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AN ASSESSMENT OF SELF-REGULATION: THE WIRELESS APPLICATIONS SERVICE PROVIDERS' CODE OF CONDUCT

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A research report submitted to the Faculty of Management, University of the Witwatersrand, in partial fulfillment of the requirements for the degree of Master of Management (in the field of ICT Policy and Regulation).

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ABSTRACT

The Wireless Applications Service Providers Association (WASPA) is a self-regulatory body for the wireless application industry in South Africa – and employs its Code of Conduct as the primary instrument in regulating the industry. The purpose of this qualitative study is to evaluate how effective the Code has been in regulating the behaviour of the wireless applications service providers in the country. The findings from the research study suggest that the WASPA Code has more weaknesses than strengths. A significant finding is that WASPA is viewed as a legitimate regulator of the WASP industry – and its Code enjoys wide support from the industry. However, there are some questions around the organisation and the Code's credibility in a number of important areas. Some of the more important negative findings include, amongst others, the following: WASPA might have been captured by the established players in the industry; the WASPA Code seems to have insufficient focus on business-to-business aggregators; and the WASPA regulatory regime must cover the network operators' VAS services in order to ensure more meaningful industry coverage.

DECLARATION

I declare that this report is my own, unaided work. It is submitted in partial fulfillment of the requirements of the degree of Master of management (in the field of ICT Policy and regulation) in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in any other University.

Itumeleng Tumi Mokgoro
28 February 2011

DEDICATION

For my wife and daughter – Kutchi and Rebone.

For Marlin – a dear friend.

