



## REPORT OF THE ADJUDICATOR

<b>Complaint reference number:</b>	20504
<b>WASPA member(s):</b>	Switchfire Limited (IP) (1069) / Opera Telecom (SP) (0068)
<b>Membership number(s):</b>	See above
<b>Complainant:</b>	Public
<b>Type of complaint:</b>	Automatic subscription
<b>Date complaint was lodged:</b>	2013-05-23
<b>Date of the alleged offence:</b>	2013-01-30
<b>Relevant version of the Code:</b>	12.4
<b>Clauses considered:</b>	11.3, 11.5, 11.6 and 14.42.
<b>Relevant version of the Ad. Rules:</b>	N/A
<b>Related cases considered:</b>	16800

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### Complaint

Complaint 20504 is the escalation of unsubscribe request 3948469 regarding subscription service charges.

The formal complaint was sent to the WASP on 2013-05-14 and they responded on 2013-05-14.

Secretariat sent an email to WASP about complaint on the 2013-05-15.

The complainant refused resolution on 2013-05-17.

The WASP provided additional information on 2013-05-28.

The Complainant wrote:

"I have recently been subjected to charges for services allegedly provided to me by a company called switchfire. I inquired with my cellular service

provider(MTN) to assist me in determining how such a service could be billed when I did not subscribe nor did I use their service.

MTN gave me your contact info to further my complaint. Switchfire has given me a so called \"goodwill refund\" but the issue is that there is a data access bill for a large sum that I paid to MTN for which they refuse to refund.

I requested switchfire to forward all the available information to verify my subscription, such as my phone type, the confirmation message, how my number was obtained etc.. I received a list of URL addresses with dates and times but not all the expected info.

I took a look at my MTN detailed billing and there is no record reflecting me having replied to any number with a request to subscribe. I believe that I am being scammed in some way here and need to get to the bottom of the matter. Firstly, I would like you help me to determine which party it is that I need to complain against. Is it Switchfire or MTN ?.”

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### **WASP response**

The WASP disputed the Complainant's view of events and provided logs to substantiate subscription. The WASP also refunded the Complainant in full. They stated further, that adjudicators are not allowed to require WASPS to pay damages and as such the Complainant should be seeking recourse against MTN for the data charges they state were erroneously deducted.

The Complainant was subscribed validly and provided proof of subscription in this regard. Proof of activity was also provided. The Complainant does not deny subscribing to the service but has an issue with the data charges deducted by their cellular service provider. This is not a matter of the Code being breached but that of the Complainant disliking his data charges.

Accordingly they do not feel that the Complainant was due anything further than the refund which he has paid. They refer to case 16800 which sets the precedent and points out that the adjudicator is not able to make a damages claim.

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### **Sections of the Code considered**

#### **11.3. Subscription initiated via a browser (web or WAP)**

11.3.1. If a subscription service is initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation message must be sent to the customer's mobile handset in order to prove that the number entered matches the customer's mobile handset number. This message may either:

- (a) contain a PIN which is then confirmed or validated on the web page, or
- (b) contain the name of the service, an explanation of the confirmation process, and a URL

with a unique identifier, which, when clicked, validates the handset number.

11.3.2. For any subscription services that are initiated via WAP, it is a requirement for the service provider who has a direct contract with the network operator to display a WAP confirmation page to the potential subscriber. This confirmation page must be displayed after the subscriber has first indicated an interest in the subscription service by clicking on a "join" or similar link.

11.3.3. The WAP confirmation page must display the following information in a clear and easy to read manner:

- (a) The name of the service and an indication that it is a subscription service
- (b) The price and frequency of billing
- (c) A phone number for customer support

11.3.4. Where it is necessary for a consumer to confirm that their MSISDN may be made available to an application, this may be done by including the following wording on the WAP confirmation page:

[Application name] has requested that your mobile number be made available.

11.3.5. The information listed in 11.3.3 and 11.3.4 above must be presented as text and not as an image.

11.3.6. The WAP confirmation page described above must also present a confirmation button. It must be clearly communicated to the customer on the confirmation page that clicking the confirmation button will initiate a subscription service.

