



# TELECOMMUNICATIONS AUTHORITY OF FIJI

## DETERMINATION NO: 01/2024

**Subject:** Determination on the Alleged Illegal Activities by NetVault Fiji Pte Ltd ['NetVault']

**Date:** 08 December 2024

**Reference:** NFPL/24

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### 1. Introduction

"This determination is issued by the Telecommunications Authority of Fiji under Section 18(1)(b) of the Telecommunications Act 2008 following an investigation into an alleged illegal activity by NetVault (Fiji) Pte Ltd ("**Netvault**").

After various earlier communications, on 20 November 2023, a Desist Order was issued to Netvault, outlining specific actions required to address regulatory non-compliance involving the unauthorized sale and operation of Starlink services in Fiji. Subsequent review of additional documentation provided as part of the discovery process led to the formulation of this determination.

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### 2. Background

- **Complaint/Investigation Trigger:** The investigation was initiated in 2023 after Telecom Fiji Ltd ("**Telecom**"), a licensed operator lodged a formal complaint against Netvault regarding the alleged illegal sale of telecommunications services within Fiji. This was followed by a joint letter of complaint by Telecom and Vodafone Fiji Ltd ("**Vodafone**").
- **Desist Order:** A Desist Order was issued by the Telecommunications Authority of Fiji ('**Authority**') pursuant to section 79 of the Telecommunications Act 2008 on 20th November 2023. Following action was required from NetVault:
  - *Cease Selling Starlink Services in Fiji – not complied with.*
  - *Deactivation of Accounts Related to Starlink Services Sold in Fiji – not complied with.*
  - *Compliance Evidence Submission – not complied with.*
  - *Submission of Customer Information – partially complied with.*
  - *Submission of Authorised Reselling or Retailing Agreement – non satisfactory.*

- **Discovery Process:** Many documents were exchanged between TAF and NetVault’s legal counsels. TAF was represented by Karunaratne Lawyers while NetVault was represented by Lal Patel Bale lawyers. While there has been a voluminous exchange of documents between TAF and NetVault's legal counsels, it is important to note that the volume of documentation does not necessarily equate to the inclusion of all the required or relevant information. It took nearly a year to gather some, though not all, of the required information, which suggests that there may have been delays in providing the necessary details, potentially as a strategy to buy time or slow down TAF’s momentum.

It must be noted for records that a better part of the one-year period [between November 2023 – ~August/September 2024] no tangible communications were received from NetVault to resolve the matter. TAF has exhausted all possible avenues to resolve the compliance issues with NetVault, including providing ample time and opportunities for the company to make representations, either personally or through legal counsel. TAF ensured that NetVault was given a fair chance to be heard before formulating this determination

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### 3. Applicable Legal Framework

The laws, regulations, and guidelines relevant to the determination.

- **Telecommunications Act 2008**

*Interpretation*

**“telecommunications service”** means any service that enables or facilitates telecommunications

**“telecommunications”** means the conveyance of one or more of the following -

(a) speech, music or other sounds;

(b) visual images;

(c) signals serving for the imparting of any matter otherwise than in the form of sounds or visual images;

(d) signals serving for the actuation or control of machinery or apparatus, from one device to another, through the agency of electric, magnetic, electromagnetic, electrochemical or electro mechanical energy, or by means of fibre optic technology, or any other means or form of conveyance that may be developed in the future;

**Section 33. - (1)** No person may provide a telecommunications service except -  
(a) under the authority of a licence granted under this Part

**18. - (1)** The Authority may, upon written application by any person having an interest in the subject-matter of the determination, or upon its own motion if the Authority has reason to believe a determination is necessary, make determinations relating to -

(a) any obligation of a licensee relating to the terms or conditions of a licence or a spectrum licence, including obligations in regulations, standards or technical rules; or

(b) any activity set out in section 79(1),

in accordance with subsection (3) or any other prescribed procedures.

