WASPA
WIRELESS APPLICATION SERVICE PROVIDERS' ASSOCIATION

Report of the Appeals Panel

Complaint number	**#62005 and #62083**
Cited WASPA members	**SVMobi / Sanvir Mobitech Ventures Private Limited (1841)**
Notifiable WASPA members	**Not applicable.**
Appeal lodged by	**Member**
Type of appeal	**Written appeal**
Scope of appeal	**[X] Review of the sanctions imposed by the adjudicator** **[X] Review of the adjudicator's decision**
Applicable version of the Code	**17.14**
Clauses considered by the panel	**4.2; 4.11; 5.4; 5.5; 12.1 read with 8.9; 15.8B; 15.9; 15.10; 23A.5**
Related complaints considered	**#61079, #62085, and #62093**
Amended sanctions	**1. The appeal is partly upheld.** **2. The total fine is reduced from R70 000.00 to R40 000.00. The findings and fines for clauses 4.2, 5.4 and 5.5 are set aside. The total comprises R20 000.00 for the non-compliant subscription flow (clauses 12.1 read with 8.9, 15.8B, 15.9 and 15.10, consolidated) and R20 000.00 for the breach of clause 4.11, increased from R10 000.00. No fine is imposed for the further findings of breach in #62083. R40 000.00 is payable to WASPA within 7 business days of the date of this report.**

	3. **All subscribers acquired between 2025-08-01 and 2026-03-16, on any network, must be refunded, unless the Member proves to WASPA's satisfaction that the subscriber validly consented. Subscribers acquired before 2025-08-01 who complain must also be refunded, unless their subscription is proven legitimate. Proof of refunds is due within 20 business days. If it is not provided, all subscribers acquired in that period must be refunded within a further 10 business days.** 4. **Subscribers in the refund population, and any subscriber refunded after a complaint, must be unsubscribed. Other subscribers need not be unsubscribed, but no subscriber may be charged while the services remain terminated, and any charges levied after 2026-07-08 must be refunded. The Member must confirm the unsubscriptions to WASPA within 20 business days.** 5. **The fixed three-month termination period imposed in adjudication #62005 is set aside.** 6. **The services remain terminated, and may be reactivated only once WASPA is satisfied, on written confirmation and supporting evidence, that adequate fraud-prevention measures, aligned with WASPA's published best practices, are in place across all acquisition channels relevant to the services. Reactivation is at WASPA's discretion. Until then, WASPA may notify the networks not to process subscription requests for the services.**
Appeal fee	**50% of the appeal fee to be refunded to the Member.**
Is this report notable?	**Not notable.**
Summary of notability	**Not applicable.**

Initial complaint

1. The adjudications in complaints #62005 and #62083 are considered together in this combined appeal. Both complaints concern the Member's "Gamebar" and "Glambar" subscription services ("the services"), each charged at R7.00 per day, and both cite the same clauses of the WASPA Code of Conduct ("the Code"), with two main differences. First, the test in complaint #62005 was conducted on the Cell C network on 2026-02-09, whereas the test in complaint #62083 was conducted on the MTN network on 2026-03-12, and complaint #62083 also cites

clause 23A.5 of the Code. Second, in complaint #62005 the subscriptions followed the installation of the "Magic Camera" application, whereas in complaint #62083 they followed the installation of the "Now Junk Cleaner" application. Both applications were downloaded from the Google Play Store.

2. In both matters, the emergency procedure under clauses 24.71 to 24.81 of the Code was invoked, and the Member was notified on 2026-02-20 of complaint #62005 and on 2026-03-13 of complaint #62083. In each case, the Member responded promptly. In complaint #62005, it blocked all subscription activations on the Cell C network. In complaint #62083, it blocked all incoming traffic and subscription activations across all South African networks. In light of this response, the emergency hearings were cancelled on 2026-02-25 and 2026-03-17 respectively, and both complaints proceeded as formal complaints.

3. In both complaints, it is not disputed that the tester was auto-subscribed to the services and billed. The Member contends that this resulted from unauthorised third-party activity rather than any campaign run by it, and its appeal is directed at the sanctions imposed.

Sections of the Code considered

4. The following sections of the Code are considered herein:

4.2. Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

4.11. Members must take reasonable steps to prevent their networks and systems from being used in a fraudulent manner, and must comply with WASPA's published best practices for fraud prevention.

5.4. Members must have honest and fair dealings with their customers.

5.5. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

8.9. A "call-to-action" is any link, input box, short-code, or any other component of an advert which triggers the confirmation step for a transaction or a service. In the case where a mobile network operator provides a two-stage confirmation process for the service, the first page of this confirmation process may be considered to be the call-to-action.

12.1. For any web page, pricing information must be displayed for premium-rated services or when a mobile network operator prescribes specific advice of charge requirements. For these services, where there is a call-to-action, pricing information must be clearly and prominently displayed adjacent to the call-to-action.

15.8B. A customer must not be subscribed to any subscription or notification service without completing a confirmation step.

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.

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.