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TABLE OF CONTENTS

1 CHAPTER 1: INTRODUCTION TO THE WASP INDUSTRY 1

1.1 Overview of the WASP Industry 1

1.1.1 Products and Services 1

1.1.2 Collaboration with Mobile Network Operators 3

1.1.3 Strategic Role of Content Revenue 4

1.2 Challenges in the Industry 6

1.2.1 Consumer Distrust 6

1.2.2 Industry Response to its Challenges 7

1.3 Problem Statement 10

1.3.1 Doubt Over Effectiveness of Industry Response 10

1.4 Purpose Statement 10

1.4.1 Evaluating the Effectiveness of Industry Response 10

1.5 Summary 10

2. CHAPTER 2: REVIEW OF LITERATURE ON SELF REGULATION 12

2.1. Theories of Regulation 12

2.1.1. Devolution of Power 12

2.1.2. Economic and Social Regulation 13

2.1.3. Justifications for Regulation 15

2.1.4. Consumer Protection 16

2.2. The Regulation Continuum 18

2.2.1. No Regulation 19

2.2.2. Statutory Regulation 20

2.2.3. Co-Regulation 21

2.2.4. Self-Regulation 22

2.3. Evaluating Self-Regulation and Codes of Conduct 23

2.3.1. Evaluation Approach 24

2.3.2. Adapted Code Evaluation Framework 26

2.4. Summary 33

3. CHAPTER 3: RESEARCH QUESTION AND METHODOLOGY 35

3.1. Research Question 35

3.1.1. Main Research Question 36

3.1.2. Research Sub Questions 36

3.2. Interpretive Approach 37

3.2.1. Qualitative Methodology 39

3.2.2. Phenomenological Study 40

3.3. Data Collection 40

3.3.1. Triangulation 41

3.3.2. Review of Official Records 42

3.3.3. Individual Interviews 43

3.3.4. Purposive Sampling 44

3.3.5. Data Analysis 46

3.4. Summary 47

4. CHAPTER 4: RESULTS FROM QUALITATIVE RESEARCH 48

4.1. Review of Official Records 48

4.1.1. Institutional Positioning 48

4.1.2. Code Relevance 50

4.1.3. Stakeholder Participation 54

4.1.4. Code Enforcement 55

4.1.5. Impact of Code 57

4.2. Individual Interviews 59

4.2.1. Institutional Positioning 61

4.2.2. Code Relevance 65

4.2.3. Stakeholder Participation 68

4.2.4. Code Enforcement 72

4.2.5. Impact of the Code 74

4.3. Summary 77

5. CHAPTER 5: ANALYSIS OF RESEARCH RESULTS 79

5.1. Whether the Organisation is in Good Standing 79

5.1.1. Support for the Organisation and Code 79

5.1.2. WASPA Organisation Captured by Established Players 80

5.1.3. WASPA Resources 81

5.2. Responding to the Market's Needs 82

5.2.1. Code Relevance 82

5.3. How Far the Reach Extends 84

5.3.1. Organisations Included 84

5.4. Code's Openness and Transparency 85

5.4.1. CodeCom Processes and Inclusivity 85

5.4.2. External Participation 86

5.5. Ensuring Code Compliance 87

5.5.1. Punitive Measures 87

5.5.2. Heavier Penalties 88

5.5.3. Disclosure of "Crime" Proceeds 88

5.6. Achieving the Code's Objectives 89

5.6.1. WASP Behaviour 89

5.6.2. Reputation of WASP Services 90

5.7. Unintended Consequences 91

5.7.1. The Cost of Managing the Code 91

5.8. Summary 92

6. CHAPTER 6: CONCLUSION 93

6.1. Answering the Research Questions 94

6.1.1. Institutional Positioning: WASPA's Standing 94

6.1.2. Code Relevance: Response to Market Needs 95

6.1.3. Stakeholder Participation: Code's Reach 96

6.1.4. Stakeholder Participation: Openness and Transparency 97

6.1.5. Code Enforcement: Ensuring Compliance 98

6.1.6. Impact of the Code: Achieving Objectives 99

6.1.7. Impact of the Code: Unintended Consequences 100

6.2. Summary 101

8. BIBLIOGRAPHY 103

8.1. Interviews 110

9. ANNEXURES 112

9.1. Interview Protocol 112

9.2. WASPA Complaint Report 2006-2008 114

1 CHAPTER 1: INTRODUCTION TO THE WASP INDUSTRY

1.1 *Overview of the WASP Industry*

The evolution of mobile telecommunications business, from the erstwhile second-generation to the more recent third-generation networks and compatible handsets, has led to the emergence of new category of wireless applications for mobile phone users (Goggin, 2008, p. 141). The companies that provide these wireless applications have various names across the different markets in the world. In South Africa, these companies are referred to as Wireless Applications Service Providers, or more commonly WASPs. Similarly, the industry is referred to as the WASP industry. In the United Kingdom (UK) the wireless applications services are referred to as "premium rate" services. According to the UK communication regulator, Ofcom, these services "are a form of micro-payment paid for content, data services and value added services that are subsequently charged to your telephone bill" (Ofcom, n.d.).

1.1.1 Products and Services

WASPs "provide mobile applications and content" (MyBroadband, 2008). Mobile content is defined as "value-added services (VAS) that provide entertainment, information or a combination of the two" and mobile services are "systems designed to deliver mobile content to mobile phone users" (Pandey, Clarck-Dickson, & Moss, 2009, p. 19). Mobile content is expressed across numerous content areas – e.g. music, sports, games, news – and also include "repackaged formats of existing media such as television, radio or Internet" (Pandey, *et al*, 2009, p. 19).

Table 1 below outlines the mobile content and services categories. The mobile content market, and the services that deliver the said content, can be divided into

a number of categories – including, amongst others, mobile entertainment, mobile messaging, and mobile banking services (Pandey, *et al*, 2009, p. 20).

Table 1: Categories of Mobile Content and Services

Category	Example/ Description
Mobile messaging	SMS, MMS, e-mail, and Instant Messaging
Mobile entertainment	Mobile music, games, images, TV and video, gambling, and mobile adult and user-generated content (UGC)
Mobile payments, banking and financial services	Mobile banking, local and remote mobile payments, and domestic and international funds transfer
Location Based Services	Personal navigation, point of interest (POI), friend finder and family tracker services
Mobile Internet	Wireless data access using mobile phones
Mobile social networking	Chat rooms, User Generated Content sharing communities, etc
Mobile advertising	SMS and MMS adverts, mobile web banners and posters, etc
Source: (Pandey, *et al*, 2009, p. 20-21)	

