



## Telecom Decision CRTC 2011-341

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Ottawa, 20 May 2011

### **PIAC's application concerning the process for nominating and selecting consumer-group-appointed directors to the CCTS's Board of Directors**

File number: 8665-P8-201104330

*In this decision, the Commission denies the application of the Public Interest Advocacy Centre (PIAC) to have the Canadian Federation of Independent Business removed from the process for nominating and selecting consumer-group-appointed directors to the Commissioner for Complaints for Telecommunications Services Inc.'s (CCTS) Board of Directors. The Commission also denies PIAC's request for an order that the CCTS pay its costs associated with making the application.*

#### **Introduction**

1. On 28 February 2011, the Commission received an application from the Public Interest Advocacy Centre (PIAC), on behalf of itself and Canada Without Poverty, in which it requested that the Commission
  - have the Canadian Federation of Independent Business (CFIB) removed from the process for nominating and selecting consumer-group-appointed directors (as defined below) to the Commissioner for Complaints for Telecommunications Services Inc.'s (CCTS) Board of Directors (the Board); and
  - order the CCTS to pay PIAC's costs associated with making the application.

#### **Background**

2. The CCTS is an independent telecommunications consumer agency established in 2007 by telecommunications service providers in response to *Order requiring the CRTC to report to the Governor in Council on consumer complaints*, P.C. 2007-533, 4 April 2007. The CCTS is governed by its Board, which is comprised of three directors representing the telecommunications industry and four directors who are independent of telecommunications industry affiliation (independent directors). Two of the four independent directors are to be appointed by Canadian consumer groups (consumer-group-appointed directors). The CCTS's bylaw provides that these directors are to be appointed by those consumer groups that are recognized by the Board from time to time.<sup>1</sup>

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<sup>1</sup> Section 33(b)(ii) of the CCTS's bylaw.

3. In Telecom Decision 2007-130, the Commission approved, subject to certain conditions being met,<sup>2</sup> the CCTS's structure and mandate, including its governance structure. In the proceeding leading to Telecom Regulatory Policy 2011-46, the Commission reviewed the structure and mandate of the CCTS and found, among other things, that its governance structure continued to be appropriate.
4. The three-year term for the CCTS's current consumer-group-appointed directors is set to expire this summer. In February 2011, the CCTS initiated a process to nominate and select directors for the upcoming term. As part of this process, the CCTS invited twelve groups<sup>3</sup> to each nominate a candidate for the positions and then vote to determine which two candidates would be appointed to the Board.

## Process

5. The Commission received comments on the application from the CCTS, TELUS Communications Company (TCC), l'Union des consommateurs (l'Union), and the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC).
6. The public record of this proceeding, which closed on 18 March 2011, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings" or by using the file number provided above.

## Issues

7. The Commission has identified the following issues to be addressed in this decision:
  - I. Should the CFIB be allowed to participate in the process to nominate and select consumer-group-appointed directors?
  - II. Should the CCTS be required to pay PIAC's costs associated with making the application?
8. **Should the CFIB be allowed to participate in the process to nominate and select consumer-group-appointed directors?**
  8. PIAC, supported by CIPPIC and l'Union, argued that the CFIB should not be allowed to participate in the CCTS's process to nominate and select consumer-group-appointed directors. PIAC submitted that the CFIB is not a consumer group as evidenced by the fact that it represents small businesses, not individual consumers, and often takes anti-consumer positions.

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<sup>2</sup> The CCTS met all conditions of approval in August 2008.

<sup>3</sup> The CCTS invited the following twelve groups to participate in the process to nominate and select two consumer-group-appointed directors to its Board: ARCH Disability Law Centre; BC Public Interest Advocacy Centre; Canada Without Poverty; the CFIB; the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC); the Consumer's Association of Canada; the Consumer's Association of Canada (Manitoba) Inc.; the Consumers Council of Canada; Option Consommateurs; PIAC; the Public Interest Law Centre; and l'Union des consommateurs.