(3) In making any determination, the Authority must -

(a) provide reasonable notice to any person who may be affected by the determination;

(b) allow any affected person an opportunity to be heard; and

(c) provide reasons in writing for its determination.

- **Telecommunications (Licensing) Regulations 2012** –

**Regulation 3** – Every service provider who provides telecommunications services must hold a license issued by the Authority under the Act.

**Regulation 4 (3)**

For the avoidance of doubt-

(a) a licence to provide telecommunications services shall cover the operation of telecommunications facilities necessary or desirable to provide such services;

(b) persons operating equipment and systems that are not associated with the provision of telecommunications services, such as billing systems, may not be licensed under these Regulations; and

(c) a person or an enterprise, such as a hotel, who resells the telecommunications services of a licensee without change or modification to the services, need not be licensed in respect of such resale activities.

- Fiji Customs Act 1986

- Policies of TAF

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#### 4. Review of Evidence

The following evidence has been reviewed as part of the determination:

- Email correspondence between Mesake Tuinabua of Telecom Fiji Ltd (“**TFL**”) and Tevita Navila of TAF dated from 29 September 2023 till 25 October 2023 [**Annexure A**].
- Email correspondences between Tevita Navila of TAF and Ryan Goodnight of Space X (Starlink) dated from 25 October 2023 till 11 November 2023. [**Annexure B**].
- Email Correspondences between Tevita Navila of TAF and NetVault from 11 November 2023 till 20 November 2023. [**Annexure C**].
- Desist Order 02/2023 issued to NetVault dated 20 November 2023 [**Annexure D**].
- Screenshots of 2024 Facebook posts from NetVault’s director Radek Tkaczyk (Technical Director) [**Annexure E**].
- Email correspondences from Vodafone’s CEO to TAF Chair dated 3 July 2024 to TAF [**Annexure F**].
- Joint letter of complaint dated 3 July 2024 from licensed service providers - Vodafone and TFL [**Annexure G**].
- NetVault (Fiji) Pte Ltd - Certificate of Registration [**Annexure H**].
- Starlink Cease and Desist Order to NetVault [**Annexure I**].
- Correspondence from Lal Patel Bale Lawyers to Karunaratne Lawyers dated 7 October 2024 [**Annexure J**].
- Correspondence from LTA to TAF dated 16 October 2024 [**Annexure K**].
- Email from Link Technologies to TAF dated 16 October 2024 with various attachments [**Annexure L**].
- Correspondence from Lal Patel Bale Lawyers to Karunaratne Lawyers dated 21 October 2024 [**Annexure M**].
- Email correspondences between Rebecca and Ted of Starlink and TAF dated 14 October 2024 till 23 October 2024 [**Annexure N**].
- Email correspondence between TAF and Investment Fiji from 22 till 23 October 2024 [**Annexure O**].

- Email Correspondences between TAF and Fiji National Provident Fund ('**FNPF**') from 25 October 2024 till 9 December 2024 [**Annexure P**].
  - Correspondence from TAF to FNPF dated 25 October 2024 [**Annexure Q**].
  - Correspondence from TAF to Director Immigration dated 25 October 2024 [**Annexure R**].
  - Correspondence from Lal Patel Bale Lawyers to Karunaratne Lawyers dated 4 November 2024 [**Annexure S**].
  - Correspondence from Lal Patel Bale Lawyers to Karunaratne Lawyers dated 20 November 2024 [**Annexure T**].
  - Correspondence from Lal Patel Bale Lawyers to Karunaratne Lawyers dated 22 November 2024 [**Annexure U**].
  - Review of NetVault's introduction of new innovative products in the Fijian market.
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## 5. Findings

Present the regulator's analysis based on the evidence:

1. NetVault is in material breach of the license requirements for the telecommunications sector in Fiji and its actions constitute a breach of the section 33 of Telecommunications Act 2008 and Regulation 3 of the Telecommunications (Licensing) Regulations 2012. It is mandatory that all telecommunications service providers must have a license from TAF to legally provide such services in Fiji.
2. It must be emphasized that NetVault began operating in Fiji **before** Starlink Fiji Pte Ltd [**'Starlink'**] was granted its license in the country. While NetVault may reference an agreement with Starlink in Australia or other jurisdictions, it is crucial to note that such an agreement falls outside of Fiji's jurisdiction. Regardless of any existing agreement between the parties, operations in Fiji are governed by Fijian law, and Starlink's lack of a license to operate in Fiji during the relevant period renders their position legally untenable.
3. Due Diligence – NetVault claims, without any substantive evidence, that they had consulted various levels within TAF and the government, and that they claim that the advice given to the company was to proceed with the establishment of the business without obtaining a license. Additionally, NetVault claims, again without

any evidence, that TAF's Manager of Technical Services, Mr. Tevita Navila had advised them that no license was required.

4. However, it is well established that ignorance of the law does not constitute a valid defence for breaching legal obligations. While NetVault may be afforded the benefit of the doubt regarding receiving incorrect advice—despite the lack of supporting evidence—this cannot justify their decision to begin providing illegal telecommunications services in Fiji. This is despite the fact that NetVault was formally informed by TAF on various occasions of their non-compliance in November 2023, NetVault continued to assert that a license is unnecessary. This persistent claim, despite clear legal guidance to the contrary, demonstrates a wilful disregard for the law, further weakening their position. Moreover, their failure to take corrective actions or exhibit an understanding of the legal requirements only exacerbates their non-compliance.
5. Consultations – In the course of conducting its due diligence for investigations, TAF engaged with several stakeholders. TAF met with the Fiji National Provident Fund (“**FNPF**”) to determine the number of employees associated with NetVault and assess any potential impact on employees should any actions be taken. TAF also consulted with Investment Fiji, who confirmed they had no records of NetVault's investments in Fiji. Additionally, the Land Transport Authority (“**LTA**”) was consulted, and it was determined that NetVault does not have any vehicles registered in the LTA database. Further consultations were held with the Director of Immigration, the Fiji Police Force, and the Financial Intelligence Unit to gather information and seek their assistance regarding this matter.
6. Application for a license - While NetVault had submitted an application in April 2023, it was merely under the premise of providing E-education services using Starlink, which is not aligned with the scope of their operations. Furthermore, no application fee was paid, rendering the application invalid. TAF holds no records of any active application from NetVault that requires further action. By the time this application was submitted, NetVault was already operating illegally. Their application, made after the fact, appears to be an attempt to become retrospectively compliant with the licensing requirements. However, an attempt at simply applying for a license under firstly under incorrect pretences, failing to pay the requisite fees, and not receiving a license from TAF does not justify their continued disregard for legal requirements. Ignorance of these facts, especially after being informed, cannot be used as a valid justification for non-compliance.
7. Loss of Revenue - While NetVault claims to have paid all taxes, this statement does not account for their failure to meet the full scope of legal obligations. Had

they been properly licensed, they would have been required to pay a 2.5% annual gross revenue levy, net of settlements, as part of the telecommunications and USO levy. Therefore, their tax payments alone do not demonstrate compliance with the law. Furthermore, by operating without a license and taking business away from licensed providers, NetVault caused a direct loss of revenue for those licensed providers, which in turn resulted in a loss of revenue for TAF and ultimately the people of Fiji. This highlights their non-compliance with both legal and financial requirements.

