

DECISION

Background

- 1 On 15 June 2016 the Tolling Customer Ombudsman (TCO) received copy of an exchange of correspondence between Mr ES and EastLink in regard to an existing dispute.
- 2 Following referral to the TCO, the complaint was lodged as a TCO dispute and on 24 June 2016 EastLink confirmed same with Mr ES:¹

“As you are aware, your complaint has been forwarded to EastLink’s Customer Relations team for resolution. As you have escalated your response to the Tolling Customer Ombudsman, we are also including him in all correspondence.”

- 3 On 6 July 2016 EastLink provided the TCO with the following summary of complaint together with relevant attachments:

“We have been in contact with two customers over the past six months to try and gain resolution to the [Name] Pty Ltd concerns raised. The two contacts representing them are:

- [Mr ES] - [email address]
- [Mr AB] - [email address]

To assist you in understanding the issues raised and our responses I will outline the contacts and actions completed via a timeline aimed at demonstrating a pattern of behaviour from [Name] Pty Ltd to not comply with the Terms and Conditions of a Pre-Paid Tag Account.

It shows our attempts to facilitate payments to prevent further fees and charges been incurred by [Name] Pty Ltd which if responded to would of prevented additional charges been incurred and the matter would of been resolved quickly.

Below is a brief timeline of events:

- **02/02/16** – An Automatic Payment failure occurred (bank account details were changed but the customer did not update or advise EastLink of the change.) and a notification is issued to email address - [email address]
- **04/02/16** – The Account falls into debit and a Suspension Warning is issued to email address - [email address] requesting a payment of \$30.70.
- **10/02/16** – A Monthly Account Statement is issued to email address - [email address] advising that Account is \$0.70 in Debit.
- **11/02/16** – The Account remains unpaid an Account Suspended notification is issued to email address - [email address] requesting a payment of \$38.29.

¹ All parties’ submissions used in this Decision are quoted verbatim

- **10/03/16** – A Monthly Account Statement is issued to email address - [email address] advising that Account is \$49.29 in Debit.
- **10/04/16** – A Monthly Account Statement is issued to email address - [email address] advising that Account is \$100.94 in Debit.
- **13/04/16** – The customer identifying himself as [Mr ES] sends an enquiry via email from address – [email address] in regards to Toll Invoices he is receiving.
- **14/04/16** – EastLink sends response to email address – [email address] advising him that the Account was suspended, payment was required to reactivate and that Toll Invoices were outstanding. **(view 1st attachment: “RE: EastLink Enquiry”)**
- **14/04/16** – [Mr ES] replies and asks why Account was suspended and why he didn't get a call or email in regards to it. **(No payment is received by EastLink)**
- **14/04/16** – EastLink sends response to email address - [email address] advising [Mr ES] of the requirement of keeping the Account in a positive balance and that our Tags inform our customers via beeps of the Account status. We also attach copies of Account Suspension, Suspension Warnings, recent Monthly Statements. **(view 2nd attachment: “RE: EastLink Enquiry”)**.
- **14/04/16** – [Mr ES] replies and states that no notice was made and that some vehicles don't have Tags. **(No payment is received by EastLink)**
- **14/04/16** – EastLink sends response to email address - [email address] advising the customer for a **second time** that a payment is required to bring the Account back into a positive balance. We also advise the customer to confirm Tag details. **(view 3rd attachment: “RE: EastLink Enquiry”)**
- **30/04/16** – [Mr ES] replies and states “See attached. Please refer to my previous many emails without reply as yet. Regards, [Mr ES]”. **(No payment is received by EastLink)**
- **02/05/16** – EastLink sends response to email address - [email address] advising him of the consequences of travelling whilst an Account is suspended. We then advise the customer for a **third time** - to make payments under specific reference numbers and the consequences of not paying Toll Invoices. The customer is advised of the balance owing. **(view 4th attachment: “RE: Another EastLink Invoice per attach”)**
- **02/05/16** – [Mr ES] replies and states that EastLink has failed to inform him and requests itemised trip information. [Mr ES] also asks how EastLink wishes to re-establish the Account. **(No payment is received by EastLink)**
- **03/05/16** – EastLink sends response to email address - [email address] advising him that copies of notifications and Toll Invoices have again been attached and that he was advised of the Account status on various occasions. We then advise the customer for a **fourth time** – that a payment is required to bring the Account back into credit and we also provide the requested breakdown of Toll Invoices and advise of the consequences of not paying Toll Invoices. The customer is advised of the balance owing. **(view 5th attachment: “RE: Another EastLink Invoice per attach”)**
- **09/05/16** – [Mr ES] forwards email chain to an [Mr AB] at email address – [email address] along with copies of the Suspension Warning, Account Suspended and Toll Invoice notifications. [Mr ES] then advises [Mr AB] to request the balance outstanding and to provide EastLink with a new account for debits. **(No payment is received by EastLink)** **(view 6th attachment: “FW: Another EastLink Invoice per attach”)**
- **16/05/16** – The customer identifying himself as [Mr AB] sends a response via email address - [email address] asking for balance outstanding minus fees. Customer also requests to organise direct debits for the Account.
- **18/05/16** – EastLink sends response to email address - [email address] confirming balances owing and advising the customer that Invoice fees stand as the Toll Invoices were issued correctly. We also advise that direct debit can be set up once the Account debt is cleared. **(view 7th attachment: “RE: Another EastLink Invoice per attach”)**
- **19/05/16** – [Mr AB] replies and asks what amounts are fees and what amounts are toll charges. **(No payment is received by EastLink)**
- **20/05/16** – EastLink sends response to email address - [email address] confirming the amount of fees and toll charges. **(view 8th attachment: “RE: Another EastLink Invoice per attach”)**

