

Jon Seymour

PO Box 1951
North Sydney NSW 2059

April 14, 2016 (rev 2) - see revision history below

Telstra Complaints Department
Attn: Aika

Re: INT 1-766814334530

As discussed on the phone on April 12, Telstra and I have agreed to disagree with regard to the issues raised in my complaint and that as part of closing the complaint Telstra will send a letter to my above address stating Telstra's position with respect to the complaint. I requested some additional details from you as part of that closing letter.

This letter details what I would like to be documented in that letter more thoroughly. If that letter does not contain what I consider to be adequate responses to the following questions, then I reserve the right to either re-open the complaint or lodge another complaint.

1. Is it true that this document <https://www.telstra.com.au/help/download/document/things-you-need-to-know-about-telstra-services-c048.pdf> is a fair summary of the contract that I signed with Telstra in January or February 2014 in respect of my Telstra account?

I note that the document referred to above contains the paragraphs:

Premium SMS and MMS (PSMS/PMMS) services are information and entertainment services such as ringtones, horoscopes, chat services and voting lines. These services are purchased by making a phone call, sending a text message, or using the internet or data connection from your compatible mobile phone. You receive and use the services at the premium price set by the provider – which may not be Telstra.

Once you sign up, we pay the provider for their service on your behalf, then recover the charges from you via your Telstra bill. Make sure you check costs and conditions before signing up to any premium service because they often involve an ongoing subscription, not just a single purchase.

Subject to your non-excludable rights under consumer protection laws, we don't endorse and aren't liable for third party content you buy from another person or company. We don't make any promises about its accuracy, suitability or quality. However, we can withdraw content if we considered to be inappropriate, offensive, in breach of law, or for other commercial reasons.

I further note that this document does not further define what is meant by the term "sign up".

2. What steps does Telstra take, prior to applying a charge to a customer's account in relation a 3rd party service, to assure itself that "sign up" for that service has actually occurred and has resulted from informed consent by the holder of the Telstra account?
3. Does Telstra ever apply charges to a customer's account in cases where either:
 - a) a customer has not "signed up" to the 3rd party service with informed consent, or,
 - b) Telstra does not possess demonstrable knowledge that such an event has occurred?

Further, if either case applies, are those circumstances clearly explained in the terms and conditions of the standard Telstra customer contract? If so, where? If not, why not?

4. Telstra claims to know that a 3rd party provider **has claimed** that I "signed up" to its 3rd party service and also that Telstra can provide records that show that such a claim was made by the provider. Does Telstra also claim to know that I actually "signed up" to such a service with informed consent at or before 18:44 on April 7?
5. Can Telstra provide me with any records that demonstrate the knowledge that Telstra has that the "sign up" event occurred and was the result of informed consent by me? Such records should include:
 - the date and time of the "sign up" event
 - any identifiers of the device that originated the "sign up" event, including source IP address
 - If known, whether the device used to initiate the "sign up" event was the phone associated with my Telstra account – and how that much is known if so
 - If known, whether the application used to originate the "sign up" event was a web browser or some other kind of phone application. If it was a phone application, which application was used?
 - the URL of the web page containing the form that originated "the sign up" event, including details of the URL containing the terms and conditions that applied to that "sign up" event
 - the contents of the form submitted as part of the "the signup" event
 - the destination URL of the "sign up" event.
 - the details of any authentication processes that were used to establish that I, and not some other 3rd party, initiated the "sign up" event
6. My understanding is that if I "sign up" online for a product or service provided directly by Telstra, that Telstra:
 - has taken steps to ensure that my "sign up" was the result of informed consent
 - has kept detailed records of the "sign up" event that substantiates the charge on the bill
 - can produce such records on demand to me, if requested.

In particular, I understand that if Telstra applies a charge to my account in respect of such a service, then Telstra "knows" that a "sign up" event has occurred and can demonstrate why that knowledge is true, if required, by producing copies of the relevant records.

