

## DECISION

### Background

- 1 The complainant, [Ms P], via the office of the Ombudsman Victoria, first made a complaint to the Tolling Customer Ombudsman (TCO) on 5 December 2012, as follows:<sup>1</sup>

*"I refer to discussions with your office yesterday and quote reference number [\*\*\*51] and provide the following details:*

*Infringement Notice [\*\*\*796] 9/1/2012 15:16 Charged \$122.00*

*I have never received a late toll invoice from Connect East and as per evidence provided on the attached notice from Victoria Police, they are still sending notices to an address I have not lived at for more than 4 years.*

*Despite my licence and City Link account details being changed.*

*As per City Link account provided, you will also notice that I have been charged tolls on the 9/01/12 \$6.24 at 14:49 and \$6.24 at 19:12 which indicates that they were happy to charge my city link account*

*Infringement Notice [\*\*\*545] 10/4/2012 17.49 Charged \$122.00*

*I have never received a late toll invoice from Connect East and as per evidence provided on the attached notice from Victoria Police, they are still sending notices to an address I have not lived at for more than 4 years.*

*Despite my licence and City Link account details being changed.*

*As per the attached city Link statement a \$40 CR was made to the account and I was actually \$18.95 in Credit on my city Link account at the time of the offence, even though city link are saying my account was suspended, the account was in credit and had capacity to pay the toll of \$3.00*

*Infringement Notice [\*\*\*546] 11/4/2012 11:11 Charged \$122.00*

*I have never received a late toll invoice from Connect East and as per evidence provided on the attached notice from Victoria Police, they are still sending notices to an address I have not lived at for more than 4 years.*

*Despite my licence and City Link account details being changed.*

*As per the attached city Link statement a \$40 CR was made to the account and I was actually \$18.95 in Credit on my city Link account at the time of the*

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<sup>1</sup> All parties' submissions used in this Decision are quoted verbatim

*offence, even though city link are saying my account was suspended, the account was in credit and had capacity to pay the toll of \$3.00*

*A review was requested and the Victorian Police have declined my request as per the supporting documents.*

*Given the above information and I have (a) been charged for tolls on the day of the infringement on 9/1 and (B) had credit funds in my account of \$18.95 to cover both tolls on the 10/4 and 10/11. I seek further assistance in disputing these matters. Note I had also requested my address to be changed with City Link 6 times over the last 4 years.*

*I attach all correspondence to date and have requested that these matters be heard in the magistrates court and look forward to discussing with you.”*

2 On 7 December 2012 the complaint was acknowledged by the TCO and forwarded to CityLink for response. [Ms P] was advised that the TCO does not have the power to deal with individual infringement notices once they are issued by Civic Compliance Victoria (CCV) as it does not have jurisdiction over that Government agency.

3 [Ms P] responded to the TCO as follows:

*“A complaint was already lodged with city link and they told me they were not interested in investigating the matter further. I will have the name of the person somewhere at home if you need it, but I think it was [B].*

*I trust you will now get involved.”*

4 The TCO replied:

*“The TCO, like all ombudsmen, must have a process that is open, transparent and fair to both the relevant tolling business and their customers. Accordingly, it is necessary for me to ensure to my satisfaction that the parties understand the nature of the dispute between them and have had the opportunity to comment on all aspects of it before seeking to resolve it.*

*This involves a process where I require the relevant tolling business to put in writing to me their response to your complaint and to give you the further opportunity to comment on it. This means there is no misunderstanding.*

*A Resolutions Advisor from the relevant tolling operator customer resolutions group would usually make contact to resolve the matter directly with you. However, they may elect to communicate via this office. In that case, on receipt of a response from the CityLink Customer Resolutions team I will again review your complaint.”*

5 On 10 December 2012 [Ms P] emailed the TCO:

*“Here is the formal response from City Link as discussed.*

*My issue as outline to you, but to summarise again:*

*I have never received late toll invoices or suspension letters or they would have been paid.*

*City Link failed to update my address as requested.*

*I have been charged for tolls on the same day I have been fined on, which was on the 9<sup>th</sup> Jan*

*I had credit funds in my account to cover the tolls on the 10<sup>th</sup> and 11<sup>th</sup> April*

*I trust this is now sufficient information to conduct your review.”*

6 The attached letter from CityLink to [Ms P] dated 5 November 2012 is quoted below:

*“Infringement Notices for [Licence Plate Number (LPN)]for travel on EastLink*

*Thank you for your recent enquiry. We appreciate you taking the time to advise us of your concerns.*

*I would like to confirm the Infringement Notices for your vehicle [LPN] for travel on EastLink were issued because the vehicle Registration was suspended from your CityLink Account [\*\*\*002] during the following periods. This means you owed CityLink money and were therefore not registered to travel on CityLink or any other toll road during these periods.*