23A.5. Subscription services must have a landing page prior to the confirmation step. An advert for a subscription service may not send a customer directly to a confirmation page but must link the customer to a landing page for the service. A landing page:

(a) must clearly show the pricing information for the service;

(b) must contain a link to, or the URL of, the Ts&Cs for the service;

(c) must use only "subscribe" or "join" as the call-to-action, and may include additional words following "subscribe" or "join" which are not considered to be "intervening text" for the purpose of displaying pricing information;

(d) must not mislead by presenting examples of content not available as part of the

service;

(e) must state the name of the service; and

(f) must include a description that makes the nature of the service clear to the customer.

This clause does not apply to adverts delivered via MTN's platform, managed by MTN or to advertising/services approved by MTN for use on Google, Meta or TikTok advertising platforms.

Adjudicator's findings in #62005

5. The Member had maintained that no new subscriptions were being processed on the Cell C network and that its income from that network came from existing subscribers.

6. The adjudicator found that the Member did not persist with its denial after the Complainant pointed out that the tester had been subscribed to and billed for both services. The adjudicator also noted that the Member's own revenue figures showed an increase in October 2025 for both services, which contradicted the Member's claim.

7. On a balance of probabilities, the adjudicator held that the tester had been subscribed to the services without any of the confirmation steps required by the Code, and had been billed R7.00 per day for each service. As new subscriptions must have been processed at least in October 2025, this was not an isolated incident, and the adjudicator concluded that it was an egregious case of auto-subscription by the Member.

8. The adjudicator found that the Member's response of 2026-02-26 was no defence at all. In the adjudicator's view, it consisted of bald, unsubstantiated statements about the Member's general business practices, which were contradicted by the test results and did not address the specific elements of the complaint.

9. The adjudicator accordingly found that the Member had breached clauses 4.2, 4.11, 5.4, 5.5, 12.1 read with 8.9, 15.9 and 15.10 of the Code. The adjudicator made no finding on clause 15.8B, although it was cited in the complaint.

10. In aggravation, the adjudicator considered the Member's "laissez-faire" attitude to serious allegations, noting that it had needed to be pressed several times to respond. The adjudicator also remarked that the conduct could arguably amount to criminal fraud, and that conduct of this kind posed a serious threat to the industry as a whole. In mitigation, the adjudicator noted that the Member's only previous sanction was in 2018, and that the Member had instructed its partners to cease activity within a day of receiving the complaint.

11. The adjudicator imposed the following sanctions:

11.1. the WASPA Secretariat was to inform all networks not to process any subscription requests for the services for three months;

11.2. all current subscribers to the services were to be unsubscribed;

11.3. the services were to be terminated, and could be reactivated only after three months and once the breaches had been corrected;

11.4. the Member was to reimburse all subscription fees paid by customers from 2025-08-01 to the date of publication of the adjudication, which, based on the Member's income statement, amounted to R115 190.00 for Gamebar and R93 553.00 for Glambar; and

11.5. a fine of R10 000.00 was imposed for each of the seven clauses breached, totalling R70 000.00.

Adjudicator's findings in #62083

12. As the Member's defence was that the subscriptions resulted from unauthorised third-party activity, the adjudicator first considered clauses 3.5 to 3.7 of the Code. The adjudicator held that these clauses do not make a member automatically liable for every third-party act, and that it was necessary to distinguish between breaches caused by the member, its affiliates or sub-contractors, and breaches caused by an unauthorised third party. Whether the member had taken reasonable steps to prevent its systems from being used fraudulently was a separate question.

13. The adjudicator accepted that the evidence did not show the customer journey to have formed part of an authorised campaign deployed by the Member. The Member's version, that the incident arose from unauthorised third-party activity directed at a publicly reachable service flow, was not materially contradicted by any technical evidence from the Complainant.

14. On this basis, although the adjudicator accepted that the customer journey was unfair, deceptive and non-compliant, the adjudicator was not satisfied that it was attributable to the Member, and found no breach of clauses 5.4, 5.5, 12.1 read with 8.9, 15.8B, 15.9, 15.10 or 23A.5. The adjudicator also found no breach of clause 4.2, as that clause should not be used to duplicate liability for conduct addressed by more specific clauses, and the Member had in any event responded promptly and engaged with the process.

15. The adjudicator did, however, find a breach of clause 4.11. The test showed that the Member's systems could still be used to generate unauthorised subscriptions without a customer-facing confirmation process. Although the Member had acted promptly once notified, the adjudicator was not satisfied that the steps it had taken beforehand were reasonable or sufficiently effective.

16. In aggravation, the adjudicator considered that the customer journey resulted in subscriptions without pricing disclosure, consent or confirmation, which posed a serious threat to consumers and to confidence in the industry, and that the Member had "one previous upheld complaint involving clause 4.11".

17. In mitigation, the adjudicator considered:

17.1. the Member's prompt response to the formal complaint and emergency notice;

17.2. its blocking of South African traffic and subscription activations;

17.3. its instructions to partners and affiliates not to run traffic to the services;

17.4. the absence of evidence that the subscription flow continued after notification;

17.5. the Member's constructive engagement; and

17.6. the fact that adjudication #62005 had already dealt with substantially the same facts.

18. In light of these substantial mitigating circumstances, the adjudicator imposed no fine, but ordered the Member:

18.1. to identify, unsubscribe and refund all customers subscribed to the services through the impugned flow, from the date of the test to the date of publication of the adjudication; and

18.2. to terminate the services from the date of publication, and not to reactivate them until it had corrected the breach of clause 4.11 and implemented effective fraud-prevention controls.

