422.06. This bill stated that \$1433.05 would be debited on 7 February 2013.
- 18. On 8 February 2013, Customer B's bank account was direct debited by Live Connected for \$1433.05.

² Clause 5.7.1(c) of the TCP Code also refers to clause 5.2.1(a) of the TCP Code. Clause 5.2.1(a) is not relevant to this investigation because Live Connected issues its customers with a bill prior to a direct debit occurring.

19. Having considered this evidence, it is the ACMA's view that Live Connected did not allow Customer B at least 10 working days to check the bill before the direct debit occurred.
20. In addition, it appears from the 'statement issued date' and 'payment required date' on the two bills provided by Live Connected to Customer A and Customer B, that these were not isolated incidents. Given that bills usually follow a standard template, it is likely that other Live Connected customers who incurred charges in addition to their fixed monthly commitment, would not have been given 10 working days to check the unfixed charges before direct debits occurred. Based on the evidence provided to the ACMA, it appears that Live Connected customers are given approximately 4 working days to check any unfixed charges before a direct debit occurs, which is less than half of the required timeframe under clause 5.7.1(c) of the TCP Code. In addition, this argument is supported by the inclusion of clause 9.6 in Live Connected's Terms and Conditions - see below.

Has Live Connected 'otherwise agreed' to an alternate timeframe with Customer A and Customer B respectively to check their bill before a direct debit occurred?

21. Clause 5.7.1(c) of the TCP Code effectively allows a provider to give a customer less than 10 working days to check a bill where an alternate timeframe has been agreed between the supplier and the customer.
22. Clause 9.6 of Live Connected's Terms and Conditions states³:

When available, you authorise us to debit amounts (including any direct debit fees that may be payable) directly from your nominated bank or credit card account on the 7th or 8th of every month where you have chosen that method of payment, after receiving your bill on the 3rd or 4th of every month.

23. It is the ACMA's view that the inclusion of a term in a supplier's standard terms and conditions does not constitute an agreement under clause 5.7.1(c) of the TCP Code. In our view, the "agreement" that must be obtained in respect of clause 5.7.1(c) is an agreement to depart from the "10 working day" requirement that would ordinarily apply. That is, the customer must explicitly agree to vary the condition in clause 5.7.1(c). The ACMA's view is that this cannot be accomplished by way of standard terms and conditions, unless those terms and conditions explicitly refer to the relevant term as a variation of the usual 10 working day rule.
24. The ACMA's view is that clause 9.6 is not an agreement of the kind referred to in clause 5.7.1(c) of the TCP Code, meaning that the 10 working day rule still applied.

³ The ACMA notes that there are two different versions of Live Connected's Terms and Conditions available online. The version referred to in this report is the version available through Live Connected's website- <http://www.liveconnected.com.au>.

25. The ACMA has therefore formed the view that Live Connected has contravened clause 5.7.1(c) of the TCP Code, as it did not provide Customer A and Customer B with at least 10 working days to check their bill before debiting their bank accounts.

Clauses 6.9.1(a) and 8.2.1(a)(v) – not taking credit management action in relation to a specified disputed amount that is the subject of an unresolved complaint

26. Clause 6.9.1(a) requires a supplier to not *take credit management action in relation to a specified disputed amount that is the subject of a complaint where the supplier is aware that the dispute has not been resolved to the satisfaction of the consumer and is being investigated by the supplier, the TIO or a relevant recognised third party.*
27. Clause 8.2.1(a)(v) requires a supplier to demonstrate fairness, courtesy, objectivity and efficiency by *not taking credit management action in relation to a specified disputed amount that is the subject of an unresolved complaint in the circumstances where the supplier is aware that the complaint has not been resolved to the satisfaction of the consumer and is being investigated by the supplier, the TIO or a relevant recognised third party.*
28. The ACMA is satisfied that in relation to Customer A and Customer B, Live Connected has taken credit management action as defined by the TCP Code and that both consumers have made a complaint as also defined by the TCP Code.

Evidence provided by Customer A about Live Connected's compliance with clauses 6.9.1(a) and 8.2.1(a)(v)

29. On 16 November 2012, Customer A made a complaint to Live Connected disputing the excess data usage charges of \$554.22. A discussion between Customer A and Live Connected subsequently ensued through Live Connected's online complaints portal. Live Connected offered Customer A a good will credit of \$245 on 20 November 2012. Customer A remained dissatisfied and on the same day asked Live Connected to further reduce the disputed charges so that they would pay \$143.88 in total. In response, Live Connected asked Customer A to contact it again after 3 December 2012.
30. When Customer A received a statement issued on 3 December 2012 which indicated that Live Connected had not further reduced the excess usage charges, the Customer contacted Live Connected and asked if it was still considering reducing the disputed charges in line with their offer on 20 November 2012. Live Connected did not reply and debited Customer A's account \$327.26 (an amount including the excess data charges of \$544.29, plus the charges for the two other mobile services, but less the credit adjustment of \$245) on 8 December 2012.
31. This evidence suggests that Live Connected debited Customer A's bank account for charges which were disputed and which were the subject of an unresolved complaint. As a result, the ACMA has formed the view that Live Connected contravened clauses 6.9.1(a) and 8.2.1(a)(v) on 8 December 2012, by taking credit management action on a disputed amount which was the subject of an unresolved complaint.

Evidence provided by Customer B about Live Connected's compliance with clauses 6.9.1(a) and 8.2.1(a)(v)

32. On 28 January 2013, Customer B disputed excess usage charges on the account for 'around \$600' and then on 31 January 2013 for 'around \$1400' by emails to Live Connected. After not hearing back from Live Connected by 2 February 2013, Customer B emailed Live Connected again and advised Live Connected not to debit their bank account for the disputed amount. On 4 February 2013, Customer B received a bill for \$1433.05, which the ACMA understands included the disputed excess data charges of \$1422.06.
33. On 5 February 2013, Customer B contacted the TIO and registered a complaint against Live Connected about the disputed excess usage charges and the failure of Live Connected to respond to their complaint. On the same day, the TIO notified Live Connected that it had registered a complaint against it. The correspondence between the TIO and Live Connected explains that Customer B's complaint relates to disputed charges for excess data usage and, amongst other things, asks Live Connected to suspend credit management action on the disputed amount while the complaint is being investigated.
34. On 5 February 2013, a representative of Live Connected responded to Customer B's enquiry and noted that as the matter was now with the TIO, the Live Connected TIO complaints team would respond.
35. On 8 February 2013, Live Connected direct debited Customer B's bank account for \$1433.05, which included the disputed excess data charges of \$1422.06.
36. This evidence suggests that Live Connected debited Customer B's bank account for disputed charges totalling \$1422.06, where the disputed charges were the subject of an unresolved complaint. As a result, ACMA has formed the view that Live Connected contravened clauses 6.9.1(a) and 8.2.1(a)(v) on 8 February 2013 by taking credit management action on a disputed amount which was the subject of an unresolved complaint.