

29 August 2014

Mr John Stanton
Chief Executive Officer
Communications Alliance Limited
PO Box 444
MILSONS POINT NSW 1565
Email: jstanton@commsalliance.com.au

Dear John

Review of the Mobile Number Portability (MNP) Code (C570:2009)

The Telecommunications Industry Ombudsman (TIO) welcomes the opportunity to contribute to Communications Alliance's scheduled review of the Mobile Number Portability (MNP) Code.

Please find enclosed the TIO's submission, which sets out:

- TIO complaints data and complaint issues relevant to mobile number portability
- our comments on specific issues that continue to drive new complaints about mobile number portability, and
- associated case studies in the Appendix.

We trust that the information in this submission will assist Communications Alliance in its review of the MNP Code.

If you require further information, please contact me on 03 8600 8700 or by email (david.brockman@tio.com.au).

Yours sincerely



David Brockman
Executive Director – Industry, Community & Government

Telecommunications Industry Ombudsman Ltd ABN 46 057 634 787

PO Box 276 Collins Street West
Vic 8007
Level 3, 595 Collins Street
Melbourne 3000

Tel freecall* 1800 062 058
Fax freecall* 1800 630 614
Telephone 03 8600 8700
Fax 03 860 8797

TTY 1800675 692
Email tio@tio.com.au
Web www.tio.com.au

* calls from mobile phones may incur charges



Telecommunications Industry Ombudsman

Telecommunications Industry Ombudsman submission – Review of the Mobile Number Portability (MNP) Code

August 2014



Contents

About the TIO	1
TIO submission on the review of the Mobile Number Portability Code	2
Complaints to the TIO	3
Overall trends in new complaints	3
New complaints about mobile services	3
Issues in new complaints relevant to mobile number portability	4
Specific issues relating to mobile number portability	6
Unauthorised ports	6
Unauthorised ports contributing to bank fraud	7
Porting delays and compliance with the MNP process	8
Telecommunications (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Determination 2013	9
Appendix: Case Studies	11

About the TIO

The Telecommunications Industry Ombudsman (TIO) is authorised under Part 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* to provide an independent alternative dispute resolution service for small business and individual consumers in Australia who have a complaint about their telecommunications services.

We aim to resolve these complaints quickly in a fair, independent and informal way, having regard not only to the law and to good industry practice, but also to what is fair and reasonable in all the circumstances. Before the TIO becomes involved in a complaint, the service provider is given an opportunity to resolve the complaint with its customer.

We are independent of telecommunications companies, consumer groups and government.

For most complaints we receive, we establish the issues in dispute and the resolution sought, and then refer the consumer or small business to a designated point of contact at the relevant telephone or internet service provider. The provider is given a further opportunity to resolve the matter with the consumer, without the TIO's direct involvement. Around 88 per cent of consumers we refer do not contact the TIO for further assistance after this stage of the process.

Where the consumer and service provider do not reach an agreement and the consumer returns to the TIO, we become more directly involved by seeking to conciliate an agreed resolution between the parties.

Complaints that cannot be resolved by conciliation are progressed for formal investigation by the TIO. If the complaint remains unresolved after formal investigation and the TIO is of the view that it would be fair and reasonable to do so, the TIO can make binding determinations up to a value of \$50,000 and non-binding recommendations up to a value of \$100,000 in respect of each complaint.

We record complaints according to service types – internet, mobile and landline services, and by the types of issues that these complaints present. These issues include connection and fault repair delays, credit management disputes, contractual disputes, customer service/complaint handling and billing disputes. Every complaint involves at least one issue. Some complaints can involve multiple issues – for example, a complaint about a delay in rectifying a faulty landline service may also involve a claim that the consumer's complaint about this fault was not acknowledged or progressed (a complaint handling issue).

Further information about the TIO is available at www.tio.com.au.

TIO submission on the review of the Mobile Number Portability Code

The TIO welcomes the opportunity to contribute to the review of the Mobile Number Portability (MNP) Code 2009.

We believe that the MNP Code continues to provide both service providers and consumers with certainty in relation to the porting of mobile services. In this submission, we make suggestions about areas of the MNP Code that should be retained or strengthened, in light of our experience in handling complaints about mobile number portability issues over the past few years.

