



REPORT OF THE ADJUDICATOR

WASPA Member (SP) Viamedia
Information Provider (IP)
(if any)
Service Type Unsolicited commercial sms
Source of Complaints Anonymous
Complaint Number 7924
Date received 27 October 2009
Code of Conduct version 8.0

Complaint

The anonymous complainant states that the SP sent the following SMS invite:

*7s is paying R911 in airtime every minute. Are you getting your share!! ? Dial
*120*2777# Remember every spin adds to the jackpot. R1.67/unit . Reply out to stop.*

The complainant alleges that this equates to the SP paying out R1.2 million per day, which the complainant does not believe is possible. The complainant believes this to be a fraudulent misrepresentation.

The complainant states that they have tried to opt-out but are still receiving messages.

The stated charge of R1.67 per unit is misleading. The SP is billing R1.67 per 20 seconds and the user needs to interact with the service to play. The user can therefore be billed anything from R1.67, if they play quickly enough (i.e. within 20 seconds), to R15.00 if they don't play at all, or just abort the service.

If a user does not interact with the service, it costs R15.00.

The number *120*2777#, is an interactive USSD. The costs of the service are not presented on the first page.

SP's response

The SP states that the opt-out mechanism for the service is functioning perfectly. If the complainant had responded on the Cell C or MTN networks or to the services long code or short code on the Vodacom network, it would have worked fine.

The SP states further that it uses 'tagging' for some of its messaging. Tagging helps the SP track the response to certain campaigns. A tag is an additional couple of numbers on the end of the long code which uniquely identify the user responding. The long code is the number a message is sent from e.g. 0820022777 to which a reply is sent.

The SP states that something was incorrectly configured on Vodacom's side (a copy of communications from Vodacom were attached to the SP's response). This resulted in a few cases where a response to a message never reached the SP, including the complainant's messages.

The SP states that it was pushing Vodacom to resolve this issue immediately and it had suspended all commercial message sends until the problem was fixed. All its bulk sms customers were alerted to the potential risk.

The SP was trying to determine if it could recover any of the replies that may have been sent. If it was able to get them from Vodacom, it would ensure that any users who opted-out are flagged as such.

This function was tested when it was set up and it worked fine on the short code and long code, but as the tags are any sequence of numbers and therefore infinite, it's impossible to test them all and it was assumed that all worked fine. This was a

reasonable assumption. However, as a result of this complaint, the Vodacom problem was found when it may have never been detected.

The SP denies that there is anything wrong with the way in which it has presented its pricing information. The pricing of R1.67 per unit is standard and is how USSD services are billed for by Vodacom. This was the format that Vodacom requested the SP to use. The networks bill for USSD in 20 second units, so this is the most accurate, sensible, logical way to present the cost and as previously mentioned, this is the way Vodacom requested it to be presented.

It is comfortably possible to play the game in one unit (as is supported by the SP's statistics and user experience). It does not require the user to spend any longer on the site and very few ever do. The SP states that this is therefore the full retail cost of playing the game. Even if a user spends longer, it is still a correct representation of the cost as this is not a fixed cost but an indication of time based billing.

The SP argues further that users could spend all day on the service and be billed the R15 as the complainant suggests. However the SP draws the analogy of someone spending an hour on a call to achieve something that could be achieved in a minute and therefore be charged for the hour and not the minute. The SP believes that users know the longer they stay on, the more they will be charged. No service would advertise the hourly cost if the action takes less than a minute and per minute was the method of charging. They would advertise the per minute cost. In the case of USSD, it is standard to use the 20 second units which is what all cell companies bill in. No additional costs are levied. Multiple communications are not required. No premium messages are required.

The SP states in response to the allegation that it has contravened section 6.2.7 of the Code, that it requires all its customers to agree contractually to present the cost of services at the top of the first page as per the rules. The SP states that it regularly tests this requirement as part of its regulatory procedure and has found omissions from time to time (usually with new partners), but not for this particular service. After receiving this complaint, the SP tested the service and found the price was there.

However, the design of the menus is in the customer's control, so the SP is not in a position to say or prove that the complainant is lying. Assuming that there was a

mistake or even a malicious omission by the SP's customer, the SP cannot demonstrate that there was very little damage done. The service has not yet been advertised anywhere, except for the commercial sms campaign. No print or TV adverts have been released. The price is clearly set out in the sms message. Anyone acting on the message would know the price. Hence, even if the price was omitted, which the SP believes was not the case; a user would have known what the price was prior to using the service.

The SP denies that any fraud has been committed with respect to the R 911.00 being paid out per minute as promoted. The SP states that the service was paying that amount out, and at times more. As the service is being launched, the service owners are giving away huge airtime prizes to promote it. During the hour after a send these payouts are maintained to give everyone the chance to win at the promoted rate.

