

Case law**Case Details**

National ID: Melita Mobile Limited v. Direttur għall-Affarijiet tal-Konsumatur

Member State: Malta

Common Name: N/A

Decision type: Administrative decision in appeal

Decision date: 17/04/2013

Court: Competition and Consumer Appeals Tribunal

Subject:

Plaintiff: Melita Mobile Limited

Defendant: Direttur għall-Affarijiet tal-Konsumatur

Keywords: advertising, advertorial, misleading advertising, misleading commercial practices, misleading omissions, telecommunications operator, unfair commercial practices

Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Article 5, 1](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(d\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 1](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 2](#).

Headnote

The use of the phrase "Up to 30% cheaper mobile call rates" by a telephone network company is deemed to be a misleading and unfair commercial practice when the offer omits certain information which would help the consumer to make more of an informed transactional decision.

Facts

The appellant Melita Mobile Limited appealed the decision taken by the Director General of Consumer Affairs taken on the 17th July 2009 which ruled that adverts and other marketing material used by the appellant amounted to unfair/ misleading commercial practice. The Director decided that Melita's marketing campaign which included the phrase "Up to 30% cheaper mobile call rates," was unfair and misleading as dictated 51B, 51C(b)(iv) and 51D of the Consumer Affairs Act (which implement respectively Article 5, Article 6.1(d) and Article 7 of Directive 2005/29 into Maltese law), and that it could mislead consumers since the phrase did not inform the consumer off the actual price scheme.

Melita in its appeal argued inter alia that:

- i) It is true that Melita's mobile rates were cheaper than its competitors and that the phrase was clear enough for a "reasonably well informed and reasonably observant and circumspect" consumer that makes "intelligent choices".
- ii) The Director's interpretation of 51 D, regarding misleading omissions (which implements into Maltese law Article 7 of Directive 2005/29) was mistaken since Melita was not able to express all the terms and conditions because the advert was intended to be short and brief. Meanwhile, such extra information was available to the consumer via brochures, shops and its website.

Legal issue

The court argued that the phrase "Up to 30% cheaper mobile call rates" is misleading because it omits certain information and misleads the consumer. This is because, in actual fact, the subscriber to such plan would be required to pay the fee which amounts to a minute's call even if the phone call was just a few minutes- whilst the 30% cheaper rates were of benefit after the minute mark. Meanwhile emphasis was made on words such as "every second" which was written in bold and "after the first minute" was left in normal font. The court also noted that the phrase "Terms and Conditions apply" was left in small font at the very side of the advert, without any additional information. The conclusion was that the appellant's actions placed the consumer in a position in which he could not make an informed decision.

Decision

Does the phrase "Up to 30% cheaper mobile call rates" amount to a misleading or unfair commercial practice, when the offer is subject to terms and conditions which are not immediately clear?

URL: <http://www.justiceservices.gov.mt/courtservices/Judgements/search.aspx?func=all>

Full text: [Full text](#)

Related Cases

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Result

The appeal of Melita Mobile Limited was dismissed and the Decision of the Director General of Consumer Affairs was confirmed.