For ease of analysis, one can segment the companies that provide these mobile applications into two main groupings – those who sell products and services directly to the public and those who sell to corporate clients. On the one hand the business-to-consumer players largely sell content and related services to members of the public. As per Table 1 earlier, content entertainment services include, amongst others things, mobile music, games and images (Pandey, *et al*, 2009, p. 20). On the other hand, the business-to-business players largely sell mobile services used to deliver content – and only communicate to the general public on behalf of their clients. As per Table 1 earlier, mobile services include, amongst others things, mobile messaging and mobile banking (Pandey, *et al*, 2009, p. 20).

1.1.2 Collaboration with Mobile Network Operators

Wireless Applications Service Providers collaborate with mobile network operators to provide their services to the market. In business-to-consumer services, the WASP is responsible for sourcing and marketing the services, and buys the use of the mobile network operators' infrastructure and billing relationship with the end-consumer to deliver and bill for these services. For example, On Demand Group runs a television streaming service called *TV: On Demand*, which they have editorial control over and market to end-users (On Demand Group, 2010). Vodacom subscribers are able to access the *TV: On Demand* service via the Vodacom 3G network (Dingle, 2010) and are billed for this access through a Vodacom billing engine. If one accepts Melody's definition of interconnection occurring where one party connects equipment not belonging to an operator to the end of its network (1997, p. 53), then the collaboration between the WASP and the mobile network operator can be seen as a form of interconnection.

Table 2 represents how the various participants in the mobile content value-chain are positioned – and what their role is. Mobile network operators are an important player in the delivery and retail environments (Pandey, *et al*, 2009, p. 4).

Table 2: Content Value Chain and Player Positioning: Emerging Markets

Role	Participant	Example
Content origination: The creation or commissioning of original content and applications	Content producers	Media companies, publishers, broadcasters, film studios
	Application developers	Mobile software and application developers
Content provisioning: Sourcing, enabling and enhancing content and applications	Aggregators	Specialist mobile aggregators
	Enablers (technology)	Service delivery platform vendors, online service providers (incl. social networks), device platform vendors
Content distribution: Delivery of content and applications via networks and devices	Delivery networks	Mobile networks, WiFi providers
	Devices	Mobile phones
	Retailers	WASPs, mobile operator portals
Source: Adapted from Dodardziev, Zoller & Mackenzie, 2010, p. 4.		

1.1.3 Strategic Role of Content Revenue

The monthly average revenue per user (ARPU) features prominently in the South African mobile network operator's annual reports (Vodacom, 2003; Vodacom, 2009). This suggests that the operators see ARPU as one of the key measurements of performance.

Overall ARPU for mobile network operators around the world has been in decline over the last few years (Kemp, 2010, p. 8). According to MTN Group President and CEO, Phuthuma Nhleko "ARPUs typically drop as more people at the lower end of the income spectrum are able to own a mobile" (MTN Group, 2010). Dodardziev, *et al* (2010, p.3) agree with this view, and also attribute the drop in

voice ARPU “to lower-quality, lower-spending net additions”. In addition, the role of growing competition in the sector, “which has led to reduced voice tariffs” is also acknowledged for contributing to declining ARPU (Dodardziev, *et al*, 2010, p. 3). To illustrate this decline, Vodacom’s overall ARPU per month decreased from R266 in 2000 (Vodacom, 2003, p. 6) to R133 in 2009 (Vodacom, 2009) – representing a fifty percent decline. However, it must be noted that there is little evidence to suggest that Vodacom’s tariffs for voice services – and other operators’ generally – have dropped correspondingly over the same period. As a result, there may be other reasons for declining voice ARPU – e.g. changing user behaviour. One way to determine the reasons for this decline would be through access to user behaviour data, over time, on a number of active SIM cards.

As a result of declining voice ARPU, growing non-voice revenue has become imperative (Dodardziev, *et al*, 2010, p. 3). To this end, data revenue provides an invaluable opportunity for network operators to compensate for declining voice ARPU. In 2009 Vodacom South Africa’s data services contributed approximately twelve percent to overall revenue (Vodacom, 2009). In 2010, mobile data represented in the region of twenty-five percent of total ARPU for many operators in developed markets (Kemp, 2010). This suggests that there is potential for growth of data services in South Africa.