- **03/06/16** – [Mr AB] replies and asks that EastLink respond to his enquiry on 19/05/16. (EastLink is unsure as to why the customer did not respond to our email sent 20/05/16) **(No payment is received EastLink)**
- **07/06/16** – EastLink sends response to email address - [email address] advising of the 20/05/16 email and we attach to response. We then provide an updated table displaying Toll Fees and Toll Costs. We again reconfirm what actions the customer must make which includes making a payment to his Account and to clear the outstanding Toll Invoices. **(view 9th attachment: “RE: Another EastLink Invoice per attach”)**
- **10/06/16** – [Mr AB] replies and asks to setup new direct debits for the amounts owing. He also states that he will not be paying the Invoice fees as he states that he has not been informed of the closure of the Account. **(No payment is received EastLink)**
- **15/06/16** – EastLink sends response to email address - [email address] and [email address] confirming that the Account has not been closed. We again advise the customer to reactivate the Account with a payment. We again advise of Suspension and Suspended notifications issued, which are again attached to the response. We advise of where our correspondence is being sent and forwarded to. We confirm Toll Invoices that have progressed to CCV and we advise again of the total outstanding with Toll Invoices. We also advise the customer that he can contact your office if the outcome is not to his satisfaction. **(view 10th attachment: “RE: Another EastLink Invoice per attach”)**
- **15/06/16** – [Mr ES] includes [Mr AB], Civic Compliance Victoria, [Name] Pty Ltd's legal department and your office in his response and advises [Mr AB] to make payment without paying Toll Fees, provide EastLink with Direct Debit details and to enquire with how to receive notifications. [Mr ES] then states that EastLink did not advise him that the EastLink Account was in debit or in suspension. **(No payment is received by EastLink) (view 11th attachment: “RE: Another EastLink Invoice per attach”)**
- **15/06/16** – [Mr AB] replies and includes [Mr ES] in response to advise that he has made payment to the Tolling charges. **(No payment is received by EastLink) (view 12th attachment: “RE: Another EastLink Invoice per attach”)**

As this complaint has been ongoing, we have forwarded a recommendation to review the following infringements which were issued in June to be withdrawn:

- Travel Date - 8 March 2016 (LPN: [Q***89/VIC])
- Travel Date - 12 March 2016 (LPN: [Q***89/VIC])

Despite numerous attempts to resolve the matter, the following debt below remains unpaid and action is required on the customer's behalf if they wish to resolve this matter. ***The below totals are accurate as of 6 July 2016 and may change if pending travel is yet to be invoiced***

EastLink Account Reference Number: [***04]: **\$104.94** in debit.

EastLink Reference Number: [***11]: **\$338.28** outstanding.

EastLink Reference Number: [***76]: **\$13.94** outstanding.

An extension has been placed on Toll Invoices that have not yet been referred to CCV. The due dates have been extended until 16 August 2016.

To avoid further CCV notices and debt recovery action – we advise that the customer contact EastLink on (03) 9955 1400 to make payments or discuss payment options; such as Payment Plans.

We would like to take this opportunity to remind the customer of the importance of complying with our Customer Service Agreement (attached). This agreement is binding from the moment his Account was created and will remain if he chooses to continue using his EastLink Tolling Account.

All Terms and Conditions are valid to the customer, but we ask that the customer be mindful of these especially:

“3.2 Changes to Account Details You must notify us of any change to your Account Details as soon as possible, and not later than 3 business days after the change takes effect. If you don't notify us of a change in your Account Details, you might not receive important information from us or you might incur additional charges.”

“3.7 Keeping your account balance positive

a) You must keep at least the Minimum Balance in your account at all times.

b) If at any time the balance of your account is less than the Minimum Balance, you must restore your account balance to at least the Minimum Balance by paying the required amount into your account. If the required amount is less than the Top Up Amount, you must pay at least the Top Up Amount.

c) If you've authorised automatic top up payments, we'll top up your account by debiting your bank account or credit card with a single payment equal to the minimum number of multiples of the Top Up Amount required to restore your account balance to at least the Minimum Balance.

d) If you haven't authorised automatic top up payments, we'll notify you when you need to top up your account.

e) If at any time your account does not have a positive balance, this will be a Trigger Event and we may suspend or close your account in accordance with clause 9.1. Clauses 9.3 and 9.4 explain the effect of suspension or closure of your account.”

If our Terms and Conditions for use is not to the customer's satisfaction, we ask that he exercise his right to avoid the EastLink Tollway and explore other Tolling products with other providers.

As shown above, EastLink has performed it's due diligence in advising the customer of his account status and in attempting to organise payments to reactivate the account and clear outstanding Toll Invoices. At no stage has EastLink prevented the customer from resolving the dispute or prevented the customer from making the necessary payments to clear debt and reactivate his account. If the customer had contacted EastLink to update debit details, it would have prevented the account from falling into arrears and thus proceeding to suspension. In closing, we ask that the customer – in good faith, action our request for resolution and make the required payments.

The customer can contact me personally on (03) 9955 1400 during my contact hours: Mon-Fri 8:30am-4:30pm (just ask for [Name] in Customer Relations) if he wishes to make payment or to organise a payment plan.”

- 4** On 7 July 2016 the TCO provided the above information to Mr AB with the following recommendation:

“It is my recommendation that there be an immediate payment of outstanding monies to avoid further costs.”

- 5** On 13 July 2016 Mr AB wrote to the TCO:

“Can you please provide payment details so I can make a payment?”

- 6** To which the TCO responded:

“I have just spoken with [Name] at EastLink to enquire as to the most efficient method of payment available to you.

EastLink recommends that you make one payment (combining all amounts due) into your account, which will then be transferred against the separate reference numbers.

Please telephone [Name] on [(03) ***] during his contact hours: Mon-Fri 8:30am-4:30pm: to finalise the transaction.”

7 On 14 July 2016 Mr AB emailed the TCO, copied to EastLink, as follows:

“Blow are the 3 accounts I have been provided with. The highlighted one is the [Name] Pty Ltd account which I am a contact on. I have just made payment towards that for \$150. The other two accounts might be personal accounts but are accounts that I am not a contact on so I really don’t know what they are. Perhaps you could tell me who they are for? I’m coming in now as the account manager for [Name] Pty Ltd to try and help the cause but can’t assist with the other two accounts as they don’t seem to be related...”

