Legislative Instruments Act 2003

Section 26 – Explanatory Statement

Telecommunications (International Mobile Roaming) Industry Standard 2013

Statutory Basis and Purpose

On 23 August 2012, the Minister for Broadband, Communications and the Digital Economy made the *Australian Communications and Media Authority (International Mobile Roaming Industry Standard) Direction (No. 1) 2012* (the Direction). The Direction requires the ACMA to determine an industry standard under subsection 125AA(1) of the *Telecommunications Act 1997* (the Act). The *Telecommunications (International Mobile Roaming) Industry Standard 2013* (the Standard) introduces certain requirements for carriage service providers (CSPs) that supply international mobile roaming services (Providers). The Standard meets the requirements of the Direction and also includes additional measures as contemplated by the Direction.

Background

At subclause 6(1), the Direction specifies that two minimum requirements must be included in the Standard being requirements for each Provider to:

(a) give consumers information, on arrival at an overseas destination, about the charges applicable for the Provider's international roaming services at that destination; and

(b) permit consumers to decline continued provision of those international roaming services, at any time, while at that overseas destination.

The Direction further provides at subclause 6(2) that the the industry standard may deal with any other matter:

(a) related to international mobile roaming services that the ACMA regards as appropriate including, without limitation, measures which will enable consumers to monitor and manage the cost and their use of international roaming services; or

(b) that the ACMA considers ancillary or incidental to a matter specified in subclause 6(1).

The Standard complements the Communications Alliance *Telecommunications Consumer Protections Code* C628:2012 (TCP Code), by implementing a number of consumer awareness measures in addition to those required by the TCP Code. These additional measures are designed to protect consumers from unexpected

high bills upon their return from an overseas trip by ensuring they can monitor, track and where necessary alter their use of mobile telecommunication services overseas to better manage their spending.

The Standard sets out different requirements for Providers that supply services using their own telecommunications network (Mobile Network Operators, or MNOs) compared with other Providers, who resell services supplied by MNOs (Mobile Virtual Network Operators, or MVNOs). This is because the technical capabilities of each are different and MVNOs must rely on MNOs and in some cases other MVNOs for information relevant to the provision of international mobile roaming (IMR) services supplied to their customers. In some respects, the Standard provides MVNOs with more time to become compliant with requirements in the Standard than is given to MNOs.

In drafting the Standard the ACMA undertook an extensive consultation process involving three rounds of formal consultation with industry representative bodies, Mobile Network Operators and Mobile Virtual Network Operators, compliance bodies, consumer groups and individual consumers.

Notes on the Standard

Clause 1 - Name of Standard

Clause 1 names the Standard the *Telecommunications (International Mobile Roaming) Industry Standard 2013*.

Clause 2 - Commencement

Clause 2 provides that paragraphs 5(2)(b) and (c), subclauses 5(4) and (6), subclauses 9(2), (3), (4), (5), (6), (7), (8) and (9), and the notes under subclauses 5(2) and 5(4) of the Standard commence on 27 September 2014. The remaining provisions of the Standard commence on 27 September 2013.

Clause 3 - Definitions

Clause 3 defines the terms used in the Standard. Where possible, the definitions are consistent with definitions in the Act or registered codes such as the TCP Code.

Clause 4 - Application of this Standard

Clause 4 sets out that the Standard applies to all CSPs supplying IMR services, including CSPs that provide wholesale services to other CSPs. In some cases CSPs will have requirements under the Standard even if they do not provide those services to end-users, for instance, where there is a chain of supply through which IMR services are provided to other CSPs which are ultimately provided to end-users.

Clause 5 - Mobile network operators to give information about supply of IMR services

Clause 5 sets out obligations on MNOs to ensure customers are made aware, prior to accruing liabilities for usage, of the significantly higher charges that may be associated with IMR services compared to using domestic telecommunications services. It also requires that MNOs provide specific cost information to those of its customers who activate a Short Message Service (SMS) enabled device in an overseas country and that, where relevant, MVNOs be given information about the activation of customer devices in overseas countries.