*1st Suspension Period:*

*From 7 January 2012 to 23 January 2012— We understand you have requested to know why you were charged for two trips for travel on CityLink on 9 January 2012 and one trip for travel on CityLink on 15 January 2012 and yet received Infringement Notices for travel on EastLink. I would like to explain the trips for travel on CityLink were delayed in being transferred to your CityLink Account. These were transferred on 25 January 2012 when the Account balance was above the trigger mark and was active. If these were not charged to your CityLink Account you would have been issued with Late Toll invoices which could have progressed to Infringement Notices.*

*2nd Suspension Period:*

*From 30 March 2012 to 9 May 2012 —A Suspension Confirmation letter was issued on 25 March 2012 requesting a payment of \$44.25 (I have attached a copy for your record). A payment of \$40 was received on 3 April 2012 (bringing the balance to only \$18 credit) as this was not enough to reregister*

*the vehicle Registration, the suspension process continued until a further payment of \$50 was received on 8 May 2012.*

*Prior to the receipt of the Infringement Notices EastLink would have issued you with Toll invoices and Final Notices.*

*Unfortunately as neither did CityLink nor EastLink receive payment of the EastLink Toll invoices by the due date of the final Notices according to legislation, the Victoria Police may issue an Infringement Notices for each day of travel. Neither can CityLink nor EastLink intervene if an Infringement Notice is issue. Should you wish to dispute the issue of the Infringement Notices you must submit a written application for an Internal Review direct to Civic Compliance Victoria, PO Box 1916, Melbourne, Vic, 3001; alternatively you may also contact them by telephone on (03) 9200 8111 with any queries or additional information.*

*Thank you for the opportunity to respond to your concerns. Should you wish to discuss this matter further, please contact me on.....”*

7 On 12 December the TCO emailed [Ms P] as follows:

*“I acknowledge receipt of your email, note its contents and confirm it has been forwarded to CityLink for comment on the issues you raise. I am also in receipt of EastLink’s email to you of today’s date (copy attached).*

*I will again review your complaint on receipt of CityLink’s response.”*

8 EastLink’s email to [Ms P] dated 12 December 2012 is quoted below:

*“As you are aware, the Tolling Customer Ombudsman has forwarded your complaint to EastLink’s Customer Relations team for resolution. As this complaint has not previously been dealt with by us, we would like to take this opportunity to address your concerns.*

*CityLink have confirmed that on 09/01/12, 10/04/12 and 11/04/12 the Terms and Conditions of your CityLink Account were not met and therefore your Account was in suspension. As such, travel on these dates was invoiced to [Full name of Ms P] at [PO BOX address].*

*Toll Invoice [\*\*\*576] was issued to the address above on 16/05/12 with a due date of 30/05/12. On 02/06/12 we received a request to have this Toll Invoice reissued to [Ms P’s email address] and \$6.41 was waived from the Toll Invoice total as a goodwill gesture. Then on 04/06/12 we emailed a copy of the original invoice to the email address as requested.*

*As we did not receive full payment, an Overdue Notice was issued to the same postal address on 03/06/12. The due date on this Overdue Notice, for full payment, was 17/06/12 and as we did not receive payment in full, the travel was referred to Civic Compliance Victoria. Once travel has been referred to an Enforcement Agency, the matter is completely out of our*

*jurisdiction and all disputes must go through Civic Compliance Victoria's dispute process.*

*Our investigation also highlighted an outstanding amount of \$8.92 in residual balances against the above invoice as well as one from 2010. Although, we find no fault on EastLink's behalf, as a goodwill gesture we have waived this amount in full.*

*We now consider your complaint with EastLink closed and refer you to CityLink for further clarification on the Terms and Conditions of your CityLink Account we must refer you to CityLink."*

- 9** There was an exchange of correspondence between EastLink and [Ms P] on 12 December 2012 as follows. [Ms P] to EastLink:

*"Thank you for your response. However I dispute your communication below and in fact reference 3 invoices, which you have not made comment on and the reference of [\*\*\*576] was in fact paid. I had an account with Citylink and was billed for other transactions on these days.*

*I await the investigations of the ombudsman and re-enforce the appalling display of customer service between your investigation and city link and intend to send this example off to the media if need be."*

- 10** EastLink to [Ms P]:

*"Thank you for your timely response, we would like to take a moment to clarify a few points with you.*

*We would like to confirm that you have received three Infringement Notices from Civic Compliance Victoria (CCV) for three dates of travel which were invoiced on two separate EastLink Toll Invoices.*