EastLink Reference Number	Fees	Tolls
[**04]	\$53.65	\$47.29
[**11]	\$138.83	\$100.23
[**76]	\$19.17	\$14.08

8 EastLink responded to Mr AB in the following terms:

“EastLink reference number(s): [**11], [**76] relate to LPN details under the ownership of [Mr ES] (LPN: [Q**89/VIC]) and [Ms ES] (LPN: [E**80/VIC]).

These vehicles are currently linked to EastLink Account: [**04] ([Name] PTY LTD).

As the vehicles have continued to travel on EastLink despite the Account being suspended – the totals owing have changed.

EastLink reference number(s): [**11] – [Mr ES]: **\$364.93** payable with pending travel made 5 July 2016 and 12 July 2016 yet to be invoiced.

EastLink reference number(s): [**76] - [Ms ES]: **\$38.35** payable with pending travel made 9 July 2016 yet to be invoiced.

An extension has been placed on Toll Invoices that have not yet been referred to CCV. The due dates have been extended until 16 August 2016.

Failure to pay the amounts required by the due date above may result in Civic Compliance Victoria issuing an infringement notice to the vehicle's owner or driver. The cost of an infringement notice would be \$155 for **each day** of unregistered travel on EastLink.

We suggest that Mr Arnold’s recommendation sent 13 July 2016 be actioned to avoid further issues.”

9 The same day the TCO reiterated the above to Mr AB:

“I enclose a copy of correspondence from EastLink which is self- explanatory.

Could I again recommend that you attend to payment of the outstanding monies to avoid further costs.”

10 On 15 July 2016 the following exchange of correspondence took place:

EastLink to Mr AB:

"We confirm that EastLink Account: [***04] is currently set to manual top ups. Please reply to this email or update your payment details online if you require Automatic Payments to be initiated.

If you reply to this email with updated Bank Account details – I can create this process for you."

Mr AB to EastLink:

"In regards to account ref: [***04], I just want to confirm that we have only paid for the toll charges and not the fees?

I would like to set this account up for direct debits, how will this work?

The account details are:

BSB: [Number]
ACC: [Number]

In regards to the below accounts, Can you send through the bpay details or do I just change the reference e number and keep the same biller code? For these can you confirm that these are just toll charges and not fees?

EastLink reference number(s): [***11] – [Mr ES]: **\$364.93**

EastLink reference number(s): [***76] - [Ms ES]: **\$38.35**

And as you mentioned these are due by the 16th August, 2016?"

EastLink to Mr AB:

"As requested, Automatic Top Ups have been set up on EastLink Account: [***04] with the bank details provided.

When your credit balance falls below its Low Balance Threshold (\$13.63), your Account will be topped up automatically and your nominated Bank Account or Credit Card will be debited with your chosen Top Up amount (minimum \$30.00).

Below are the amounts and payment details needed to perform BPAY payments.

Please note that LPN: [Q89/VIC] has pending travel made 05/07/16 that is yet to be invoiced and LPN: [E***80/VIC] has pending travel made 09/07/16 yet to be invoiced.***

EastLink reference number(s): [***11] - [Mr ES]: **\$388.48** payable (Total has changed due to [Ms ES] nominating [Mr ES] for a Toll Invoice)

- BPAY using the following details:
 - o Biller Code: **727214**
 - o Reference Number: [***11]

EastLink reference number(s): [***76] - [Ms ES]: **\$14.80** (Total has changed due to [Ms ES] nominating [Mr ES] for a Toll Invoice)

- BPAY using the following details:

- o Biller Code: **727214**
- o Reference Number: **[***76]**

We confirm that the debt accrued on Reference Number(s): [***04], [***11], [***76] include/includes Toll Administration fees and were correctly issued/applied. As previously advised on 7 July 2016 and 14 July 2016 by the Tolling Ombudsman – all amounts are payable in full by 16 August 2016.”

11 On 20 July 2016 Mr AB emailed EastLink:

“Simply we state the following –

1. Eastlink advises they had two emails for the last 6 months yet were just sending emails to [email address]. We have determined that those emails being sent to [email address] were being automatically filtered as spam, thus not received. Please note - breeze and eastlink emails are/were being sent as marketing and advertising material almost twice a week. To have important and accounts emails coming through and appearing in the same way as their mass marketing is inappropriate. Our IT systems filter a lot of constant bombardment of emails.
2. Eastlink knew I was in charge of the accounts as we had informed them so many times and that all emails should be to my email.
3. Instead of eastlink calling or mailing to advise there was an electronic direct debit issue it appears they just kept sending emails to the [email address] email and nothing more, in the hope that it will be sorted? That’s utterly heedless when it’s an important matter. Clearly that’s not reasonable when serious attention needs to be brought to a matter.
4. Again the only way we found out was all the vehicles owners that were on our account started to receive mail and threats from eastlink.
5. It was only after we had to raise a dispute did we actually receive a call to outline what the problem was. We still are not 100% sure why.
6. We have paid all tolling fee’s, but we will not be paying fees and infringements. In order to mitigate loss and issue eastlink ought to have just reasonably made a call or sent a letter out, not just keep throwing emails to one email address that clearly wasn’t being received.

I understand we have the three accounts below:

[***04]
[***11]
[***76]

My understanding is that there are only two vehicles we are paying for, being [Q***89/VIC], [E***80/VIC]. Can we just put everything on 1 account as too confusing the way it is? So going forward they won’t be invoiced but will receive a statement per month of charges made...

Can you confirm the toils paid to date and tolls owing to date.”

With a follow-up email:

“Also [Name], can you please confirm which accounts the attached are for?”

12 On 21 July 2016 EastLink responded to Mr AB:

“Thank you for your email.