Subclause 5(1) requires that CSPs that are also MNOs which supply IMR services are required to give certain SMS messages to their customers, within 10 minutes of the customer activating their SMS enabled device in an overseas country. The first SMS message required to be given is a general warning that significantly higher charges may apply to the customer (although subclause 5(3) allows for modification of that message in certain circumstances). Paragraphs 5(1)(b) and 5(1)(c) provide that MNOs must also give to their customers an SMS message or messages that provide specific information relating to the maximum charges that may apply to the customer when using various IMR services at their current location (maximum charge information), and information about how the customer may decline the continued supply of IMR services while overseas. The information provided under paragraphs 5(1)(b) and 5(1)(c) must be correct for the country of arrival, but information that can be generally applied to a region or continent will also be acceptable so long as it is correct for the country of arrival. Example notifications for paragraphs 5(1)(b) and 5(1)(c) are provided in Note 3 following clause 5.

Subclause 5(2) applies to IMR services which are provided to customers of MVNOs. The requirements apply where a MNO supplies a carriage service to another CSP (i.e. a MVNO), and the service is used to supply IMR services to a customer of the MVNO or a customer of another CSP (this is relevant where there is a chain of supply through two or more MVNOs). Paragraph 5(2)(a) provides that the MNO must, within 10 minutes of the customer activating an SMS enabled device in an overseas country, give a warning SMS message to the customer of the same kind referred to in paragraph 5(1)(a) (although subclause 5(3) allows for modification of that message in certain circumstances).

Paragraphs 5(2)(b) and 5(2)(c) place an obligation on MNOs to give MVNOs that they are supplying with a carriage service information about MVNO customers who activate an IMR service in an overseas location. MVNOs acting as wholesalers or “upstream providers” are required by subclause 5(4) to pass this information on to MVNOs acting as “downstream providers”. This information is intended to facilitate the giving of maximum charge information to customers of MVNOs on arrival overseas, as MVNOs will not necessarily otherwise know that the customer’s device has been activated in an overseas country (see subclause 6(3)).

Subclause 5(3) sets out circumstances in which the content of the required warning messages given under paragraphs 5(1)(a) and 5(2)(a) may be varied. This recognises that some MNOs and MVNOs may apply pricing structures for IMR services in some countries or regions that mirror the domestic rates for similar services. In instances where the CSP considers on reasonable grounds that no significantly higher charge will apply to the customer in the country where the device is activated, the sentence "Significantly higher charges may apply" may be removed from a warning message given to customers under paragraphs 5(1)(a) and 5(2)(a).

Subclause 5(4) places an obligation on CSPs that receive information supplied under paragraph 5(2)(b) or 5(2)(c) (i.e. information about customers of MVNOs who activate their device overseas) to take reasonable steps to supply the information to the customer's CSP. This provision is inserted to ensure that information is passed as appropriate through the chain of supply so that it reaches the customer's CSP, and that if possible it is redirected if mistakenly given to the wrong CSP. For example, a MVNO that resells IMR services to another MVNO will be required by subclause 5(4) to pass the information given to it under paragraphs 5(2)(b) or 5(2)(c) to the other MVNO.

Subclauses 5(5) and (6) set out the frequency of messaging with respect to both warning and pricing notifications. There is no requirement to send notifications within the same country if a customer leaves and re-enters within a 14 day period. After a 14 day period another notification must be sent.

Subclause 5(7) provides that fees cannot be charged to customers by a CSP for providing SMS notifications to customers in accordance with the Standard.

Clause 6 - Mobile virtual network operators to give information about supply of IMR services

Subclause 6(1) provides that, prior to 23 May 2016, in respect of post paid and automatic pre-pay services, MVNOs may choose whether to give maximum charge information and information about discontinuing the supply of IMR services to their customers on arrival overseas, or whether to provide detailed information about IMR services to the customer immediately prior to agreeing to provide an IMR service to the customer. However, from 23 May 2016, all MVNOs will be required to offer pricing information and information about discontinuing the supply of IMR services to their customers on arrival overseas.

The transitional arrangement in place prior to 23 May 2016 recognises that the development of systems by MVNOs that would facilitate the giving of pricing information and information about how to decline the

further supply of IMR services to their customers on arrival overseas may be a lengthy and complex undertaking. The aim is to ensure, during this transition phase, customers at least receive relevant information at the point they enable IMR functionality with their mobile service provider, prior to the development of inter-CSP communications and/or SMS notification systems by MVNOs. The transitional arrangement does not prevent MVNOs from developing and utilising their notification systems prior to 23 May 2016.

Subclause 6(2) provides a list of information to be supplied to customers in the event of an MVNO choosing not to supply pricing information to their customers on arrival overseas during the transitional period to 23 May 2016. The information required to be provided includes a fact sheet prepared by the ACMA that will be available on the ACMA website (paragraph 6(2)(a)) and information about how to decline the continued supply of IMR services while overseas (subparagraph 6(2)(b)(v)).

