

## iPhone 6 ad: why do Telcos keep tripping up on consumer law?

### Speed read

In our article, “Unlimited” claim issues for fixed line Telcos hit mobile operators too<sup>1</sup> we showed how “unlimited” claims are challenges for mobile as well as fixed operators. Now the Australian regulator, under law applicable in NZ and Australia, has, this week, pinged Telstra for that long standing focus for regulators: headline claims altered in the small print. This time it’s an ad for a bundled agreement for an iPhone 6 and monthly mobile services, where the handset fee was buried in the small print.

It’s hard to understand why Telstra would take the risk on this when the attitude of the regulators are so strong, and the law is so clear.



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### The Detail

In September, Telstra put this A3-sized ad in the *Melbourne Age*. As can be seen, \$70 per month was the headline price for a mobile service using the flash new iPhone 6. Trouble is, the small print – as pointed out in the comment on the ad – had an additional handset charge of \$11 per month, making the all up cost \$81 per month instead of \$70.

Telstra has paid an infringement penalty of \$102,000, and had this widely reported in the press.

As the ACCC said about this:

*"Businesses must be careful about using attention-grabbing headline prices to ensure that their advertisements do not mislead consumers about the actual price they will have to pay. This is especially the case for bundled goods and services like phones and plans."*

The *Sydney Morning Herald* outlines Telstra’s response:

*"Despite paying the fine, Telstra disagreed with the regulator’s ruling, saying the newspaper advertisement was full-page, making the writing much larger, and it prominently featured the mobile plan cost, the handset cost and the total minimum cost, as legally required, and was in line with how other telcos market their products....."*

*Telstra said there was scope for constructive engagement between industry and the regulator, rather than formal enforcement, to deal with these sorts of issues."*

Hmmm, that might be a stretch.....:

1. Telstra paid the penalty and incurred the media flak and adverse publicity. It could have fought the regulator on this: it chose to accept the penalty.

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2. This is not surprising for our view is that this is a relatively straightforward breach of consumer law (in both Australia and NZ). The larger size of the ad would make no difference in court in our view, and the fact that other telcos do similar things is no answer. The cases are clear enough that advertisers need to be pretty darned careful before they alter and dilute headline claims in the small print.

3. To say there is "*scope for constructive engagement between industry and the regulator rather than formal enforcement*" is a big stretch. Telcos in NZ and Australia well know, in the words of the ACCC that "*Consumer protection in the telecommunications sector remains an ACCC enforcement priority*". The regulator has been strong on this headline v small print issue for years and there have been plenty of prosecutions and warnings. We expect that the regulator reckons it is well past the time where "*constructive engagement*" works. In fact it looks like Telstra may have been lucky it wasn't facing a full blown prosecution by the regulator, instead of the less intrusive procedure the regulator took.

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1. <http://www.wigleylaw.com/assets/Uploads/Unlimited-claim-issues-for-fixed-line-telcos-hit-mobile-operators-too.pdf>

Wigley+Company  
PO Box 10842  
Level 6/23 Waring Taylor Street, Wellington  
T +64(4) 472 3023 E [info@wigleylaw.com](mailto:info@wigleylaw.com)  
and in Auckland  
T +64(9) 307 5957  
[www.wigleylaw.com](http://www.wigleylaw.com)

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