



Compliance and Enforcement Decision CRTC 2024-176

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Ottawa, 6 August 2024

File number: PDR 9174-3175

1256456 British Columbia Ltd., doing business as Marketise Solutions Inc. – Violations of the Unsolicited Telecommunications Rules

Summary

The Commission imposes a total administrative monetary penalty of **\$198,000** on 1256456 British Columbia Ltd., doing business as Marketise Solutions Inc., for making telemarketing calls on behalf of clients (i) to consumers whose telephone numbers were registered on the National Do Not Call List (DNCL), (ii) while its clients were not registered with the National DNCL operator, (iii) while its clients were not registered subscribers of the National DNCL, and (iv) without keeping records relating to its clients' registrations and subscriptions to the National DNCL, resulting in **198 violations** of the Unsolicited Telecommunications Rules.

Introduction

1. On 20 July 2023, a person designated by the Commission¹ issued a notice of violation² under the *Telecommunications Act* (the Act) to 1256456 British Columbia Ltd., doing business as Marketise Solutions Inc. (Marketise).
2. The notice shows that between 4 August 2020 and 26 February 2021, Marketise made telemarketing calls on behalf of clients that resulted in
 - 38 violations of Part II, section 4 of the Unsolicited Telecommunications Rules (the Rules), which states that a telemarketer shall not initiate a telemarketing telecommunication to a consumer's telecommunications number that is on the National Do Not Call List (DNCL), without the consumer's express consent;
 - 70 violations of Part III, section 3 of the Rules, which prohibits telemarketers from initiating telemarketing telecommunications on behalf of a client if the client is not registered with, and has not provided information to, the National DNCL operator;
 - 83 violations of Part II, section 7 of the Rules, which prohibits telemarketers from initiating telemarketing telecommunications on behalf of a client if the client is not a

¹ Paragraph 72.04(1)(a) of the *Telecommunications Act* (the Act) states that the Commission may designate persons, or classes of persons, who are authorized to issue notices of violation.

² Subsection 72.07(1) of the Act states that a person authorized to issue notices of violation who believes on reasonable grounds that a person has committed a violation may issue, and shall cause to be served on that person, a notice of violation.

registered subscriber of the National DNCL and has not paid the applicable fees to the National DNCL operator;

- 10 violations of Part III, paragraph 5(b) of the Rules, which states that a telemarketer initiating a telemarketing telecommunication on behalf of clients shall keep records related to its clients' proof of registration with the National DNCL operator for a period of three years from the date the records are created; and
 - 10 violations of Part II, paragraph 8(b) of the Rules, which states that a telemarketer initiating a telemarketing telecommunication on behalf of clients shall keep records related to its clients' proof of subscription to the National DNCL for a period of three years from the date the records are created.
3. The notice of violation also includes a total administrative monetary penalty (the penalty), of \$211,000 for 211 violations, meaning \$1,000 per violation.
 4. The Commission received representations from Marketise on 25 September 2023, in which the company argued that it had not committed the violations, it is no longer operational, and it has very little money.
 5. Subsection 72.08(2) of the Act says that if a person makes representations in accordance with a notice of violation, the Commission must decide, on a balance of probabilities, whether the person committed the violations. If it decides that the person committed the violations, it may impose the penalty.

Issues

6. The Commission will address two issues in this decision:
 - Did Marketise commit the violations set out in the notice of violation?
 - If yes, is a penalty of \$1,000 per violation, for a total penalty of \$211,000, appropriate?

Did Marketise commit the violations set out in the notice of violation?

7. The investigation report claims that Marketise provides lead-generation services to agents and brokerages in the real estate and mortgage industries across Canada. The company uses various marketing techniques, including telemarketing calls, to get the contact information of consumers who may be interested in the services of real estate and mortgage specialists. It gives these consumer leads to its clients for a fee and a percentage of revenue from any resulting sale.
8. In this case, the designated person alleged that during the period covered by the notice of violation, Marketise generated 131 consumer leads for 10 clients through unsolicited telemarketing calls, resulting in 211 violations of the Rules.