Member's appeal submission

19. The Member submitted a consolidated appeal against the findings and sanctions in adjudications #62005 and #62083. Its central contention was that the sanctions went well

beyond the activity complained of, and were not factually connected, proportionate, non-duplicative or appropriately targeted at the customers actually affected.

20. The Member's factual position was that:

20.1. the services had been paused from an acquisition perspective for a substantial period before the complaints;

20.2. no authorised campaigns, publishers or affiliates were acquiring new subscribers at the time;

20.3. the services remained technically accessible only for operational and testing purposes;

20.4. the revenue during the relevant period came predominantly from renewals by subscribers acquired through earlier campaigns; and

20.5. its declining revenue trend was consistent with the absence of new acquisitions.

21. The Member contended that an unauthorised third party appeared to have used the technically accessible service flow as a test environment for fraudulent activity. It accepted that service providers must take reasonable measures to prevent their systems from being misused, but argued that the adjudications had wrongly treated its entire historical subscriber base and renewal revenue as the product of that activity.

22. The Member disputed the finding in #62005 that it had failed to address the allegations. It submitted that it had provided several responses during the complaint process, and that this finding may have influenced the severity of the sanctions. It also pointed out that adjudication #62083 had accepted that the customer journey was not shown to be an authorised campaign, and had found a breach of clause 4.11 only, and argued that the sanctions should reflect that finding.

23. The Member's principal concern was the order to unsubscribe and refund all customers of the services. It argued that the order did not distinguish between customers acquired through the impugned activity and legitimate subscribers acquired long before it, and that any refund should be based on the clear identification of affected customers and the charges attributable to the impugned activity. It also asked how the refund amounts of R115 190.00 (Gamebar) and R93 553.00 (Glambar) had been calculated.

24. The Member raised two concerns about the combined effect of the adjudications. First, the termination periods overlapped, which it understood to result in a combined termination period. Second, both adjudications could require it to refund the same customers for the same revenue. It submitted that a fixed termination period served little purpose for services that were not being promoted, and proposed instead that the services be allowed to resume once appropriate fraud-prevention controls had been implemented and, if required, verified by WASPA.

25. In mitigation, the Member relied on its prompt action once notified, including pausing South African acquisition activity, blocking subscription activity, instructing its partners and co-operating with WASPA. It also stated that it was willing to strengthen its fraud-prevention measures, including access controls, traffic and source validation, and monitoring.

26. The Member advanced eight grounds of appeal:

26.1. failure to distinguish between authorised activity and unauthorised third-party activity;

26.2. failure to consider the absence of active acquisition campaigns;

26.3. failure to distinguish new subscriber acquisition from renewal revenue;

26.4. the refund sanction was excessively broad and not connected to identified affected customers;

26.5. the refund calculation lacked a clear factual basis;

26.6. the sanctions were disproportionate to the findings, particularly in #62083;

26.7. the combined sanctions were excessive and potentially duplicative; and

26.8. the Member's responses and co-operation were not adequately reflected in the sanctions.

27. The Member asked the appeal panel to:

27.1. limit the refund obligation to customers identifiable as subscribed or billed through the impugned activity;

27.2. exclude legitimate historical subscribers from the unsubscription and refund orders;

27.3. require a clear methodology for identifying affected customers;

27.4. review the calculation of the refund amounts;

27.5. ensure that there is no duplication between the two adjudications;

27.6. review the combined termination period;

27.7. consider technical remediation as an alternative to extended termination; and

27.8. reconsider the overall proportionality of the sanctions.

28. In support of its appeal, the Member attached its six-month revenue table for the services and its email of 2026-02-20 to a partner which, it said, had sent traffic without its approval.

Complainant's response

29. The Complainant opposed the appeal and asked that the adjudications be upheld. It submitted that the Code imposes strict obligations on members to ensure compliance across all acquisition channels, including affiliates and third-party publishers, and that liability attaches regardless of intent or whether the services had been "paused".

30. The Complainant submitted that the Member's remedial steps were reactive, having been taken only after it was notified of the complaints. Clause 4.11 requires members to take reasonable steps to prevent their systems from being used fraudulently, and the fact that the services remained exploitable at the time of testing showed that the Member's preventative controls were inadequate.

31. On the refund orders, the Complainant submitted that both adjudicators ordered full refunds because the Member could not show which subscribers had been legitimately acquired and

which had been affected by fraudulent flows. In the absence of such evidence, WASPA had to err on the side of consumer protection, and limiting refunds to identified customers would leave many affected consumers uncompensated.

32. In response to the Member's reliance on its declining revenue, the Complainant pointed out that adjudication #62005 had found that subscriptions increased in October 2025, which contradicted the Member's claim that no new subscribers were being acquired. It submitted that even limited auto-subscription is unacceptable under the Code, and that an overall decline in revenue does not negate liability.

33. On the overlap between the two adjudications, the Complainant submitted that each complaint was independently tested and confirmed, and that the sanctions were imposed in respect of separate incidents on different networks. It accepted that the appeal panel may consolidate the operational aspects of the sanctions, but submitted that any duplication does not invalidate the underlying findings.

