

March 22, 2011

[REDACTED]

RE: CCTS File Number 77476

On February 17, 2011, we issued a Recommendation regarding the above complaint. [REDACTED] has indicated that he has accepted our Recommendation. However, Fido has exercised its right to reject our Recommendation. As such, I am required to issue a Decision under Section 11 of the Code.

Our Recommendation

[REDACTED] disputed the basis upon which his service was suspended by Fido. As a resolution to his complaint, [REDACTED] requested to be released from his contract without penalty. Fido had suspended [REDACTED] service due to an outstanding balance that he owed to Rogers. His Fido account was in good standing and did not have an outstanding balance owing.

Fido relied on Rogers' Terms of Service ("Terms") which it claimed allowed it to suspend [REDACTED] Fido account, even if the Fido account was in good standing, since it is a "related Rogers entity".

After a reviewing both Rogers' and Fido's Terms, we determined that:

- The Terms were not sufficiently clear to have constituted plain disclosure to [REDACTED] of the risk that his conduct on his previous Rogers account could impact his Fido account;
- Fido confirmed that it performed a credit check prior to activating [REDACTED] Fido service. As such, it ought to have known of [REDACTED] outstanding debt on his Rogers account and ought to have informed him of this debt as well as the implications thereof;
- Neither the Fido Terms of Service or its Privacy Policy allow the sharing of account information between related Rogers' entities for debt collecting purposes.

Since [REDACTED] account had already been cancelled and billed an early termination fee, we recommended that Fido credit the termination fee.

Fido's Response to the Recommendation

Fido has rejected our Recommendation. Under Section 11 of the Code, the party objecting to the recommendation is required to explain why he or she considers it to be unacceptable or inappropriate.

Its response is as follows:

1. Rogers Communications

Fido states that Rogers offers a wide range of services under a variety of brand names including Fido. It states that this information is free and available to the general public.

It indicates that it makes this relationship evident in Fido's Terms and Conditions as they state that *"us, we, our and Fido means Fido Solutions, operated by Rogers Communications Partnership"* and that *"account information may, from time to time, be disclosed to Fido's affiliates, including other members of the Rogers Communications Inc. organization"*.

2. [REDACTED] Rogers account

Fido reiterates that [REDACTED] Rogers account was cancelled for non-payment and that Rogers' Terms authorize Rogers to *"obtain information about your credit history and agree that Rogers may provide information to others about your credit experience with Rogers."*

Fido indicates that besides the fact that Fido is a Rogers brand, Rogers was entitled to inform Fido of any unpaid balance on a Rogers account. Fido also claims that Section 33 of Rogers' Terms stipulates that if Rogers *"restrict, suspend, block or terminate (the) Services or accounts"* it may *"suspend, block or terminate, without notice or liability, your Services under any other agreement or account that you may have with us or a Fido affiliate (including accounts that may be in good standing)"* therefore it believes it was in its right to suspend [REDACTED] Fido account based on the fact that his Rogers account was outstanding.

3. [REDACTED] Fido Account

Fido states that the Rogers account was not brought to its attention when [REDACTED] signed up for the Fido account and that the credit check did not reveal the outstanding Rogers account either. It states that it would have refused activation of the Fido account had it know of the unpaid Rogers account.

When Fido later discovered the unpaid Rogers account, it suspended the service further to its Terms which it says allows it to suspend his service as per section 35 of Fido's Terms and Conditions which, according to Fido states that it *"may terminate any or all of your Services or accounts"* if *"you are in default of your obligations pursuant to the Agreement"*.