9. The Commission notes that the consumer statements and information from Marketise's clients obtained by Commission enforcement staff during the investigation show that Marketise made calls for its clients to assess if consumers were interested in buying or selling their house or needed a mortgage. If so, the caller would record their contact information so that a real estate or mortgage agent could contact them.
10. The Commission considers that this falls within the definitions of "Telemarketing" and "Solicitation" under the Rules.³ Therefore, the calls that Marketise made for its clients were telemarketing telecommunications within the meaning of the Rules.
11. The investigation report shows that the consumer telephone numbers linked with 38 of the 131 leads identified during the investigation were registered on the National DNCL when Marketise made the telemarketing calls for its clients. Nothing on the record of this case shows that the company got consumers' express consent before making telemarketing calls for its clients or that the calls it made qualified for an exemption under the Rules. Part II, section 4, and Part VII, paragraph 1(b) of the Rules say that Marketise must show that valid express consent was given by the consumers who received telemarketing calls or that there was an exemption for the telemarketing calls it made to consumer telephone numbers registered on the National DNCL.
12. Therefore, the Commission finds that Marketise committed 38 violations of Part II, section 4 of the Rules. Those violations are the result of telemarketing calls made to consumers whose numbers were registered on the National DNCL, without their express consent or an exemption.
13. Under the Rules, telemarketers cannot make telemarketing calls for a client unless that client has registered with the National DNCL operator and subscribed to the National DNCL (see Part III, section 3 and Part II, section 7). It is the telemarketer's responsibility to make sure that its clients have a valid National DNCL registration and subscription for the relevant area codes and time period. If not, the telemarketer cannot make telemarketing calls for these clients.
14. Based on the information on the record of this case, 6 of the 10 clients to whom Marketise provided leads were not registered with the National DNCL operator during the period that Marketise made telemarketing calls on their behalf, and 7 of the 10 clients were not subscribed to the National DNCL.
15. Accordingly, the Commission finds that Marketise committed 70 violations of Part III, section 3 of the Rules and 83 violations of Part II, section 7 of the Rules when it made telemarketing calls for clients who were not registered with the National DNCL operator or subscribed to the National DNCL.

³ According to the Rules, "Telemarketing" means the use of telecommunications facilities to make unsolicited telecommunications for the purpose of solicitation. "Solicitation" means the selling or promoting of a product or service, or the soliciting of money or money's worth, whether directly or indirectly and whether on behalf of another person.

16. Under the Rules, telemarketers who make telemarketing calls for clients must keep records showing that their clients have registered with the National DNCL operator, as well as proof of any subscriptions their clients have purchased, for three years from the date the records are created (see Part III, paragraph 5(b) and Part II, paragraph 8(b) of the Rules).
17. In this case, four Marketise clients were registered with the National DNCL operator during the period that Marketise made telemarketing calls on their behalf, and three were subscribed to the National DNCL.
18. The Commission disagrees with the designated person's interpretation of the Rules, in particular Part III, paragraph 5(b) and Part II, paragraph 8(b) of the Rules. Records relating to clients' registrations and subscriptions to the National DNCL must be created first before the obligation to keep a record applies. If a telemarketer's client has not registered with the National DNCL operator or subscribed to the National DNCL, it means that no such records were created. Therefore, it cannot be said that the telemarketer violated the rules about keeping such records.
19. Given this, the Commission finds that Marketise committed four violations of Part III, paragraph 5(b) of the Rules, and three violations of Part II, paragraph 8(b) of the Rules when it made telemarketing calls for clients without keeping records of four of its clients' registrations with the National DNCL operator and three of its clients' subscriptions to the National DNCL.
20. Marketise also claimed that all violations were committed by a certain Mr. Wilson in his personal capacity and not as an employee of Marketise. The Commission notes that while most of Marketise's clients recalled interacting with Mr. Wilson when dealing with the company, the record of this case shows that any payments made by clients were electronically transferred to Marketise's business bank account. The record also shows that Marketise's business bank account was opened by the company's director, and that the director is listed as the sole account holder.
21. Therefore, regardless of whether Mr. Wilson was an employee of Marketise, the company and its director made money from the interactions Marketise's clients had with Mr. Wilson. Accordingly, the claim that the violations were committed by Mr. Wilson in his personal capacity do not excuse Marketise.
22. Marketise also said that the company is no longer operating. However, the record shows that, according to a corporate records search, Marketise was providing leads to clients from 4 August 2020 to 26 February 2021, and that Marketise's corporate registration was active on 28 May 2023. The Commission confirmed that Marketise's corporate registration was still active as of 14 November 2023. This means the company was still in operation, regardless of whether it was still actively providing lead-generation services or making telemarketing calls. Marketise provided no evidence to support its claim that the company is not operating or that the corporate entity was dissolved.

23. The Commission therefore finds, on a balance of probabilities, that during the period covered by the notice of violation, Marketise committed 198 violations of the Rules when it made 131 telemarketing calls on behalf of clients.

Is a penalty of \$1,000 per violation, for a total penalty of \$211,000, appropriate?