34. Finally, the Complainant submitted that the sanctions were proportionate, given the seriousness of unauthorised subscriptions, the Member's failure to prevent misuse of its service flows and the need for deterrence. It noted that the adjudicators had taken mitigating factors into account; for example, adjudication #62083 imposed no fine. It acknowledged the Member's co-operation and its willingness to strengthen its fraud-prevention measures, but submitted that these did not alter the fact that the services were non-compliant at the time of testing.

Member's further submission

35. The Member reiterated that the subscriber base generating renewal revenue had been acquired before the tests, when authorised acquisition campaigns were active, and that no campaigns were active at the time of the tests. It submitted that the activity identified was unauthorised publisher activity designed to bypass the operator confirmation process, and that, once the matter was brought to its attention, it had investigated the source of the traffic, questioned the publisher concerned, and stopped that publisher's traffic across its other offers.

36. The Member asked the appeal panel to distinguish between a service being technically accessible and a service being actively marketed for subscriber acquisition. It submitted that the fact that the services remained accessible did not mean that it was running an acquisition campaign or knowingly allowing unauthorised subscriptions.

37. On the refunds, the Member argued that customers who had subscribed before the tests were not affected by the fraudulent activity the tests identified, and should therefore not be refunded. It stated that it was willing to refund any customer who was genuinely affected, and again asked how the refund amounts in #62005 had been calculated. These were R115 190.00 for Gamebar and R93 553.00 for Glambar, R208 743.00 in total.

38. The Member attributed the increase in revenue in October 2025 to improved chargeability of existing subscribers rather than to new acquisition, and submitted that its revenue figures had

been shared voluntarily, in good faith, only to show that the services were not being actively promoted.

39. The Member accepted that WASPA was entitled to investigate each complaint separately, but asked the appeal panel to treat them as one underlying issue for the purposes of proportionality, remediation, and the avoidance of overlapping obligations. It also submitted that the total subscription revenue was not the same as the revenue it received, as revenue is shared with the network operator and its commercial partners, and asked that its co-operation be taken into account in mitigation.

40. The Member's principal question to the appeal panel was on what basis a subscriber acquired before the test could be regarded as affected by the activity identified in it. It attached a list of its active subscribers with their acquisition dates, offered to provide further subscriber information and its correspondence with the publisher, and asked for an opportunity for a brief discussion with the appeal panel before a decision was reached.

Deliberations and findings

Scope of the appeal

41. Although the appeal was framed as being against both the findings and the sanctions, it was in substance directed at the sanctions. The Member did not contend that any specific clause of the Code had not been breached, and the relief it sought related principally to the sanctions imposed by the adjudicator. Its contentions that the activity was unauthorised third-party activity, and that it had addressed the allegations, were advanced in support of its request that the sanctions be reconsidered.

42. The appeal panel's function is set out in clauses 24.61 and 24.63 of the Code. The appeal panel must consider the evidence put before the adjudicator, the adjudicator's decision and any further information from the parties, and decide on that basis whether a breach of the Code has in fact been made out. Where it has, the appeal panel must review the sanctions imposed and either uphold them or substitute such other sanctions as it considers appropriate. As the appeal panel held in #62093, this function is not confined to the matters expressly appealed. The appeal panel has therefore considered the sanctions and the findings on substance in both adjudications.

43. Several of the Member's grounds of appeal depend on factual contentions. The Member contended that the subscriptions did not result from any campaign run or authorised by it, that no new subscribers were being acquired, and that its revenue derived from renewals by previously acquired subscribers. The onus was on the Member to substantiate these contentions.

The Member's evidence on appeal

44. The Member relied on three documents: its revenue table for the services, its email of 2026-02-20 to its partner, and a list of its active subscribers. The email is dealt with under

"Attribution" below. The revenue table and the list of active subscribers are both inconsistent with the Member's contentions.

Revenue table

45. The Member submitted that its declining revenue was consistent with the absence of new acquisition. Revenue from renewals alone would ordinarily be expected to decline steadily as subscribers cancel. The table does not show this. After falling in September 2025, revenue increased between September and October 2025 by 27.72% for Gamebar and 13.28% for Glambar. For Gamebar, October was the highest month in the table. Revenue remained at or near that level in November 2025, and declined from December 2025. The Member attributed the increase to improved chargeability of existing subscribers, but offered no evidence of this.

List of active subscribers

46. The Member's list records a masked MSISDN and the date and time of subscription for each active subscriber. It does not identify the network, the charges levied, or the source through which each subscriber was acquired. As it lists only active subscribers, it does not reflect subscribers who have since unsubscribed. The list contains 297 active Gamebar subscribers and 258 active Glambar subscribers, most of whom were acquired before 2025-08-01. However:

46.1. It records 116 acquisitions across the two services between August 2025 and February 2026 (48 on Gamebar and 68 on Glambar); and

46.2. October 2025 is the highest month for acquisitions on both services in 2025, with 17 Gamebar and 18 Glambar acquisitions, which coincides with the increase in revenue.

47. The appeal panel therefore does not accept the Member's contentions that no new subscribers were being acquired during the relevant period and that its revenue derived from renewals by previously acquired subscribers. The appeal panel does accept that most of the Member's active subscribers were acquired before 2025-08-01, and has taken this into account in determining the scope of the refund order.

