



Telecom Decision CRTC 2024-8

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Reference: 2023-45

Ottawa, 11 January 2024

Public record: 1011-NOC2023-0045

Optitel Mobile Inc. – Failure to become a participant in the Commission for Complaints for Telecom-television Services Inc.

Summary

The Commission finds that Optitel Mobile Inc. (Optitel) contravened section 24.1 of the *Telecommunications Act* (the Act) by failing to become a participant in the Commission for Complaints for Telecom-television Services Inc. (CCTS) from 12 May 2022 to the date Optitel stopped operating, 31 July 2022.

The Commission finds that Optitel's contravention of section 24.1 of the Act is a violation for the purposes of section 72.001 of the Act. The Commission also finds that Robert Trudeau, the director of Optitel, is liable for its violation.

The Commission is not imposing an administrative monetary penalty (AMP) on Optitel or Robert Trudeau in relation to the violation, because the company has been dissolved and is no longer providing services that fall within the scope of the CCTS. As a result, bringing it into compliance is no longer an option or an objective.

Even though the Commission is not imposing an AMP on Optitel or Robert Trudeau at this time, its finding of liability can be taken into consideration should there be any future contraventions of the Act.

Background

1. The Commission for Complaints for Telecom-television Services Inc. (CCTS)¹ is an independent body that assists Canadians who have been unable to resolve disputes regarding forborne telecommunications services with their telecommunications service providers (TSPs). The CCTS is an integral component of a deregulated telecommunications market, and it provides a valuable service to Canadian consumers.
2. To ensure that Canadian consumers have recourse when they are unable to resolve complaints with their TSPs, since 2011 the Commission has required that all TSPs

¹ Formerly the Commissioner for Complaints for Telecommunications Services Inc.

that provide services within the scope of the CCTS's mandate (in-scope services) be participants in the CCTS (the CCTS participation requirement).

3. The CCTS participation requirement was established pursuant to sections 24 (regarding carriers) and 24.1 (regarding non-carriers, also known as resellers) of the *Telecommunications Act* (the Act) as a condition of offering or providing telecommunications services.² The CCTS participation requirement is triggered 30 calendar days after the date on which the CCTS informs the person that the CCTS has received a complaint related to telecommunications services that the person provides and that falls within the scope of the CCTS's mandate (in-scope complaint).
4. To become a participant in the CCTS, a TSP signs the CCTS Participation Agreement, a contract in which the participant agrees to, among other things, abide by the Participation Agreement and the CCTS's by-laws, be bound by and observe the CCTS's Procedural Code, submit to and honour remedies levied by the CCTS, and cooperate in good faith with any investigation conducted by the CCTS.
5. The Commission takes any non-compliance with the regulatory obligations it imposes on TSPs seriously and uses the measures at its disposal that are most appropriate in the circumstances to promote compliance.

Administrative monetary penalties regime

6. Since 2014, the Act has included a general administrative monetary penalties (AMPs) regime,³ under which the Commission is empowered to impose AMPs on persons who contravene the Act or regulations or decisions made by the Commission under the Act. The purpose of a penalty imposed under this regime is to promote compliance with the Act, regulations, and Commission decisions.
7. The Commission set out its general approach under the general AMPs regime in Compliance and Enforcement and Telecom Information Bulletin 2015-111.

Show cause proceeding

8. In Telecom Notice of Consultation 2023-45 (the notice), the Commission launched a show cause proceeding concerning Optitel Mobile Inc. (Optitel) because the company had not become a CCTS participant as of the date of the notice.
9. In particular, the Commission called for Optitel to show cause why the Commission should not find that it had committed a violation under section 72.001 of the Act⁴ during the relevant time period by contravening the CCTS participation requirement. The Commission also required the TSP's director to show cause why he should not be

² The CCTS participation requirement was imposed directly on non-carriers in 2016.

³ See sections 72.001 to 72.0093 of the Act.

⁴ This provision states that any contravention of the Act, or a Commission regulation or decision made thereunder, with some exceptions, constitutes a violation and may result in liability to pay an AMP.

liable for any violation found to have been committed by the company that he directs. The Commission identified Robert Trudeau as the director of Optitel.

10. Furthermore, the Commission directed Optitel to show cause why, if it is found to have committed a violation related to the CCTS participation requirement, the Commission should not impose an AMP on it in the amount of \$50,000. The Commission also required Robert Trudeau to show cause why, if he is found liable for a violation related to the CCTS participation requirement in respect of the company that he directs, the Commission should not impose an AMP on him in the amount of \$15,000.
11. The Commission also sought comments on an additional potential enforcement measure in the form of a mandatory order. The Commission directed Optitel to show cause why, if it is found to have committed a violation, the Commission should not impose a mandatory order requiring it to take all steps necessary to participate in the CCTS within 60 days of the date of the mandatory order. The Commission also required Robert Trudeau to show cause why, if he is found liable for any violations committed by the company that he directs, he should not be named in the mandatory order, which would hold him further accountable for ensuring that the company takes the necessary steps to participate in the CCTS.
12. The Commission made Robert Trudeau a party to the proceeding and provided notice that if he failed to file information as to why he should not be liable for any violation committed by Optitel, the Commission might draw an adverse inference.
13. The Commission did not receive any interventions that called into question the evidence provided by the CCTS, though Robert Trudeau did provide an affidavit affirming that Optitel had ceased operating in July 2022.