8. Reliance on reseller advice - Netlinkz Limited, whose principal place of residence is Suite 401, 56 Bowman Street, Pyrmont, NSW, Australia, is not registered in Fiji. Therefore, even assuming the validity of any agreement between Netlinkz and NetVault— a point we make no determination on— such an agreement does not extend to or apply within Fiji’s jurisdiction. Furthermore, it is crucial to note that the agreement was entered into between Netlinkz Limited and NetVault, which is registered at Level 19, 10 Eagle St, Brisbane, QLD, 4000. As such, the agreement, even if valid, holds no legal bearing in Fiji, given that neither party is operating within the jurisdiction of Fiji. This underscores the lack of applicability of the agreement to the legal framework governing telecommunications in Fiji.
9. Reliance on reseller advice - World Link Communications, registered in Dubai, operates outside of Fiji’s jurisdiction. Even assuming the validity of any agreement between World Link Communications and NetVault— whether NetVault operates in Fiji, Australia, or another jurisdiction— we make no determination on the agreement’s validity. However, such an agreement would not apply within Fiji’s legal framework. As with the situation involving Netlinkz Limited, the agreement between World Link Communications and NetVault, irrespective of the location of NetVault’s operations, holds no legal standing in Fiji. This further reinforces the argument that reliance on these agreements does not absolve NetVault of its obligations under Fijian law.
10. NatVault’s Client List – a list of 11 customers with 17 fixed sites was provided. Details included the locations (street), phone contact, city, email addresses. Total revenue of USD\$41,330.80 was provided. However, no breakdown was provided on the revenues for individual customers, nor any details on breakdown between one-off cost to install (capex) and monthly recurring revenues. Monthly recurring revenue is a key aspect compared to an ordinary retailer which determines it to be a reseller generating revenue.
11. Investments of \$300,000.00 in Fiji – TAF has obtained formal correspondence from the Land Transport Authority of Fiji confirming that NetVault does not own any

motor vehicles in Fiji. Additionally, FNPF, upon conducting a physical inspection, confirmed that "Our Nadi Team visited HLB House and found that NetVault was not physically located there; rather, HLB acts as their accountant." FNPF confirmed NetVault is not registered in their system. TAF's own physical inspection corroborated these findings. It is also important to note that NetVault failed to submit any impact statements outlining the potential consequences should they be required to cease operations in Fiji. While TAF did not specifically request such statements, the onus was on NetVault to provide all necessary supporting documentation and information to demonstrate their operations and investments in Fiji.

12. Starlink Invoice to TAF - NetVault claims that the mere presence of an invoice from Starlink to NetVault Fiji somehow constitutes an agreement. However, Starlink has confirmed in an official email that Starlink Fiji is not an authorized reseller, either directly or indirectly. Furthermore, NetVault Fiji is not listed as an authorized reseller or retailer on Starlink's official website. In addition to this, no formal agreement has been presented to TAF to legitimize NetVault's operations or existence in Fiji. This further undermines NetVault's claim of having a valid and authorized arrangement with Starlink, as no documentation exists to support their standing in Fiji's telecommunications market.
13. Not modifying of Services does not require license – NetVault or their counsel's have claimed that they are exempt from a telecommunication license relying on Regulation 4 (3) (c) of the Licensing Regulations 2012 which states that a person or an enterprise, **such as a hotel**, who resells the telecommunications services of a licensee without change or modification to the services, need not be licensed in respect of such resale activities. The intention of the legislator is clear in Regulation 4(3)(c), as demonstrated by the example of a hotel. It is evident that a hotel's primary revenue does not stem from providing basic telecommunications services for convenience, with such services likely forming only a minor portion of their overall income. In contrast, evidence in the case of NetVault shows that, in addition to installing Starlink kits, the company has been charging monthly recurring fees, thereby generating the majority of its revenue from these services.
14. The assertion that not modifying services [TAF makes no determination that NetVault is not modifying Starlink services] exempts the need for a license applies primarily to establishments like hotels, bus stations, and airports, where telecommunications services (such as Wi-Fi or public calling from an information desk) are offered as value-added services. In these cases, the primary business



of the organization is not telecommunications, and the telco services are provided as a convenience to customers who are visiting for a different primary service.