Data services – including WASP services – provide consumers with additional value, and therefore provide mobile network operators with additional income – over and above voice revenue. Overall WASP market-size and market-share figures are difficult to access, as the network operators do not commonly make this information public. However, the overall market is estimated to have generated over a billion rands in revenue in 2006 (Perlman, 2006, p. 3). According to documentation submitted by Vodacom and Cointel to the Competition Tribunal, during its 2005 consideration of the merger between the two firms, forty-nine percent of Vodacom WASP revenue came from the top five providers: iTouch, Exactmobile, First National Bank, Cointel and Foneworx. The

remaining fifty-one percent came from a multitude of smaller providers. It is highly probable that these ratios would be duplicated in relation to MTN and Cell C (Manoim, 2006, p. 2).

1.2 *Challenges in the Industry*

1.2.1 Consumer Distrust

Wireless applications have become a ubiquitous part of everyday life and as a result the industry has attracted an abundance of service providers – and these have come with varying service standards and business ethics. The main challenge faced by the wireless applications industry in South Africa relates to the abuse of consumers, primarily through lack of transparency around services and the pricing thereof – where consumers would typically be unsure of how much money they are paying, and for what service. An example of one such practice is "subscribing consumers to premium-rated services without their knowledge" (McCleod, 2006). A scan of numerous media reports suggest that other common issues relate to minors accessing adult services, competitions and spam[1].

Further, media reports – particularly from the technology-specialist sites like, amongst others, MyBroadband (McCleod, 2006; MyBroadband, 2008) – suggest that WASP conduct has historically generated considerable public resentment. These business practices have been linked to increased churn amongst prepaid consumers "who, instead of trying to unsubscribe to a service they don't want, simply discard their SIM cards and switch networks" (McCleod, 2006). The challenge with such "rogue conduct" is the development of an atmosphere of consumer distrust – which can harm society in several ways. Firstly, "rogue conduct" by one group of service providers may result in consumers questioning the integrity of an entire industry (Muris, 2002, p. 5). Secondly, this distrust may

[1] Unsolicited marketing communication sent to consumer's handset

well result in some consumers going without products whose purchase would improve their well-being (Muris, 2002, p. 5).

1.2.2 Industry Response to its Challenges

1.2.2.1 **Self-Regulation**

The Wireless Application Services Providers Association (WASPA) is a self-regulatory regime for the industry – and its response to the challenge of rebuilding consumer trust. According to WASPA Chairman, Leon Perlman, WASPA's central objective is "protecting consumers from rogue services that negatively impact consumer confidence and the industry," (Rasool, 2010). WASPA employs a Code of Conduct as the central tool to regulate the industry.

The self-regulatory regime was formed – on 26 August 2004 – primarily for the purpose of recognition as an Industry Representative Body (IRB) for companies providing wireless application services in South Africa (WASPA, 2004, p. 1). IRBs are responsible for, amongst other things, self-regulation of their respective industries through the use of codes of conduct – and the basis for WASPA's recognition as an IRB finds legal force in the Electronic Communications and Transactions Act of 2002 (RSA, 2002, Section 71). The Act was passed with the objective of, amongst others, promoting electronic forms of contracting and providing the basis for consumer protection in electronic transactions – across the various technology platforms (WASPA, 2004, p. 1). An organisation qualifies for this recognition as an IRB, by the Minister of Communications, if:

> … its members are subject to a code of conduct; membership is subject to adequate criteria; the code of conduct requires continued adherence to adequate standards of conduct; and the representative body is capable of monitoring and enforcing its code of conduct adequately. (RSA, 2002, Section 71)