Issues

14. The Commission has identified the following issues to be addressed in this decision:
 - Did Optitel contravene section 24.1 of the Act, thereby committing a violation, by failing to participate in the CCTS?
 - If Optitel contravened section 24.1 of the Act, should the Commission find its director, Robert Trudeau, personally liable for Optitel's violation?
 - If Optitel contravened section 24.1 of the Act, should the Commission impose an AMP on Optitel and an AMP on Robert Trudeau? If so, what should the amounts of the AMPs be?

Did Optitel contravene section 24.1 of the Act, thereby committing a violation, by failing to participate in the CCTS?

Background

15. Section 24.1 of the Act allows the Commission to directly impose conditions of service on persons other than Canadian carriers (i.e., non-carriers) that offer telecommunications services.
16. In Broadcasting and Telecommunications Regulatory Policy 2016-102, the Commission directly imposed the CCTS participation requirement on all TSPs as follows:
 45. [...] the Commission requires, pursuant to sections 24 (regarding carriers) and 24.1 (regarding non-carriers) of the [Act], that as a condition of offering or providing telecommunication services,

[...]
 - o every person who is not a participant in the CCTS as of 17 March 2016 become and remain a participant in the CCTS commencing 30 calendar days after the date on which the CCTS informs that person that the CCTS has received a complaint related to telecommunications services provided by it falling within the scope of the CCTS's mandate.
17. Prior to the publication of the notice, the CCTS provided the Commission with evidence of the CCTS's communications with Optitel to inform the company that a complaint had been received,⁵ which triggered the CCTS participation requirement. Evidence of the CCTS's contact with Optitel was incorporated into the record of the proceeding and summarized in Appendix 1 to the notice.
18. Commission staff also contacted Optitel to ensure that the company was directly informed about the participation requirement and the possible consequences of failing to comply.
19. Moreover, Commission staff informed Robert Trudeau by email on 2 March 2023 that the notice had been published, and stayed in contact with him until the closing of the record of the proceeding on 2 May 2023.

Commission's analysis

20. The affidavit that Robert Trudeau submitted to the Commission affirmed that Optitel (i) had ceased operating in July 2022; (ii) had deactivated both its websites; and (iii) would not operate in the field of telecommunications without becoming a participant in the CCTS.

⁵ The triggering complaints were received after 17 March 2016.

21. Robert Trudeau did not provide such evidence to the CCTS prior to the referral. Furthermore, he failed to provide this information to Commission staff during the compliance counselling phase in advance of the launch of the show cause proceeding.
22. In previous instances, even though participation in the CCTS is required 30 calendar days after the date on which the CCTS informs the TSP that it has received an in-scope complaint against it, the Commission has used the date of referral from the CCTS to determine the start of the non-compliance period, because that is the point at which the Commission officially began to address the non-compliance. However, Optitel's case was referred to the Commission after the company had ceased operations. Therefore, the Commission considers that the date on which Optitel was required to become a participant was the start of the non-compliance period, and the date on which they ceased operations was the end of the non-compliance period.
23. There is no evidence or argument on the record of the proceeding that calls into question the evidence provided by the CCTS.
24. Optitel was required to become a CCTS participant as of 12 May 2022, 30 days after it was notified of the requirement by the CCTS on 12 April 2022. The company was therefore in contravention of its obligation to participate in the CCTS starting on 12 May 2022. Furthermore, it appears that the company remained in contravention of the participation requirement until it ceased to operate on 31 July 2022.
25. Consequently, it appears that Optitel was in contravention of the CCTS participation requirement from 12 May 2022, the date on which it was required in accordance the Commission's regulations to join the CCTS, to 31 July 2022, the date on which the company ceased operations.
26. In light of the above, the Commission finds that Optitel contravened section 24.1 of the Act, thereby committing a violation for a fixed period of time, by failing to become a participant in the CCTS, from the date it was required to become a participant in the CCTS, 12 May 2022, to the date it stopped operating, 31 July 2022.

If Optitel contravened section 24.1 of the Act, should the Commission find its director, Robert Trudeau, personally liable for Optitel's violation?

Background

27. Pursuant to section 72.008 of the Act, an officer, director, or agent or mandatary of a corporation that commits a violation may be held liable for that violation if they directed, authorized, assented to, acquiesced in, or participated in the commission of the violation, whether or not the corporation is proceeded against.

Commission's analysis

28. In the notice, Robert Trudeau was identified and made a party to the proceeding as the director of a company providing telecommunications services.