My expectation is that in relation to 3rd party services, Telstra would also "know" that a "sign up" event had occurred and could demonstrate that knowledge if required by me.

Why was my expectation not met in this case? Is it because Telstra does not require such evidence from 3rd party providers or even demand that such evidence be supplied when a complaint is made? Or is it for some other reason?

7. Which section of the Telstra customer contract makes clear that Telstra retains the right to transfer to the Telstra customer's account a billing charge made by a 3rd party against Telstra even when Telstra does not "know" that a "sign up" event both occurred for the service in question and was the result of "informed consent" by the Telstra customer?
8. Does Telstra consider itself bound by the "End Suppliers and Aggregators" responsibilities defined in "Industry Code C637:2011 Mobile Premium Services"? If not, why not?
9. Section 6.1.9 "All Mobile Premium Services - Complaint Handling"/"End Carriage Suppliers of C637:2011 states:

6.1.9 End Carriage Suppliers and Aggregators: End Carriage Suppliers and Aggregators must:

- (a) subject to clause 6.1.9(c), if they receive a Complaint that relates to an aspect of the Mobile Premium Service under the control of a Content Supplier:
 - (i) take reasonable steps to ensure the correct Helpline number is passed on to the complainant; and
 - (ii) refer the Complaint to the Content Supplier in a timely manner;

Why, when the customer contacts Telstra to dispute the fact that Telstra has decided to commence transferring charges from Telstra to the customer, does Telstra refer the **Complainant** to the Content Supplier, given that:

- (a) C637:2011 only requires that the Complaint be referred, not the **Complainant**
- (b) The decision to commence transfer of charges from Telstra to the customer is an **aspect of the Mobile Premium Service** that is **exclusively** under Telstra's control
- (c) It is a foreseeable outcome that by referring the **Complainant** to the Content Supplier, the **Complainant** will likely incur further substantial costs in the form of mobile phone calls to the Content Supplier's helpline; costs that Telstra itself stands to benefit from directly at the expense of its customer in the form of mobile phone call revenue.
- (d) If Telstra retained responsibility and control of the dispute resolution process in these cases, Telstra would learn the details of the cases and be well-informed about whether a systemic problem regarding disputed sign up events with the Content Supplier actually existed.

10. Does Telstra intend to take any actions in future to amend its terms of service to make clear that Telstra may transfer charges from 3rd party to Telstra customer accounts even in circumstances where Telstra itself does not "know" that "sign up" events have occurred as the result of informed consent by the account holder?
11. Does Telstra intend to take any actions to ensure that if the particular 3rd party provider the subject of this dispute makes future claims of "sign up" events occurring in respect of any Telstra customer, then evidence that such an event has occurred will be readily available to any Telstra customer that requests to see it?

12. Does Telstra agree that while it does not bear any special responsibility for the conduct of the relationship between the 3rd party service provider and the Telstra customer once a service “sign up” event has occurred with informed consent, Telstra does bear special responsibility in relation to the sign up events themselves because Telstra has assumed the right to commence transfer of charges by the 3rd party from Telstra to the Telstra customer once Telstra has obtained knowledge that a “sign up” event has occurred?
13. Does Telstra intend to modify its business practice to retain control of the dispute resolution process in cases where the Telstra customer’s complaint is a dispute about the implicit **claim** made by Telstra that the customer has signed up to a 3rd party service.
14. (a) What measures does Telstra routinely take to assure itself that claimed “sign up” events are not, in fact, the result of fraudulent or deceptive actions taken by third parties not related to the Telstra account holder?
- (b) If Telstra does not have any such measures in place, how is this fact consistent with Telstra’s duty of care to its customers, its contractual relationship with its customers, and its legal duties under Section 51 of the Trade Practices Act and consumer protection laws?
- (c) What industry codes of conduct relevant to this matter does Telstra consider itself bound by? Please supply copies.
- (d) Given that it has the technical capability to do so, and given the risks associated with not doing so, why has Telstra not taken over responsibility for soliciting informed consent for “sign up” events for 3rd party services?
15. If Telstra does not take and does not intend to take actions such as those listed above, can Telstra explain why it has no such intention and how this lack of intention is consistent with the laws and duties mentioned above?
16. I have requested that Telstra bar access to Premium SMS services from my device and I understand that this bar has taken effect. Under the terms of my contract with Telstra, does Telstra presently retain the right to apply any other kinds of 3rd party charge to my account and if so could you refer me to the applicable sections of my contract with Telstra which grants Telstra those rights?
17. Please provide full details of the 3rd party biller involved in this event, including
- the ABN of the business
 - the postal address of the complaints department for that business
 - the contact details of a person in the business with knowledge of my case
 - details of the communications Telstra had with that business on my behalf since 7 April 2016
 - the date which this biller entered into a contract with Telstra
 - whether the business name of this provider was accurately reflected in the 19sms.com.au site records as at April 7. If not, why did Telstra permit this service provider to bill my account on that date?
 - whether Telstra has knowledge of any prior events when this provider has claimed that informed consent “sign up” of any Telstra customer occurred but the occurrence was subsequently disputed by that Telstra customer when a record of charges applied in