We set out in this submission:

- (a) TIO complaints data and complaint issues relevant to mobile number portability, and
- (b) Our comments on specific issues that continue to drive new complaints about mobile number portability, and their relevance to the MNP Code review.

We have provided examples of the issues outlined in (b) above, in case studies set out in the **Appendix** to this submission. These issues have been highlighted due to their potentially systemic nature and the fact that they cause detriment to both consumers and service providers. This detriment may be in the form of delays or loss of service number, financial loss and significant inconvenience for the affected consumer. There is also potential detriment to service providers – in the form of dissatisfied customers, unpaid bills or disputed charges – if a dispute between the parties escalates or remains unresolved.

We trust that the information in this submission will assist Communications Alliance in its review of the MNP Code.

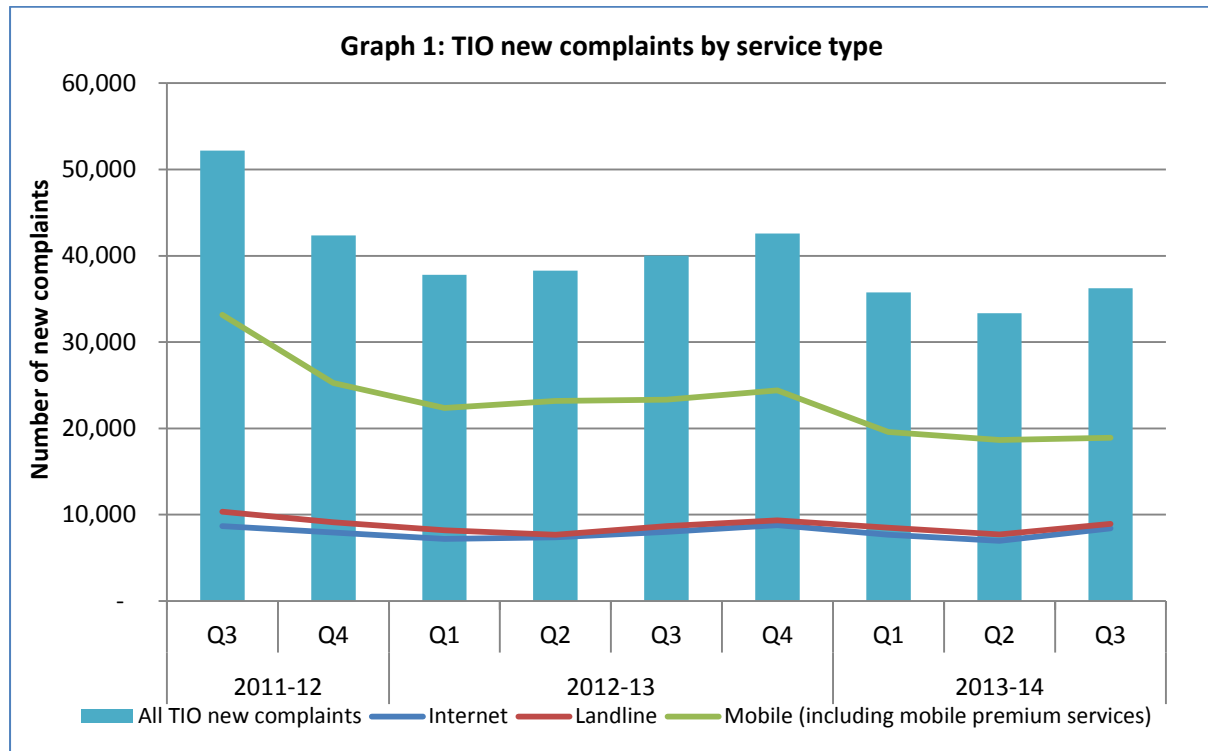
Complaints to the TIO

Overall trends in new complaints

When a consumer – an individual or a small business – contacts us about an expression of grievance or dissatisfaction about a matter within the TIO’s jurisdiction that the service provider has had an opportunity to consider, we record this as a ‘new complaint’.