Complainant's reply

The complainant replied to the SP's response regarding the alleged contraventions of sections 6.2.2, 6.2.3 and 6.2.4 of the Code by stating that R 1.67/unit is certainly not the format Vodacom uses to indicate the pricing of their own services.

20c/20seconds or part thereof up to 3 minutes is the format used by Vodacom.

Laypersons would not know what is meant by unit and this may refer to a session of 20c or to the entire session which only terminates after 3 minutes. It is unreasonable to assume that the public is aware of the inner workings of USSD sessions. The way in which Vodacom handles billing is clearly much more transparent. Indicating billing per minute would also be much more transparent.

The game has since been amended to indicate billing per 20 seconds, which contradicts the SPs claim that this format is standard and that Vodacom requests that cost be indicated in this way.

Subscribers would also not be aware of the fact the USSD sessions on this game do not terminate automatically. The session remains open for 3 minutes – by that time the user would have been billed R15 even if he/she did not play the game. It would

be honest and fair to terminate the session after at least 30 seconds when users are not actively playing.

The cost of the service was not visible at the time at which the complaint was lodged. The SPs claim that no damage was done is debatable. The pricing on the game is not clear. It is not clear what is meant by unit, the entire session or 20 seconds? As mentioned most laymen are not familiar with the inner workings of USSD.

The SP needs to provide proof that R 911.00 in airtime was and is still being paid out *every minute*. This would amount to pay-outs of approximately R1.3 million per day. The SP should also clarify what is meant by *every spin adds to the jackpot*.

Sections of the Code considered

Section 5.1.2

Any message originator must have a facility to allow the recipient to remove his or herself from the message originator's database, so as not to receive any further messages from that message originator.

Section 5.1.3

For SMS and MMS communications, a recipient should be able to stop receiving messages from any service by replying with the word \"STOP\". If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate. The reply \"STOP\" procedure should be made clear to the recipient at the start of any messaging service, for example by including \"reply STOP to opt out\" in the first message sent. If it is not technically feasible for the recipient to reply to a specific message then clear instructions for unsubscribing must be included in the body of that message.

Section 6.2.2

All advertisements for services must include the full retail price of that service.

Section 6.2.3

Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may

be associated with downloading, browsing or receiving that content.

Section 6.2.4

Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

Section 6.2.7

For menu-driven services such as USSD, the price for the service must be clearly stated at the top of the first page. Any additional costs associated with specific menu selections must be clearly indicated.

Decision

The SP has acknowledged that a contravention of section 5.1.2 and 5.1.3 has occurred. However the SP has provided an explanation that the problem arose from Vodacom's tagging mechanism for the numbers used. I have noted the correspondence exchanged between the SP and Vodacom, and I am satisfied that the non-functionality of the opt-out mechanism was not due to any fault on the part of the SP.

The complaint regarding section 5.1.2 and 5.1.3 is accordingly dismissed.

I am not satisfied with the SP's explanation for the presentation of its pricing information. I agree with the complainant that the pricing is not clear and is misleading. The SP's statement that the network providers stipulate that the pricing for USSD services must be presented in this way is simply not true.

I have noted the complainant's suggested alternatives for presenting the pricing information and agree that the SP could easily present the information in a manner which was clearer and easier to understand for users.

The SP has contravened section 6.2.2, 6.2.3 and 6.2.4 of the Code. The complaint is accordingly upheld in this regard.

There is a dispute of fact regarding the presentation of the pricing information at the top of the page in terms of section 6.2.7. I cannot make a finding either way based on the evidence that has been placed before me on this issue.

The complaint is accordingly dismissed in this regard.

The SP has not provided proof that it pays out an amount of R 911.00 every minute when it has been called upon by the complainant to do so. In order to ward off the challenge that it is making a fraudulent misrepresentation in the advertising of this game, I would expect the SP to provide such proof. I will reserve making a decision on this issue until the SP has had a further opportunity of providing the necessary proof whereafter the matter can be referred back to me for further adjudication.

Sanction

I only picked up one other previous complaint which has been lodged against the SP, which was dismissed.

The presentation of pricing information in a clear way and which is not misleading is tantamount to ensuring that consumers are properly protected when using the services of WASPA members. The failure of the SP to provide clear pricing information is therefore viewed in a serious light.

The following sanction is given:

1. The SP is ordered to suspend this service until such time as it has provided proof to the WASPA Secretariat that it has amended the pricing information provided to consumers in all of its promotional SMS messages and in any other promotional material.
2. The SP is fined an amount of R 75 000.
3. The SP is ordered to provide proof to the WASPA Secretariat, within 7 (seven) days of receiving notice of this report, that it pays out no less than R911.00 in airtime every minute for the duration of this game.