relation to that service appeared in that customer's bill.

18. Does Telstra hold a contract directly with the business referred to in the above question in relation to 3rd party services? If not please provide the ABN of the business that Telstra does have a contract with in relation to the 3rd party services at issue in this case.
19. Does Telstra keep accurate records of the number of times a 3rd party billing provider makes claims that a 3rd party service was "signed up" with informed consent only to have those claim subsequently disputed?
20. On average, how many reports of contested informed-consent "sign up" events with a given 3rd party billing provider does it typically take before Telstra initiates action to terminate 3rd party billing arrangements with that provider. Has Telstra ever initiated such terminations in the past? Were those terminations successful? If not, why not? In particular, Telstra ever initiated termination proceedings against any or all of the 3rd party providers involved in this dispute.
21. Please provide details of the codes of practice that Telstra requires that all 3rd party providers must adhere to in order to enter into and retain a 3rd party billing contract with Telstra.

Jon Seymour

Supporting Material

[1] Supporting Material to TIO Complaint -

<https://drive.google.com/a/premiumsms.org/file/d/0B45YMnReupuEckpHaWhadzV1TkE/view>

[2] Telstra Complaint - Original Version -

<https://drive.google.com/a/premiumsms.org/file/d/0B45YMnReupuEYTVRYnJtRE9tclU/view>

[3] Blog Page - <http://blog.stoppremiumsms.org/about/>

[4] "Dismantle The Broken Premium SMS System" - petition -

<https://www.communityrun.org/petitions/dismantle-the-broken-australian-premium-sms-system-1>

[5] FaceBook page - <https://www.facebook.com/stopppremiumsms/>

[6] Twitter Page - <https://twitter.com/stopppremiumsms>

Revision History

Revision	Date	Details
1	13 April, 2016	<ul style="list-style-type: none">• initial revision• version sent to Telstra as part of complaints process (reply from Telstra expected in 5 days)• published on social media• contained some formatting and grammar errors
2	14 April, 2016	<ul style="list-style-type: none">• added revision history• corrected some formatting and grammar errors• added revision history section• version sent to ACCC• added supporting material section

We have received your complaint

ACCC <do-not-reply@www.accc.gov.au>
To: jon.seymour@gmail.com

Thu, Apr 14, 2016 at 5:06 AM



Australian
Competition &
Consumer
Commission

14 April 2016

Web form ID: accc-complaint-66958

Thank you for contacting the ACCC. We appreciate you taking the time to write to us.

If you simply reported misconduct to us, and do not need our advice, we may not respond to you.

If you need information or advice from us, or we need to refer you to another agency, we will usually write to you within 15 business days of your submission to us. **Note:** We are currently experiencing a backlog and our response time may exceed 15 days. We apologise for any delay.