The TIO recorded and handled 158,652 new complaints from small business and individual consumers in 2012-13. This compares with 197,682 new complaints recorded during 2010-11 and 193,702 in 2011-12. Over the first three quarters of 2013-14, the TIO recorded and handled 105,363 new complaints.

Graph 1 shows the breakdown of new complaints recorded by the TIO by service type – internet, landline and mobile (including mobile premium services) – over the nine quarters to March 2014.



New complaints about mobile services

New complaints about mobile services (including mobile premium services) accounted for more than half of all new complaints recorded by the TIO and totalled 93,281 during 2012-13. This compares to 114,550 new complaints about mobile services in 2010-11, and 125,421 in 2011-12. Over the first three quarters of 2013-14, the TIO recorded and handled 57,162 new complaints about mobile services. These trends are illustrated in Graph 1 above.

As Graph 1 shows, the movement in new complaints about mobile services has largely mirrored total complaints to the TIO. Over the past two financial years there has been a consistent decrease in overall new complaints and new complaints about mobile services.

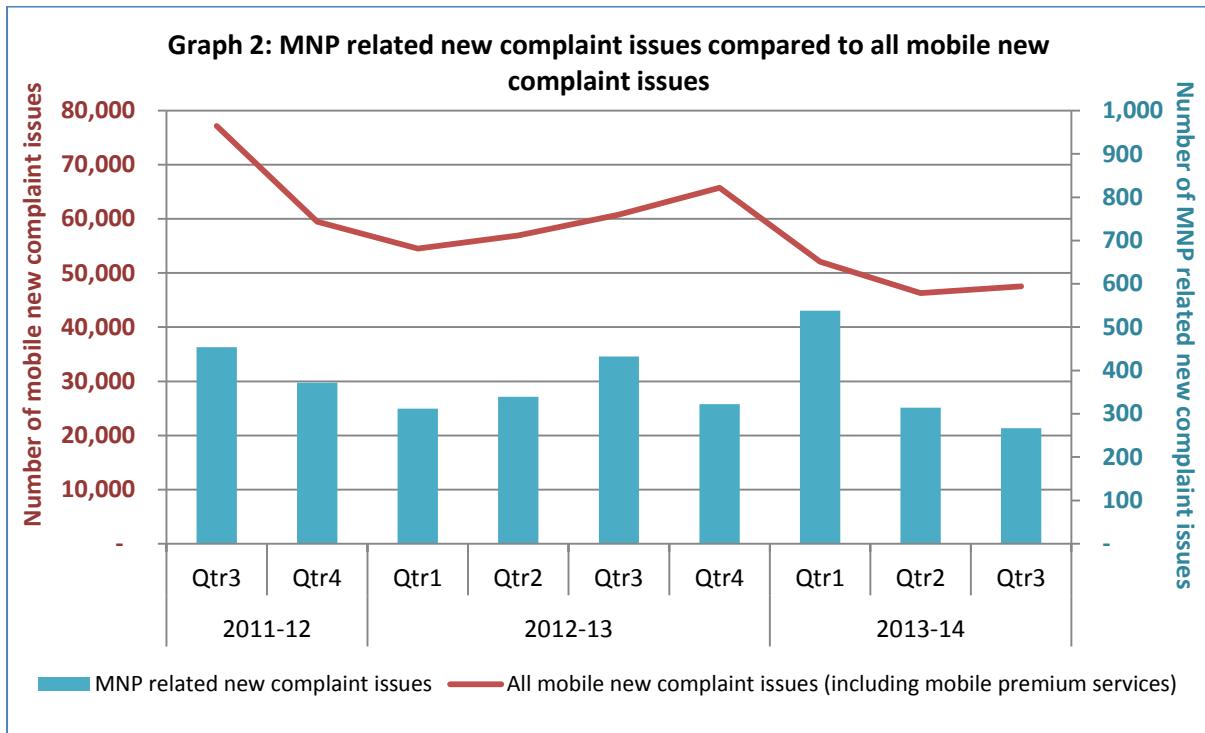
Issues in new complaints relevant to mobile number portability

We record new complaints by the types of issues that these complaints present. Issues are selected from a choice of keywords that are aligned to industry codes or common complaint categories that the TIO has identified. These issues include contractual or transfer disputes, connection and fault repair delays, credit management disputes, complaint handling issues and billing disputes.

