

Investigation Report

File No	ACMA2021/340
Entity	Potukuchi Trading Pty Ltd, the Trustee for Global Financial Solutions (ABN 98 472 782 313), trading as 1800 BizPhone
ACN	114 098 645
Scope of Investigation	Compliance with section 132 of the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>
	The service provider rule at clause 1 of Schedule 2 to the <i>Telecommunications Act 1997</i>

Findings

The Australian Communications and Media Authority (**ACMA**) finds that Potukuchi Trading Pty Ltd, the Trustee for Global Financial Solutions, trading as 1800 BizPhone (ACN 114 098 645) (**1800 BizPhone**) contravened:

- (a) section 132 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the **TCPSS Act**);
- (b) the service provider rule set out in clause 1 of Schedule 2 to the *Telecommunications Act 1997* (the **Act**); and
- (c) subsection 101(1) of the Act,

by failing to comply with the decision made by the Telecommunications Industry Ombudsman (**TIO**) on 21 May 2021 (the **TIO Decision**), identified as 2020/05/03779 (a copy of the TIO Decision is at **Attachment A**).

Background

1. This report presents the findings of an investigation conducted by the ACMA under paragraph 510(1)(aa) of the Act into a matter referred to it by the TIO.
2. On 30 June 2021, the TIO referred 1800 BizPhone to the ACMA for its failure to comply with the TIO Scheme as required by section 132 of the TCPSS Act (**Attachment B**).
3. Specifically, the TIO alleges that 1800 BizPhone failed to pay \$7,800.00 into the bank account of Dandek Pty Ltd (trading as Hamilton & Co) (**Hamilton & Co**) within 15 business days of Hamilton & Co accepting the TIO Decision, as required by the TIO Decision. In December 2019, Hamilton & Co entered into a contract for telecommunications services with 1800 BizPhone which included an agreement by 1800 BizPhone to pay early termination fees under Hamilton & Co's telecommunications contract at the time. The TIO was satisfied that 1800 BizPhone is liable to pay \$7,800 in accordance with that agreement.
4. On 21 May 2021, the TIO sent 1800 BizPhone a copy of the TIO Decision (**Attachment A**).
5. On 25 May 2021, the TIO sent 1800 BizPhone a copy of Hamilton & Co's acceptance of the TIO Decision (**Attachment C**).

6. Following the TIO referral to the ACMA, on 16 July 2021 the ACMA invited 1800 BizPhone to provide any relevant submissions or information that it would like the ACMA to consider prior to making any preliminary findings about this matter.
7. On 16 July 2021, 1800 BizPhone provided the ACMA with a written email response advising that it was experiencing financial difficulties due to Covid-19, and that it would set up a payment arrangement to pay Hamilton & Co the sum of \$7,800.00 by 15 August 2021 to comply with the TIO Decision, albeit after the time for compliance.
8. 1800 Bizphone did not make any payment to Hamilton & Co as per its proposed payment arrangement and the full amount of \$7,800.00 required to be paid in accordance with the TIO Decision remains outstanding.
9. On 5 October 2021, the ACMA sent its preliminary findings report to 1800 BizPhone and invited it to respond by 19 October 2021.
10. On 21 October 2021, 1800 BizPhone requested that the ACMA provide another copy of the ACMA's preliminary findings. The same day the ACMA again provided 1800 BizPhone with its preliminary findings and granted an extended deadline to 25 October 2021 for 1800 BizPhone to respond to the ACMA. 1800 BizPhone did not provide any written submissions in response to the ACMA's preliminary view and as at the date of finalising this report, 1800 BizPhone has not provided a response.

The TIO scheme, TIO Constitution and Terms of Reference

11. 1800 BizPhone is a current member of the TIO scheme.
12. Relevantly, subsections 128(1) and (2) of the TCPSS Act provide that each carrier and eligible carriage service provider (**eligible CSP**) must enter into a scheme to be known as the TIO scheme. An 'eligible CSP' includes a CSP which supplies standard telephone services for residential or small business customers and/or carriage services that enable end-users to access the internet (subparagraphs 127(a)(i) and (iii) of the TCPSS Act).
13. Section 132 of the TCPSS Act provides that a carrier or a CSP which is a member of the TIO scheme must comply with the TIO scheme.
14. Paragraph 17(b) of the TIO's Constitution states that, in becoming a member of the TIO scheme, each TIO member agrees to be bound by and observe the TIO's Terms of Reference (which set out how the TIO scheme operates).
15. Relevantly, clause 3.14 of the TIO's Terms of Reference provides that if a consumer, such as Hamilton & Co, accepts a TIO decision the provider, in this case 1800 BizPhone, must comply with that decision.
16. Accordingly, failure of a TIO member to comply with a TIO decision that has been accepted by the relevant consumer constitutes a failure to comply with the TIO scheme and thereby section 132 of the TCPSS Act.
17. The Act states that service providers (defined in section 86 of the Act to include CSPs) must comply with the service provider rules contained in the Act (see subsection 101(1)). The relevant service provider rule in this case requires a service provider to comply with the TCPSS Act (see subsection 98(1) and subclause 1(1) of Schedule 2 to the Act).
18. Failure to comply with section 132 of the TCPSS Act is therefore a breach of the service provider rules, and a contravention of subsection 101(1) of the Act.

Findings and reasons

19. 1800 BizPhone is an eligible CSP, supplying telephone and internet services to small business customers. It became a member of the TIO scheme on 11 July 2017.
20. As a TIO member, 1800 BizPhone is required under section 132 of the TCPSS Act to comply with the TIO scheme. 1800 BizPhone must also comply with the TIO's Constitution and Terms of Reference.
21. The TIO Decision required 1800 BizPhone to pay Hamilton & Co the sum of \$7,800.00 within 15 business days of Hamilton & Co's acceptance of the TIO Decision.
22. As Hamilton & Co accepted the TIO Decision on 21 May 2021 (see **Attachment C**), 1800 BizPhone was required, under clause 3.14 of the TIO's Terms of Reference, to comply with the TIO Decision by 11 June 2021.
23. Hamilton & Co confirmed with the ACMA on 26 November 2021 that it had not received the payment of \$7,800.00 from 1800 BizPhone, as required by the TIO Decision.
24. 1800 BizPhone has not complied with the TIO Decision by making the payment of \$7,800.00 to Hamilton & Co in accordance with the TIO Decision.
25. The ACMA has not received any submissions from 1800 BizPhone or evidence that the TIO Decision was not made in accordance with the TIO's Constitution and Terms of Reference or that 1800 BizPhone was not required to comply with the TIO Decision.
26. For the above reasons, the ACMA is of the view that 1800 BizPhone has failed to comply with the TIO Decision. Consequently, the ACMA has formed the view that 1800 BizPhone contravened section 132 of the TCPSS Act and, in doing so, did not comply with the service provider rule set out at clause 1 of Schedule 2 to the Act, and contravened subsection 101(1) of the Act.

Attachments

Attachment A	TIO Decision
Attachment B	Referral from the TIO to the ACMA
Attachment C	Hamilton & Co acceptance of the TIO Decision