

DECISION

Background

- 1 The customer, Mr T, made a complaint to the Tolling Customer Ombudsman (TCO) on 14 October 2011, as follows: (quoted verbatim)

"I am seeking your assistance to resolve a number of outstanding issues that I have with CityLink.

1. *Background*

- (a) *I have had the CityLink Access Account No. [***] (my "Account") continuously since 7 February 2007. Over that time the only vehicle that has been registered to this account has been the blue [make and model] sedan owned by my wife and having Victorian registration plates [LPN] (our "Car"). Since at least 27 April 2007, my Account has been set up so that each month CityLink automatically receives payment by making a direct debit to a credit card of mine. Continuously since this date, CityLink has always had details of a valid credit card of mine for this purpose, which has involved me updating these details via the CityLink website on at least three occasions.*
- (b) *On 2 September 2011, I noticed an amount of \$0.68 billed to my credit card by "City Link Melbourne" with a transaction date of 7 August 2011. I thought that this looked odd (normally the minimum charge for any trip that gets charged to my Account is around \$6 or \$7) so I downloaded my CityLink statement dated 8 August 2011 (copy attached at Exhibit A) and it showed that this charge was for a trip starting at 09:29 on 28 July 2011 and having details "EL Wellington Rd-Police Rd". I worked out that this relates to a section of the EastLink toll road, which is on the other side of Melbourne to where I live and is not a section of road that I could ever remember using.*
- (c) *At 5:14 pm on 2 September 2011 I rang CityLink (on 13 26 29) and asked the person I spoke to whether I could obtain more details about this charge because I thought that it would have been unlikely that I would have used that section of the*

EastLink toll road, and especially not at the claimed time on that date. In an apparent attempt to question my assertion that I didn't think I had ever used the EastLink toll road, the CityLink person I was speaking to mentioned three other trips that I had apparently recently made on EastLink:

- Trip A - starting at 14:55 on 19 April 2011 and having details "EL Canterbury Rd- Maroondah Hwy" and a cost of \$0.54;*
- Trip B - starting at 14:12 on 23 August 2011 and having details "EL Greens Road-Thompson Rd" and a cost of \$1.25; and*
- Trip C - starting at 16:12 also on 23 August 2011 and having details "EL Cheltenham Rd-Fern.Gully Rd" and a cost of \$1.33.*

The full details of these three trips shown here were not provided to me by the CityLink person during the phone call but were later extracted by me from my relevant CityLink statements. Copies of these statements, dated 8 May 2011 and 8 September 2011, are attached as Exhibits B and C, respectively.

*I had not noticed Trip A on the relevant CityLink statement and the CityLink statement that included Trips B and C had not yet been issued. I told the CityLink person that I didn't remember ever using the EastLink toll road and because it was on the other side of Melbourne to where I live thought it unlikely that this would have been the case. They said that in order to resolve this they would order the images used to charge me for the four trips on EastLink in question and they would be sent to me either via email or normal post and I would not be charged for this. She gave me a Reference No. [***].*

- (d) On 12 September 2011, I downloaded my then recently issued CityLink statement dated 8 September 2011 and apart from seeing the full details of trips B and C for the first time I noticed that whilst the "Total charged for statement period" came to \$9.44, CityLink had only debited my credit card for an amount of \$2.58 and so there was a balance owing of \$6.86. At 10:40 am that day I rang CityLink on 13 26 29 and asked the person I spoke to why this was the case — looking back over my previous CityLink statements I couldn't find any months where my credit card had been billed for anything other than the total charge for the statement period. This person could not offer any explanation and they put me on hold whilst they spoke to another person (or at least they told me that this was what they*

were doing) but this other person was likewise not able to offer any explanation. I indicated that I wanted to pay the \$6.86 balance owing immediately and we did this over the phone (billed to my credit card) and they gave me a Receipt No. of [***].

I then asked this person whether they were able to give me an update on when I would be receiving the four images that were promised to me on the phone call on 2 September 2011. This person re-assured me that the images had been ordered (on 5 September 2011) and would be sent to me, either via email, or if they could not be sent via email for some reason, via normal post (and if they were being sent via normal post I would receive an email advising me of this). I believe that I asked how much longer it would take before the images would be sent to me and seem to recall that the CityLink person said that it would normally take one to two weeks for this to occur (which I interpreted to mean from 5 September 2011, the date on which they were apparently "ordered").

- (e) By 19 September 2011 I had not received the four images that I had been promised and so at 12:40 pm I called CityLink on 13 26 29 and asked the CityLink person I spoke to whether they could give me an update on when I was likely to receive them. This person said that I probably hadn't received them because they had been sent to an old address of mine in [suburb S].