24. Since Marketise committed 198 violations during the period covered by the notice of violation, and not 211 violations, the total penalty of \$211,000 in the notice needs to be adjusted. The Commission still needs to decide if a penalty of \$1,000 for each of the 198 violations, for a total penalty of \$198,000, is appropriate for this case.

25. To determine if a penalty is appropriate, the Commission looked at the nature of the violations, the number and frequency of complaints and violations, the potential for future violations, the relative disincentive of the measure, and the ability to pay the penalty (see Telecom Decision 2007-48 and Compliance and Enforcement Regulatory Policy 2015-109).

Nature of the violations

26. Making unsolicited telemarketing calls to consumers whose numbers are registered on the National DNCL causes them significant inconvenience and nuisance since these consumers expect that they will not receive such calls. Also, making telemarketing calls on behalf of clients that are not registered with the National DNCL operator or subscribed to the National DNCL goes against the Rules, since it means a higher likelihood that unwanted calls will be made to consumers whose numbers are registered on the National DNCL.

27. Furthermore, not respecting the record-keeping obligations goes against the Commission's proactive efforts to make sure that the obligations under the Rules to register and pay the required fees are followed.

28. The Commission therefore finds that the nature of the violations committed by Marketise is serious.

Number and frequency of complaints and violations

29. Since there were no consumer complaints on the record of this case, the number and frequency of complaints do not influence the amount of the penalty.

30. As for the number and frequency of violations, Marketise committed 198 violations during the seven-month period covered by the notice of violation, or about 28 violations per month for the entire period. The number and frequency of violations are therefore low.

Potential for future violations

31. Although this is the first notice of violation for Marketise, the investigation report shows that in 2018, Commission enforcement staff did a compliance examination of another lead-generation company that was directed by the same person directing Marketise. While there was no enforcement action against this other company because it was dissolved, Commission enforcement staff told the company's director several times during that compliance examination about their company's obligations under the Rules.

32. The Commission accepts that the person that was directing the other lead-generation company in 2018 is the same person directing Marketise. Therefore, the Commission considers that the director of Marketise knew or should have known their obligations under the Rules when he incorporated Marketise in 2020.
33. There is no evidence on the record showing that Marketise took any steps to address the compliance issues brought to its attention by Commission enforcement staff.
34. Accordingly, the Commission finds that Marketise's potential for future violations is high and justifies the total amount of the penalty.

Relative disincentive of the measure

35. Regarding the relative disincentive of the measure, the purpose of any penalty is to promote compliance with the Rules and not to punish. The amount of the penalty must reflect the nature of the non-compliance, and must also discourage other non-compliance in the future and encourage companies to follow the Rules. For this reason, penalties cannot be set so low as to make it worth it for a telemarketer or a client of a telemarketer to pay the penalty and see it as simply the cost of doing business.⁴
36. Marketise made money by not following the Rules and receiving payments from clients in exchange for its lead-generation services. The record of this case shows that the company charged each client an "initiation" fee of between \$200 and \$500 and a fee per lead of between \$40 and \$50. It also received between 25% and 30% of revenue from any sale resulting from a lead. While the record does not note the total amount Marketise made from this business arrangement, it is likely higher than the \$8,500 that was deposited into Marketise's business bank account.
37. While a penalty of \$1,000 per violation is at the lower end of the range of penalties allowed for a corporation under the Act,⁵ the Commission finds that this penalty would be an appropriate disincentive in this case. This amount means that the penalty is more than the cost of doing business.

Ability to pay

38. The investigation report did not include financial information related to the company's ability to pay a penalty of \$1,000 per violation, for a total penalty of \$211,000, as shown in the notice of violation.
39. While Marketise claimed that it has "negligible funds," it provided no evidence or information to support that claim.
40. Compliance and Enforcement Regulatory Policy 2015-109 mentions situations where a person asks for a review of a notice of violation and argues that not being able to pay the penalty should be a reason to lower the amount of that penalty. Compliance and Enforcement

⁴ See paragraph 17 of Compliance and Enforcement Regulatory Policy 2015-109.

⁵ According to section 72.01 of the Act, every contravention of the Rules constitutes a violation and the person who commits the violation is liable, in the case of a corporation, to an administrative monetary penalty of up to \$15,000.

Regulatory Policy 2015-109 also says that in that situation, it is reasonable to place the burden on that person to provide documentation or detailed information to support their argument. In this case, Marketise could have given information to the Commission about its ability to pay, as well as evidence to support its claim that it has negligible funds, but it did not do so.

