



**Wireless Application Service Providers' Association**

## Report of the Adjudicator

Complaint number	<b>#36401</b>
Cited WASPA members	<b>airG Worldwide Cooperatie U.A. (1526)</b>
Notifiable WASPA members	<b>N/A</b>
Source of the complaint	<b>Public</b>
Complaint short description	<b>Unauthorized subscription and lack of monthly notification of ongoing subscription</b>
Date complaint lodged	<b>2017-10-03</b>
Date of alleged breach	<b>27-12-2016 and monthly after that until 08-2017</b>
Applicable version of the Code	<b>14.6</b>
Clauses of the Code cited	<b>15.9, 15.10, 15.12, 15.19</b>
Related complaints considered	<b>N/A</b>
Fines imposed	<b>A fine of R25,000 is imposed on airG Worldwide Cooperatie U.A.: for breach of clause 15.19</b>
Other sanctions	<b>N/A</b>
Is this report notable?	<b>Not notable</b>

Summary of notability	N/A
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### **Initial complaint**

On 23 August 2017 the Complainant logged into his service account and noticed that he was being billed for a subscription service he alleges he never subscribed to. Upon further investigation it turned out that the service was being billed by the Member. There were informal discussions between the Member and the Complainant during which the Complainant denied ever having subscribed to the subscription service. The Complainant indicated that he also did not receive any monthly reminders of the subscription service as required by the WASPA Code. The Member then refunded the Complainant the full amount billed.

The Complainant was not satisfied with this outcome as he regarded the conduct of the Member akin to fraud and an exploitive business practice. This accusation was based on internet research the Complainant carried out and where he allegedly came across similar complaints against the Member. Unfortunately the Complainant did not provide any more detailed account or hard evidence of these complaints, simply relying on general statements in this regard. The Complainant then lodged a formal complaint as he regarded this in the public interest.

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### **Member's response**

The member responded that it had reviewed its subscription logs and that the subscription had taken place on 27 December 2017. The Complainant was directed towards the subscription service via an ad displayed on the Windguru App. The Complainant confirmed that he uses the Windguru app during the informal discussions and failed to deny that he saw the advertisement. The Member also alleges that the Complainant never denied seeing the advertisement on the Windguru app nor did he deny clicking on the advertisement.

However, the Member does not have logs for the billing reminder notifications as the sending of these messages is the responsibility of their carrier partner.

The Member refuted the allegation of similar complaints stating that the maxim "because it is on the internet doesn't make it true" applies here. It then alleges that there are 'millions of satisfied airG customers' who have positive comments about their service.

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### **Complainant's response**

The Complainant confirmed that he uses the Windguru app but denies that he saw the airG advertisement and that he has no recollection of seeing it. The Complainant emphatically denies

that he ever clicked on this link or received any confirmation messages. He also emphatically denies subscribing to the service.

The Complainant regarded it as unreasonable conduct that the Member billed him monthly for 8 months without him ever making use of the service and that the Member should have followed up on this.

The Complainant disputes the statement that the Member can pass the buck for not sending the reminder to another party as it is an obligation specifically imposed by Clause 15.19 of the Code and this is confirmed by Clause 3.6. He also points out that the Member failed to provide any evidence that they investigated this failure or has taken steps to prevent this from happening.

The Complainant states that the response to the internet complaints is disingenuous as the complaints have been reported widely on reputable sites like Mybroadband. Unfortunately no specific evidence of this is provided by the Complainant.

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### **Member's further response**

The Member in response provided screenshots of the advertisement and a detailed log showing the timestamps, messaging and Complainant's phone number. The member also alleges that it discovered third party validation of the delivery of the SMS. The member states that the Vodacom SMPP bind is operated for Vodacom by Mira Networks and that there was a receipt notification at Mira on the day in question and that the interaction between airG and Mira shows no error in transmission.

The member further indicates that when it received the Complainant's complaint it immediately offered a complete refund, 'no questions' asked. The member offers no explanation as to why it so readily offered the refund.

The Member also offers no further defence in regard to the complaint that no reminder notifications were sent out.

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

The following sections of the Code of Conduct were considered in this complaint:

15.9. The confirmation step for any subscription service must require an explicit response from the customer of that service. The confirmation step may not be performed in an automated manner in such a way that the process is hidden from the customer.

### **Subscriptions initiated via a web page**

15.10. For all subscription services initiated via a web page, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of three ways:

- (i) The customer's mobile carrier may implement the confirmation step.
- (ii) The member can provide the customer with a "confirmation page".
- (iii) The member can send a "confirmation message" to the customer. The customer must not be charged for the confirmation message.

### **Subscriptions initiated via an SMS**

15.12. For all subscription services initiated by the sending of an SMS, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of two ways:

- (i) The customer's mobile carrier may implement the confirmation step.
- (ii) The member can send a "confirmation message" to the customer. The customer must not be charged for the confirmation message.

### **Reminder messages**

15.19. A reminder SMS message must be sent to a subscription or notification service customer within 30 days of the initiation of the service, and once per calendar month thereafter. This message is referred to as the "reminder message". The customer must not be charged for any reminder message.

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## **Decision**

This case is a fairly typical example of a dispute about subscription services that have allegedly been initiated without the consumer's consent. The adjudicator is faced with two diametrically opposed factual accounts where the Complainant alleges never to have initiated the service and the Member providing apparently authentic logs proving that the service had been initiated by the Complainant.

Although the account and rightful indignation of the Complainant in this case rings true, the logs provided by the Member seems authentic. There is no way to resolve this impasse on the evidence provided and I can accordingly not making a positive finding on the infringement of sections 15.9 or 15.12.

There is a clear obligation in terms of section 15.19 on the Member to provide the consumer with monthly reminder notifications after a subscription has been initiated. In this case the Member failed to provide such notifications for period of 8 months. The defence offered by the member is that the notification service is offered by a third party on its behalf and that it is therefore not responsible for this failure as it was unaware of the fact that these notifications were not being sent.

The purpose of the notification messages is clearly to alert consumers of the existence of a subscription service and the onerous nature thereof. A member cannot abdicate its responsibility for sending these notifications purely by relying on a third party service provider. It needs to ensure that it complies with this important obligation. The member has offered no

explanation of how it ensures that such notifications are delivered or of the contractual nature between it and the third party.

I therefore find that there has been an infringement of section 15.19 in this instance.

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### **Sanctions**

In considering the sanction to be imposed, I have taken notice of the fact that the member has not previously been found to have infringed the Code of Conduct. However, the infringement is a serious one and not merely a technical infringement. There is a clear abdication of the member's responsibility without a convincing excuse. A fine of R25,000 is therefore imposed.

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### **Matters referred back to WASPA**

Not applicable.

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