We regularly receive new complaints about porting or transfer issues relating to mobile services. While the TIO does not specifically categorise these issues as 'mobile number portability' (MNP) issues, we capture these issues in the following manner:

- **Transfers – delay:** when a consumer has sought to transfer a mobile number/service between providers but experiences delays in doing so
- **Transfers – unauthorised:** when a consumer finds their mobile number/service has been transferred to another provider without their authority, knowledge or informed consent, or the transfer is the result of an administrative error
- **Connection – number allocation and quarantine:** when there is a delay in the issue of a mobile number to a consumer, including the loss and retrieval of a number from quarantine
- **Transfers – reversal and point of sale:**
 - when there is a delay in reversing an unauthorised transfer, the refusal of a provider to initiate a transfer reversal or a completed reversal that changes the nature of the service
 - when there is insufficient advice or un-kept promises regarding any termination fees payable under an existing contract if a consumer authorises / requests a transfer.

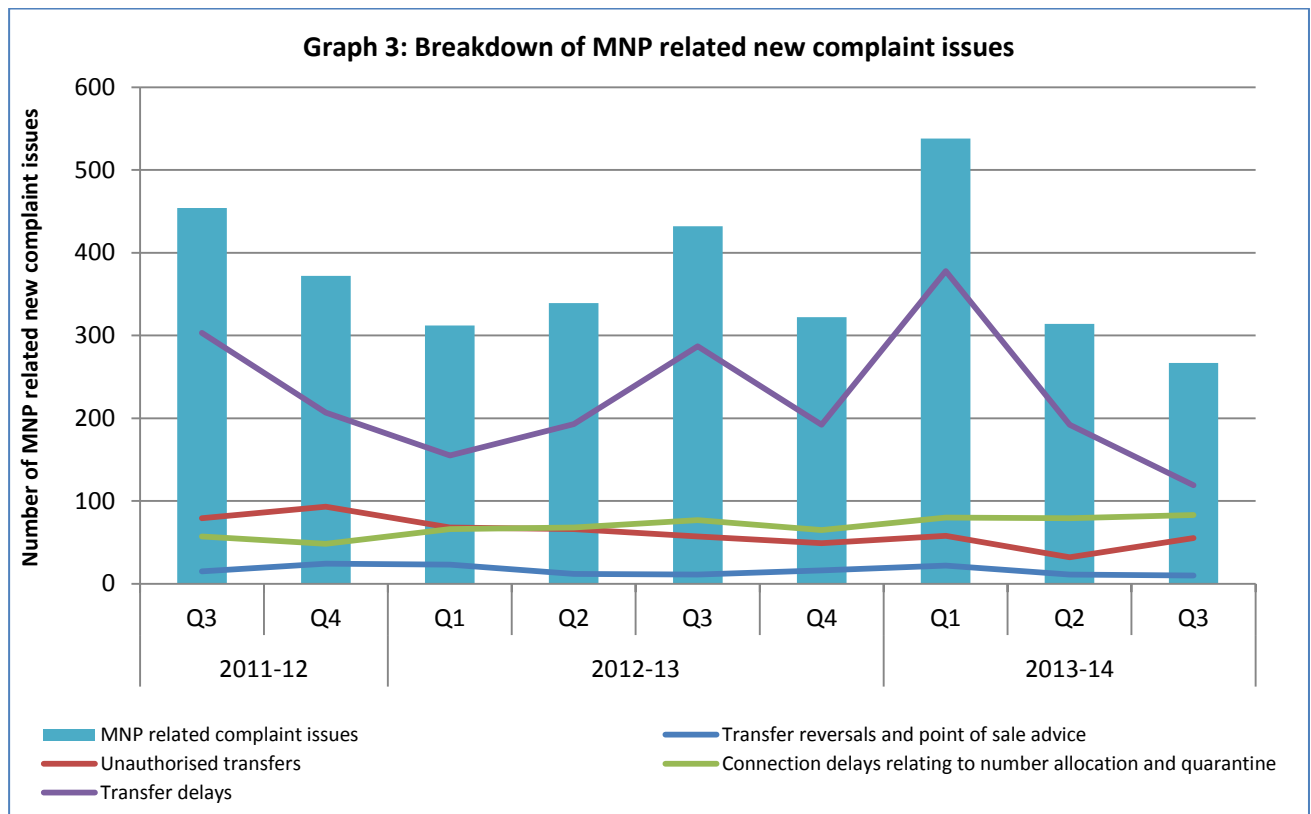
Graph 2 shows the number of MNP related complaint issues compared to all mobile new complaint issues recorded by the TIO in the nine quarters to March 2014.