WASPA has a hybrid operational model that includes, on one hand self-regulation, and on the other industry promotion (Perlman, 2006). The organisation has numerous sub-committees that oversee the execution of various functions. The Management Committee, or ManCom, controls the overall organisation and is responsible for, amongst other things, forming and dissolving other committees and expelling members who contravene the Code (WASPA, 2008). The seven-member ManCom is elected annually by the WASPA membership at the association's annual general meeting (WASPA, 2008). The Network Operators Liaison Committee, or NetCom, interacts with the mobile network operators on new product development, revenue models and technical issues (WASPA, 2008). The Code of Conduct Committee, or CodeCom, oversees the development and implementation of the Code (WASPA, 2008). The Secretariat facilitates the processing of complaints relating to the Code, and the Media Monitor proactively monitors and tests WASP services for compliance – or lack thereof (WASPA, 2009). The eight Adjudicators, are "specialist Information Communications Technology (ICT) lawyers", and rule on formal complaints (MyBroadband, 2008). The Appeals Panel is the apex adjudication body (Perlamn, 2008).

1.2.2.2 **The Code of Conduct**

The WASPA Code of Conduct was passed on 30 June 2005 at the WASPA Annual General Meeting, and has been in force since 01 September 2005. The Code focuses broadly on consumer protection matters, with advertising standards as an important sub-segment – and was developed "in an effort to minimise abusive trade practices" (McCleod, 2006). The WASPA Code "covers issues such as spam (unsolicited commercial communications), subscription services, advertising and pricing, competitions, complaint resolution, and adult services" (MyBroadband, 2008, November 10). With regard to consumer protection, WASPA states that:

> The primary objective of the WASPA Code of Conduct is to ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing associated with those services. The Code aims to equip customers and consumers with a mechanism for addressing any concerns or complaints relating to services provided by WASPA members, and a framework for impartial, fair and consistent evaluation and response to any complaints made. (WASPA, 2010, Section 1.2)

The consumer protection objectives are therefore mainly two-fold. Firstly, the intention is to bolster consumer confidence in WASP services – with particular emphasis on how pricing is communicated in advertising. Secondly, there is an intention to provide a fair complaint resolution mechanism. An example of the consumer protection measures WASPA has introduced recently is the requirement for WASPs to send monthly subscription reminder messages to their consumers. The reminder "gives customers more clear and explicit information about the services they subscribe to, the inclusive costs of the services, who the service provider is and how to unsubscribe from the service" (MyBroadband, 2008). Another example is the specifications for television advertisements. The organisation prescribes a uniform layout for all WASP television adverts, which requires that all compulsory information is "present and is easy to read on televisions of all sizes" – including "total pricing and type of service" (MyBroadband, 2008). Both examples mentioned above are particularly important in an industry that has historically battled with lack of transparency around the pricing for its services.

1.3 *Problem Statement*

1.3.1 Doubt Over Effectiveness of Industry Response

The research problem is that it is unclear whether the WASPA self-regulatory regime has been successful. It is not apparent whether its Code of Conduct has been effective in regulating the behaviour of the WASPs in the country.

There is a suggestion that “the rules are generally not enforced” (MyBroadband, 2008). In other words, it seems that the organisation is struggling to implement the Code and assert itself on its members who contravene the Code. The implication is that the threat of possible punitive action for contravening the Code might not be seen as an effective deterrent as it is “it is very uncommon for a WASP to lose their license or contract because of it” (Muller, 2008). Further, “the protection of consumers is reactive rather than pro-active” where these Code-contravening WASPs are only punished in the event of a successful complaint (MyBroadband, 2008). The implication is that these WASPs are able to get away with contravening the Code in the majority of instances.

1.4 *Purpose Statement*

1.4.1 Evaluating the Effectiveness of Industry Response

The purpose of this study is to evaluate how effective the WASPA Code has been in regulating the behaviour of the Wireless Applications Service Providers (WASPs) in South Africa.

1.5 *Summary*

As discussed earlier, the omnipresent use of wireless applications in the market has attracted the industry to a large number of service providers – with varying service levels and business ethics. WASPA’s role is to hold the industry to a

common high standard and thereby restore confidence in the industry's products and services. The research problem is that it is uncertain whether its efforts have been successful. The purpose of this study is to evaluate the effectiveness of its Code of Conduct in regulating the behaviour of the WASPs in the country.