9. CIPPIC and l'Union argued that the fact that the term "consumer group" is undefined in the CCTS's bylaw does not allow the CCTS to define any group as a consumer group. CIPPIC and l'Union submitted that consumer groups represent individuals, not businesses. In this regard, CIPPIC acknowledged that small businesses are consumers of telecommunications services, but submitted that small business groups are not consumer groups because they represent corporate interests, rather than the public interest, and are often adverse in interest to consumer groups.
10. PIAC argued that the inclusion of non-consumer groups in the process for appointing new consumer-group-appointed directors undermines the purpose of the governance model created by the Commission, which was intended to be a careful balance of industry and consumer interests and power. CIPPIC supported this view and argued that while small businesses may have legitimate interests to voice in the CCTS's processes, they could be represented by the two other independent director positions on the CCTS's Board, i.e., the two independent directors that are not appointed by consumer groups.
11. PIAC also submitted that the Commission reserved the right to control the appointment of the two initial consumer-group-appointed directors to Canadian consumer groups active in the proceeding leading to Telecom Decision 2007-130. PIAC argued that, as a result, the nomination and election of new directors must therefore only be made by "consumer groups" as defined by those consumer groups at that time.
12. The CCTS, supported by TCC, submitted that its current process for appointing new consumer-group-appointed directors was consistent with its bylaw and mandate. In this regard, the CCTS submitted that its bylaw gives the Board the authority to select the consumer groups that are to participate in the selection process. The CCTS further argued that including a party that represents small businesses in its process is consistent with its mandate to resolve complaints from small business consumers.
13. The Commission notes that, in Telecom Decision 2007-130, it approved the CCTS's bylaw which allows the Board to recognize, at its discretion, Canadian consumer groups for the purpose of appointing consumer-group-appointed directors. As such, the Commission considers that the CCTS is not required to adopt in its current process the definition of "consumer group" that was put forward by those consumer groups that participated in the proceeding leading to Telecom Decision 2007-130 when the initial consumer-group-appointed directors were selected.
14. The Commission further notes that the CFIB is independent of the telecommunications industry and represents a subset of consumers of telecommunications services, i.e., small business consumers, whose complaints fall within the CCTS's mandate. The CCTS has included eleven other groups in its nomination process whose primary function is to represent individual consumers.

15. In light of the above, the Commission considers that inclusion of the CFIB in the CCTS's nomination and selection process is reasonable and not in contravention of the CCTS's bylaw or Commission decisions. Accordingly, the Commission **denies** PIAC's application to have the CFIB removed from the CCTS's nomination and selection process for consumer-group-appointed directors.

**II. Should the CCTS be required to pay PIAC's costs associated with making the application?**

16. PIAC requested that the Commission require the CCTS to pay PIAC's costs of making the application on the basis that PIAC had previously attempted to resolve the issue informally with the CCTS, and that such compensation would address PIAC's time and expense for defending the rights of consumers.

17. The CCTS argued that the Commission should deny this request on the basis that PIAC's application was based on a misinterpretation of clear Commission determinations and provisions in the CCTS's constating documents. The CCTS further argued that PIAC did not file evidence to support its assertions of harm to itself or the public interest and that PIAC's application had disrupted the director selection process, which remains ongoing, and had consumed substantial time and resources from the CCTS's staff.

18. The Commission considers, in the circumstances of this case, that it would not be appropriate to require the CCTS, a not-for-profit corporation, to pay PIAC's costs associated with the making of its application. The Commission therefore **denies** PIAC's request for an award of costs associated with the making of its application.

Secretary General

**Related documents**

- *Review of the Commissioner for Complaints for Telecommunications Services*, Telecom Regulatory Policy CRTC 2011-46, 26 January 2011
- *Establishment of an independent telecommunications consumer agency*, Telecom Decision CRTC 2007-130, 20 December 2007