Our Analysis

We have reviewed Fido's response in detail and provide the following analysis:

Fido outlines in its response that its Terms and Conditions make the relationship between Fido and Rogers "evident", quoting the following definition:

"us, we, our and Fido means Fido Solutions, operated by Rogers Communications Partnership"

Furthermore, it indicates that section 33 of Rogers' Terms of Service states that if Rogers:

"restrict, suspend, block or terminate (the) Services or accounts: (it may) suspend, block or terminate, without notice or liability, your Services under any other agreement or account that you may have with us or a Fido affiliate (including accounts that may be in good standing)"

However, we reviewed Rogers' Terms of Service provided to us by Fido and found some discrepancies between Fido's position and our interpretation of the Rogers Terms. Section 33 of Rogers Terms actually states:

"If we restrict, suspend, block or terminate your Services or accounts...We may also suspend, block or terminate, without notice or liability, your Services under any other agreement or account that you may have with us or a **related Rogers entity** (including accounts that may be in good standing)" (emphasis added).

Neither Rogers' Terms of Service nor Fido's Terms and Conditions define a "Rogers entity".

Based on this information we remain of the view that, as explained in our Recommendation, both Fido and Rogers Terms are ambiguous as neither Terms clearly define a "Rogers entity" or a "Fido affiliate".

Like any other contractual provisions, if the service provider that drafted these clauses wishes to rely on them, it is up to the provider to ensure that they are drafted with sufficient clarity to enable customers to fully understand the implications of choosing to do business with the provider.

In this case, we are still of the opinion that the Rogers and the Fido Terms are not sufficiently clear to have constituted plain disclosure to ██████████ of the risk that his conduct on the Rogers account could impact his Fido account.

Our Decision

Section 11.5 of our Procedural Code provides that in formulating a Decision, the Commissioner shall consider whether there is substantial doubt as to the correctness of the original Recommendation. Fido has not provided us with any new information nor has it raised any substantial doubt as to the correctness of our Recommendation. As such, we no basis upon which to change our Recommendation, which now becomes our Decision.

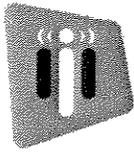
Further to Section 11.7 and 11.8 of our Procedural Code, [REDACTED] may accept or reject this Decision within 20 days of receipt. Should [REDACTED] decide to reject this Decision, he may pursue this complaint through any other forum and Fido shall be fully released from the Decision.

A copy of the CCTS Procedural Code has been attached for ease of reference.

Sincerely,

Howard Maker
Commissioner

Attachments 1. CCTS Recommendation
 2. CCTS Procedural Code



February 17, 2011

CCTS #77476 – [REDACTED]

Subject: Results of our Investigation of your Complaint against Fido - RECOMMENDATION

Complaint Details

- [REDACTED] subscribed to a fixed-term contract with Fido in early 2010 for his wireless service – he states that he went through a credit check with Equifax, Fido and Rogers and was issued a \$200 credit limit;
- He states that in August 2010, his Fido service was suspended in support of an unpaid balance on his closed Rogers account; he does not deny that he owed money to Rogers;
- He states that although he knows that “Rogers owns Fido”, he was never advised that one company can suspend his service for an unpaid balance on the other or that both companies can share a customer’s information between one another;
- He states that the unpaid Rogers balance was on a closed account and that the account was closed long before he subscribed to Fido’s service;
- He states that even if Fido is allowed to suspend his service for the Rogers account, Fido knew or should have known about the Rogers account and should not have allowed him to activate the Fido account, or, that it should have advised him at the point of sale; he states that had it done this, he would have never have subscribed to Fido’s service in the first place;
- As Fido suspended his service, he no longer wishes to be a Fido customer and requests that Fido allow him to terminate his contract without penalty;

Fido’s Response

- Fido explains that [REDACTED] Rogers account has been cancelled since May 8, 2009 and that on August 13, 2010 it suspended his Fido account due to the unpaid balance on the Rogers account;
- Fido explains that it is a part of Rogers Communications Partnership and that its Terms of Service allow it to disclose his account information to other Fido Affiliates including Rogers brands; Fido states that its Terms provide that it:
 - *may also suspend, block or terminate, without notice or liability, your Services under any other agreement or account that you may have with us or a Fido affiliate (including accounts that may be in good standing)”;*
- It also states that Rogers’ Terms of Service states that:
 - *If we restrict, suspend, block or terminate your Services or accounts:*
 - *you must pay any amounts owing;*
 - *we may also suspend, block or terminate, without notice or liability, your Services under any other agreement or account that you may have with us or a related Rogers entity (including accounts that may be in good standing);*
- Fido states that this Rogers clause also applies to Fido accounts;