29. The Commission considered that there was evidence that Robert Trudeau was aware of the CCTS participation requirement and had failed to ensure the compliance of the TSP he directed. During informal compliance discussions led by Commission staff prior to the issuance of the notice, Robert Trudeau did not provide any rationale or evidence to explain why he had failed to do so.
30. Robert Trudeau was given sufficient notice that he could be found liable for any violation committed by Optitel, and was offered multiple opportunities to present evidence and make submissions throughout the show cause proceeding, but failed to do so.
31. Because the onus was on Robert Trudeau to show cause why he should not be found liable for any violations committed by Optitel, which he failed to do, the Commission finds Robert Trudeau liable for Optitel's violation.

If Optitel contravened section 24.1 of the Act, should the Commission impose an AMP on Optitel and an AMP on Robert Trudeau ? If so, what should the amounts of the AMPs be?

Background

32. Pursuant to section 72.001 of the Act, a contravention of a provision of the Act, a regulation, or a decision made by the Commission under the Act constitutes a violation and the person who commits the violation is subject to the imposition of an AMP.
33. Failing to abide by conditions of service that are imposed pursuant to sections 24 and 24.1 of the Act is a violation, which the Commission may address by imposing an AMP pursuant to section 72.001.
34. In determining the amount of the AMPs, the Commission must take into account the following factors set out in subsection 72.002(1) of the Act:
 - a) the nature and scope of the violation;
 - b) the history of compliance with the Act, regulations, and Commission decisions made under the Act;
 - c) any benefit the person obtained from the commission of the violation;
 - d) the person's ability to pay;
 - e) factors established by any regulations; and
 - f) any other relevant factor.

Commission's analysis

35. Optitel did not explain why it did not commit a violation of section 72.001 of the Act. Therefore, the Commission finds that Optitel's contravention of section 24.1 of the Act is a violation for the purposes of section 72.001.
36. However, Optitel has been dissolved and is no longer providing in-scope services. Therefore, the Commission considers the issue moot, and promoting the company's compliance is no longer an option or an objective.
37. Furthermore, the Commission considers that the issue of whether it should impose an AMP on Robert Trudeau, in his capacity as director, is also moot. In this case, the non-compliance was on the part of Optitel, not Robert Trudeau. Imposing an AMP on Robert Trudeau, although possible under the Act, would serve no practical purpose given that Optitel no longer exists, and there is therefore no person (i.e., Optitel) to bring into compliance according to subsection 72.002(2) of the Act. In light of the above, the Commission is not imposing an AMP on either Optitel or Robert Trudeau in relation to the company's violation.
38. Even though the Commission is not imposing an AMP on Optitel or Robert Trudeau at this time, its finding of Robert Trudeau's liability as the director of a company that has been found to be in non-compliance can be taken into consideration in the future should there be any future contraventions of the Act.
39. In this regard, paragraphs 72.002(1)(b) and (f) of the Act provide that the amount of an AMP is to be determined by taking into account the history of compliance of the person who committed the violation as well as any other relevant factor. The finding of Robert Trudeau's liability is a relevant factor that the Commission could consider when determining the amount of an AMP imposed on Robert Trudeau, or on any company he directs, in any future Commission proceedings involving him or that company.

Conclusion

40. The Commission finds that Optitel contravened section 24.1 of the Act, thereby committing a violation for a fixed period of time, by failing to become a participant in the CCTS, from the date it was required to become a participant in the CCTS, 12 May 2022, to the date Optitel stopped operating, 31 July 2022.
41. The Commission finds that Optitel's contravention of section 24.1 of the Act is a violation for the purposes of section 72.001.
42. The Commission finds Robert Trudeau liable for Optitel's violation, per section 72.008 of the Act.
43. The Commission is not imposing an AMP on either Optitel or Robert Trudeau in relation to the company's violation because the company has been dissolved and is no longer providing in-scope services.

44. The Commission findings of non-compliance can be taken into consideration should there be any future contraventions of the Act.

Policy Direction

45. The Commission considers that its determinations in this decision align with paragraphs 2(a), 2(d) and 17(a) of the 2023 Policy Direction.⁶ In finding a violation of the CCTS participation requirement, the Commission is promoting compliance with the CCTS's rules and protecting consumer rights. The Commission's determinations also promote competition by seeking to provide a level playing field for TSPs, without overly penalizing those who are no longer part of the industry.

Secretary General

Related documents

- *Show cause proceeding and call for comments – A telecommunications service provider that has failed to become a participant in the Commission for Complaints for Telecom-television Services Inc.*, Telecom Notice of Consultation CRTC 2023-45, 1 March 2023
- *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc.*, Broadcasting and Telecom Regulatory Policy CRTC 2016-102, 17 March 2016
- *Guidelines regarding the general administrative monetary penalties regime under the Telecommunications Act*, Compliance and Enforcement and Telecom Information Bulletin CRTC 2015-111, 27 March 2015

⁶ *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, SOR/2023-23, 10 February 2023