As shown in Graph 2, MNP related complaint issues have generally formed a small proportion of all mobile new complaint issues – averaging around 0.65 per cent over the last nine quarters – except for two spikes in Quarter 3 of 2012-13 and in Quarter 1 of 2013-14.

Over the nine quarters to March 2014, issues about transfer delays of mobile services have generally formed the largest MNP category, featuring in over 59 per cent of all MNP related complaint issues (averaged over the nine quarters). Connection delays relating to number allocation and retrieving numbers from quarantine is the next most common MNP related complaint issue at 20 per cent (averaged over the nine quarters), followed closely by unauthorised transfers at 17 per cent over the same period. Transfer reversals and transfer issues involving point of sale advice about termination fees made up 4 per cent.

Graph 3 illustrates the movement of specific MNP related complaint issues compared to the overall trend in MNP related complaint issues.



The two spikes in MNP related complaint issues seen in Quarter 3 of 2012-13 and Quarter 1 of 2013-14, were primarily driven by transfer delays involving mobile virtual network operators (MVNOs) that had difficulty porting their customers due to a range of factors. This is considered in further detail below.

Specific issues relating to mobile number portability

We have reviewed the current MNP Code considering key issues that have driven complaint numbers over the last few years. We offer the following suggestions as part of the MNP Code review.

Unauthorised ports

Although small in volume, complaints about unauthorised ports (transfers) of mobile services have remained relatively steady, averaging around 60 new complaints per quarter over the nine quarters to March 2014 (see Graph 3 above).

From our consideration of unauthorised porting complaints that we receive, it appears that there may be scope to further reinforce requirements in the MNP Code to verify the identity of account holders and the validity of authorisations for transfers.

Additionally, while the MNP Code provides a mechanism to deal with disputes and to reverse unauthorised ports or those that have occurred because of an administrative error, the MNP Code may not be comprehensive enough to require the speedy resolution of complaints flowing from an unauthorised port (for example, early termination fees imposed by the losing service provider).

Case Study 1 and Case Study 2 in the **Appendix** illustrate the difficulties that consumers may face when there is an unauthorised port, including the potential loss of service or number. Case Studies 3, 4 and 5 in the **Appendix** highlight other examples of unauthorised ports and the detriment that can arise including financial loss and bank fraud (see below).

Based on the TIO's experience handling complaints about MNP, we suggest that the following matters be considered in the review of the MNP Code:

- **Stronger authorisation provisions**

The MNP Code could include additional steps to prevent unauthorised ports; for example:

- a requirement for the gaining service provider (GSP) to comply with the requirements in the Telecommunications Consumer Protections (TCP) Code 2012 relating to informed consent and authorisation before a service is ported
- verification by the GSP and the losing service provider (LSP) that the consumer authorising the port request is the account holder and rights of use holder for the mobile service/number, and
- a requirement for improved communication between the GSP and the LSP if the information about the account holder held by the GSP does not match the information held by the LSP.

- **Clearer dispute resolution processes**

When a dispute arises, the MNP Code could provide for:

- timeframes for the GSP and LSP to respond to issues and resolve the dispute
- safeguards to ensure that service numbers are not lost while a dispute is being resolved, and
- when a consumer complains about a porting process, consistency with the complaint management provisions in Chapter 8 of the TCP Code 2012.

- **Contemporary cross-references**

The provisions in the MNP Code could be updated to be consistent with or make reference to:

- the provisions of the TCP Code 2012 on Changing Suppliers. For example, what constitutes 'Authorisation', 'Consent' and 'informed consent' in the TCP Code 2012 should be reflected in the MNP Code in relation to 'Customer Authorisation' and what constitutes an 'Unauthorised Port'.