Paragraph 6(3)(a) sets out the maximum charge information that MVNOs must give to their customers on arrival overseas from 23 May 2016 (or prior to that date if the MVNO chooses to do so to comply with paragraph 6(1)(a)). Paragraph 6(3)(b) provides that customers receiving a notification under paragraph 6(3)(a) must also be given information about how the customer may decline the continued supply of IMR services while overseas. The information required to be given (via SMS message) is the same as the information that MNOs must provide to their customers under paragraphs 5(1)(b) and 5(1)(c), and must be provided within 10 minutes of the receipt by the MVNO of information from a MNO or another MVNO about the customer's activation of IMR services in an overseas country. An example notification is provided at Note 2 after clause 6.

Subclause 6(4) replicates for MVNOs the prohibition placed upon MNOs in subclause 5(6). The requirement at subclause 6(4) is included to ensure that customers are not charged by their CSP in relation to an SMS message that the CSP is required to give as a result of the Standard (including in cases where the CSP chooses to give an SMS notification under subclause 6(3) prior to 23 May 2016).

Subclause 6(5) requires that the material provided by MVNOs to customers under subclause 6(2) during the transitional period prior to 23 May 2016 must be clearly distinguishable from material about other subject matters.

Clause 7 - CSPs to otherwise give maximum charge information

Subclause 7(1) imposes a general requirement on all CSPs to take all reasonable steps to provide such information as is reasonably required to enable each other CSP in a chain of supply of IMR services to an end-user to provide up to date maximum charge information to their customers. This provision recognises that the

cost of supply of IMR services to a customer is linked to the supply of services to the customer's CSP. Subclause 7(1) makes it clear that all information necessary to work out the maximum charge information that will apply to a customer must be supplied to the customer's CSP.

Subclause 7(2) imposes a general requirement on all CSPs to provide maximum charge information in relation to any overseas country within 24 hours of receiving a request from a customer for that information.

Clause 8 - CSPs to make available method to decline IMR services

Clause 8 fulfils the requirement under paragraph 6(1)(b) of the Minister's Direction to the ACMA which states that CSPs must permit consumers to decline continued provision of international roaming services, at any time, while at an overseas destination.

Subclause 8(1) requires that CSPs make available at least one method for declining the continued supply of IMR services that is accessible either by calling a particular Australian number, or by accessing the website of the CSP. This does not limit the methods which a CSP may make available to a customer to decline the continued supply of IMR services. Subclause 8(3) sets a maximum $AUD1.00 charge for telephone calls made to decline the use of IMR services by phone to an Australian number, and subclause 8(4) provides that a CSP may not charge the customer for declining the continued supply of IMR services by using the CSP's website.

Subclause 8(2) provides that where a customer declines the continued supply of IMR services, the CSP must ensure that the supply of IMR services to the customer ceases as soon as practicable, and in any case within 24 hours. It is expected that CSPs will cease IMR services as soon as they are aware that a customer has declined the continued supply of IMR services, with subclause 8(2) allowing for reasonable delays due to technology or the need to pass information between CSPs in the supply chain.

Clause 9 - CSPs to make available spend management tools for IMR services

Clause 9 requires CSPs which supply IMR services to customers to make information available that allows the customer to monitor their use of IMR services and the charges that have been incurred. Subclause 9(1) requires that CSPs provide customers with advice about the spend management tools available in relation to IMR services prior to entering into a customer contract which provides for the supply of IMR services. This advice must also be provided upon any variation to a customer contract to allow for the supply of IMR services, and must include information about the methods by which a customer can make use of these spend management tools.

Subclause 9(2) requires that CSPs which supply IMR services to customers make available supply at least one spend management tool to their customers that provides an estimate of their usage of IMR services. The ACMA acknowledges that there may be delays in CSPs receiving data from overseas networks and therefore specifies that in the event of the current usage estimate details being unavailable, customers must be informed of these delays and the most up to date information available must be provided to them.

Subclause 9(3) sets out additional spend management tools that must be supplied by CSPs to their customers (these may be provided in the same tool as is required by subclause 9(2)). Paragraphs 9(3)(a) to(c) specify different requirements for three different classes of product that a customer may be using, namely a post-paid service, an included value pack and an automatic pre-paid service. Definitions of these products are at clause 3. The requirements in all cases result in SMS notifications to a customer upon reaching certain spending thresholds.