I confirm that your complaint has been reviewed by the independent Tolling Ombudsman Michael Arnold who has determined that all outstanding amounts owing as per below be paid

to avoid incurring any additional fees which has addressed the concerns you have raised again in your email 20 July 2016.

Your statement regarding the email issues have been noted and confirm that EastLink cannot anticipate the actions of your third-party program - used to move our emails to a junk folder. We appreciate you clarifying this matter and for bringing it to our attention.

The Toll Invoice details you have attached are in reference to Toll Invoices applied to your EastLink Account [***04].

We confirm that the reference numbers below refer to the Toll Invoices outstanding and was accrued during the times of your Account being suspended. The vehicles associated with the reference numbers are linked to EastLink Account [***04].

As previously advised, we can consolidate all the charges into your EastLink Account [***04] if you wish to allow for easier payment of outstanding amounts owing to EastLink. Alternatively you can make payment as follows:

EastLink reference number(s): [***11] - [Mr ES]: **\$388.48** payable (Total has changed due to [Ms ES] nominating [Mr ES] for a Toll Invoice)

- BPAY using the following details:
 - o Biller Code: **727214**
 - o Reference Number: [***11]

EastLink reference number(s): [***76] - [Ms ES]: **\$14.80** payable (Total has changed due to [Ms ES] nominating [Mr ES] for a Toll Invoice)

- BPAY using the following details:
 - o Biller Code: **727214**
 - o Reference Number: [***76]

As previously advised, if no payment is received by 16 August 2016, the Toll Invoice(s) may then be referred to Civic Compliance Victoria, who will issue an infringement of \$155 per day of travel.

We can also confirm that your EastLink Account has the following vehicles attached to the account which currently has a credit of \$41.29 and is on Direct Debit automatic payments which will top up \$30.00 when the account balance falls below \$13.63:

[E***80/VIC]	[Make and Model]
[Q***89/VIC]	[Make and Model]
[T***54]	[Make and Model]

You are also on Monthly statements which are sent out on the 10th of each month to your preferred contact email of [Email address]

We once again remind you that all Terms and Conditions are valid to all EastLink Customers with a Pre-Paid Tag Tolling Account, but we ask that you be mindful of these especially:

“3.2 Changes to Account Details You must notify us of any change to your Account Details as soon as possible, and not later than 3 business days after the change takes effect. If you don't notify us of a change in your Account Details, you might not receive important information from us or you might incur additional charges.”

“3.7 Keeping your account balance positive

a) You must keep at least the Minimum Balance in your account at all times.

b) If at any time the balance of your account is less than the Minimum Balance, you must restore your account balance to at least the Minimum Balance by paying the required amount into your account. If the required amount is less than the Top Up Amount, you must pay at least the Top Up Amount.

c) If you've authorised automatic top up payments, we'll top up your account by debiting your bank account or credit card with a single payment equal to the minimum number of multiples of the Top Up Amount required to restore your account balance to at least the Minimum Balance.

d) If you haven't authorised automatic top up payments, we'll notify you when you need to top up your account.

e) If at any time your account does not have a positive balance, this will be a Trigger Event and we may suspend or close your account in accordance with clause 9.1. Clauses 9.3 and 9.4 explain the effect of suspension or closure of your account."

If our Terms and Conditions for use are not to your satisfaction, we ask that he exercise your right to avoid the EastLink Tollway and explore other Tolling products with other providers.

As previously confirmed, the debt accrued on Reference Number(s): [***04], [***11], [***76] include/includes Toll Administration fees and were correctly issued/applied. And as previously advised on 7 July 2016 and 14 July 2016 by the Tolling Ombudsman (who reviewed your complaint at your request) – all amounts are payable in full by 16 August 2016."

13 On 1 August 2016 Mr AB emailed EastLink as follows:

"Thanks for the information [Name],

Can you please confirm if these two accounts below have any fees in the balances owing or are they just toll charges?

EastLink reference number(s): [***11] - [Mr ES]: **\$388.48** payable (Total has changed due to [Ms ES] nominating [Mr ES] for a Toll Invoice)

- BPAY using the following details:
 - o Biller Code: **727214**
 - o Reference Number: [***11]

EastLink reference number(s): [***76] - [Ms ES]: **\$14.80** payable (Total has changed due to [Ms ES] nominating [Mr ES] for a Toll Invoice)

- BPAY using the following details:
 - o Biller Code: **727214**
 - o Reference Number: [***76]"

14 EastLink responded on 2 August 2016:

"As previously confirmed, the debt accrued on Reference Number: [***11] includes Toll Administration fees and were correctly issued. As previously advised on 7 July 2016 and 14 July 2016 by the Tolling Ombudsman (who reviewed your complaint at your request) – the below amount is payable in full by **16 August 2016**.

Please view your requested BPAY payment option below:

EastLink reference number(s): [***11] - [Mr ES]: **\$403.28** payable (Total has changed due to [Ms ES] nominating [Mr ES] for a Toll Invoice)

- Payment via BPAY using the following details:
 - o Biller Code: **727214**
 - o Reference Number: **[***11]**

Alternatively, we can organise for the above amount to be transferred in full to your EastLink Account. This would trigger the appropriate top ups from your nominated bank account to clear the amount owing. Please advise EastLink if you would like us to organise such a transfer. As previously advised, if full payment is not received by 16 August 2016, the Toll Invoice(s) may then be referred to Civic Compliance Victoria, who will issue an infringement of \$155 per day of travel to [Mr ES].”

15 On 8 August 2016 Mr AB asked EastLink:

“Can you please indicate to me how you have received loss to incur those fees with core evidence as our legal division will require that information.”

16 On 9 August 2016 the following exchange of correspondence ensued:

EastLink to Mr AB:

“Please view the attached EastLink Project Act 2004 for the relevant details in regards to our legal right to fix, charge and collect Toll Administration Fees in accordance with Victorian Legislation. We would like to draw your attention to the following sections:

194 Freeway Corporation may fix, charge and collect tolls and toll administration fees

The Freeway Corporation may fix, charge and collect tolls for the use of a vehicle in a toll zone and toll administration fees but may do so only in accordance with this Act and the Agreement.