Attribution

48. The Member's central contention was that the auto-subscriptions resulted from unauthorised third-party activity. Clauses 3.5 and 3.6 of the Code require members to ensure that their non-member clients, suppliers, affiliates and sub-contractors are aware of the Code and provide and market services consistently with it. Clause 3.7 makes members liable for breaches resulting from services offered or marketed by those parties, although reasonable steps taken by the member may be considered in mitigation.

49. The record does not support the Member's contention that the subscription activity was completely unconnected to it. In its email of 2026-02-20 to its partner, which the Member attached to its appeal under the heading "Email to Partner who have sent traffic without our approval", the Member stated that "we continue to observe traffic originating from your side" and that the incoming traffic "appears to be solely from your integration". In its response of 2026-03-16 in complaint #62083, the Member stated that the source pattern was consistent

with the "[same] publisher but with different ad network partner" in both incidents. On the Member's own version, therefore, the traffic in both incidents reached the services through its own partners' integrations.

50. That a partner may have acted outside its instructions does not take the activity outside of the ambit of clause 3.7. In appeal #62093, the breaches were likewise upheld against the member even though its advertising partner had acted outside its authorised scope. The Member did not show that it had taken any steps before the compliance tests to ensure that its partners complied with the Code, so no mitigation under clause 3.7 arises.

51. The adjudicator in #62083 accepted that clause 3.7 extends to breaches caused by a member's affiliates and sub-contractors, but found that the customer journey had resulted from unauthorised third-party activity. For the reasons above, the appeal panel respectfully differs from that conclusion on the facts, and finds that the non-compliant subscription flow in both complaints is attributable to the Member under clause 3.7.

Clause 4.11 (both complaints)

52. Clause 4.11 requires members to take reasonable steps to prevent their networks and systems from being used fraudulently, and to comply with WASPA's published best practices for fraud prevention. Both adjudicators found a breach of this clause.

53. In appeal #62085, a finding of breach of clause 4.11 was set aside because the vulnerability lay in the confirmation page hosted by the mobile network operator, and the member had a recognised technical anti-fraud solution in place. Neither feature is present here. In neither test was the tester shown a network-hosted confirmation page. The Member stated in #62005 that it deployed fraud-prevention solutions "such as Evina" across South African operators, but it provided no evidence of this, and the test reports for both services in #62005 record "Fraud System: None Found".

54. On the Member's own version, the services remained accessible "solely to facilitate operator-initiated testing and sanity checks" (#62005) and for "supporting existing subscribers and facilitating occasional operator-initiated testing" (#62083). The Member asked the appeal panel to distinguish between a service being technically accessible and one being actively marketed. A subscription flow that remains accessible without adequate fraud-prevention controls is precisely the vulnerability that clause 4.11 requires members to guard against. The fact that the services were accessible to fraud is the crux of the issue. Further, the Member's own evidence shows that the services were not dormant. Its revenue table records continuing billing of subscribers throughout the period, and its list of active subscribers records new acquisitions during it. A service that is actively billing subscribers is a live service, whether or not it is being marketed. The absence of marketing therefore does not assist the Member, and the distinction it asks the appeal panel to draw between technical accessibility and active marketing is unconvincing.

55. In addition, from 2026-02-20 the Member was on notice that its services were being used to auto-subscribe consumers, and its email to its partner shows that it was aware of continuing traffic from that partner. It nevertheless blocked activations only on the Cell C network. The services remained open on the other networks until the second test on 2026-03-12, by which time the same publisher had reached the services on the MTN network. The Member blocked

activations across all South African networks only after the second complaint, between 2026-03-13 and 2026-03-16. This is significant. Whatever the position before the first complaint, from 2026-02-20 the Member knew that its subscription flow was being exploited. A reasonable response would have been to close that flow on all networks. By leaving it open on the other networks, the Member allowed the same publisher to cause the second incident on the MTN network three weeks later. This shows that the steps the Member took, even after it had been notified, were neither reasonable nor sufficiently effective.

56. As the appeal panel held in #62093, a member does not escape responsibility under clause 4.11 merely because the offending conduct originated with a third party. Clause 4.11 does not require members to prevent all malicious activity, but it does require fraud-prevention measures appropriate to the acquisition channel, including monitoring, detection, and visibility into the acquisition flows used. The record does not show that the Member had such measures in place. The appeal panel therefore finds that the Member breached clause 4.11 in respect of both complaints. As this breach concerns the Member's own failure to prevent its systems from being used fraudulently, and not the non-compliant subscription flow itself, it is distinct from the breaches consolidated below and attracts a separate fine. The fine of R10 000.00 imposed for that breach in #62005 is increased to R20 000.00, for the reasons set out under "Aggravating factors" below, as a single fine covering the breach in both complaints.

Findings in complaint #62005

Clause 4.2

57. Clause 4.2 requires members at all times to conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA. As the appeal panel noted in complaint #62093, it is a general provision similar in character to clause 5.4.

58. The adjudicator in complaint #62005 based this finding largely on the Member's engagement with the complaint process, describing its attitude as "laissez-faire". The record does not support this. The Member responded to the emergency notice within minutes of receiving it on 2026-02-20, and wrote to its partner less than half an hour later demanding an investigation. By 2026-02-23 it had blocked all subscription activations on the Cell C network, and it engaged with the Secretariat throughout. Its initial uncertainty about what further response was required does not amount to unprofessional conduct, and the appeal panel does not agree with the adjudicator's finding that the Member failed to address the allegations.

