

## Investigation Report

<b>File No</b>	ACMA2023/172
<b>Entity</b>	Fly On IT Pty Ltd
<b>ACN</b>	142 777 599
<b>Scope of Investigation</b>	Compliance with subsection 128(1) of the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>
	Compliance with the service provider rule at clause 1 of Schedule 2 to the <i>Telecommunications Act 1997</i>
	Compliance with subsection 101(1) of the <i>Telecommunications Act 1997</i>

## Findings

The Australian Communications and Media Authority (the **ACMA**) finds that Fly On IT Pty Ltd (ACN 142 777 599) (**Fly On IT**) has contravened:

- (a) subsection 128(1) 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* (the **Act**); and
- (c) subsection 101(1) of the Act,

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

## Background

1. On 27 March 2023, the ACMA received a referral from the TIO alleging that Fly On IT had failed to join the TIO scheme in accordance with subsection 128(1) of the TCPSS Act.
2. The TIO became aware that Fly On IT may be providing telecommunications services when a complaint was made on 13 December 2022 about its failure to provide information to assist in the porting of a consumer's service to another provider.
3. The TIO has engaged with Fly On IT on several occasions in relation to joining the TIO scheme since 20 January 2023:
  - a) On 20 January 2023, the TIO attempted to contact via phone, which was unanswered. The TIO left a voice message requesting Fly On IT contact the TIO regarding their obligation to join the TIO Scheme. The TIO sent a first notice and application letter to join the TIO scheme via mail on this same date. There was no response to the call or the letter.
  - b) On 16 February 2023, the TIO sent Fly On IT a first notice email and application to join the TIO via email. There was no response to this email.
  - c) On 23 February 2023, the TIO called Fly On IT's 1300 number and left a voice message requesting Fly On IT complete the application and to contact the TIO if it had any questions. On 24 February 2023, Fly On IT advised the TIO it would complete the application form.
  - d) On 15 March 2023, the TIO called Fly On IT advising that it was required under Australian law to become a member of the TIO. Fly On IT advised it would complete the membership form by 17 March 2023.
  - e) On 27 March, as the TIO had not received a completed membership form, it referred the matter to the ACMA.

4. On 5 April 2023, the ACMA contacted Fly On IT to explain Fly On IT's obligation to join the TIO Scheme.
5. On 17 April 2023, Fly on IT emailed the ACMA with the following information

'... FLYONIT is not a provider of phone or internet services, nor a carriage service provider. Instead, we operate as a carriage service intermediary who arranges for the supply of services via our partnered carriage service providers who provide the phone system and internet services.

Regarding the tax invoice submitted as evidence, we can confirm that it is a FLYONIT invoice. However, we reiterate that we do not provide the phone or internet services ourselves, but merely invoice our customers and pay our partners a commission.'

Fly On IT stated its intention to apply for an exemption. An exemption application form was sent to them in response.
6. On 21 April 2023, the ACMA received Fly On IT's application for exemption from the requirement to join the TIO scheme.
7. On 27 April 2023, the ACMA emailed Fly On IT regarding inadequate information provided to properly assess the exemption application with a response due by 12 May 2023.
8. As the ACMA did not receive the additional information, the ACMA investigated the TIO referral and on 13 June 2023 sent its preliminary findings report to Fly On IT inviting it to respond by 23 June 2023.
9. On 14 June 2023, the TIO confirmed that Fly On IT had joined the TIO scheme on that date.

#### **Legislative framework**

10. Under paragraph 510(1)(aa) of the 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.
11. Subsection 128(1) 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 carriage service provider, such as Fly On IT, who arranges for the supply of a standard telephone service (subparagraph 127(a)(i) of the TCPSS Act).
12. Where a CSP contravenes subsection 128(1) of the TCPSS Act it also contravenes the service provider rule set out at clause 1 of Schedule 2 to the Act and subsection 101(1) of the Act.

#### **Findings and reasons**

13. Fly On IT is an 'eligible CSP' as it supplies or arranges for the supply of a standard telephone service. Evidence supplied by the TIO indicates that Fly On IT invoices customers for telecommunications services (see **Attachment A** – invoice date 1 November 2022).
14. On the basis of information provided by Fly On IT and evidence supplied by the TIO, the ACMA considers that it is reasonable to assume that Fly On IT supplies or arranges for the supply of a standard telephone service.
15. For the above reasons, the ACMA finds that Fly On IT, is an eligible CSP. By not joining the TIO scheme from at least the period of 1 November 2022 to 14 June 2023, Fly On IT has contravened section 128(1) of the TCPSS Act and, thereby failed to comply with the service provider rule set out at clause 1 of Schedule 2 to the Act, and subsection 101(1) of the Act.