



Telecom Decision CRTC 2023-7

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9319-4082 Québec inc. (Haute-Vitesse.com) – Failure to become a participant in the Commission for Complaints for Telecom-television Services Inc.

Summary

The Commission finds that 9319-4082 Québec inc. (Haute-Vitesse.com) contravened section 24.1 of the *Telecommunications Act* (the Act), thereby committing a violation for a fixed period of time, by failing to become a participant in the Commission for Complaints for Telecom-television Services Inc. (CCTS) from 3 June 2021 to the date of its dissolution on 23 February 2022.

The Commission finds that Haute-Vitesse.com's contravention of section 24.1 of the Act is a violation for the purposes of section 72.001. The Commission also finds that Martin Moses is liable for Haute-Vitesse.com's violation.

The Commission is not imposing an administrative monetary penalty (AMP) on Haute-Vitesse.com or Martin Moses in relation to the company's 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 Martin Moses at this time, its finding of Martin Moses's liability as the director of a company that was found in non-compliance of the Act could be taken into consideration in the future if they become the director of a different telecom service provider (TSP), and that TSP is found in contravention 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

¹ Formerly the Commissioner for Complaints for Telecommunications Services Inc.

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 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 2022-63, the Commission launched a show cause proceeding because 9319-4082 Québec inc. (Haute-Vitesse.com) had not become a CCTS participant as of the date of the notice.
9. In particular, the Commission called for Haute-Vitesse.com to show cause why the Commission should not find that it committed a violation under section 72.001 of the

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

³ See sections 72.001 to 72.0093 of the Act.

Act⁴ during the relevant time period by contravening the CCTS participation requirement. The Commission also required the TSP's director to show cause why they should not be liable for any violation found to have been committed by the company that they direct.

10. Furthermore, the Commission directed Haute-Vitesse.com 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 the Director of Haute-Vitesse.com to show cause why, if they are found liable for a violation related to the CCTS participation requirement in respect of the company that they direct, the Commission should not impose an AMP on them 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 Haute-Vitesse.com 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 the Director of Haute-Vitesse.com to show cause why, if they are found liable for any violations committed by the company that they direct, they should not be named in the mandatory order, which would hold them further accountable for ensuring that the company takes the necessary steps to participate in the CCTS.
12. In Telecom Notice of Consultation 2022-63, the Commission identified Martin Moses as the Director of Haute-Vitesse.com. The Commission also made Martin Moses a party to the proceeding and provided notice that if they fail to file information for why they should not be liable for any violation committed by Haute-Vitesse.com, then the Commission may draw an adverse inference.
13. In May 2022, following the closing of the record of the proceeding initiated by Telecom Notice of Consultation 2022-63, Martin Moses informed Commission staff that Haute-vitesse.com had ceased operations.
14. The Commission did not receive any interventions from Martin Moses nor from Haute-Vitesse.com in response to Telecom Notice of Consultation 2022-63.

Issues

15. The Commission has identified the following issues to be addressed in this decision:
 - Did Haute-Vitesse.com contravene section 24.1 of the Act, thereby committing a violation, by failing to participate in the CCTS?

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.

- If Haute-Vitesse.com contravened section 24.1 of the Act, should the Commission find its director, Martin Moses, personally liable for Haute-Vitesse.com's violation?
- If Haute-Vitesse.com contravened section 24.1 of the Act, should the Commission impose an AMP on Haute-Vitesse.com and an AMP on Martin Moses? If so, what should the amounts of the AMPs be?
- Other considerations

Did Haute-Vitesse.com contravene section 24.1 of the Act, thereby committing a violation, by failing to participate in the CCTS?

Background

16. 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.

17. 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,

[...]

- 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.
18. Prior to the publication of Telecom Notice of Consultation 2022-63, the CCTS provided the Commission with evidence of the CCTS's communications with Haute-Vitesse.com to inform the company that a complaint had been received,⁵ which triggered the CCTS participation requirement.
19. Commission staff also contacted Haute-Vitesse.com to ensure that the company was directly informed about the participation requirement and the possible consequences of failing to comply.

⁵ The triggering complaints were received after 17 March 2016.

20. Moreover, Commission staff informed Martin Moses by email on 7 March 2022 that Telecom Notice of Consultation 2022-63 had been published, and, on 28 April 2022, that the intervention period would soon close.

Commission's analysis

21. Given that Haute-Vitesse.com failed to respond to the show cause proceeding, there is nothing on the record of the proceeding that would call the evidence provided by the CCTS into question.

22. However, Martin Moses responded by email, on 5 May 2022, to indicate that Haute-Vitesse.com ceased to exist. Commission staff verified that information through a corporate search using Government of Quebec's Registraire des entreprises, and it was determined that Haute-Vitesse.com ceased to exist on 23 February 2022.

23. Consequently, it appears that Haute-Vitesse.com was in contravention of the CCTS participation requirement from the date of the CCTS's original referral (3 June 2021) to the date the company ceased to exist (23 February 2022).

Conclusion

24. In light of the above, the Commission finds that Haute-Vitesse.com 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 3 June 2021 to the date of its dissolution (ex officio cancellation) on 23 February 2022.

If Haute-Vitesse.com contravened section 24.1 of the Act, should the Commission find its director, Martin Moses, personally liable for Haute-Vitesse.com's violation?

Background

25. Pursuant to section 72.008, 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.

26. In Telecom Notice of Consultation 2022-63, Martin Moses was identified and made a party to the proceeding as the director of a company providing telecommunications services. The Commission considered that there was evidence that Martin Moses was aware of the CCTS participation requirement and had failed to ensure the compliance of the TSP they directed.