I briefly lived in [suburb S] in early 2007 and was living there when I applied for my Account on 3 February 2007. However, in late February 2007 we moved to an address in [suburb A] and on 27 April 2007 I logged into the CityLink website and changed my address to the new [suburb A] address. I know that this change was affected because starting with my next CityLink statement (dated 8 May 2007 and copy included as Exhibit D), my address was shown as the new [suburb A] address. In February 2008 we moved to our current address in [suburb N] and on 18 May 2008 I logged into the CityLink website and updated my address to our current address. I know that this updating took effect because starting with the next statement (dated 8 June 2008 and copy included as Exhibit E) the address was shown as my current [suburb N] address.

When I asked the CityLink person whether they could definitely confirm that the four images had been sent to my old address in [suburb S] they said that they couldn't be 100% certain of this but, rather than try to confirm whether or not this had occurred, it would be easier to order a new set of the four images. This CityLink person told me that this is what they were going to do

and that it would take (another) one to two weeks for me to receive them.

- (f) On 20 September 2011, I received an email from "[Name]" at CityLink Customer Care (copy included in Exhibit F) that I presumed was referring to the images that I had been promised but critically now said that CityLink would look at the images and then decide whether or not they would send them to me:

"Should the travel be identified as an image processing error, a credit for the trip and image processing fee set by EastLink will be refunded to your CityLink account. Should the image be correct, a copy of the image will be sent to you as requested."

This was a major departure from what had been clearly promised to me by, I believe, three different CityLink Representatives on the three separate phone calls referred to in (c), (d) and (e) above.

- (g) On that same day (20 September 2011) at 12:08 pm I called CityLink on 13 26 29. I referred to the email that I had received earlier that day and told the CityLink person that I definitely wanted to be provided with the four images that had been promised to me on my past three phone calls. The CityLink person said that all they could do was to send an email to "head office" stating my wish to see the four images no matter what they showed and I remained on hold whilst they did this (or at least they told me that this is what they were doing and had done). They told me that someone from head office would contact me by phone within a few days and they gave me a Reference No. 13835**** and a Case No. 160****. As far as I can tell I never received this promised phone call.
- (h) Shortly after completion of the phone call referred to in (g) above, I sent an email to [A] (at ccare@citylink.com.au) replying to her email dated 20 September 2011 and a copy of my reply is included in Exhibit F hereto. My reply was along the lines that I had been promised the four images by CityLink on three separate phone calls and that it was not acceptable to me for CityLink to now change their mind and say that they would look at the images first and decide whether or not they would then send them to me.
- (i) On 21 September 2011, I received another email from [A] at CityLink Customer Care (copy included in Exhibit F) essentially re-stating what she had stated in her email of the day before. I responded by return email that same day (copy of my response

is included in Exhibit F) re-iterating that I had been promised the four images on three separate phone calls and it was unacceptable to me for CityLink to now change its mind and say that they would have a look at the images and decide whether or not to send them to me. In my response email I also flagged my intention to escalate this issue to the CityLink Customer Resolutions Group.

- (j) On 22 September 2011, I received an email from [JN], [Position Title], CityLink Melbourne and this included in Exhibit G hereto. That email stated that my issues had been referred to the Customer Resolutions Group at CityLink and that I should expect to be contacted with a response to these issues within seven days.*
- (k) Mid afternoon on 26 September 2011 I received a phone call from a person identifying themselves as "[G]" from CityLink. He said that the four trips concerned were wrongly charged to my account, that the vehicle in the images had a similar number plate to our Car and that the relevant charges had been credited to my Account. I indicated that I still wanted copies of the images that had been promised to me and his reply was that CityLink would not provide these to me because I was not the registered owner of the other vehicle - although, somewhat strangely, he then admitted that he had no basis for making the claim that I was not the owner of this other vehicle !!*
- (l) Later that evening I sent a substantive email to [JN] at CityLink (at resolve@transurban.com.au) and a copy is included in Exhibit G. This email provided a detailed account of the background to my issues, described the four complaints that I had with CityLink and sought a letter from CityLink to be provided to me before 3 October 2011 (30 days after my initial contact which kicked this whole thing off) responding to nine specific points.*
- (m) On 4 October 2011, I received an email from [JN] at CityLink and a copy of that email is at Exhibit H hereto. This email from [JN] responded to three of my points (points (b), (c) and (d) in my email), partially responded to four of my points (points (f), (g), (h) and (i) in my email) but did not respond to the remaining two of my points (points (a) and (e) in my email).*
- (n) Given that Citylink had made some effort to respond to my nine points, I wanted to give them a further opportunity to address my issues before I looked to referring them to you. So later on 4 October 2011 I sent an email to [JN] (copy is included in Exhibit I) which provided responses to his responses contained in his*

email to me referred to in (m) above. My email also invited him to add further to his previous responses taking into my counter-responses.

- (o) On 5 October 2011, I received an email from [JN] at CityLink (copy is provided in Exhibit I) that acknowledged my email referred to in (n) above, stated that he did not wish add anything further at that stage and provided your contact details.*

2. Reference to You

The above background sets out the efforts that I have made in an attempt to resolve my issues with CityLink including through escalation to their Customer Resolutions Group. These efforts have had minimal success, that being in the form of the responses and partial responses provided in the email referred to in 1(m) above.