195 Fixing of tolls and toll administration fees

(1) The Freeway Corporation in accordance with this Act and the Agreement by notice published in the Government Gazette (a) may specify toll zones on EastLink; and (b) may fix tolls that are payable in respect of the use of vehicles in toll zones; and (c) may fix toll administration fees that are payable to the Freeway Corporation and specify the circumstances in which they are payable.

*In addition to any other fees fixed under subsection (1)(c), a notice under subsection (1) may, without specifying an amount, permit the Freeway Corporation to recover, as toll administration fees in respect of a vehicle, any fees from time to time charged by VicRoads to the Freeway Corporation under the **Road Safety Act 1986** for the provision of information about the ownership of the vehicle.*

197 Liability to pay toll charged

(1) Subject to this Part, a person who is the driver of a vehicle used in a toll zone is liable to pay to the Freeway Corporation—(a) the toll charged by the Freeway Corporation for that use; and (b) the relevant toll administration fees charged by the Freeway Corporation.

200 Charge of toll

(1) The Freeway Corporation may make a request for payment of a toll for the use of a vehicle in a toll zone and any relevant toll administration fee from—(a) the operator of the vehicle; and (b) the person nominated in a known user statement or a sold vehicle statement that has been accepted by an authorised person as an effective statement.

To avoid CCV fines being issued, please make payment via the following options:

EastLink reference number(s): [***11] - [Mr ES]: **\$403.28** payable in full.

- Over the phone by calling 03 9955 1400
- In person at the EastLink Customer Service Centre at Ringwood.
- By BPAY using the following details:
- Biller Code **727214**
Reference Number [***11]

In closing, we remind you that if full payment is not received by **16 August 2016**, the Toll Invoice(s) will then be referred to Civic Compliance Victoria, who will issue an infringement of \$155 per day of travel to [Mr ES].”

Mr AB to EastLink:

“Can we please cancel the direct debit we have in place and instead top up your internal account as we go. Do we do this on your website?”

EastLink to Mr AB:

“We have removed your Direct Debit details and have placed EastLink Account: [***04] on Manual Top Ups.

As you have chosen a Manual Top-Up method, it is your responsibility to ensure the account is kept in credit and above the Low Balance Threshold (LBT) of \$13.63.

When your balance falls below the LBT, a notification will be sent via your preferred communication method – Email: [email address]

Your Tag will also beep three times to alert you when your balance falls low. A payment will then need to be made to the account.

Payment Methods Available:

- Online at www.eastlink.com.au
- Over the phone by calling (03) 99551400
- In person at the EastLink Customer Service Centre in Ringwood
- BPAY using the following details:
 - Biller Code 727214
 - Reference Number: [***04]
- 7-Eleven, United Petroleum Stations and Newsagencies
 - Retailers that support EastLink payments can be found here:
<https://drive.google.com/open?id=1Ly16f5B6bKmUfgWDFHEvkWMzGU&usp=sharing>

You can check your balance anytime by visiting our website. You will also be able to view statements, make changes, and add or remove vehicles.”

Mr AB to EastLink:

“I note you have not provided any supporting evidence to substantiate that you in fact incurred loss.

The below refers to tolling charges.

Please note tolling charges are not an issue and have been paid to date.

Fee's on top of tolling charges is where there is matter is at. In that we deem are unconscionable when we state –

1. You did not exercise reasonable measures to inform us that the electronic direct debits were not functioning.
2. Did not contact the account representative or anyone about the issue. (Other than spam type emails that were blocked).

[Name] it is imperative for any organisation to exercise reasonable measures of mitigation before seeking costs, fee's etc. Our position is you did not appropriate mitigate the potential for costs here.

A simple phone call would have no doubt resolved this.

This matter is sitting with the ombudsman thus until they resolve this our position is clear and that we dispute all fees being charged wholeheartedly.

It would be a contravention of the act and imprudent for you to move this matter to the CCV until the dispute is resolved.

Please note to date my time spent dealing with this is: **\$313.45** that I have billed our company for. We will be seeking remuneration from Eastlink for this.”

EastLink to the TCO:

“As per the below email, we are at a impasse with the customer representing [Name] Pty Ltd.

As the customer has not accepted your previous ruling, are you able to advise EastLink on how to proceed or is your office able to respond to the customer?”

17 On 15 August 2016 the TCO wrote to Mr AB as follows:

“I enclose a copy email from EastLink.

EastLink has explained the legislative basis for the charging of tolls and fees payable for unpaid tolls.

It would appear that EastLink acted in accordance with the requirements for the imposition of fees in respect to the unpaid tolls. As a toll road user you have the responsibility to pay tolls and so avoid fees

It is not the fault of EastLink that your direct debits were not operating or its warning emails were blocked or sent to junk when forwarded to your email address provided by you.

I recommend that you attend to payment of the outstanding fees.”

18 On 16 August Mr AB responded to the TCO:

“I am getting rather annoyed here that my requests to clarify the tolling vs late fee's charges are still not segregated or clarified??
Please see my replies below in red for your attention.

The issue here is Eastlink closed the main account, then created all separate accounts and sprayed them everywhere into vehicle based accounts, which has caused confusion everywhere.

...

I enclose a copy email from EastLink.

EastLink has explained the legislative basis for the charging of tolls and fees payable for unpaid tolls.

It would appear that EastLink acted in accordance with the requirements for the imposition of fees in respect to the unpaid tolls. As a toll road user you have the responsibility to pay tolls and so avoid fees

In reply –

On that basis where you state it 'appears' that Eastlink have acted in accordance with the legislation can you then please provide the 'late fees section' associated to the legislation so we can peruse accordingly.

It is not the fault of EastLink that your direct debits were not operating or its warning emails were blocked or sent to junk when forwarded to your email address provided by you.