Our website provides information about your rights as a consumer and how to resolve a dispute about a product or service. See: www.accc.gov.au/consumers

Please also see our website for information about [what we can and can't do for consumers](#) and the [types of matters we prioritise](#). We cannot tell you whether we will investigate a matter you report to us.

Submitted on 14 Apr 2016 - 5:06 am

Who is making the complaint?

Title: Mr

First name: Jon

Last name:	Seymour
Age:	45-54
Address:	PO Box 1951 North Sydney 2059 NSW 2009
Phone number:	04122894423
Email address:	jon.seymour@gmail.com

Who is the complaint against?

Name of business:	Telstra
ABN:	33 051 775 556
ACN:	051 775 556

Complaint details

Complaint description:	<p>The core of my complaint is my belief that Telstra is fundamentally neglecting its duty of care to customers, under Section 51 of the Australian 'Trade Practices Act'. Specifically, the manner in which Telstra's business processes decide to commence the transfer of Premium SMS charges that it has received from other 3rd parties to its account holders and the the way its processes deal with the consequences is:</p> <p>unsafe - consumer interests are not protected from fraudulent activity of others unjust - the burden of proof in a dispute is the wrong way round self-interested - Telstra indirectly profits opaque - consumers have no real means of defending themselves</p>
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The central trunk of my argument (and it is a tree of very wide girth) is set out in the PDF attached which is a slight variation of the communication I sent to Telstra on April 13 as my complaints process with them started to wind up. [1], [2]

A more rhetorical version of the argument can be found here [3]

In truth, this problem is probably wider than just Telstra. The root causes are far deeper - fundamental systemic problems that require changes to industry codes and Australian laws. My realisation of this has lead me to start a very nascent political campaign the objective of which is to dismantle the current Australian Premium SMS system [4].

Supporting documentation and arguments can also be found on these additional social media sites [5], [6], [7].

[References in PDF]

Attachments:



Telstra Complaint - INT 1-766814334530 - ACCC - 20160414.pdf

Do you use a TTY (Telephone Typewriter):

No

12 April 2016

Mr Jon Seymour
PO Box 1951
North Sydney, NSW, 2059

Reference: SR 1-766970791185

Dear Mr. Seymour,

Thank you for speaking with me regarding your complaint on 12 April 2016.

I'm sorry we haven't been able to reach a mutually agreeable solution regarding your complaint about Third Party Purchases.

As discussed, we've investigated your complaint and can confirm that:

- You have been charged for the third party purchases made on 07 April 2016 and 08 April 2016 without receiving SMS notification to approve subscription.

As a result of the investigation, the following resolution was proposed:

- We have processed credit of \$10 for the third party purchases charges incurred.
- We have also processed credit of \$38.42 for the call you spent to the third party provider.
- We have barred premium SMS and purchases on your mobile to avoid any third party charges in the future.
- We have called the third party provider specifically Mobster Unlimited, to make sure you have been unsubscribed with them.
- We have also clarified that the only way for you to be subscribed for that is by clicking 'subscribe' on their campaign ad on some websites or entered your mobile number on the landing page. Unfortunately, they are not able to give the exact details on what website you have clicked the campaign ad.

Unfortunately, you've told me that this proposed resolution doesn't meet with your expectations. As we agreed, I've discussed this with my Team Leader who has confirmed that the proposed resolution is fair and reasonable in light of the information you have provided to us.

While it is disappointing that we are unable to reach a mutually agreeable solution, Telstra is confident that our investigation and proposed resolution are appropriate and therefore, I'm not able to do anything further to resolve this matter for you.

As you are not satisfied with the outcome, you may wish to pursue an external independent review with a body such as the Telecommunications Industry Ombudsman (TIO).

I have now closed your complaint, but if you wish to accept or discuss the resolution I have offered you, please contact me on 1800 241 787* and PIN 5167 between Monday and Friday, 9:00am to 5:00pm AEST.

Best Regards,

Aika
Employee Number: D762258

* A free call from most fixed phones