Unauthorised ports contributing to bank fraud

In November 2011, the TIO became aware of unauthorised mobile transfers where the consumer's service was ported from their preferred mobile provider without their permission or knowledge. Their mobile numbers were then used to facilitate the theft of substantial sums of money from their bank accounts.

In these cases, the person who requested the mobile transfer accessed the consumer's bank account using a code sent by the bank to the mobile number requesting a reset of the internet banking log-in. That person then accessed the consumer's bank account and transferred the consumer's money to another account, which in most cases could not be traced.

We referred these cases to the police and to the ACMA who investigated this issue.

We continue to see a small number of these types of complaints each year. Case Studies 3, 4 and 5 in the **Appendix** illustrate the types of detriment that can arise as a result of unauthorised ports, including bank fraud and financial loss.

The increasing use of mobile services in mobile commerce and banking transactions increases the financial risks that could occur if there are unauthorised transfers of these mobile services. We suggest that the issue of facilitating robust customer authorisation prior to a transfer is carefully considered in the review of the MNP Code. In addition to the suggestions made above on unauthorised ports, we further suggest the following be considered:

- **promote the use of the Porting Number Register**

We understand that at the time of the last MNP Code review, it was agreed that banks would use the Porting Number Register prior to sending out bank information to their customers via SMS (such as the banking log-ins mentioned above). Banks should be encouraged to actively use this register to prevent consumer detriment caused by fraudulent porting activity. We suggest that the MNP Code includes requirements to promote the use of this register by the banks or simplifies the processes by which banks can check or use the register.

- **retain the Customer Authorisation (CA) obligations in the MNP Code**

In our submissions on the draft LNP Code last year we expressed our concern that the obligations around Customer Authorisations (CA) were no longer codified. We understand that a similar approach is being proposed for the MNP Code, or alternatively, for the CA obligations to be incorporated into a standalone Industry Guideline. We remain concerned that this could weaken the MNP Code and increase consumer detriment. The current Customer Authorisation obligations in the MNP Code remain important safeguards to prevent unauthorised or incorrect ports that could result in loss of service or number, or financial loss.

Porting delays and compliance with the MNP process

Over the past two years, we have seen several large scale porting delays arising from mobile virtual network operators (MVNOs) use of the porting processes under the MNP Code.

In early 2012, we were advised by a carrier that a spike in porting delays in Quarter 2 of 2011-12 was caused by an MVNO not responding in a timely manner to Broadcast Port Cutover Notification messages generated as part of the MNP process. The carrier told us the MVNO was not using the required amount of sessions to communicate these messages, resulting in congestion in the process. The carrier also told us that this particular MVNO was not updating its network configuration as part of the MNP process. This contributed to delays in consumers transferring their services.

Case Study 6 in the **Appendix** is an example of this scenario.

In 2013, we received advice that there was an issue with consumers transferring between MVNOs that used the same wholesale network. The provider advised us that it was an MVNO using an aggregator and its system was set up to treat a transfer on the same network as a churn, not a port. However, when consumers transferred to an MVNO on another network, then attempted to transfer to an MVNO on the original network, the aggregator's system incorrectly treated these requests as another internal transfer. The provider advised us that it raised the issue with the wholesale

network; however as a stop gap measure its aggregator was processing a number of transfers manually every day. The manual processing of these transfers resulted in transfer delays for affected consumers. This scenario was responsible for the two spikes in complaint numbers in Quarter 3 of 2012-13 and Quarter 1 of 2013-14 (see Graph 3 above).

Case Study 7 in the **Appendix** is an example of this scenario.

We suggest that the following be considered in the review of the MNP Code:

