

Investigation Report

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| File No | ACMA2021/377-2 |
| Entity | B2B Wholesale Pty Ltd |
| ACN | 144 043 863 |
| Scope of Investigation | Compliance with section 128 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 (the **ACMA**) finds that B2B Wholesale Pty Ltd (ACN 144 043 863) (**B2B Wholesale**) has contravened:

- (a) section 128 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the **TCPSS Act**);
- (b) the service provider rules set out at clause 1 of Schedule 2 to the *Telecommunications Act 1997*; and
- (c) subsection 101(1) of the *Telecommunications Act*,

by failing to join the Telecommunications Industry Ombudsman (**TIO**) scheme.

Background

1. On 11 June 2021, the ACMA received a referral from the TIO alleging that B2B Wholesale had failed to join the TIO scheme in accordance with section 128 of the TCPSS Act.
2. B2B Wholesale Pty Ltd is a South Melbourne-based company with an Australian customer base, which provides a range of internet services, including NBN, ADSL, ISDN, SIP, Cloud PBX, Fibre, and Ethernet.
3. In its referral, the TIO advised that it became aware that B2B Wholesale may be providing carriage services following enquiries it made into one of B2B Wholesale's resellers.
4. The ACMA investigated the TIO referral and on 7 September 2021 sent its preliminary findings report to B2B Wholesale, inviting it to respond by 21 September 2021.
5. On 15 September 2021, B2B Wholesale confirmed that it had submitted a membership application form to the TIO.
6. The TIO confirmed that B2B Wholesale became a member of the TIO scheme on 15 September 2021.

Legislative framework

7. Under paragraph 510(1)(aa) of the *Telecommunications Act*, the ACMA may investigate a potential contravention of the TCPSS Act, where it has reason to suspect that a person may have contravened that Act.
8. Section 128 of the TCPSS Act requires each carrier and eligible carriage service provider (**CSP**) to enter into a scheme known as the TIO scheme. For the purpose of Part 6 of the TCPSS Act, an 'eligible CSP' includes a CSP who supplies carriage services that enable end-users to access the internet (subparagraphs 127(a)(iii) of the TCPSS Act).
9. When a CSP contravenes section 128 of the TCPSS Act it also contravenes the service provider rule set out at clause 1 of Schedule 2 to the *Telecommunications Act* and subsection 101(1) of the *Telecommunications Act*.

Findings and reasons

10. B2B Wholesale states on its website at <https://www.btbaustralia.com.au> that it provides every product an entity requires to establish itself as a telecommunications provider, Internet Service Provider (ISP), data and cloud provider. B2B Wholesale also states on its website that it provides 'it all from nbn™, ADSL, and MPLS networks, to symmetrical services, fibre, ethernet, and more.' **Attachment A** is an extract from the B2B Wholesale website.
11. While information on B2B Wholesale's website indicates that it has no direct relationship with the end-users who are accessing the internet, B2B Wholesale supplies such a carriage service to ISPs whose customers are such persons. This makes B2B Wholesale an eligible carriage service provider under sub-paragraph 127(1)(a)(iii) of the TCPSS Act.
12. B2B Wholesale advised the ACMA on 19 October 2021 that it commenced supplying carriage services that enable end-users to access the internet from approximately January 2018.
13. As an eligible CSP, B2B Wholesale was required to join the TIO scheme in accordance with subsection 128(1) of the TCPSS Act. Despite being an eligible CSP from January 2018, B2B Wholesale did not join the TIO scheme until 15 September 2021. Consequently, the ACMA finds that B2B Wholesale contravened subsection 128(1) of the TCPSS Act from at least January 2018 to 14 September 2021. Accordingly, B2B Wholesale contravened the service provider rule set out at clause 1 of Schedule 2 to the Telecommunications Act, and subsection 101(1) of the Telecommunications Act.