In reply –

It's not our fault either. We unsure what occurred, the purpose of them taking money out of account is as advertised by them, so it is on a set-and-forget basis. So therefore if there were any issues. They did not in our view make all reasonable efforts to contact us. They use the same email account to send junk mail and that is not acceptable conduct.

I recommend that you attend to payment of the outstanding fees.”

19 On 18 August 2016 Mr AB emailed EastLink:

“Does the attached Citylink invoice get covered by our Eastlink account?”

20 EastLink replied to Mr AB on 19 August 2016 as follows:

“As per your conversation with an EastLink operator on 16 August 2016, I have attached a breakdown of the EastLink Toll Invoices outstanding.

In regards to the CityLink Toll Invoice you have attached:

- The travel occurred during EastLink Account: [***04] being suspended.
- We recommend that you make full payment to CityLink (follow the instructions presented on Toll Invoice)”

21 On 26 August 2016 the TCO emailed Mr AB as follows:

“I am satisfied that EastLink has provided the necessary details in respect to your accounts.

There is nothing further I can do to assist you so I recommend that you make immediate payments. Failure to do so will lead to recovery processes by EastLink that will involve further costs.

This should be given your immediate attention.”

22 On 31 August 2016 the following exchange of emails took place:

EastLink to Mr AB dated 31 August 2016:

"In response to your email on 30 August 2016 (attached):

An independent arbitrator - the Tolling Customer Ombudsman who has presided over the dispute between [Name] Pty Ltd and EastLink has come to a ruling on 26 August 2016, and has concluded that all amounts owing/discussed are payable in full to EastLink.

As a result, a final lock has been placed until **14 September 2016** - upon which if the outstanding amount below is not cleared in full, the Toll Invoice(s) will then be referred to Civic Compliance Victoria, who will issue an infringement of \$155 per day of travel to [Mr ES].

In addition - EastLink will also reserve the right to begin debt recovery processes if payment is not received, and we confirm that any further enquiries from today's date will not affect the expiry date of the lock.

EastLink reference number(s): [***11] - [Mr ES]: **\$393.16** payable in full via the following payment options:

- BPAY using the following details:
 - Biller Code: **727214**
 - Reference Number: **[***11]**
- Over the phone by calling (03) 99551400
- In person at the EastLink Customer Service Centre in Ringwood

As stated by yourself on 9 August 2016:

"This matter is sitting with the ombudsman thus until they resolve this our position is clear and that we dispute all fees being charged wholeheartedly.

It would be a contravention of the act and imprudent for you to move this matter to the CCV until the dispute is resolved."

In response to your questions:

Regarding the breakdown of fees and tolls (as attached), we agree to pay the trip costs but not the fees. Can you please then confirm the amount payable of just the total trip costs?

(See above)

Also, what vehicles are linked to the following accounts?

- Reference Number: **[***11]**
Reference Number: **[***76]**

These are not Tolling Accounts but reference numbers for locations of Toll Invoices issued to vehicles [Q***89/VIC] and [E***80/VIC].

And:

1. What is the Account Number for vehicles:
[Q***89/VIC]

[T***54]
[E***80/VIC]

EastLink Account Number: [***04]

2. There are no tolling charges owing as at 30 Aug 08 on the above?

Toll travel up until 30 August 2016 has been applied to EastLink Account Number: [***04]

3. The account number for (1) above is active?

EastLink Account Number: [***04] is currently active but in debit with **\$45.74** outstanding – please make immediate payment (minimum \$75.74) to avoid account suspension and Toll Invoice fees.”

Attached email from Mr AB to EastLink under reply:

“Regarding the breakdown of fees and tolls (as attached), we agree to pay the trip costs but not the fees. Can you please then confirm the amount payable of just the total trip costs?

Also, what vehicles are linked to the following accounts?

- Reference Number: [***11]
Reference Number: [***76]

And:

1. What is the Account Number for vehicles:
[Q***89/VIC]
[T***54]
[E***80/VIC]
2. There are no tolling charges owing as at 30 Aug 08 on the above?
3. The account number for (1) above is active?”

Mr AB to EastLink:

“Thanks for getting back to me but can you please confirm which vehicles belong to Reference Number: [***11]?”

Mr ES to EastLink:

“Seeing that you have cc’d me in...
I have read your email and wish to make a quick reply, however please liaise with [Mr AB] as you have been.

You are contradicting yourself and causing more confusion here [Name] after reviewing your dialogue below.

I note we have now 3 made up reference numbers....

- [***11]
- [***11]
- [***76]
- [***04]

Yet only 2 vehicles that were on one account.

The matter is simple. Eastlink had issues debiting our account, and quite simply failed to appropriately mitigate losses and issues to all parties by merely notifying them and rectifying these issues. To date we are not clear on why you had issues?

Using an email that you use to spam advertising emails from to notify customers also of serious issues is unsatisfactory in anyone's common-sense view of this.

- We note you confirm that account number [***04] as at 31 August 2016 covers the following vehicles:
[Q***89/VIC]
[T***54]
[E***80/VIC]
- And that this account is in debit of 45.74. Where do we get access to this account (assuming it's some internal account) so we can monitor and top-up accordingly? I note you had something on your website so we need logins provided immediately.
- Please provide the determination of the Tolling Ombudsman to [email address] cc. me in to please, so that we can have our Legal Division peruse it's validity.

Note that our time spent on this is being accounted and we will be issuing out a pro-forma tax invoice next week to recoup these costs if our Legal Division finds that you did not appropriately mitigate costs and issues to all relevant parties."

23 On 1 September 2016 EastLink responded to Mr AB and Mr ES:

"This email is also in response to the attached: "RE: EastLink-[Name] Pty Ltd" sent by [Mr ES].

*"Thanks for getting back to me but can you please confirm which vehicles belong to Reference Number: [***11]?"*

The Licence Plate Numbers associated with Reference Number: [***11] are [Q***89/VIC] and [E***80/VIC]

As all matters have been addressed previously – in detail (as per this entire email chain) we recommend that you review the previous correspondence again; and the preceding correspondence to find the requested information you seek.