Commission's analysis

27. There has been no indication that Martin Moses has been unable to bring the TSP they directed into compliance with the CCTS participation requirement.

28. They were given sufficient notice that they could be found liable for any violations committed by Haute-Vitesse.com. Martin Moses was offered multiple opportunities

to present evidence and make submissions throughout the show cause proceeding, which they failed to take advantage of.

29. In light of Martin Moses's ongoing non-engagement with Commission processes, and because the onus was placed on them through Telecom Notice of Consultation 2022-63 to show cause why they should not be found liable for any violations committed by Haute-Vitesse.com, which they failed to do, the Commission finds Martin Moses liable for Haute-Vitesse.com's violation.

If Haute-Vitesse.com contravened section 24.1 of the Act, should the Commission impose an AMP on Haute-Vitesse.com and an AMP on Martin Moses? If so, what should the amounts of the AMPs be?

Background

30. 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.
31. 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.
32. 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
 - f) any other relevant factor

Commission's analysis

33. Haute-Vitesse.com did not explain why it did not commit a violation of section 72.001 of the Act. Therefore, the Commission finds that Haute-Vitesse.com's contravention of section 24.1 of the Act is a violation for the purposes of section 72.001.
34. Although Haute-Vitesse.com was in contravention of the CCTS participation requirement and failed to explain why imposing an AMP would be inappropriate, the

Commission considers that no further compliance and enforcement action is necessary because this issue is moot. The company is no longer providing services within the scope of the CCTS's mandate because it has been dissolved, and promoting the company's compliance is no longer an option or an objective.

35. Furthermore, the Commission considers that the issue of whether it should impose an AMP on Martin Moses, in their capacity as director, is by extension also moot. In this case, the person in non-compliance was Haute-Vitesse.com, not Martin Moses. Imposing an AMP on Martin Moses, although possible under the Act, would serve no practical purpose given that Haute-Vitesse.com no longer exists, and there is therefore no person (i.e., Haute-Vitesse.com) to bring into compliance according to subsection 72.002(2) of the Act.
36. In light of the above, the Commission is not imposing an AMP on Haute-Vitesse.com or Martin Moses in relation to the company's violation because the company has been dissolved and is no longer providing in-scope services. Accordingly, bringing it into compliance is no longer an option or an objective.

Other considerations

37. Even though the Commission is not imposing an AMP on Martin Moses at this time, the Commission considers that its finding of Martin Moses's liability as the director of a company that was found in non-compliance of the Act could be taken into consideration in the future if they become the director of a different TSP, and that TSP is found in contravention of the Act.
38. In the future, this could be accomplished by virtue of paragraph 72.002(1)(f) of the Act, which provides that the amount of an AMP is to be determined by taking into account any other relevant factor. The finding of Martin Moses's liability is a relevant factor that the Commission could consider when determining the amount of an AMP imposed on Martin Moses, and any company they direct, in any future Commission proceedings involving them or their company.

Conclusion

39. The Commission finds that Haute-Vitesse.com 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 3 June 2021 to the date of its dissolution (ex officio cancellation) on 23 February 2022.
40. The Commission finds that Haute-Vitesse.com's contravention of section 24.1 of the Act is a violation for the purposes of section 72.001.
41. The Commission finds Martin Moses liable for Haute-Vitesse.com's violation.
42. The Commission is not imposing an AMP on Haute-Vitesse.com or Martin Moses in relation to the company's violation because the company has been dissolved and is no longer providing in-scope services.

43. Even though the Commission is not imposing an AMP on Martin Moses at this time, its finding of Martin Moses's liability as the director of a company that was found in non-compliance of the Act could be taken into consideration in the future, if they become the director of a different TSP, and that TSP is found in contravention of the Act.

Policy Directions

44. The 2006 Policy Direction⁶ and the 2019 Policy Direction⁷ (collectively, the Policy Directions) state that the Commission, in exercising its powers and performing its duties under the Act, shall implement the telecommunications policy objectives set out in section 7 of the Act, in accordance with the considerations set out in the Policy Directions, and should specify how its decisions can, as applicable, promote competition, affordability, consumer interests, and innovation.
45. The Commission reviewed the record of this proceeding in light of the Policy Directions and considered their aspects to the extent necessary, using measures that are efficient and proportionate to their purpose. The Commission considers that its determinations in this decision are compliant with the 2019 Policy Direction, since they promote consumer interests by ensuring that TSPs that do not participate in the CCTS to resolve complaints comply with their obligations. The Commission remains of the view that the CCTS dispute resolution process, which is an integral component of a deregulated telecommunications market, enhances and protects the rights of consumers in their relationships with TSPs.
46. Further, the Commission considers that the requirement that all TSPs participate in the CCTS, and the enforcement of that requirement, are consistent with the 2006 Policy Direction. The CCTS participation requirement is competitively neutral and symmetrical because it applies to all TSPs that offer in-scope services. Moreover, the Commission reiterates its determination, from paragraph 36 of Broadcasting and Telecom Regulatory Policy 2016-102, that market forces are not sufficient to sustain a critical mass of participation in the CCTS for it to operate effectively.
47. Accordingly, in compliance with paragraph 1(b)(i) of the 2006 Policy Direction, this decision advances the telecommunications policy objectives set out in paragraphs 7(a), (b), and (h) of the Act.⁸

⁶ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

⁷ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

⁸ The cited objectives of the Act are 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; 7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; and 7(h) to respond to the economic and social requirements of users of telecommunications services.

Secretary General

Related documents

- *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 2022-63, 7 March 2022
- *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