59. To the extent that the subscription flow was non-compliant, that conduct is fully addressed by the findings on the more specific clauses, and applying clause 4.2 to the same conduct would amount to a double penalty. The adjudicator in complaint #62083 declined to find a breach of clause 4.2 for the same reason. The finding of breach of clause 4.2 in complaint #62005, and the fine imposed for it, are set aside.

Clause 5.4

60. Clause 5.4 requires members to have honest and fair dealings with their customers. As held in appeal #61079, and applied by the adjudicator in complaint #62093, it is a general provision that should not be applied where a more specific clause already addresses the conduct, as that would impose a double penalty. The non-compliant subscription flow is fully addressed by

the specific clauses below. Therefore, the finding of breach of clause 5.4 in complaint #62005, and the fine imposed for it, are set aside.

Clause 5.5

61. Clause 5.5 prohibits a member from knowingly disseminating information that is false or deceptive, or likely to mislead. A finding under this clause requires evidence that the member was aware of the misleading character of the information at the time. The adjudicator in #62005 did not deal with this element, and described the "Magic Camera" application as the Member's service. The record does not support this. The application was downloaded from the Google Play Store, where it is listed under a third-party developer, and the Member's services were Gamebar and Glambar. The applications that triggered the subscriptions in both tests were published by third parties, and the record does not show that the Member knowingly disseminated misleading information. The finding of breach of clause 5.5 in #62005, and the fine imposed for it, are set aside.

Clauses 12.1 read with 8.9, 15.8B, 15.9 and 15.10

62. The appeal panel agrees with the adjudicator in #62005 that the tester was subscribed to both services and billed without being shown pricing information adjacent to any call-to-action, without giving any explicit response, and without any additional confirmation step before billing. As these breaches are attributable to the Member under clause 3.7, the findings of breach of clauses 12.1 read with 8.9, 15.9 and 15.10 are upheld.

63. Clause 15.8B provides that a customer must not be subscribed to any subscription service without completing a confirmation step. It was cited in the complaint, and the adjudicator identified it, at paragraph 17.6 of the adjudication, as one of the allegations the Member was called upon to answer. However, the adjudicator made no finding on it, and the clause does not appear among the breaches found. The facts on which it rests are not disputed. In the #62005 test, the tester installed the "Magic Camera" application and was subscribed to both services without being shown any landing page or confirmation page, and without taking any step to confirm a subscription. The adjudicator expressly found that the tester had been subscribed "without any of the required confirmatory steps". For the reasons set out under "Attribution" above, that subscription flow is attributable to the Member under clause 3.7. The Member had a full opportunity to address the clause, both before the adjudicator and on appeal, and did not dispute that no confirmation step was completed. The appeal panel therefore finds that the Member breached clause 15.8B in #62005. As this breach arises from the same subscription flow as the breaches of clauses 12.1 read with 8.9, 15.9 and 15.10, it is covered by the consolidated fine, and no additional fine is imposed.

64. The adjudicator imposed a separate fine of R10 000.00 for each of clauses 12.1 read with 8.9, 15.9 and 15.10. However, all of these breaches, including the breach of clause 15.8B, arose from the same instance of non-compliance, namely a single auto-subscription flow. As the appeal panels held in complaints #62085 and #62093, overlapping breaches arising from the same conduct should not each attract a separate fine. These fines are therefore consolidated into a single fine, which also covers the breach of clause 15.8B of the Code, and the amount of which is determined below.

Findings in complaint #62083

65. The adjudicator in complaint #62083 found that the customer journey was unfair, deceptive, and non-compliant, but made no finding of breach of clauses 12.1 read with 8.9, 15.8B, 15.9, 15.10 or 23A.5 solely because the journey was not attributable to the Member. The Member itself placed attribution in issue in its appeal, and responded in its further submission to the Complainant's contention that members are liable for breaches by their affiliates and partners. It has therefore had a full opportunity to address the question on which these findings depend.

66. For the reasons set out under "Attribution" above, the non-compliant subscription flow in complaint #62083 is attributable to the Member. In that test, conducted on the MTN network on 2026-03-12, the tester installed the "Now Junk Cleaner" application from the Google Play Store and was then subscribed to both services. The tester was not shown any landing page, pricing information or call-to-action, gave no explicit response, and completed no confirmation step before being subscribed.

67. Clause 23A.5 requires a subscription service to have a landing page before the confirmation step, which must, among other things, clearly show the pricing information and the name of the service. The tester was not shown any landing page. The clause "does not apply to adverts delivered via MTN's platform, managed by MTN or to advertising/services approved by MTN for use on Google, Meta or TikTok advertising platforms". That exclusion depends on how the advert was delivered or approved, not on the network on which the customer was subscribed. Although the test was conducted on the MTN network, the subscriptions were triggered by a third-party application that was not delivered via MTN's platform or managed by MTN, and there is no evidence, nor did the Member contend, that MTN approved it. The exclusion therefore does not apply.

68. The Member is accordingly found to be in breach of clauses 12.1 read with 8.9, 15.8B, 15.9, 15.10 and 23A.5 of the Code in respect of complaint #62083. For the reasons set out under clauses 4.2, 5.4 and 5.5 above, no breach of those clauses is found in #62083.