To manage your EastLink Account online, follow the link below and login using either your **12 digit Account Number: [***04]** OR your **Email address:** [email address], plus your 4 digit PIN: [****]

<https://etolling2.breeze.com.au/Login-Services/Login.aspx>

EastLink's determination is to accept and abide by the Tolling Customer Ombudsman's decision(s) as he has requested that you make full payment on four occasions (attached).

In closing, we give consent for you to forward this email (which includes the Tolling Customer Ombudsman's ruling) to your legal department."

24 On 5 September 2016 Mr AB wrote to EastLink:

"Can you please waive the fees attached to the Citylink bill attached as the account shouldn't have been suspended at the time, happy to pay the toll charges only. Please advise."

25 EastLink responded on 6 September 2016 as follows:

“EastLink cannot waive another Toll operator’s Invoice fees as we are separate companies and your EastLink Account was suspended during the time of travel. For further details in regards to why/how/when your EastLink Account has been in suspension – please refer to the previous correspondence which starts at the beginning of this email chain.

In closing, we recommend that you follow the instructions on the Toll Invoice to make payment.”

26 On 8 September 2016 the TCO advised EastLink:

“Formally advise that you are going to close the complaint and it is for the TCO to decide.”

27 On 9 September 2016 EastLink advised Mr AB as follows:

“This email is to formally advise you that EastLink will close your complaint on 14 September 2016.

Further determinations and actions will be for the Tolling Customer Ombudsman to decide.”

28 On 14 September 2016 Mr AB notified EastLink:

“I have paid the sum of \$235.44 today, please see receipt attached. I hereby confirm that we formally dispute the toll invoice fees of \$157.72 for the reasons previously provided and await appropriate intermediary resolution on that dispute.”

29 The TCO advised Mr AB on 17 September 2016 that a Decision will be prepared in this matter as he believed that all the evidence and relevant submissions had been provided.

Discussion

30 The objective of the TCO is to resolve complaints, which fall within its jurisdiction, between toll road operators, which fund the TCO, 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. The TCO decisions are binding on toll road operators but not on customers, who retain all their legal rights.

31 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.

32 The TCO is not a judicial body and does not have punitive powers. 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. It must act within the limits of its jurisdiction in doing this.

- 33** The TCO only has jurisdiction over the conduct of toll road operators and cannot determine matters in relation to allegations against Civic Compliance Victoria (CCV) or other outside bodies, such as Government agencies like SPER. Decisions are binding on toll operators but not customers, who retain all their legal rights.
- 34** There are two parties involved in this dispute with EastLink. For the purpose of this decision they will be described as customers. I am satisfied that the customers have had the opportunity to resolve this matter and it would not benefit from further mediation.
- 35** I am satisfied that EastLink has provided an accurate and extensive history of the travel of the customer's vehicles on the EastLink toll road. It has provided account details in respect to the customer's vehicles and the amounts that were outstanding for both tolls and administration fees incurred as a consequence of the non-payment of tolls.
- 36** On 1 August 2016 Mr AB emailed EastLink as follows:

"Thanks for the information [Name],

Can you please confirm if these two accounts below have any fees in the balances owing or are they just toll charges?

EastLink reference number(s): [***11] - [Mr ES]: **\$388.48** payable (Total has changed due to [Ms ES] nominating [Mr ES] for a Toll Invoice)

- BPAY using the following details:
 - o Biller Code: **727214**
 - o Reference Number: [***11]

EastLink reference number(s): [***76] - [Ms ES]: **\$14.80** payable (Total has changed due to [Ms ES] nominating [Mr ES] for a Toll Invoice)

- BPAY using the following details:
 - o Biller Code: **727214**
 - o Reference Number: [***76]"

- 37** EastLink responded on 2 August 2016:

"As previously confirmed, the debt accrued on Reference Number: [***11] includes Toll Administration fees and were correctly issued. As previously advised on 7 July 2016 and 14 July 2016 by the Tolling Ombudsman (who reviewed your complaint at your request) – the below amount is payable in full by **16 August 2016**.

Please view your requested BPAY payment option below:

EastLink reference number(s): [***11] - [Mr ES]: **\$403.28** payable (Total has changed due to [Ms ES] nominating [Mr ES] for a Toll Invoice)

- Payment via BPAY using the following details:

- o Biller Code: **727214**
- o Reference Number: **[***11]**

Alternatively, we can organise for the above amount to be transferred in full to your EastLink Account. This would trigger the appropriate top ups from your nominated bank account to clear the amount owing. Please advise EastLink if you would like us to organise such a transfer. As previously advised, if full payment is not received by 16 August 2016, the Toll Invoice(s) may then be referred to Civic Compliance Victoria, who will issue an infringement of \$155 per day of travel to [Mr ES].”

38 I am satisfied that the customers understand the amounts outstanding for both the tolls and fees. I have recommended in the course of this dispute with EastLink that they make payment of the amounts owing. I understand from one of their submissions that they have paid the amounts owing as tolls but not the administration fees. I treat this as a recognition of their liability to pay such tolls.

39 However, these tolls were not paid in accordance with the requirements of their account for the use of the EastLink toll road, which I am satisfied that they understood. The customers had an automatic payment arrangement for payment of tolls incurred on their account, but the account did not make payment of tolls incurred for travel. As EastLink advised:

- **“02/02/16** – An Automatic Payment failure occurred (bank account details were changed but the customer did not update or advise EastLink of the change.) and a notification is issued to email address - [email address]
- **04/02/16** – The Account falls into debit and a Suspension Warning is issued to email address - [email address] requesting a payment of \$30.70.
- **10/02/16** – A Monthly Account Statement is issued to email address - [email address] advising that Account is \$0.70 in Debit.
- **11/02/16** – The Account remains unpaid an Account Suspended notification is issued to email address - [email address] requesting a payment of \$38.29.
- **10/03/16** – A Monthly Account Statement is issued to email address - [email address] advising that Account is \$49.29 in Debit.
- **10/04/16** – A Monthly Account Statement is issued to email address - [email address] advising that Account is \$100.94 in Debit.”