*Toll Invoice [\*\*\*705] was issued to [PO BOX address] for travel on 09/01/12. This invoice was issued to you on 04/05/12 with a total amount of \$10.51 payable by 18/05/12. Due to non-payment, on 22/05/12 an Overdue Notice was issued to the same address with a due date of 05/06/12 for the amount of \$15.38. As we did not receive full payment for this amount, the trip made on 09/01/12 was referred to CCV on 04/07/12. This meant the amount payable to EastLink for this invoice was then reduced to \$9.71. On 22/07/12, we received payment for this residual balance and therefore nothing further remains payable against this invoice. However, as travel had already been referred to CCV, the matter is out of our jurisdiction and as previously advised, all disputes must go through CCVs dispute process.*

*Toll Invoice [\*\*\*576] was issued to [PO BOX address] for a later trip on 09/01/12 as well as travel on 10/04/12 and 11/04/12. This invoice was issued on 16/05/12 for the amount of \$24.42 and due on 30/05/12. As previously stated, we waived \$6.41 from the total as a good will gesture on 02/06/12 and that left a balance of \$18.01 outstanding. As we did not receive payment of*

*\$18.01, an Overdue notice was issued on 04/06/12 for the amount of \$29.29 which was due on 17/06/12. You made a BPAY payment of \$4.31 on 02/06/12 which we received on 05/06/12. As your payment method was BPAY, and BPAY is a third party, we experienced a delay in receiving the payment. However, as the payment was made after the due date and the amount paid was insufficient for your travel on 09/01/12, 10/04/12 and 11/04/12, your travel was referred to CCV on 16/07/12. This means that the amount payable to EastLink was reduced to \$4.87. Once again, we received payment for this residual balance on 22/07/12 and therefore nothing further remains payable against this invoice. As stated above, the travel had already been referred to CCV by this time and the matter was out of our jurisdiction and all disputes must go through CCV's dispute process.*

*We confirm that CityLink have advised that your CityLink Account was in fact suspended on the above dates of travel. We have included the date of suspension below as advised by CityLink:*

- 07/01/12 to 23/01/12*
- 30/03/12 to 09/05/12*

*In regards to CityLink travel on 09/01/12 being applied to your suspended CityLink Account, we must refer you back to CityLink for further clarification as this is whom you hold your Account with.*

*As stated above, we did not receive full payment prior to the due date on each invoice that progressed to CCV. According to the information provided by CityLink and non-payment of the full amount outstanding, the Toll Invoices were issued and travel progressed to CCV correctly.*

*We are unable to assist you any further regarding this matter and respectfully consider your complaint closed with EastLink and refer you back to CityLink and CCV for complete resolution.”*

**11** [Ms P] to EastLink:

*“Could you please explain then, why the infringements were issued to [street address]? I would appreciate a copy of all the said invoices”*

**12** EastLink to [Ms P]:

*“We have attached a copy of the original Toll Invoices for your records. However, as CCV are a separate company we are unable to make comment on what address they have issued your Infringements to.*

*In relation to Toll Invoice [\*\*\*705], I was mistaken with the amount due. It was actually \$10.54. I apologise for the honest mistake and confirm the actual amount is as shown on the attached copy.”*

- 13 On 14 December 2012 CityLink provided the TCO with a detailed response to the issues raised by [Ms P]. This was forwarded to [Ms P] for comment:

*“With regards to the concerns raised by [Ms P] I am pleased to confirm the following.*

- [Ms P] first contacted CityLink on 5 November 2012 with the receipt of three Infringement Notices for her vehicle [LPN] for travel on EastLink on 9 January 2012, 10 and 11 April 2012.*
- She advised that she did not receive any Toll invoices from EastLink prior to the receipt of the Infringement Notices.*
- She provide her CityLink Statement showing that she had been charged for CityLink trips on 9 January 2012 and therefore should not have received the Infringement Notice for travel on EastLink on 9 January 2012.*
- I sent her a letter dated 5 November 2012. I have attached a copy of this letter for your record. For my explanation please see “1<sup>st</sup> Suspension Period”.<sup>2</sup>*
- [Ms P] also disputed the receipt of the Infringement Notices for her travel on EastLink on 10, 11 April 2012 and again provided her CityLink Statement showing that she had made a payment of \$40 which bought the balance to \$18.95 credit and therefore the Account should not have been suspended.*
- I explained this in my letter dated 5 November 2012. Please see explanation under “2<sup>nd</sup> Suspension Period”.<sup>3</sup>*

*With regards to the non-receipt of Toll invoices from EastLink prior to the receipts of the Infringement Notices, please see the letter (attached) from Amy of EastLink.<sup>4</sup>*

*We would once again like to advise as neither CityLink nor EastLink receive payment of the EastLink Toll invoices by the due date of the Final Notices, according to legislation, the Victoria Police may issue an Infringement Notices for each day of travel. Neither can CityLink nor EastLink intervene if an Infringement Notice is issue. Should [Ms P] wish to dispute the issue of the Infringement Notices she must submit a written application for an Internal Review direct to Civic Compliance Victoria, PO Box 1916, Melbourne, Vic, 3001; alternatively she may contact them by telephone on (03) 9200 8111 with any queries or additional information.”*

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<sup>2</sup> Refer paragraph 6.