15. NetVault's operations are fundamentally different. They are offering telecommunications as their primary service and, notably, were going directly to customers to install the service, as opposed to customer coming to hotels and airports for a different service. This distinction clearly sets their activities apart from the value-added services provided by non-telecommunications businesses, thereby necessitating the requirement for a telecommunications license under Fiji's regulations.
16. Under the Telecommunications Act 2008 in Fiji, the term "telecommunications service" is defined as any service that enables or facilitates telecommunications. This includes various communication services like phone, internet, and broadcasting services. According to Section 33(1) of the Act, no individual or company is permitted to provide such services unless they hold a valid license issued by the relevant authority. Furthermore, Regulation 3 of the Telecommunications (Licensing) Regulations 2012 stipulates that any service provider offering telecommunications services in Fiji must obtain a license from the Authority. This regulation ensures that all companies involved in providing telecommunications services operate under legal authorization, ensuring compliance with regulatory standards and protecting consumers and the industry at large. Therefore, any company intending to offer these services in Fiji must first secure a license from the appropriate regulatory body before they can legally operate.
17. Trying to establish formal business relationship with Starlink - After the fact, NetVault allegedly wrote to Starlink to establish a formal business relationship. This action appears to be a retrospective attempt to create the appearance of compliance with the law, rather than a genuine effort to adhere to legal obligations. This effort is clearly designed to give the impression of rectifying their non-compliance, but it must be recognized as a reactionary measure, made after their illegal operations were already underway.
18. Starlink Users Fiji - In an effort to build credibility and showcase their operations in Fiji, NetVault (or their agents) established a Facebook page titled "Starlink Users Fiji," which serves as a knowledge base for their activities. This initiative, while not legally required, provides a platform where customers can learn more about the services NetVault claims to offer. However, it is essential to recognize that while this Facebook page may present a positive public image and knowledge sharing,

it does not alter the fact that their telecommunications services were being provided without the necessary licenses. Despite these efforts to establish a presence and offer information, it does not legitimize their operations under Fijian law.

19. Deliberate Circumvention of the Desist Order: After TAF halted the processing of NetVault's import permits for Starlink kits as part of the Desist Order. During our investigation it was revealed that NetVault had **knowingly and intentionally circumvented the order** by entering into an agreement with Link Technologies, a third-party entity. NetVault by virtue of the Desist Order knew that there were in breach of the licensing requirements and that they were cease providing telecommunications service. However, with that agreement NetVault purposefully hid this information from Link Technologies and went on to acquire and distribute Starlink kits indirectly, allowing them to continue their illegal operations despite the clear directive from TAF. **This calculated action represents a flagrant disregard for regulatory authority** and constitutes an **attempt to bypass the Desist Order**, undermining the enforcement efforts of TAF and further violating the telecommunications laws of Fiji. To elaborate further

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## 6. Key Factors Influencing the Determination

20. Several key factors influenced the determination regarding NetVault's actions. First, their apparent disregard for legal requirements demonstrates a wilful non-compliance with Fijian law. The company's attitude, as evidenced by their continued assertion that a license was not required despite clear legal guidance to the contrary, reflects a lack of genuine intent to comply with the legal framework. This stance, characterized by a dismissive attitude toward regulatory obligations, can be interpreted as a deliberate challenge to the authority of the regulatory bodies.

Second, the impact of NetVault's actions has been significant, as they have been providing telecommunications services without the necessary licenses, undermining the integrity of the telecommunications market in Fiji and depriving the government and licensed providers of revenue. The failure to pay the required levies, including the 2.5% of annual gross revenue as telecommunication and USO levy, further exacerbates the issue.

Lastly, despite being informed of their non-compliance in November 2023, NetVault took no corrective actions. Instead, they continued their operations without adjusting their practices or demonstrating an understanding of the legal

obligations they were ignoring. This continued defiance and failure to take meaningful steps to rectify the situation reflects an intent to operate outside the boundaries of the law.