- **update the MNP Code to deal with added complexity in the supply chain**
In our experience, consumers sign up to MVNOs because they are attracted by budget plans with unlimited calls/SMS and higher data allowances. These agreements are usually provided on a month-to-month basis without any fixed contracts. When these providers have had reason to amend their plans consumers may move to another provider offering similar deals at a lower rate. These constantly changing plans mean consumers may transfer frequently between MVNOs, including back and forth on multiple carriers' networks. The MNP Code review should consider whether the Code is resilient to the newer models and complexities in the supply chain for mobile services.
- **clearer dispute resolution processes:**
We note that the dispute resolution process in the Industry Guideline Mobile Number Portability 2009 – Operations Manual is outlined in more detail compared to the MNP Code. However, it is not clear whether providers, specifically smaller providers and MVNOs fully understand their obligations around compliance and dispute resolution. We suggest that improved dispute resolution – through clear timeframes, number safeguards, and TCP Code consistency – could reduce the impact of porting delays on consumers.
- **harmonisation of obligations involving porting and connections**
A similar process to the Pre-Port Number Validation (PNV) process in the LNP Code could perhaps be included in the MNP Code to address the issue around MVNOs using the same wholesaler. A more detailed process may give more guidance for providers, especially smaller providers when dealing with delays and this would in turn benefit consumers and reduce consumer complaints.

Telecommunications (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Determination 2013

As part of the recent deregulation review, we understand that some providers have recommended the revocation of the *Telecommunications (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Determination 2013* (the Determination). While we understand providers' views around the cost in enforcing these obligations, especially smaller providers and providers using agents, the reasons for the Determination still exist. If a provider (or its agent) collects sufficient, appropriate information from a consumer prior to a mobile transfer, it would mean fewer unauthorised transfers and fewer reversals (see for example, Case Study 5 in the **Appendix**). This benefits consumers and providers.

The Determination contains some important protections. If these are to be reconsidered, the MNP Code may need to be amended to include key protections from the Determination into its CA obligations.

Appendix: Case Studies

These are summaries of actual complaints dealt with by the TIO. The dates, names of the consumers and service providers have been de-identified to ensure confidentiality of the TIO's dispute resolution process.

Case Study 1

In March 2014, the consumer contacted the TIO to complain that her father's mobile service had been transferred to someone else without his consent or knowledge and that his service had stopped working. The consumer said that her father's original provider was not able to assist to recover the number. His original provider also told him it did not have the details for the person who had requested the transfer.

The consumer told us that she was worried her father's personal information had been accessed to initiate the transfer. The consumer also told us that her father had serious medical conditions and needed his mobile service to keep in touch with his specialists. The consumer wanted the original provider to retrieve her father's mobile number and to re-activate his service. She also wanted the provider to waive any early termination charges that had been imposed because of the transfer of her father's service.

After the TIO's referral to the provider's senior complaint handling area, the consumer returned to us claiming that the provider said it could not assist with the disputed transfer, nor did it provide any explanation as to how the transfer had occurred.

The TIO raised the matter for conciliation to see if the provider could retrieve the mobile number and re-activate the service for the consumer's father.

Soon after the TIO commenced conciliation, the provider retrieved the number and re-activated the mobile service for the consumer's father. The provider also waived all early termination charges. The consumer accepted this resolution to the complaint.

Case Study 2

In March 2014, the consumer contacted the TIO about the transfer of her mobile service by another provider without her permission. The consumer said that she had contacted her own provider and it told her the service was now in another person's name. The consumer said that her provider had initiated a reversal of the transfer of her service.

The consumer told us that she was seeking confirmation from the provider that had transferred her service without her permission, that it would not charge her early termination fees. She also wanted an explanation as to how the transfer had occurred.

After referral of the complaint by the TIO, the provider explained that the transfer had happened because of incorrect information given to it by a third party. The provider confirmed that the consumer's service had been returned to her original provider and there were no charges relating to

the unauthorised transfer. The provider also claimed it had not breached the consumer's privacy because the information that facilitated the transfer was provided by the third party and not the provider.

The consumer was not satisfied with this explanation but decided not to pursue the complaint further.

Case Study 3

The consumer told the TIO in March 2014 that in late 2013 an unknown party accessed her mobile account on two separate occasions. The consumer found out about the second breach via email and this prompted her to go into her provider's store. In the store she asked her provider to make a note on her account that changes could only be made in person at a store and with the presentation of photo ID.

The consumer told us that in February 2014 her mobile phone stopped working. When she called her provider, the consumer was advised her service had been ported to another provider. The consumer then found out that over \$10,000 was missing from her business bank account, however, this was later refunded by her bank. The consumer said that on speaking to her provider it denied there was any activity on her mobile account and it took several days to restore her mobile service.

