

DECISION

Summary and outcome

1. The complainant, Ms SC, has had her Linkt account charged for trips made on Citylink and Eastlink in Melbourne. She states that these charges have been generated by a car that she sold in October 2017 as the tag was left in the vehicle. She advised Citylink on 30 October 2017 that the car needed to be removed from the account and a new car added.
2. Citylink, now Linkt, has offered to refund all of the CityLink amounts (a total of \$506.40) as a goodwill gesture, but indicated that it cannot refund the Eastlink trips. It further notes that quarterly statements have been issued since 13 January 2018 and that normally customers have 90 days to dispute any travel on their account.
3. The offer made by Linkt is appropriate in the circumstances.

Background

4. The complainant, Ms SC, first made a complaint to the TCO Tolling Customer Ombudsman (TCO) on 9 July 2019 after a telephone call with Linkt on 8 July 2019 failed to resolve her complaint.
5. After the initial response from Linkt to the TCO complaint on 17 July 2019, Ms SC advised in response that:
 - a. She had sold several cars over the life of her tolling account and provided the same advice regarding the sales on each occasion. This was the only instance on which the eTag association was not removed as requested.
 - b. She does not believe that the inability of Linkt to recover funds from Eastlink should affect whether she is liable for the trips or not
 - c. She had trusted that she had been billed correctly and had acted in good faith that she was being billed correctly.
6. Neither party is able to produce contemporaneous evidence regarding what was requested in the October 2017 call.

Current position of the parties

7. Linkt maintains that the vehicle's registration was removed as requested, but it is the responsibility of each customer to:
 - a. Remove tags from vehicles at the time of sale and inform Linkt of any changes in vehicle registration
 - b. review statements and advise of any anomalies within 90 days of receipt.¹

Further, it maintains that it cannot recoup funds from the new owner or Eastlink.

8. While the refund of \$506.40 was received by Ms SC, she remains dissatisfied on the basis that Linkt's response has not established why she should be liable for tolls incurred by the new vehicle's owner given that the registration was disassociated from her account at the appropriate time.

Discussion

9. When making a decision, I am required to examine all the available information and to reach an outcome which is fair to both parties and is based on the 'balance of probabilities.' This means that where the parties do not agree on an issue, I need to decide whether it is more likely than not that a particular event did, or did not, happen.

CityLink tolls

10. Clause 3 of the terms and conditions of the Everyday Account Customer Service Agreement relevantly states that:

*We will operate the CityLink electronic tolling system to detect vehicles that make Trips on CityLink by **identifying your Tag** or the vehicle's Registration Number. We will charge the relevant CityLink Tolls to your Account **which may be based on your Tag, the Linkt Registration or the observed Class of your vehicle**. You are also responsible for the Tolls or fees incurred by any vehicle **that you drive on CityLink, whether or not it is a Nominated Vehicle**. (emphasis added)*

11. A Nominated Vehicle is a vehicle which the account holder has asked to link to their account and is registered on the Linkt Register. At the time of travel (and thus at the point that the relevant tolls were incurred) both parties accept that the relevant vehicle registration was not associated with Ms SC's account and so was not a Nominated Vehicle.

¹ The general terms and conditions can be found at <https://www.linkt.com.au/melbourne/legal/csa/everyday-account-customer-service-agreement>

12. It also appears to be accepted that Ms SC was not the driver of the relevant vehicle on CityLink at the relevant times.
13. However, Linkt is entitled to impose tolls and fees based upon the tag detected. It is a matter of contention about whether the tag should have remained associated with the account at that time.

Eastlink tolls

14. Clause 3 goes on to state:

Travel on Eligible Toll Roads

Other Eligible Toll Road operators may operate electronic tolling systems on their toll roads to detect vehicles that make Trips on those toll roads by identifying the Tag or the vehicle's Registration Number. The Eligible Toll Road operator will send Trip data and the relevant Tolls to us so we can charge those Eligible Toll Road Tolls (and any fees if applicable) to your Account. We will charge those amounts determined as payable by the Eligible Toll Road operator and we are not responsible for confirming the accuracy of that information.

15. Eastlink is an Eligible Toll Road operator and has detected the tag making a trip on its toll road. Eastlink sent Linkt the Trip data and relevant tolls to charge those tolls and fees to Ms SC's account.
16. The trip data referred to is not defined. 'Trip' is defined in the *Eastlink Project Act (2004)* broadly as the driving of a vehicle on EastLink (subject to certain qualifiers). It is likely that the trip data was therefore, at most, the entry and exit points for the relevant trips along with time, date and tag/registration information. The schedule of Eastlink tolls would already be known to Linkt.
17. It is unclear the verification which is done on this information prior to Linkt charging to the account linked to the relevant tag. However, Linkt can only charge Eligible Toll Road Tolls in accordance with the terms of the contract.
18. Again, the imposition of the tolls relies upon the detection of a tag and the association of that tag to a valid account.