So I still have a number of unresolved issues with CityLink. I do not believe (particularly taking into account the email from CityLink's [Position Title] referred to in 1(o) above) that I will be able to make any more progress with these issues by further interaction with CityLink. On this basis, I am referring these issues to you and seeking your assistance with their resolution.

I have download from your website and filled in and signed the "Consent to release information to the Tolling Customer Ombudsman" form and this enclosed.

3. My Outstanding Issues with CityLink

The following are my outstanding issues with CityLink:

- (a) Dispute #1 — CityLink's refusal to provide me with an explanation as why their representatives promised that I would be sent the four images on three separate occasions but are now refusing to provide them to me.*

Reference is made specifically to the relevant promises made by CityLink described in 1(c), 1(d) and 1(e) above, point (a) under the heading "RESOLUTION OF MY COMPLAINTS" in Exhibit G, point (a) in Exhibit H, my "[LT]" response to point (a) in my email in Exhibit I and the email from [JN] to me dated 5 October 2011 also in Exhibit I.

My position is that CityLink should be required to provide me with such an explanation whereas their position is that they should not have to do this. The basis for my position is as follows:

- *Despite being a legislated monopoly not subject to any direct competition, and perhaps even more so because of this, CityLink should be required to meet minimum commonly-accepted levels of customer service. I believe that such minimum levels of customer service include providing a customer who has been provided with false information, upon their request, with an explanation as to why this occurred. There are good reasons for this, including that:*
 - *this necessarily involves the supplier conducting an investigation and the fact that they actually took the time and effort to do this demonstrates to their customers that they take their customer service commitments seriously;*
 - *if a supplier has to investigate what went wrong (so that this can be reported to the customer) there will be a much greater chance that they will take action to ensure the same problem doesn't happen again; and*
 - *having to provide an explanation to the customer has a "name and shame" effect and hence provides an incentive for the supplier to work proactively to prevent customers being given false information in the first place.*
- *In this particular case, I was not just provided with false information once by a single CityLink representative, but rather this was done by, I believe, three different CityLink representatives on three separate occasions. This is further reason as to why CityLink should be required to provide me with the explanation sought.*
- *It appears to me that providing the explanation sought may in fact be required by CityLink's obligations under clause 13 of the CityLink Access Account Customer Service Agreement (as downloaded from their website on 7 October 2011) which states in part*
- *"If you believe that your dispute or complaint has not been properly addressed, you have the right to have the issue reviewed by our independent customer resolutions group who will provide a response with reasons (emphasis added)."*
- *It cannot be that difficult for the CityLink Customer Resolutions Group to work out who of their representatives*

made these false promises to me, ask them why they did this and then explain their reasons to me.

- (b) *Complaint — CityLink should not issue statements that include details and charges for trips where these charges are not included in the payment amount deducted by direct debit in conjunction with the issuing of the statement (which necessarily results in a positive balance owing on the statement).*

Reference is made specifically to Exhibit C, the relevant interactions with CityLink described in the first paragraph in 1(d) above, points (b) and (c) under the heading "RESOLUTION OF MY COMPLAINTS" in Exhibit G, points (b) and (c) in Exhibit H and my "[LT]" responses to points (b) and (c) in my email in Exhibit I. The explanation from CityLink in point (b) of Exhibit H as to what happened here doesn't quite ring true. If you look at my other CityLink statements included in Exhibits A and B (where the stated balance of the account is zero) you can see that the balance stated is as at the 7th of the month, even though the statement date is the 8th of the month. Going from my 8 August 2011 statement to my 8 September 2011 statement, has CityLink really changed their processes so that the balance shown on the statement is now as at the day after the last day of the statement period rather than on that last day? I don't think that this is likely and if it was then why didn't [JN] of CityLink include this in his explanation in his email to me in Exhibit H. Notwithstanding my doubts concerning the CityLink explanation, I have had no choice but to accept this explanation in describing my main complaint.

The basis for my complaint is as follows:

- *My reaction when I looked at my CityLink statement dated 9 September 2011 was "how can there be a balance owing when they have my credit card details and the bill is meant to be paid each month by direct debit — is there something wrong with my credit card, when do I have to pay this balance owing by?". I expect that other customers would react in the same way in this same situation.*
- *The Manager of the CityLink Customer Resolutions Group offered an explanation as to why this happened (although, as noted above, the explanation doesn't quite ring true) and confirmed that CityLink has no plans to change this practice going forward. However, it is important to note that:*
 - *the CityLink Customer Service person I spoke to (and the colleague they apparently spoke to whilst I was on hold)*