Subclause 9(4) exempts CSPs from the requirement to provide the spending management tool in respect of included value packs set out in subclause 9(3) where they form part of an included value plan that was available to customers prior to 1 March 2012. This aligns the IMR Standard with the provisions in the TCP Code.

Subclause 9(5) requires that CSPs inform customers with an included value pack of the maximum charge information that will apply if the customer continues to use IMR services after the exhaustion of their included value pack. This information must be supplied when the customer is given the notification required to be given to them under subclause 9(3) when the customer reaches 100% of the included value of their included value pack.

Subclause 9(6) requires the notifications required under subclause 9(3) to be sent to customers in the form of an SMS message.

Subclause 9(7) imposes a general requirement on all CSPs to take reasonable steps to provide such information as is reasonably required to enable each other CSP to supply to its customers the spend management tools described in subclauses 9(2) and 9(3). This provision recognises that the supply of IMR services to a customer may be facilitated through a chain of CSPs, and that information required for the customer to be able to monitor their usage and the charges that will apply to them may depend on the timely provision of usage and charging information from one CSP to another. Subclause 9(7) makes it clear that CSPs must pass on relevant information in a timely manner that will enable other CSPs to provide the usage information and alerts described in subclauses 9(2) and 9(3). The intention is for MNOs and MVNOs acting

as wholesalers or "upstream providers" to pass on information to MVNOs acting as "downstream providers" to ensure efficient delivery of all spend management tools and alerts to the end-user.

Subclause 9(8) sets out that the spend management tools required at subclauses 9(2) and 9(3) must be easy for the customer to find and access.

Subclause 9(9) describes the delayed implementation of subclauses 9(2) to 9(8) for MVNOs, with the obligation coming into effect on 23 May 2016. The delay reflects the need to allow reasonable time for the development of notification systems between MNOs and MVNOs and between MVNOs

Clause 10 - Referral of complaints to the Telecommunications Industry Ombudsman

Under section 114 of the Act, an industry standard can confer functions and powers to the Telecommunications Industry Ombudsman (TIO) if the TIO consents. Clause 10 recognises that the TIO has accepted the conferral of certain powers and functions in relation to the Standard. Under clause 10 of the Standard, the TIO may, among other things investigate and give directions in relation to complaints made by customers about matters referred to in the Standard. These powers take effect at the same time as the first provisions contained within the Standard, which is 27 September 2013.

Clause 11 - Review of Standard

Clause 11 states that the ACMA must review the Standard prior to 27 June 2018, two years after its full implementation. An earlier review may be undertaken at the discretion of the ACMA.

A Statement of Compatibility with Human Rights is attached.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Telecommunications (International Mobile Roaming) Industry Standard 2013

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This Standard is made in response to a Direction from the Minister for Broadband, Communications and the Digital Economy made on 23 August 2012, under subsection 125AA(4) of the *Telecommunications Act 1997* (the Act).

The *Telecommunications (International Mobile Roaming) Industry Standard 2013* (the Standard) introduces certain requirements for carriage service providers that supply international mobile roaming (IMR) services. The Standard meets the minimum requirements of the Direction (generally, to establish rules to provide customers supplied with IMR services with easily understood information about the charges for these services, and facilitate the ability to 'stop' those services whilst customers are overseas). The Standard also includes additional measures as contemplated by the Direction to enable customers supplied with IMR services to monitor their usage of IMR services and the associated cost.

Human rights implications

Right to privacy

The Standard engages the right to privacy in a limited way. Subclauses 5(2), 5(4) and 9(7) of the Standard require that information relating to IMR services supplied to customers be passed between carriage service providers. Some of this customer information will be personal information. Requiring that personal information be passed between carriage service providers limits the right to privacy (Article 17 of The International Covenant on Civil and Political Rights). However, these provisions of the Standard are directed towards ensuring that the customer's carriage service provider is given current information about the customer's use of IMR services, so that the customer can benefit from the provisions of the Standard that require they be informed of the costs associated with using IMR services on arrival overseas, and that they be provided with spend management tools. In most cases the customer's CSP would in any event eventually receive the personal information in question for billing related purposes, and these provisions are directed toward ensuring timely provision of this information.

Conclusion

The Legislative Instrument is compatible with human rights because, to the extent that it may limit the right to privacy, the limitations are reasonable, necessary and proportionate.

Australian Communications and Media Authority