69. Although #62083 arose from a separate test, on a different network and date, the breaches arose from the same type of non-compliant subscription flow as in #62005 and, on the Member's own version, from the same publisher. The Member's failure to prevent the second incident is already sanctioned by the fine for clause 4.11, which covers both complaints. As these findings are also made for the first time on appeal, the appeal panel does not consider an additional fine appropriate, and none is imposed.

Summary of findings

70. In summary, the appeal panel finds that the Member breached clause 4.11 of the Code in respect of both complaints, as it failed to take reasonable steps to prevent its systems from being used fraudulently, and that the non-compliant subscription flow in both complaints is attributable to the Member under clause 3.7.

71. In #62005, the findings of breach of clauses 12.1 read with 8.9, 15.9 and 15.10 are upheld, a breach of clause 15.8B is found, and the findings of breach of clauses 4.2, 5.4 and 5.5 are set aside.

72. In #62083, the finding of breach of clause 4.11 is upheld, the Member is further found in breach of clauses 12.1 read with 8.9, 15.8B, 15.9, 15.10 and 23A.5, and no breach of clauses 4.2, 5.4 or 5.5 is found.

Duplication of sanctions

73. The Member raised concerns about overlapping termination periods and duplicate refund obligations. The appeal panel does not accept that the two adjudications sanction the same conduct. Although both concern the same services, each complaint arose from a separate test, on a different network, and on a different date. Each adjudication therefore dealt with a separate incident, and the findings in each stand on their own.

74. The appeal panel does, however, accept that the sanctions, as imposed, overlap in practical effect. Both adjudications order the termination of the same services, and, as worded, the unsubscription and refund orders in #62005 are not limited to Cell C customers and could therefore include customers covered by the refund order in #62083. The appeal panel addresses this overlap below.

Customer refunds

75. The two adjudications ordered refunds on different terms. Adjudication #62005 ordered the reimbursement of all subscription fees paid from 2025-08-01 to its date of publication, 2026-07-08. Adjudication #62083 ordered refunds only for customers subscribed through the impugned flow from the date of the test on 2026-03-12, to its date of publication on 2026-08-06. The Complainant's submission that both adjudicators ordered full refunds is therefore not correct. The appeal panel replaces both orders with a single order, so that no customer is refunded twice.

76. The appeal panel accepts that a refund should be directed at the customers affected by the non-compliant subscription mechanism, and not at the Member's historical subscriber base. That is also the approach taken in appeal #62093, where the refund was limited to consumers acquired through the non-compliant flow. In that matter, however, the member had itself identified the affected consumers and had already refunded them. Here, the Member has not identified any affected subscriber, and maintains that none was affected, while its own list records 116 acquisitions from August 2025, a period in which, on its own version, no authorised acquisition campaigns were running.

77. The burden of establishing which subscribers were validly acquired therefore rests on the Member, which holds the relevant records. Every subscriber acquired between 2025-08-01 and 2026-03-16, when the Member blocked activations on all South African networks, is treated as having been acquired through the non-compliant subscription mechanism, unless the Member demonstrates, by reference to contemporaneous subscriber-level records, that the subscriber completed a compliant subscription process and validly authorised the subscription and associated charges in accordance with the Code. Such evidence must be capable of independent verification, such as the network operator's confirmation records, and WASPA will determine whether it is sufficient. Where the Member cannot produce that evidence for a particular subscriber, that subscriber must be refunded.

78. This meets the Member's concern about historical renewal revenue. Subscribers acquired before 2025-08-01 are excluded, as there is no evidence that they were affected, and subscribers acquired after that date whose valid consent the Member can prove may also be excluded. Any subscriber acquired before 2025-08-01 who complains that they were subscribed without consent must, however, be refunded unless the Member proves that the subscription was legitimate.

79. The Member asked twice how the refund amounts in #62005 of R115 190.00 for Gamebar and R93 553.00 for Glambar were calculated. The answer is that they were taken directly from the Member's own revenue table. Those figures are, however, no longer the basis of the refund order. Under the order set out below, the amount owing depends on the charges actually levied on each subscriber in the refund population. That information is held only on the Member's own billing systems. The onus is therefore on the Member to establish, by reference to its billing records, the charges levied on each subscriber and the amount refunded.

Proportionality of the sanctions

80. The Member submitted that the sanctions were disproportionate, particularly in #62083, where the adjudicator found only a breach of clause 4.11. Although the appeal panel has made further findings of breach in #62083, no fine is imposed for them. The combined refund order is narrower than the order originally imposed in #62005, which already applied to all subscribers on any network, and the condition-based termination is what the Member itself proposed. Taken together, the total fine has been reduced from R70 000.00 to R40 000.00. The refund has been confined to subscribers acquired through the non-compliant subscription mechanism between 2025-08-01 and 2026-03-16, and the Member may exclude any subscriber whose valid consent it can prove. The fixed termination period has also been set aside. The appeal panel considers the sanctions, as amended, proportionate to the seriousness of the non-compliance.

Request for a hearing and further information

81. The Member asked for an opportunity to discuss the matter with the appeal panel. This is a written appeal, and the matter can properly be determined on the written record. The request is declined.

82. The Member also offered to provide further information and supporting documentation. It had a full opportunity to place this information before the appeal panel, and did so in part. The appeal panel has not delayed its decision to receive it. In any event, the order below requires the Member to provide subscriber-level information to WASPA.

