

“Unlimited” claim issues for fixed line Telcos hit mobile operators too

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Speed read

Regulators such as the NZ Commerce Commission and the Australian ACCC strongly focus on “unlimited” claims for fixed line broadband etc.



A recent ACCC decision shows how mobile operators are exposed too in Australasia.

Fixed line broadband providers have been prosecuted for consumer law breaches in Australasia such as for claiming (a) unlimited speeds when there are speed limits (eg as to particular types of traffic); and (b) unlimited data when there are limits on what data can be carried. For example, the headlines in ads and websites may claim unlimited fixed line speeds and/or data but then the acceptable use policy or other small print imposes restrictions.

Recent ACCC action against a mobile provider shows that the regulators’ “unlimited” fixed line broadband concerns extend to mobile. This time the issue was a product that allowed unlimited calls and SMS’s when the detail said the product was not unlimited. The provider was fortunate not to be prosecuted, having entered court enforceable undertakings.

This is a reminder that mobile network operators are under focus too. With care, strong marketing claims can still be made.

The Detail

Headline claims about Telco service and product performance, when the small print (or actual performance) says or does something different, is a big focus for the Commerce Commission and ACCC. For background legal principles, see, for example, our articles.

[Will regulator take a look at Air New Zealand’s “drip” pricing?¹](#) and [Air New Zealand ad campaign provides another example for business on Fair Trading Act risk.²](#)

The main focus so far has been broadband performance such as where (a) a Telco throttles or de-prioritises certain classes of traffic or (b) the headline performance claims contrast with the small print.

In the ACCC case earlier this year, mobile provider, ALDI mobile, sold an “Unlimited Pack”, providing 30 days of unlimited voice calls, SMS and MMS.

But what was in the small print – the Acceptable Use Policy – meant that customers were subject to daily, three day and 30 day limits on voice calls, SMS and MMS. The headlines over-reached.

ALDI mobile admitted it likely breached consumer law (law that is similar in New

Zealand) and entered court enforceable undertakings to refrain from breaches, etc. It got adverse publicity about this.

Note that, even if the Acceptable Use Policy (AUP) only gave the mobile operator the option to curtail unlimited calls, that’s likely to be in breach. It’s quite common for AUPs to do that and that has been attacked by the regulators.

So, while fixed line broadband providers should be well aware of issues such as “unlimited” claims, given regulators’ guidance, prosecutions, etc, mobile operators are in the sights too. For example, speed claims for mobile broadband will be a major concern for the regulators, with the additional issues for mobile such as around contention at antennae, etc, during congested times. Any performance claim based largely on theoretical speeds will be risky, for example.

As we’ve said before, it’s usually possible to make strong marketing claims while complying with the legislation: it just requires some real care.

1. <http://wigleylaw.com/assets/Uploads/Will-regulator-take-a-look-at-Air-New-Zealands-drip-pricing.pdf>

2. <http://www.wigleylaw.com/assets/Uploads/Air-New-Zealand-ad-campaign-provides-another-example-for-business-on-Fair-Trading-Act-risk.pdf>

We welcome your feedback on this article and any enquiries in relation to its contents. This article is intended to provide a summary of the material covered and does not constitute legal advice. We can provide specialist legal advice on the full range of matters contained in this article.

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