



REPORT OF THE ADJUDICATOR

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| Complaint reference number: | 20292 |
| WASPA member(s): | Mira Networks (Pty) Ltd (SP) |
| Membership number(s): | 0011 |
| Complainant: | Public |
| Type of complaint: | Service payment |
| Date complaint was lodged: | 2013-05-27 |
| Date of the alleged offence: | N/A |
| Relevant version of the Code: | 12.1 |
| Clauses considered: | 11.2; 11.3; 11.5; 11.6; 11.8; 11.9; 11.10 & 14.3.14 |
| Relevant version of the Ad. Rules: | N/A |
| Clauses considered: | N/A |
| Related cases considered: | 17189. 17250, 17373 and 17001 |

Complaint

The Complainant in this matter alleged that the SP in this matter fail to pay him / her for money received via its long codes. It further queries whether this is a network problem and wants clarification whether this is in fact a technical problem on the SP's side.

The Complainant also went further to state that legal action has been taken in the past to resolve similar matters with the SP.

Service and Information providers' responses

The SP initially indicated that this is not the correct platform and that this matter falls outside the scope of the WASPA Code of Conduct.

The SP formally responded by stating the following:

This complaint revolves around network payment discrepancies. We cover this in our agreement with the client:

b) Where discrepancies arise between reports from the MIRA System and the Networks, MIRA will raise these discrepancies with the Networks, but pending resolution of the discrepancies, shall effect payment in accordance with the Networks' reports.

Because the networks have not resolved these discrepancies, we cannot pay these amounts to the client.

Sections of the Code considered

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

3.1.2. Members are committed to lawful conduct at all times.

3.3.3. A member is not liable for any failure to provide a service due to circumstances beyond that member's control.

14.3.14. On the basis of the evidence presented, the adjudicator will decide whether there has been a breach of the Code. Each case will be considered and decided on its own merits.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SP's subsequent reply.

Section 14.3.14 states that on the basis of the evidence presented, the adjudicator will decide whether there has been a breach of the Code.

The Adjudicator is not in a position to make a ruling on this matter due to the technical aspects levied against and subsequently purported by the SP.

The Adjudicator can only rely in this matter on the content of sections 3.1.1, 3.1.2 and 3.3.3.

It would have been the opinion of the Adjudicator that if the SP is correct in its assumption, then the clause within the SP's own agreement with the Complainant seems to coincide with section 3.3.3 of the Code and would it therefore not have been possible for the Adjudicator to rule a breach of section 3.1.2.

It is however not possible to deduce whether the problem is due to a technical fault on behalf of the SP or as a result of discrepancies on behalf of the networks.

This seems to be the allegation levied against the SP by the Complainant in this matter.

The Adjudicator was however not provided with any evidence to support such allegation or claim.

The Adjudicator is also not any better off in determining why, if indeed so, the Complainant's number has been terminated. If this is the case, then the Adjudicator would have formed the opinion that this could amount to a breach of section 3.1.1.

Therefore, in light of the above and due to a lack of clarity, the Adjudicator requests the Secretariat to instruct WASPA's technical arm for a technical report or explanation of both the Complainant and SP's allegations and / or submissions.

Such a report or explanation should be made available to both parties in this matter.

If this proves unachievable or should such report or explanation fails to bear any fruit for either the parties in reaching consensus, then the recommendation of the Adjudicator would be for the parties to resolve their grievances contractually.

The Adjudicator can therefore not make a finding.

The Complaint is therefore not upheld and subsequently dismissed.