<sup>3</sup> Refer paragraph 6.

<sup>4</sup> Refer paragraph 8.

14 [Ms P] responded to the TCO as follows:

*"Thanks for your response, however you have failed to provide me an explanation as to why I can be issued an infringement notice when there are credit funds in my account or charged for tolls on the same day. How is the legal conduct?"*

*I would appreciate this matter being escalated to someone more senior and providing an explanation, as to why it is acceptable for City Link to provide fines, when the account had both sufficient funds and you charged me for tolls on this day."*

15 The TCO replied to [Ms P] on 19 December 2012 in the following terms:

*"I acknowledge receipt of your email and draw your attention to my email of 14 December together with enclosed CityLink letter dated 5 November 2012. I refer in particular to paragraphs 3 and 4 of that letter in relation to your queries.*

*As the Tolling Customer Ombudsman there is no one more senior in the organisation."*

16 [Ms P] responded to the TCO:

*"Thanks Michael. I will send these issues off to the media then. This conduct is appalling and I will be taking the matter further to name and shame all involved."*

17 On 21 December 2012 the TCO advised [Ms P]:

*"I acknowledge receipt of your email and note its contents.*

*I recommend that you make an application to Civic Compliance Victoria or the Magistrates Court to have the matter reviewed."*

18 [Ms P] responded promptly as follows:

*"I have done that Michael, but I would like a formal response from you in regards to the questions I have asked of you."*

19 On 3 January 2013 the TCO wrote to [Ms P] as follows:

*"I acknowledge receipt of your email of 21 December 2012.*

*I will provide a formal Determination in respect of all issues as soon as possible."*

## Decision

- 20** The objective of the TCO is to resolve complaints, which fall within its jurisdiction, between toll road operators and their customers efficiently, fairly and without charge to the customer. In attaining this objective the focus is to look at the issues that are relevant to the resolution of the complaint between the toll road operator and its customer.
- 21** This is done in the context of the circumstances of the complaint, any terms of the use of toll roads and legal requirements. Relevant terms are contained in the Customer Service Agreement, on a toll road operator's website or in other material that is available to customers, whilst the applicable legislation can be accessed through Government websites.
- 22** The TCO, when making a decision, does so on the basis of what it considers fair in the circumstances, taking into account the effect of a decision on each party and any public interest. I only have jurisdiction over the conduct of toll operators and cannot determine matters in relation to allegations against CCV or other outside bodies.
- 23** [Ms P] had an account with CityLink, which has inter-operational arrangements with EastLink in regard to the charging of tolls in relation to the use of their respective toll roads. She has brought complaints against both CityLink and EastLink in respect of the failure to deliver late toll notices and account related matters. [Ms P's] version of events is set out in the body of this Decision.
- 24** [Ms P] had obligations under the terms of the arrangement with CityLink for the usage of toll roads. These obligations included the provision of an address for service of notices from toll road operators and the maintenance of an account with CityLink that was \$40 in credit at the times relevant to the issues in this complaint.
- 25** Both CityLink and EastLink have responded to [Ms P's] complaint in respect to these issues, with CityLink providing a detailed explanation on 5 November 2012. [Ms P] has not accepted the responses provided and has, in particular, queried why tolls could not have been set off against an \$18.95 credit in her CityLink account.
- 26** I have noted [Ms P's] arguments but must find that as she had not brought her account above the \$40 credit limit her account was in suspension at the relevant times. It remained in suspension until 8 May 2012, when a further \$50 was received. It was for this reason her outstanding toll accounts were referred to CCV.
- 27** [Ms P] has queried why CCV infringement notices were correctly addressed when the EastLink (ConnectEast) toll invoices were not. CCV is required to make up-to-date searches of a person's address when sending out its infringement notices. The toll operators have to rely on the address on file provided by [Ms P] in respect to its toll invoices. Despite [Ms P's] contention that her address had been updated, EastLink forwarded it to the address it had available.

- 28** I am satisfied with the explanations that the toll operators have provided and find that both CityLink and EastLink acted in accordance with its proper procedures in this matter in forwarding their tolls to CCV for collection as they had not received payment for the EastLink tolls by the due date of the Final Invoice.
- 29** In these circumstances I cannot uphold [Ms P's] complaint.

**Michael Arnold**  
**Tolling Customer Ombudsman**

**Dated: 8 February 2013**