



Report of the Adjudicator

Complaint number	42104
Cited WASPA members	Mira Networks (Pty) Ltd
Notifiable WASPA members	n/a
Source of the complaint	Public
Complaint short description	Unsubscribe request.
Date complaint lodged	22 October 2019
Date of alleged breach	Not known.
Applicable version of the Code	16.8
Clauses of the Code cited	15.27
Related complaints considered	n/a
Fines imposed	As the member is in business rescue proceedings and is commencing the winding down of their business, I fine the member R10 000.00 for a breach of 15.27 suspended indefinitely provided the member does not commence trading within South Africa again. Should they do so the fine will be payable within 7 (seven) days of their obtaining confirmation of their ability to commence trading from CIPC.
Other sanctions	n/a
Is this report notable?	Not notable.
Summary of notability	n/a

Initial complaint

The complainant complained of being charged for content services without having been subscribed as well as not receiving a response to an unsubscribe request. She was charged a total of R359.31 over July, August and September 2019.

Member's response

Concerning the complaint of not responding to the ticket in time:

1. Mira Networks filed for Business Rescue proceedings on the 3rd of June. It has since been decided that the business will have an orderly wind down till it ceases to trade in essence from the 1st of November 2019.
2. Key clients have migrated their business to other aggregators, and Mira Networks' systems has been closed down.
3. The task to answer and close the query in the allocated time could not be met due to the above.
4. Concerning the ticket and traffic on the MSISDN:
 - a. Mira can determine that at some time SexyLekker2 44551 ZA interacted with the number. This could have been a marketing sms.
 - b. Mira cannot confirm that there was any billing for this service. The binds with the networks have been terminated.
 - c. Mira can further confirm that SexyLekker2 44551 ZA was a service for Echovox SA which is a WASPA Member.
 - d. This member will be able to provide a.) full logs concerning the billing and b.) information of who their current aggregator is.

Complainant's response

No further response.

Member's further response

No further response.

Sections of the Code considered

15.27. The processing of any service termination request must not be unreasonably delayed. Termination requests submitted to the member in an automated fashion (including via SMS, USSD or the WASPA API) must be honored within 24 hours, and all other termination requests (including email requests) must be honored within two working days (48 hours).

Decision

There are many aspects to this complaint which are problematic but due to the fact that only clause 15.27 has been cited I will limit my decision to dealing with that clause. Business rescue

proceedings are not intended as the ability for a company to fail to meet their legal and operational obligations but rather a stay on creditors being able to come after the company to enable the company to either become financially stable again or to achieve a better outcome for any creditors on liquidation. As such I find that the argument around why the member failed to comply timeously to the unsubscribe request is without merit. Accordingly I find the member to be in breach of 15.27.

Sanctions

As the member is in business rescue proceedings and is commencing the winding down of their business, I fine the member R10 000.00 for a breach of 15.27 suspended indefinitely provided the member does not commence trading within South Africa again. Should they do so the fine will be payable within 7 (seven) days of their obtaining confirmation of their ability to commence trading from CIPC.

Matters referred back to WASPA

The element of unknowing subscription has still not been dealt with. As it appears the member cannot technically provide the information relating to subscription, I suggest that the issue of subscription be referred to Echovox SA. I also request that WASPA consider whether clauses 15.9, 15.10 and 15.11 should be referred back for adjudication.