*could offer no explanation as to why this had happened;
and*

- the "fine print" notes included on my CityLink statement do not offer any explanation as to why this occurs and there is no other information provided within the statements that might help explain to customers why they may see a positive balance owing when they would have reasonably expected to see a zero balance.*
 - That you can still have a positive balance owing on a statement when you pay by direct debit essentially coincidental with the issue of that statement is very confusing to customers — something which is confirmed by the fact that CityLink's own customer service staff could not offer any explanation as to what might be going on.*
 - It is misleading for CityLink to present a positive number as the "Balance owing" on a customer's monthly statement when that amount does not actually become payable for another month. The average consumer in Australia would interpret such a presentation to mean that the balance owing amount was payable as at the date of the statement.*
 - If, for some reason, eg. expiry of a customer's credit card, a direct debit was unsuccessful and the customer had a positive balance owing from the previous month's statement, might there be a risk that CityLink then treat this balance owing as being one month overdue when this would not actually have been the case ?*
 - There wouldn't seem to be any reason why CityLink could not eliminate this confusion (both for its customers and its customer service staff !!) by, for example, producing the monthly statements immediately after attempting/processing the direct debit.*
- (c) Dispute #2 — CityLink's refusal to provide me with an explanation as why their representative told me that the four images had been sent to an old twice-previous address of mine when was not in fact the case.*

Reference is made specifically to the relevant statements made by CityLink described in 1(e) above, point (e) under the heading "RESOLUTION OF MY COMPLAINTS" in Exhibit G, point (e) in Exhibit H, my "[LT]" response to point (e) in my email in Exhibit I and the email from [JN] to me dated 5 October 2011 also in Exhibit I.

My position is that CityLink should be required to provide me with such an explanation whereas their position is that they should not have to do this. The basis for my position is essentially the same as that outlined above in relation to Dispute #1, and also noting that:

- *I do not believe that there was ever a possibility that the images had been sent to my old address in [suburb S]:*
 - *CityLink were never going to send me the images anyway, via email or to any postal address, so I fail to see how they could have had any reasonable basis for making the claim they had been sent to me; and*
 - *CityLink has even more serious IT/systems problems than would appear to be the case based upon the woeful performance of their website if there could have been a possibility that if they went to post me something it would be sent to an old twice-previous address rather than my current address which they have used in preparing my monthly statements for at least the last three years.*
- *Given the common subject matter, this instance of CityLink providing me with false information should not be looked at in isolation but rather be looked at in conjunction with the three instances of such behaviour that are at the heart of Dispute #1.*
- *As you would be no doubt aware, it is a common contact centre tactic where the supplier doesn't want to send information to a customer (which can be for a range of reasons) to tell the customer that the information must have been sent to their old address but, not to worry, they will order a new copy to be sent to the customer's correct address. In many cases the customer never receives the information at their current address but can't be bothered ringing up again to find out what has happened to it (and the supplier gets their way). Could it be that this tactic is being employed by CityLink's contact centre?*

(d) Dispute #3 — CityLink's claim that they are prohibited by the Melbourne City Link Act 1995 (the "Act") from providing the four images to me because this would involve them providing me with "restricted tolling information" ("RTI").

Reference is made specifically to points (f) and (g) under the heading "RESOLUTION OF MY COMPLAINTS" in Exhibit G,

points (f) and (g) in Exhibit H, my "[LT]" response to point (g) in my email in Exhibit I and the email from [JN] to me dated 5 October 2011 also in Exhibit I.

I have some doubts as to whether CityLink is actually prohibited under the Act from providing me with the four images because they are RTI. I raised these doubts with [JN] at CityLink in my email to him dated 5 October 2011 and invited him to respond to my doubts making specific reference to the legislative provisions to support his position, but he declined to do so.

The basis for my doubts are as follows:

- The relevant claim was made by CityLink on 4 October 2011 and it would appear that the version of the Act in force on that date was the same version as is in force today, ie. version 080 at www.legislation.vic.gov.au. The definition of RTI in the Act is at section 90.
- The preamble to section 90 states:

*"In this section **restricted tolling information** means any information obtained from the records prepared by, or for, a relevant agency in performing its obligations, exercising its rights or carrying out its functions under this Act, the regulations, the **Transport (Compliance and Miscellaneous) Act 1983**, the regulations under that Act, the **Road Management Act 2004** and the regulations under that Act, the Agreement or the Extension Agreement in relation to"*

I believe that the relevant agency here is CityLink Melbourne Limited (the Link corporation as defined in the Act) and it would seem possible to treat the four images as comprising information obtained from records prepared for this CityLink entity by Eastlink pursuant to the arrangement between CityLink and Eastlink under which CityLink bills its customers for use of Eastlink. However it would appear to be highly questionable whether this arrangement between CityLink and Eastlink constitutes CityLink performing its obligations, exercising its rights and carrying out its functions under the specific legislation and agreements mentioned above. I have glanced through this legislation and these agreements and I cannot see provisions that make the billing arrangement between CityLink and Eastlink an obligation, right or function of CityLink. This arrangement would appear to be a purely commercial arrangement between these two organizations. If this is correct, the four

images could not be within the scope of RTI as defined in section 90 of the Act and CityLink's claim would not be valid.