Amendment of sanctions

Aggravating factors

83. The appeal panel agrees with both adjudicators that the non-compliance was serious. Unauthorised auto-subscription undermines informed consumer consent and exposes consumers to recurring charges without their knowledge or approval.

84. The absence of adequate fraud-prevention measures has already been sanctioned under clause 4.11, and is not weighed again in determining the consolidated fine.

85. The appeal panel regards the Member's approach to identifying affected customers as an aggravating factor that sets this matter apart from appeal #62093. In #62093, the member identified and refunded the affected consumers before it was ordered to do so. Here, the Member made no genuine attempt to identify the affected customers, even though that information is held only on its own systems and is readily available to it. Instead, it maintained that no customers were affected, a position its own subscriber records contradict. The appeal panel finds that the Member was not candid with WASPA in this regard.

Mitigating factors

86. The Complainant submitted that the Member's remedial steps were reactive. As held in appeals #62085 and #62093, remediation is always reactive, since the wrong has already occurred. What matters is whether the response was timely, comprehensive and effective. The Member responded promptly to each complaint and engaged with WASPA, although its response to the first complaint was limited to the Cell C network and did not prevent the second incident on the MTN network. There is no evidence of further consumer harm after it blocked activations across all South African networks in March 2026.

87. The adjudicator in #62083 treated "one previous upheld complaint involving clause 4.11" as an aggravating factor. The appeal panel does not agree. According to adjudication #62005, the Member's only previous sanction was imposed in 2018, in complaint #39145, for a breach of clause 14.11. That breach is more than seven years old, and it concerned a different clause from those breached in these matters. The Member has had no breaches of the Code in the last three years, and no previous breach of clause 4.11 or of any other clause breached here. In the appeal panel's view, a single, unrelated breach this old should not count against the Member. On the contrary, its record of compliance since then is treated as a mitigating factor, as the adjudicator in #62005 also did.

Fines

88. The adjudicator in complaint #62005 imposed a fine of R10 000.00 for each of the seven clauses breached, totalling R70 000.00. The adjudicator in complaint #62083 imposed no fine.

89. The appeal is upheld in part. On appeal, the findings of breach of clauses 4.2, 5.4 and 5.5, and the fines of R10 000.00 imposed for each (R30 000.00 in total), are set aside.

90. The fines of R10 000.00 each for the breach of clauses 12.1 read with 8.9, 15.9 and 15.10 (R30 000.00 in total) are consolidated into a single fine of R20 000.00 for the non-compliant subscription flow as a whole, which also covers the breach of clause 15.8B.

91. For the reasons set out under "Aggravating factors" above, the fine of R10 000.00 for the breach of clause 4.11 is increased to R20 000.00, as a single fine covering the breach in both complaints.

92. No fine is imposed for the further findings of breach in #62083.

93. The total fine is therefore reduced from R70 000.00 to R40 000.00. It is payable to WASPA within 7 business days of the date of this report.

Refunds

94. The refund orders in adjudications #62005 and #62083 are replaced with a single order. The Member must refund all charges levied on every subscriber to the services, on any network, acquired between 2025-08-01 and 2026-03-16, from the date of acquisition to the date of unsubscription. The only exception is a subscriber for whom the Member proves, with independently verifiable records, that the subscriber in question completed a compliant subscription process and validly consented to the charges. The burden of proof is on the Member. WASPA will decide whether the evidence is sufficient, and any subscriber whose exclusion WASPA does not accept must be refunded within 10 business days of that decision. Any subscriber acquired before 2025-08-01 who complains that they were subscribed without consent must also be refunded if their subscription cannot be proven to be legitimate.

95. Within 20 business days of the date of this report, the Member must provide WASPA with written confirmation and supporting evidence of these refunds**.**

96. If the Member fails to provide the confirmation and supporting evidence within that period, it may not exclude any subscriber from the refund population, and all charges levied on every subscriber acquired between 2025-08-01 and 2026-03-16 must be refunded in full within a further 10 business days. WASPA may, on good cause shown, extend these periods or accept evidence provided late.

97. The onus is on the Member to establish, by reference to its billing records, the charges levied on each subscriber in the refund population and the amount refunded to each.

Unsubscription

98. All subscribers within the refund population, and any subscriber refunded following a complaint, must be unsubscribed, if not already done. Subscribers acquired before 2025-08-01, and legitimate subscribers excluded from the refund population, do not otherwise need to be unsubscribed. However, the Member may not charge any subscriber while the services remain terminated, and must refund any charges levied on any subscriber after 2026-07-08, the date on which the services were ordered to be terminated. Charges already refunded under the refund order need not be refunded again. The Member must confirm in writing to WASPA, within 20 business days of the date of this report, which subscribers have been unsubscribed.

Termination

99. The fixed three-month termination period imposed in adjudication #62005 is set aside.

100. The services remain terminated, and may be reactivated only once WASPA is satisfied, on written confirmation and supporting evidence, that adequate fraud-prevention measures, aligned with WASPA's published best practices, are in place across all acquisition channels relevant to the services.

101. Reactivation is at WASPA's discretion. Until then, WASPA may notify the networks not to process subscription requests for the services.

Appeal fee

102.50% of the appeal fee is to be refunded to the Member, and 50% is to be forfeited.