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## 7. Conclusion

Following a comprehensive investigation process and evaluation of the evidence, it is determined that NetVault has committed significant violations of the Telecommunications Act 2008 and relevant regulations by engaging in the unauthorized sale and operation of Starlink services within the jurisdiction of Fiji. This unlawful activity constitutes a **serious breach** of regulatory obligations, with NetVault failing to comply with the Desist Order issued by TAF on 20 November 2023. NetVault's failure to cease its illegal operations, submit required compliance reports, and take necessary corrective actions exacerbates the severity of the breach, with continued harm to the integrity of Fiji's telecommunications sector.

Despite clear instructions from TAF, NetVault's persistent non-compliance undermines the regulatory framework, leading to significant financial losses to licensed telecommunications operators and the failure to meet necessary tax and revenue obligations. This action not only impacts the telecommunications market but also poses risks to national security and the economy.

In view of these findings, and under the authority provided by the Telecommunications Act 2008, the following determinations are made:

1. **Immediate Cease and Desist:** NetVault must immediately cease all unauthorized telecommunications activities and terminate the advertisement, sale and operation of Starlink services within Fiji.
2. **Submission of Compliance Report:** NetVault is required to submit a comprehensive compliance report to TAF within **14 days**, detailing the steps taken to terminate illegal operations and demonstrate adherence to Fijian telecommunications laws.
3. **Financial Penalties and Actions:** NetVault may be subject to penalties for operating without a telecommunications license and failing to meet regulatory levies. These penalties will be calculated based on the losses incurred by TAF and licensed operators.
4. **Further Legal Action:** If NetVault fails to comply with the orders or continues operations in violation of the Telecommunications Act 2008, TAF may initiate further legal proceedings, including possible criminal charges.

5. **Inform Customers:** Inform the 11 customers on NetVault’s contraventions and breaches and encourage them to review their current telecommunications arrangements. A public notice in newspapers should be published to inform customers.

In addition to the above actions, **TAF requests the support and cooperation** of other relevant government agencies, including:

1. **Fiji Police Force:** For assistance in enforcing this determination, ensuring the immediate cessation of unauthorized operations, and investigating any criminal activities that may have resulted from NetVault’s actions.
2. **Fiji Revenue and Customs Service (FRCS):** To investigate potential tax evasion or failure to comply with customs regulations related to the import and distribution of Starlink equipment and services.
3. **Fiji Immigration Department:** To assist in determining the legality of any foreign personnel associated with NetVault's operations in Fiji, ensuring compliance with visa, work permit, and immigration regulations.
4. **Other Statutory Organizations in Fiji:** As and when required for the enforcement of the law.

The collaborative involvement of these agencies is critical to ensuring that NetVault’s violations are addressed comprehensively and that future illegal activities are prevented. TAF urges these agencies to prioritize this matter and provide timely support to ensure the integrity of Fiji's telecommunications sector.

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## 8. Final Orders

TAF, under the authority of the Telecommunications Act 2008, orders:

1. **NetVault Fiji Pte Ltd** to immediately cease all unlawful telecommunications activities and submit all required compliance documentation within 14 days.
2. **Penalties and corrective actions** to be enforced pursuant to Section 72 (2) and section 76 of the Telecommunications Act 2008 and additional legal proceedings may be initiated if necessary based on NetVault’s contraventions and breaches.
3. **Collaborative action** from the Fiji Police, FRCS, and Immigration to assist in enforcing this determination, conducting investigations, and ensuring full compliance with the laws of Fiji.

4. **TAF reserves the right to recover all legal fees and associated costs, apart from penalties**, incurred in pursuing this case from NetVault, including any enforcement, investigative, and administrative expenses related to this matter.
5. **NetVault** has the right to **appeal this decision** to the **Telecommunications Appeals Tribunal** (“Tribunal”) upon receiving this determination, as provided for under Sections 62 and 66 of the Telecommunications Act 2008. The appeal process will be conducted in accordance with the relevant laws and procedures of the Tribunal.

Failure to comply with this determination will result in further legal and regulatory actions.



Prit Chand

**Chief Executive Officer**

Telecommunications Authority of Fiji

**END**