- In light of these clauses, Fido declined to remove the suspension until the Rogers balance is paid in full; Fido states that it offered to connect [REDACTED] with a Rogers representative to try and resolve his concerns, but that [REDACTED] declined this option;
- It did not comment on [REDACTED] request to have the Fido account cancelled with no penalty;

Analysis

We have fully examined [REDACTED] complaint as well as Fido's response to the complaint. The details of our analysis are as follows;

- We spoke with [REDACTED] he cancelled his account on September 2, 2010 and was charged a termination fee; he informed us that now that the account is cancelled, he requests that Fido credit the termination fee;
- Based on its response, Fido is not only relying on its own Terms of Service but rather on Rogers' Terms;
- Section 4.1 of our Procedural Code requires the Commissioner to *"make Recommendations and Decisions in relation to complaints with a view to determining whether the TSP Member reasonably performed its obligations pursuant to the applicable contract..."*;
- This provision appears to confine the Commissioner to a review of the specific contract in dispute between the customer and the service provider against which the complaint has been made; thus, we query whether we are even permitted to consider the provisions of the Rogers Terms in the context of this complaint.;
- Therefore, we feel that Fido's Terms of Service apply;
- Section 36 of Fido's Terms state that:
 - *"we may restrict, block, suspend or terminate any or all of your services or accounts...without notice or liability to you if: You are in breach of the Agreement, including non-payment of your charges..."*;
- The Terms of Service also specify that the agreement is limited to Fido services. The definition of an agreement in Section 36 does not include agreements made with any of Fido's affiliates;
- We note that at the time of the suspension, [REDACTED] Fido services were in good standing and Fido has not demonstrated that he had breached his Fido agreement;
- Even if we consider the Rogers Terms, we note that Fido is not specifically identified in the Rogers Terms, and Fido has provided nothing to demonstrate that when activating his Fido account in 2010, [REDACTED] knew or ought to have known that Fido would be entitled to take action on his Fido account for something that transpired on his Rogers account prior to the existence of the Fido account;
- Therefore, we reviewed Fido's Terms of Service - Section 37 which states that:
 - *"If we restrict, suspend, block or terminate your Services or accounts:*
 - *you must pay any amounts owing;*
 - *we may also suspend, block or terminate, without notice or liability, your Services under any other agreement or account that you may have with us or a Fido affiliate (including accounts that may be in good standing);*
- In our view, neither the Rogers or Fido clauses are sufficiently clear to have constituted plain disclosure to [REDACTED] of the risk that his conduct on the Rogers account could impact his Fido account;

- Additionally, Fido performed a credit check when [REDACTED] subscribed to the service; at that point, it ought to have disclosed the problem with the Rogers account to [REDACTED] and advised him of the implications thereof;
- In order to effect a suspension of [REDACTED] Fido account because of the outstanding account with Rogers, the two companies must have shared the account information. Fido claims that its Terms of Service permit such sharing. We have reviewed the Terms and Fido's Privacy Policy, but neither of these documents allow sharing of account information for debt collecting purposes;

Conclusion

- In light of the above, we feel that the appropriate action was for Fido to have allowed [REDACTED] to have cancelled his contract without penalty;
- However, as the service has now been cancelled and the termination fee has been applied, we recommend that Fido credit the termination fee.
- Attached is a copy of the CCTS Procedural Code which contains important information with respect to the recommendations made by CCTS, including information about acceptance of recommendations by a complainant and a telecommunications service provider. In particular, we refer [REDACTED] and Fido to sections 10 and 11.