- *Even if it is case that the preamble to section 90 does not rule out the four images including RTI, for this to be the case, the images would additionally need to include information in relation to one of the things specified in sub-sections (a) to (f) of section 90:*
 - *regarding sub-section (a), it is clear that the images do not include information concerning a "toll zone" because this term, as defined in section 3 of the Act, only applies to sections of the CityLink toll road and the four images relate solely to use of the EastLink toll road;*
 - *regarding sub-sections (b) to (d), the four images will show still pictures taken of specific locations on the EastLink toll road which may or may not also include images of vehicles travelling on that toll road — there is no way that they will provide any of the information described in these three sub-sections which relates to the registration of vehicles under Part 4 of the Act and the payment of tolls by vehicles that are so registered;*
 - *regarding sub-section (e), I do not believe that a photo taken of a vehicle driving on a public road constitutes information of a personal nature or commercially sensitive information; and*
 - *regarding sub-section (f), I do not believe that any regulations have been made pursuant to this sub-section.*
- *By the reasoning set out in the above two dot points, I have serious doubts as to whether it is valid for CityLink to claim that they are prohibited by the Act from providing me with the four images because they are, or include, RTI.*

- (e) *Dispute #4 — CityLink's claim that they are prohibited by the Melbourne City Link Act 1995 (the "Act") from providing the four images (with licence plates, persons in vehicles and any other distinguishing features of vehicles redacted) to me because this would involve them providing me with RTI.*

Reference is made specifically to points (h) and (i) under the heading "RESOLUTION OF MY COMPLAINTS" in Exhibit G, points (h) and (i) in Exhibit H, my "[LT]" response to point (i) in

my email in Exhibit I and the email from [JN] to me dated 5 October 2011 also in Exhibit I.

Based upon the same reasoning as set out above in relation to Dispute #3, I believe that there is serious doubt concerning the validity of CityLink's claim that they are prohibited under the Act from providing me with the four modified images because they would be, or contain, RTI. I also note that if it was true (despite my view that this cannot be the case) that CityLink was prohibited from providing me the four un-edited images because they contained RTI solely due to sub-section 90(e) of the Act, this prohibition would disappear if the images were edited as described.

4. *My Desired Outcomes*

What I would like to see happen as a result of this submission is as follows:

- (a) In relation to the four admitted instances of CityLink providing me with false information that are the subject of Disputes #1 and #2, I would like to see you make a direction to CityLink that their Customer Resolutions Group:
 - (i) identify each of the CityLink representatives who provided me with the false information;*
 - (ii) obtain from these representatives detailed explanations as to why they provided me with the false information; and*
 - (iii) provide me with a written statement describing, separately for each of the four instances, in reasonable detail the reasons why their representatives provided me with the false information.**

- (b) In relation to my Complaint, I would like to see you recommend to CityLink that they:
 - (i) make changes to their processes so that Access Account statements are prepared immediately after attempting/processing the direct debit payment so that if the direct debit is successful the balance of the statement will be zero;**

or if there good reasons why this cannot be done:

(ii) *make the following changes to their Access Account statements:*

- *if the balance of the account is a positive number solely because charges have been added after the direct debit was made but before the statement was produced, change the reference to "Balance owing" to "Balance as at dd mmm yyyy" (where "xx mmm yyyy" is the date on which the balance (as presented) has been calculated); and*
- *add a note to the list of notes included in the statements along the following lines:*
 - *"Page 1 may show a non-zero balance when you were expecting a zero balance due to charges being added to your account between when we processed your standing authorization payment and when we produced this statement."*

(c) *In relation to Disputes #3 and #4, I would like to see you make a two-part determination as to whether (on 4 October 2011) CityLink was truly prohibited under the Act from providing me with the four images concerned because they were, or contained, RTI, with:*

- (i) *the first part based upon the images in their un-edited form; and*
- (ii) *the second part based upon these same images but with vehicle licence plates, persons in the vehicles and any other distinguishing features of vehicles redacted.*

I look forward to hearing from you regarding this submission and what you can do to assist in resolving my outstanding issues with CityLink.

If you require any further information please do not hesitate to contact me via the details below or the address provided above."

2 The complaint was referred to CityLink by the TCO on 18 October 2011 but the TCO responded to Mr T as follows:

"Thank you for your letter together with attachments.

The Tolling Customer Ombudsman is an independent person appointed to help customers of Breeze[®], CityLink[®], EastLink[®], Hills M2TM, Roam[®] and Roam Express[®] tolling businesses resolve complaints fairly, efficiently and

free of charge. The complaints may be resolved by way of conciliation, mediation or arbitration and the parties may negotiate a settlement at any stage.

Each complaint received is processed in an orderly way so that it can be dealt with on its merits and in a manner that is fair to both the customer and relevant tolling business. Before the Tolling Customer Ombudsman can deal with your complaint, you must have:

- (a) first lodged a formal complaint with the relevant internal customer resolutions group;*
- (b) (i) have either received a negative response to that complaint; or*
 - (ii) allowed the complaint to be resolved through the relevant internal customer resolutions group.*

Accordingly, I have forwarded a copy of your complaint to the Transurban internal customer resolutions group for response.