11.3.7. The WAP confirmation page may not contain any marketing messages or other content that is likely to distract the customer from the required confirmation information and process.

11.3.8. The WAP confirmation page must offer all languages used in the promotional material for that service.

#### 11.5. Welcome message

11.5.1. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message should not be mistaken for an advert or marketing message. The customer may not be charged for this message.

11.5.2. The welcome message must start with the text "Welcome: " and must also be a clear notification of the following information, in the following order:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) Clear and concise instructions for unsubscribing from the service;
- (d) The service provider's telephone number.

#### 11.6. Reminder messages

11.6.1. A monthly reminder SMS must be sent to all subscription service customers. This reminder must be sent within 30 days of the initial notification message, and once per calendar month thereafter. The customer may not be charged for these reminder messages.

11.6.2. The reminder messages specified in 11.6.1 must adhere exactly to the following format, flow, wording and spacing:

Reminder: You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. SMS HELP [optional keyword] to [short code]/call [call centre number + "(VAS)" if applicable]. To unsub, sms STOP [service keyword] to [short code].

or

Reminder: You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help call [call centre number + "(VAS)" if applicable]. To unsub, sms STOP [service keyword] to [short code].

11.6.3. The entire reminder message must be sent in a single SMS, may not contain any line breaks or carriage returns and may not include any additional characters other than those specified in 11.6.2.

11.6.4. The content/service description must be text describing the content, promotion or service (e.g. "tones" or "poems"). This text must not be worded in a way that attempts to deceive or mislead the customer from the purpose of the reminder which is to inform the user that they are subscribed to a service.

11.6.5. The cost of service and frequency of billing must use the format "RX/day", "RX/week" or "RX/month" (or RX.XX if the price includes cents). No abbreviations of "day", "week" or "month" may be used.

11.6.6. For services that are not billed on a daily, weekly or monthly basis, the pricing should be of the format "RX every [time period]".

11.6.7. The text "(VAS)" must be included after any VAS-rated phone number. It does not need to be included after phone numbers which are not VAS-rated.

11.6.8. Members must test reminder messages on a range of phones to ensure that all characters and lines are displayed identically.

14.4.2. For all other clauses of the Code, possible sanctions that may be imposed on a member found

to be in breach of the Code of Conduct are one or more of the following:

- (a) a requirement for the member to remedy the breach (including ordering a refund);
  - (b) a formal reprimand;
  - (c) an appropriate fine on the member, to be collected by WASPA;
  - (d) a requirement, in appropriate circumstance, for the member to pay reasonable and valid claims for compensation;
  - (e) suspension of the member from WASPA for a defined period;
  - (f) expulsion of the member from WASPA;
  - (g) a requirement for the member to disclose the identity of any information provider found to be acting in breach of this Code of Conduct;
  - (h) a requirement for the member to suspend or terminate the services of any information provider that provides a service in contravention of this Code of Conduct;
  - (i) a requirement to withhold a specified amount or portion of money payable by the member to the information provider.
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**Decision**

Once again this case finds me in a he said she said situation. And once again without alleging fraud on the part of the WASP in generating logs I can find no basis upon which to dispute the validity of the logs.

The Complainant asked two questions:

1. Does WASPA accept logs in the format provided as valid?
2. With whom should the Complainant be seeking recourse in respect of the allegedly erroneously deducted data charges paid to MTN for data usage using the subscription services.

Firstly, the logs provided are in the format accepted by WASPA. Although there is often a situation of Complainants disputing the logs the WASPS provide as proof of subscription. As such, and without alleging fraud on the part of the WASP, I have no option but to consider valid logs provided in terms of the requirements of the Code of Conduct.

Secondly, the WASP is correct that all the adjudicator is entitled to do in terms of sanctions and the Code is to require the WASP to refund the Complainant in full (which has been done in terms of a goodwill gesture on the part of the WASP) and then to penalise the WASP for breaches of the Code and fine them. The adjudicator is not able to award damages to the Complainant.

In this case the Complainant has already been refunded. As I do not find the WASP to be in breach of the Code of Conduct I am not going to penalise the WASP further. I suggest that the Complainant take up the matter of the data charges incurred with MTN.

The complaint is dismissed.

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**Sanctions**

No sanction.