41. Compliance and Enforcement Regulatory Policy 2015-109 also says that the Commission's analysis of the ability to pay is not limited to direct financial information; it can also be based on other characteristics of a company's ability to make money, including its size, the scope of its operations, and the number of employees.
42. In this case, there is little information on the record about Marketise's overall ability to make money. The record only shows that during the period covered by the notice of violation, Marketise had been in business for at least three years, had three employees, served clients in the real estate and mortgage industries across Canada, and charged the fees noted above. There is no other information about the company's size, how many clients it has, its sales and revenues, or any other indirect financial information.
43. While the designated person submitted limited evidence about Marketise's ability to pay the penalty, there is no information from Marketise addressing its ability to pay either. Therefore, nothing on the record of this proceeding shows, on a balance of probabilities, that a penalty of \$1,000 per violation, for a total penalty of \$198,000, is more than what Marketise is able to pay. This determination is similar to past decisions that looked into a telemarketer's or client of a telemarketer's ability to pay.⁶
44. Therefore, the Commission finds that a penalty of \$1,000 per violation, for a total penalty of \$198,000, is appropriate, proportionate to the circumstances of this case, necessary to promote compliance with the Rules, and not more than what Marketise is able to pay.

Conclusion

45. The Commission finds, on a balance of probabilities, that during the period covered by the notice of violation, Marketise made 131 telemarketing calls on behalf of clients and, as a result, committed **198 violations** of the Rules:
 - 38 violations of Part II, section 4;
 - 70 violations of Part III, section 3;
 - 83 violations of Part II, section 7;
 - 4 violations of Part III, paragraph 5(b); and
 - 3 violations of Part II, paragraph 8(b).

⁶ See, for example, Compliance and Enforcement Decisions 2021-205 and 2021-387.

46. The Commission also finds that in the circumstances of this case, a penalty of \$1,000 per violation for 198 violations of the Rules is appropriate. Marketise must therefore pay a total penalty of **\$198,000**.
47. Marketise has the right to apply to the Commission to review and rescind or vary this decision. Any application to review and vary must be made within 90 days after the date of this decision (see section 62 of the Act).⁷
48. Marketise can also file an application for leave to appeal to the Federal Court of Appeal to appeal this decision before that court. The application must be made to the Federal Court of Appeal within 30 days after the date of this decision. A judge of the Federal Court of Appeal can grant more time in exceptional circumstances (see section 64 of the Act).
49. The Commission reminds Marketise that it must comply with the Rules if it makes telemarketing calls for clients in the future. To make sure that it follows the Rules, Marketise should, for example,
- make sure that any clients that it makes telemarketing telecommunications for are registered with the National DNCL operator and subscribed to the National DNCL;
 - make sure that it downloads its clients' subscriptions to the National DNCL at least once every 31 days before the date of a telemarketing telecommunication;
 - make sure that it keeps records relating to its clients' registrations with the National DNCL operator and subscriptions to the National DNCL for a period of three years from the date the records are created; and
 - establish and implement acceptable written policies and procedures to follow the Rules, such as documenting a process to (i) prevent the making of telemarketing telecommunications to any telecommunications number that has been registered for more than 31 days on the National DNCL; and (ii) honour consumers' requests that they not receive telemarketing telecommunications.
50. To make sure Marketise follows the Rules, the Commission could impose larger penalties in the case of future violations.
51. The amount of \$198,000 must be paid by **5 September 2024**. It must be paid in accordance with the instructions that are in the notice of violation. Any amount owing that is not paid by **5 September 2024** will accumulate interest until the amount is paid in full.⁸

⁷ In Telecom Information Bulletin 2011-214, the Commission issued, pursuant to the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, revised guidelines for review and vary applications to reflect the modified time limit in which such applications must be made.

⁸ Interest is calculated and compounded monthly at the average bank rate plus 3% on the amount. Interest will accrue during the period beginning on the due date and ending on the day before the date on which payment is received.

52. If no payment is received by **5 September 2024**, the Commission intends to take measures to collect the amount owing, which could include registering the unpaid amount with the Federal Court, as explained in subsections 72.09(4) and (5) of the Act.

Secretary General

Related documents

- *2442947 Ontario Inc., operating as Trust Windows Corp. – Violations of the Unsolicited Telecommunications Rules*, Compliance and Enforcement Decision CRTC 2021-387, 19 November 2021
- *2590054 Ontario Inc., operating as Top Tier Moving and Storage – Violations of the Unsolicited Telecommunications Rules*, Compliance and Enforcement Decision CRTC 2021-205, 16 June 2021
- *Administrative monetary penalties under the Voter Contact Registry*, Compliance and Enforcement Regulatory Policy CRTC 2015-109, 27 March 2015
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48, 3 July 2007; as amended by Telecom Decision CRTC 2007-48-1, 19 July 2007