However, I must advise that the Tolling Customer Ombudsman, like all Ombudsman services designed to resolve complaints, is inquisitorial. The object is to resolve complaints fairly and in the most effective manner. It is not an adversarial process like the courts where evidence is provided on oath and witnesses can be compelled to provide such evidence subject to some exceptions. There is no compulsion of witnesses in an ombudsman scheme.

You have made allegations of “false” information being provided to you. False is a term that has implications of the deliberate provision of incorrect information. I have no evidence, in the complaints that have come to me, of toll operators deliberately providing incorrect information. There is no purpose for a toll operator to provide false information and certainly nothing to be gained. The finding of a deliberate falsehood would result in an adverse Tolling Customer decision.

It is my experience that toll operators contact staff may mistakenly provide incorrect information or persons can be at cross purposes when discussing issues on the telephone. There was an obvious opportunity for misunderstanding here about the provision of vehicle images to customers. In the course of conversation the presumption could reasonably be that the customer is seeking the images of his own vehicle and not those of another road user. Customers are entitled, if available, to the images of their own vehicle to check the imposition of tolls. There is, however, no automatic right at law or under the tolling agreements for the provision of any information about other customers or road users. Privacy requirements would deem otherwise.

It is not, in these circumstances, my intention to compel statements from the operators in the terms that you seek. There may well be a training issue that needs attention and I will examine CityLink’s response in this regard.”

3 The complainant then again contacted the TCO on 21 October 2011 as follows:

"Thank you very much for your prompt response to my letter dated 14 October 2011.

Reading your letter, there appears to be some confusion as to the scope of my reference to you. I believe that I am principally to blame here and I apologize for not being clearer in my letter. I will attempt herein to clarify the situation.

The following two things were not intended to be, and are not, within the scope of my reference to you:

- *whether CityLink's provision of incorrect information to me on the four phone calls (as described in my letter) was or was not intentional; and*
- *whether CityLink is prohibited by law (or otherwise) from providing its customers with copies of images taken on toll roads except to the limited extent that both:*

the images were taken on EastLink; and

it is claimed by CityLink that such release is prohibited under the Melbourne City Link Act 1995 because the images are, or contain, "restricted tolling information", as defined in that Act.

Again I apologize for not making it clear in my letter that these matters were not within the scope of my reference to you.

I note the position expressed in the second-last paragraph of your letter regarding my wish that you make directions to CityLink related to them providing me with explanations as to why, on four separate occasions, they provided me with incorrect information. Taking this into account, I believe that it would be in the best interests of expeditiously resolving the matters I have raised for my reference to you to be revised to be as follows:

1. *All information provided in my letter to you dated 14 October 2011 (including its attachments) should be treated as background material except where specifically incorporated by cross-reference in points 2 to 6 below.*
2. *I request that you make a determination of the dispute between myself and CityLink described in the following parts of my 14 October 2011 letter.*
 - (i) *the first paragraph in 3(a) starting with "Dispute #1 ..."; and*
 - (ii) *the first sentence in the third paragraph in 3(a) starting with "My position ..."*

3. *I request that you investigate my complaint described in the first paragraph of 3(b) of my letter dated 14 October 2011 starting with "Complaint ..." and take whatever action you deem appropriate following this investigation.*
4. *I request that you make a determination of the dispute between myself and CityLink described in the following parts of my 14 October 2011 letter.*
 - (i) *the first paragraph in 3(c) starting with "Dispute #2 ..."; and*
 - (ii) *the first sentence in the third paragraph in 3(c) starting with "My position ..".*
5. *I request that you make a determination of the dispute between myself and CityLink described as follows:*
 - (i) *the claim made by CityLink on 4 October 2011 and described in the first paragraph in 3(d) of my letter dated 14 Oct 2011 starting with "Dispute #3 ..."; and*
 - (ii) *my position being that I do not agree that this claim by CityLink (as at the date it was made) is valid.*
6. *I request that you make a determination of the dispute between myself and CityLink described as follows:*
 - (i) *the claim made by CityLink on 4 October 2011 and described in the first paragraph in 3(e) of my letter dated 14 October 2011 starting with "Dispute #4 ..."; and*
 - (ii) *my position being that I do not agree that this claim by CityLink (as at the date the date it was made) is valid.*

I look forward to hearing from you regarding this matter taking into account the above clarifications. As always, if you require further input from me, please do not hesitate to contact me using the contact details provided in my 14 October 2011 letter."

4 This email was referred to CityLink.

5 CityLink responded on 7 November 2011 as follows:

"I have identified the below key issues in [Mr T's] most recent correspondence:

1. *[Mr T] has requested CityLink to provide detailed explanations as to why he was allegedly given incorrect information by multiple CityLink representatives. This related to images being provided to him for EastLink travel that was charged to his Account in error.*

We have explained the process followed when a customer disputes an image-based trip on EastLink and that an image may only be provided where it is correct. We have apologised for any information provided by CityLink representatives that resulted in [Mr T's] expectation that images would be sent to him. Please refer to points (a) and (e) of our response.