The tag

19. Clause 7 relevantly states:

We will debit a toll to your Account when one or more of your Nominated Vehicles, your Tag or the Number Plate of your Nominated Vehicle is detected in a Toll Zone or on an Eligible Toll Road, subject to clause 17.

...

If your Nominated Vehicle is linked to another Account, and your Nominated Vehicle is detected on an Eligible Toll Road without your Tag being detected, we may choose which Account will be charged with the Tolls and any applicable fees from that Trip.

We will charge Tolls and the No Tag in Vehicle Fee to your Account:

- a) without any knowledge of and regardless of who was driving the vehicle at that time; and*
- b) whether or not you authorised or were aware of the use of the Nominated Vehicle.*

20. Clause 17 details when the agreement will end. It has no bearing on the present situation. The identity of the driver also has no bearing, except to note that it is accepted that it was not Ms SC.
21. As above, it is also accepted that the vehicle was not a Nominated Vehicle at the time of the tolls being charged. As a result, the complaint rests on whether the tag, not the registration, was, or should have been, disassociated from Ms SC's account in October 2017.
22. If the tag has appropriately remained linked to Ms SC's account, then she will be liable for the tolls and fees associated with the tag being properly detected by the electronic detection systems irrespective of the vehicle in which it was travelling.
23. Ms SC has advised that, at the time she noticed these charges (presumably in July 2019) she had 4 tags on her account – 2 for her current vehicles, the tag in question and a 4th tag with no registrations attached. The tag in question and the 4th tag were removed at her request when she first checked her account and queried the charges.
24. Linkt advise that:
 - a. Ms SC called on 30 October 2017 and removed the relevant registration from her account and added a new one. She did not request the removal of the tag from her account; and
 - b. its records do not indicate any mention of an e-tag still being associated with the relevant vehicle.
25. I have not been provided with any recording of the October 2017 call or any contemporaneous notes to indicate whether the tag, or the registration, or both were asked to be removed. I only have statements by the complainant and employees of Linkt about what appears to have occurred almost 2 years ago.
26. As a result, I must try to determine what, in the circumstances, is most likely to have occurred.

27. If the relevant tag had been requested to be removed in October 2017, I see no reason why it would not have been. There is no benefit to Linkt in not carrying out this request and it is a normal part of their business operations.
28. Given the circumstances of one vehicle being removed and another registered, it also appears reasonable for the Linkt operator to assume that the tag would simply be moved from one vehicle to another of the same class – in this case between two motor cars. Queries may have been raised about the fate of the tag had the new vehicle been a motorcycle (which does not require a tag) or a different class of vehicle, but otherwise there was minimal need to enquire beyond providing an extra layer of customer service.
29. Even if the complainant had requested that the tag be removed in October 2017, the first of the six statements should have indicated to her that the request had not been processed properly.
30. While I sympathise with Ms SC's submission that she had assumed that she was being billed correctly and that it should not be wholly the responsibility of the consumer in verifying the accuracy of bills, reasonable care should be taken. This is particularly so after a change had been made to the account such as deregistering a vehicle.
31. Had Ms SC done so, the issue could have been identified much sooner and the matter not escalated as it has.

Determination

32. I am satisfied that, in the circumstances, it appears that the tag was not requested to be removed from the account in October 2017 and there was no reason for Linkt to do so in the absence of any instructions from Ms SC.
33. As the terms and conditions permit Linkt and Eligible Toll Road operators to levy tolls based on the tag information and Eastlink referred its tolls and fees to Linkt for attribution against the relevant account. As the tag remained associated with Ms SC's account, the tolls and fees from both Linkt and Eastlink appear to have been properly charged.
34. In the circumstances, I am satisfied that Linkt's goodwill offer to refund the CityLink charges in order to resolve this complaint is appropriate.
35. Were Linkt to refund the remaining \$800 of Eastlink tolls to Ms SC, it would essentially be paying tolls to Eastlink on her behalf when it was entitled to pass these costs on to the relevant account holder linked to the tag. This is not a fair outcome.
36. I have no jurisdiction over the new owner of the relevant car and so I cannot order the outcome which would be the fairest to all parties to this complaint. The new owner has received the benefit of use of toll roads for which Ms SC is paying. In the

proper course of things, the new owner owes Linkt and Eastlink the relevant tolls. Unfortunately, Linkt have already advised that the vehicle is not linked to any other tag or account which could be debited instead.

37. The fairest outcome is that the new owner be required to pay the tolls which he or she incurred. Were the new owner able to be located, it may be that Ms SC has a cause of action against that individual, given that she has suffered the loss, but she would need to seek independent legal advice regarding this.
38. I remind the parties that under the TCO Tolling Customer Ombudsman process, my decision is not binding on Ms SC and that she can seek relief in any other forum.

Nicolas Crowhurst
Interim TCO Tolling Customer Ombudsman

Dated: 3 August 2019