40 EastLink sent notices of the default and account suspension to the customers but they did not rectify the situation. These notices included the following:

- **“14/04/16** – EastLink sends response to email address - [email address] advising [Mr ES] of the requirement of keeping the Account in a positive balance and that our Tags inform our customers via beeps of the Account status. We also attach copies of Account Suspension, Suspension Warnings, recent Monthly Statements. **(view 2nd attachment: “RE: EastLink Enquiry”). 14/04/16** –
- [Mr ES] replies and asks why Account was suspended and why he didn’t get a call or email in regards to it. **(No payment is received by EastLink)**
- **14/04/16** – EastLink sends response to email address - [email address] advising [Mr ES] of the requirement of keeping the Account in a positive balance and that our Tags inform our customers via beeps of the Account status. We also attach copies of Account Suspension, Suspension Warnings, recent Monthly Statements. **(view 2nd attachment: “RE: EastLink Enquiry”).**
- **14/04/16** – [Mr ES] replies and states that no notice was made and that some vehicles don’t have Tags. **(No payment is received by EastLink)**

- **14/04/16** – EastLink sends response to email address - [email address] advising the customer for a **second time** that a payment is required to bring the Account back into a positive balance. We also advise the customer to confirm Tag details. **(view 3rd attachment: “RE: EastLink Enquiry”)**

41 Further explanation of the dealings with the customers is set out in the body of this Decision.

42 EastLink has explained the basis for the payment of fees for unpaid tolls to the customers. On 8 August 2016 Mr AB asked EastLink:

“Can you please indicate to me how you have received loss to incur those fees with core evidence as our legal division will require that information.”

43 On 9 August 2016 the following exchange of correspondence ensued:

EastLink to Mr AB:

“Please view the attached EastLink Project Act 2004 for the relevant details in regards to our legal right to fix, charge and collect Toll Administration Fees in accordance with Victorian Legislation. We would like to draw your attention to the following sections:

194 Freeway Corporation may fix, charge and collect tolls and toll administration fees

The Freeway Corporation may fix, charge and collect tolls for the use of a vehicle in a toll zone and toll administration fees but may do so only in accordance with this Act and the Agreement.

195 Fixing of tolls and toll administration fees

(1) The Freeway Corporation in accordance with this Act and the Agreement by notice published in the Government Gazette (a) may specify toll zones on EastLink; and (b) may fix tolls that are payable in respect of the use of vehicles in toll zones; and (c) may fix toll administration fees that are payable to the Freeway Corporation and specify the circumstances in which they are payable.

*In addition to any other fees fixed under subsection (1)(c), a notice under subsection (1) may, without specifying an amount, permit the Freeway Corporation to recover, as toll administration fees in respect of a vehicle, any fees from time to time charged by VicRoads to the Freeway Corporation under the **Road Safety Act 1986** for the provision of information about the ownership of the vehicle.*

197 Liability to pay toll charged

(1) Subject to this Part, a person who is the driver of a vehicle used in a toll zone is liable to pay to the Freeway Corporation—(a) the toll charged by the Freeway Corporation for that use; and (b) the relevant toll administration fees charged by the Freeway Corporation.

200 Charge of toll

(1) The Freeway Corporation may make a request for payment of a toll for the use of a vehicle in a toll zone and any relevant toll administration fee from—(a) the operator of the vehicle; and (b) the person nominated in a known user statement or a sold vehicle statement that has been accepted by an authorised person as an effective statement.

To avoid CCV fines being issued, please make payment via the following options:

..”

Mr AB then wrote to EastLink:

“I note you have not provided any supporting evidence to substantiate that you in fact incurred loss.

The below refers to tolling charges.

Please note tolling charges are not an issue and have been paid to date.

Fee’s on top of tolling charges is where there is matter is at. In that we deem are unconscionable when we state –

You did not exercise reasonable measures to inform us that the electronic direct debits were not functioning.

2. Did not contact the account representative or anyone about the issue. (Other than spam type emails that were blocked).

[Name] it is imperative for any organisation to exercise reasonable measures of mitigation before seeking costs, fee’s etc. Our position is you did not appropriate mitigate the potential for costs here.

A simple phone call would have no doubt resolved this.

This matter is sitting with the ombudsman thus until they resolve this our position is clear and that we dispute all fees being charged wholeheartedly.

It would be a contravention of the act and imprudent for you to move this matter to the CCV until the dispute is resolved.

Please note to date my time spent dealing with this is: **\$313.45** that I have billed our company for. We will be seeking remuneration from Eastlink for this.”

44 EastLink wrote to the TCO:

“As per the below email, we are at an impasse with the customer representing [Name] Pty Ltd.

As the customer has not accepted your previous ruling, are you able to advise EastLink on how to proceed or is your office able to respond to the customer?”

45 On 26 August 2016 the TCO emailed Mr AB as follows:

“I am satisfied that EastLink has provided the necessary details in respect to your accounts.

There is nothing further I can do to assist you so I recommend that you make immediate payments. Failure to do so will lead to recovery processes by EastLink that will involve further costs.

This should be given your immediate attention.”

46 This matter has not been resolved by the customers despite my advice. Having considered all the evidence provided by the parties, I am satisfied that EastLink is entitled to payment of the tolls and fees in this matter and any outstanding balance should immediately be paid by the customers. In the event of non-payment EastLink may forward the outstanding balance for collection by Civic Compliance Victoria.

Determination

- 47** On the evidence before me, I cannot relieve the customers of their obligation to pay the outstanding monies due.
- 48** I reaffirm that my decision is not binding on the customers and that they can seek relief in any other forum.

Michael Arnold
Tolling Customer Ombudsman

Dated: 6 October 2016