2. *[Mr T] has raised concerns regarding his Statement issued on 08/09/2011 regarding the balance owing amount of \$6.86 dr.*

We have advised the monthly statement for a CityLink Access Account is not a bill or request for payment but a snapshot of usage for the statement period. It is possible, as in this instance, for charges to be applied to the Account within the Statement period though after the Monthly Payment has been processed. Please refer to points (b) and (c) of our response.

3. *[Mr T] has requested CityLink to provide an explanation as to why a CityLink representative allegedly advised him that the images were posted to a previous/incorrect address.*

We have confirmed the images were not posted to him. Please refer to points (d) and (e) of our response.

4. *[Mr T] has responded to our previous explanation for the images not being provided to him relating to Restricted Tolling Information and the Melbourne CityLink Act (the Act) stating this is not valid as the travel was on EastLink.*

We advise CityLink's processes reflect the principles defined in the Act. Additionally, EastLink's policy is not to disclose images unless they are correct."

- 6 The points referred to in the above correspondence were contained in an email from CityLink to Mr T dated 4 October 2011:

"Thank you for your recent enquiry regarding charges on your CityLink Account. I understand you were charged for travel on EastLink and requested further information relating to the travel as you did not recall travelling on EastLink at the time.

Please accept my sincere apologies for the inconvenience this matter has caused. I will respond to each of your issues as follows:

- (a) *You have indicated on disputing the travel, CityLink advised on 3 occasions the images relating to the charges would be sent to you. As you have since been advised, this is not the case. CityLink only sends images if the image is correct. You have advised your vehicle registration number is [LPN], EastLink have advised an image misread occurred and [LPN] was not the vehicle travelling at the time. To reiterate, if an error was to*

occur and your travel was charged to someone else's account, we would not send an image of your travel to that person in any circumstances

(b) You have asked why CityLink only billed a portion of the monthly bill to your Credit Card. Your monthly statement is not a bill or request for payment but a snap shot of usage for the statement period. On the date the payment of \$2.58 was taken, the travel of 30/08/2011 had not yet been charged to the account. This travel had been charged to the account on 08/09/2011 when the statement was issued

(c) Your account will continue to operate this way

(d) The images were not posted to you as explained in (a) above

(e) I apologise that you were misinformed which resulted in your expectation that images would be sent to you. Unfortunately, I do not have an explanation for this as requested, however I have provided feedback to the call centre regarding this process.

(f) CityLink is prohibited by law from providing you with these images

(g) The Melbourne CityLink Act (the Act) refers to CityLink not disclosing Restricted Tolling Information (RTI). RTI includes any identifying information relating to a person or vehicle using the Road. An image of an alternate road user is considered to be identifying information

(h) Please refer to (a) and (g) above

(i) Please refer to (f) and (g) above.

Thank you again for your enquiry."

7 CityLink's email of 7 November 2011 was referred to Mr T.

8 Mr T wrote to the TCO on 8 November 2011 and said:

"Thank you very much for on-forwarding the CityLink response included below.

As you would recognize, this response doesn't add anything of substance over or above the email that CityLink sent me on 4 October 2011 with the possible exception of new words contained in the last two sentences under point 4. However, these new words do not help in attempting to explain the validity of the relevant CityLink claims and so they do not assist in resolving the two disputes between myself and CityLink described in points 5 and 6 of my letter to you dated 21 October 2011:

- *With respect to the first of these sentences, I have provided a detailed explanation, including specific references to the legislation, as to why I think that their claims are not valid, but CityLink refuses to/is not able to provide such an explanation justifying the basis for their claims. Their claims are either valid under the legislation or not – just saying that they act in accordance with the principles defined in the Act is meaningless in the context of the present disputes.*
- *With respect to the second of these sentences, any policies of Eastlink are irrelevant to the issues in dispute here. The two disputes relate to claims made by CityLink relating to provisions of the Melbourne City Link Act. The only way that Eastlink policies might be relevant to interpretation of these provisions is if these provisions, or the Act more generally, specifically catered for this and I don't see this and I don't see that CityLink is suggesting this either.*

My position remains as per my letter to you dated 21 October 2011 and I look forward to hearing from you as to the next steps in the process.”

Decision

- 9** 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.
- 10** 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 legislation such as the Melbourne CityLink Act 1995 can be accessed through Government websites.
- 11** The TCO is not a judicial body and does not have punitive powers. When making a decision it 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.
- 12** In view of certain aspects of Mr T's complaint, it is necessary to confirm that CityLink and ConnectEast (EastLink/Breeze) are separate unrelated competitive corporate entities subject to their legislative requirements. There are, however, interoperability arrangements required of them for, amongst other things, the purpose of tolling joint customers. Apart from that, neither toll road operator can determine how the other can operate. They, in this regard, both have strict obligations to protect the privacy and identity of particular toll users under privacy principles other than in exceptional circumstances, for example, law enforcement.