The consumer told the TIO she wanted an explanation as to how her service had been transferred, and to be compensated for time spent resolving her complaint.

When the TIO progressed the complaint for conciliation, the consumer's provider disputed her claims about unauthorised access to her account, specifically the dates the consumer had quoted and provided evidence where an unauthorised party was denied access to the account. The provider confirmed a note had been made on the consumer's account that access and account changes could only be made in person in store on presentation of photo ID.

The provider also advised its security measures were the same for all of its customers and that it was unable to offer additional security to this consumer, apart from suspension of an account at the consumer's request. The provider did not believe the consumer's privacy was breached as the appropriate details were provided to initiate the transfer. However, the provider offered the consumer a credit of approximately \$600 as a goodwill gesture. The consumer asked about additional security measures that may be available to try to protect her from future attempts to access her bank account.

The TIO recommended the consumer ask her provider about applying a password to her account as an additional level of security. The consumer agreed and claimed this had never been offered to her. The provider was able to apply a password to the account to improve the account's security.

Case Study 4

The consumer contacted the TIO in April 2014 claiming that her two mobile services had been transferred away from her provider without her knowledge. The consumer said she called her provider disputing the transfer and was advised it had been transferred to another provider using another mobile carrier. The consumer said she completed a port reversal form to have services returned to her preferred provider and this had not happened yet. The consumer also said she had been told she had to call the provider who had transferred her services even though she had no relationship with it.

The consumer was without her mobile services for over a week. She also discovered \$5,000 had been removed from her account, however, this was refunded quickly by her bank.

The provider who had transferred the consumer's services contacted the TIO to say it had assisted the consumer to return these services to her preferred provider. It said it had provided information to the consumer on how to prevent future fraud and looked at ways to isolate the origin of fraud. It also suggested the consumer consider changing her account number with her preferred provider as the old account number had been compromised. The TIO confirmed the details of these instructions with the consumer.

The consumer informed us that her preferred provider then charged her for the reconnection of her mobile services, as well as late payment fees when she disputed these charges. Her preferred provider later waived both the disputed reconnection fee and associated late payment fees.

Case Study 5

In March 2014, the consumer contacted the TIO about his pre-paid mobile service. He said he had been contacted by his bank and alerted to unusual activity on his bank account, with an attempt to transfer \$400. The consumer told us that his bank suggested that he make contact with his mobile service provider because access might have been obtained via his mobile service. The consumer said that he made contact with his provider and it confirmed that his mobile service had been transferred away.

The consumer told us that he contacted the provider which transferred his service and it confirmed the transfer had occurred at one of its stores and that the person who transferred it had provided the consumer's name, date of birth and phone number to facilitate the transfer. The consumer said that this provider did not request any photo ID at the time of the transfer. The consumer told us that he asked his provider how it had allowed the transfer and if it could get his service transferred back, however, his provider was reluctant to assist him.

After referral by the TIO to the provider's senior complaint handling area, the consumer told us that his provider began to provide more assistance, and it eventually retrieved his mobile service number. The provider also offered the consumer a month's free service to compensate him for the inconvenience. The consumer accepted this resolution.

Case Study 6

In January 2012, the consumer told the TIO she had been released from her mobile contract with a provider due to coverage issues and had been attempting to port to another provider since November 2011. The consumer said the provider she was trying to connect with had advised that her current provider was at fault, which it denied.

The consumer's current provider contacted the TIO and told us that the delay was being caused by another provider that was not fulfilling its role as an MNP participant to process third party ports in a timely manner. The provider claimed it had contacted this provider alerting it to the delay and it was also liaising with the consumer's preferred provider.

After referral by the TIO, the consumer was able to port her service number.

Case Study 7

In October 2013, the consumer told the TIO she had purchased a mobile phone from one provider and later discovered it could not provide her with a service. The consumer said that she was referred to another provider for a free one-month trial, which she took up.

When the consumer then attempted to port away from this provider to a different provider offering similarly cheap rates, the transfer was delayed. The consumer said that she had been waiting for about a week for the transfer to occur and her preferred provider told her that her previous provider would not release her service.

After referral by the TIO, the consumer was able to transfer her service to her preferred provider.