- 13 There were a range of complaints made by Mr T. They were primarily centred on, firstly, Mr T's concern about tolls and charges imposed on him by CityLink; secondly, on CityLink's failure to provide him with photo images of the number plates of the third party vehicles that should have been tolled; thirdly, CityLink's billing statements; and fourthly, service issues.
- 14 CityLink has been responsive to the issues raised by Mr T. It has reversed all charges that were to be paid by Mr T and apologised for any inconvenience caused to him about related service issues,
- 15 It would appear that CityLink operatives did provide Mr T with ambiguous conflicting information about the provision of the photo images of number plates of toll road users other than his own. CityLink has provided an explanation of why it cannot release the photo images of the third party vehicle's number plates and confirmed that these were not posted to him.
- 16 CityLink operatives may have erred. Alternatively, there might have been a situation in which Mr T and the operatives were at cross-purposes in relation to the circumstances in which the photo images could be provided. In any event, an explanation has been given and an apology made by CityLink. Further, an undertaking has been given to address the issue with the call centre to prevent a re-occurrence.
- 17 CityLink also has provided an explanation of its billing processes. The clarity of billing processes is an interpretative question and can be a subjective matter. Customers can have different views on the subject of clarity and what in their mind is or is not logical. A toll road operator has to produce a system it considers is best for its customers and itself. This does not always meet with the approval of customers who may have varying opinions about how it can be improved.
- 18 Relevantly, I note that CityLink has recently changed certain of its processes and has provided information to me in the following terms:

"As you may know, CityLink is close to the completion of the project to update its core customer care and billing systems. The project is called GLIDe and we are excited about the service improvements this will be able to provide our customers.

I would like to provide you with a courtesy notification of the target dates for its implementation. We are targeting cutting over from the current system GATe on Friday November 25th and going Live with GLIDe on Wednesday 30th November 2011.

GLIDe effectively rolls four systems into one, which greatly improves data integrity, improves processing speeds, will deliver a more reliable and easy-to-use website and comply with new international security requirements. However there will be some disruptions to our business during this cutover which I would like to explain.

Firstly, roadside list files will not be updated during this period and customers travelling on CityLink over this weekend may experience incorrect TAG beeps if their account status changed over that period of time.

CityLink will communicate all customer impacts via our website and our roadside variable message boards will display suitable messages during this period. CityLink customers will also be advised through the IVR and by CSO scripts in the call centre. To give you some idea of the size of the change, over 450 people have been through 3 days training on the new system including 250 at the call centre. We have surveyed all of these and the vast majority are very excited about using the much improved system.

Secondly, enforcement processing will also be temporarily on hold until the GLIDe system is operational & all files have processed and been caught-up. We will sequence our roadside lists, payment files and FTO trip files before processing any traffic, minimising the risk of incorrect enforcement to customers.

We are committed to making this as seamless to our customers as possible. To this end, we have increased staff in the call centre to deal with the expected time to learn the new system in production and any potential issues that may arise with a system change of this size and nature...”

- 19** I am satisfied that CityLink has acted reasonably in its response to Mr T’s complaint about service and in its explanation of its billing processes. Further, it has recognised the need generally to upgrade its processes in relation to customer care and billing systems that may well address the concerns that Mr T has raised. This is a proactive step which should improve services for members of the public that use toll roads.
- 20** There remains the complaint in relation to the non-provision of the de-identified photo images of a third party motor vehicle. I have some question about what use Mr T would make of such information and why he would require it after he has been relieved of the allegation of paying any tolls. It is apparent from both CityLink and EastLink that their policy is not to provide photo images to persons where they do not relate to their vehicles but to third party vehicles. This is done for privacy purposes and in order to avoid misuse of such information.
- 21** Leaving that aside, Mr T has challenged CityLink’s interpretation of its obligations under the Melbourne CityLink Act 1995. In particular, he does not agree with the meaning it has attached to the words “restricted tolling information”. The TCO does not provide legal opinions to toll road operators or its customers.
- 22** However, I am satisfied the words could be interpreted to cover information provided by toll road operators as part of interoperability purposes for the tolling of customers. If it was not so interpreted and information was provided to customers, there could well be an impact on the privacy of third party vehicles. In these circumstances I am

satisfied that it was reasonable for CityLink to interpret the meaning of “restricted tolling information” as it did.

- 23** As I have indicated, I do not see what purpose it would serve for the provision of such information. It does not impact on Mr T’s liability to CityLink, as that has been resolved, and serves no particular public interest. I do not propose to overturn CityLink’s decision in this regard.
- 24** I am satisfied, however, that Mr T has been inconvenienced by the service provided by CityLink, as set out in his complaint. I believe that it is fair in the circumstances that his account be credited with an amount equal to his average monthly toll bill, calculated over the six months prior to the lodgement of his complaint.

Michael Arnold
Tolling Customer Ombudsman

Dated: 16 December 2011