The research report is structured as follows. The next chapter is a review of the pertinent literature – and explores the main themes in evaluating self-regulation and Codes of Conduct. The third chapter is a discussion of the research question and the methodology adopted. The fourth chapter is a presentation of the research results. This is followed, in the fifth chapter, by an analysis of the said results. Finally, chapter six presents the conclusions and puts forward some recommendations.

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2. CHAPTER 2: REVIEW OF LITERATURE ON SELF REGULATION

This chapter is a review of the pertinent literature relating to the research question. Firstly, it looks at theories of regulation with a specific focus on responding to market failure and consumer protection. Secondly, it analyses the regulatory continuum – from no regulation to statutory regulation – and locates the discussion on self-regulation within this context. Thirdly, it discusses the code of conduct as a central tool for any self-regulation regime. Lastly, it looks at the analytical framework to be employed in evaluating the effectiveness of the WASPA Code of Conduct.

2.1. Theories of Regulation

2.1.1. Devolution of Power

The Constitution of the Republic of South Africa is the supreme law of the country (White, 2004, p. 5201). It forms the foundation for a society based on democratic values and safeguards these democratic values through the "separation of powers" principle which divides the functions of the state between three interdependent arms – the legislature, the executive, and the judiciary (Mokgoro, 2002). The legislative body controls the public fiscus and creates laws that are universally binding; the executive then applies and gives effect to these laws; the judiciary intervenes to resolve complex disputes that may arise from the creation and application of these laws – i.e. between the legislature and the executive on the one hand, and between them and members of society on the other (Mokgoro, 2002).

As the ultimate "majoritarian" political forum in the country, the legislature has oversight functions over the implementation of the law (Venter, 2001, p. 21). In order to aid in the implementation of the Electronic Communications and Transactions Act of 2002, the legislature has devolved regulatory powers to

WASPA, a self-regulatory “non-majoritarian” institution. WASPA was formed primarily for the purpose of recognition as an Industry Representative Body, or IRB, for companies providing wireless application services in South Africa as per the Electronic Communications and Transactions Act (WASPA, 2004, p. 1).

2.1.2. Economic and Social Regulation

Melody argues that regulation is introduced as a response to two main objectives – economic and social (1997, p. 13). This distinction made between “economic” and “social” regulation is echoed by Price and Verhulst (1999, p. 8). “From an economic perspective the services should satisfy the full range of consumer demand and be supplied under conditions of optimal efficiency,” Melody says (1997, p. 13). The effort of achieving “optimal efficiency” finds expression in policies related to stimulating competition in the marketplace. “From a social perspective, the service should be made available to everyone on reasonable terms, whether or not it is profitable to do so,” he adds (Melody, 1997, p. 13). The effort of making the service “available to everyone” finds expression in policies related to universal access. *Self-regulation*, as per the discussion later in 2.2, is one of various options available to regulate markets – in order to achieve the above-mentioned economic and social objectives. The other options are *statutory regulation, co-regulation* and *no regulation*. Within this context, it is important to consider the effectiveness of the *self-regulation* option in achieving competition and universal access in the WASP industry.

The central role of telecoms policy is to develop a competitive environment (Samarajiva & Melody, 2000, p. 29). A liberalised, competitive environment has numerous benefits: it encourages innovation, widens the choices available to consumers, improves quality of service, and lowers overall prices (Samarajiva & Melody, 2000, p. 29). The evidence of most of these benefits is especially conspicuous in the OECD countries – with lower prices, increased subscribers, and diversified range of services resulting from the introduction of competition in

the market (Esselaar, Gillwald, & Stork, 2006). In order to create the desired competitive environment, regulators must curb the market power of any one firm. To this end, it is therefore invaluable for regulators to interrogate the structure of the market to determine which firm holds “significant market power” within it (Samarajiva & Melody, 2000, p. 30). In many instances where two network operators being interconnected have different levels of market power, the larger operator with “significant market power” has no motivation to interconnect with the smaller competitor – and may either reject interconnection or attempt to impose unfavorable terms (Melody, 1997, p. 51). A regulator would cancel out such inequalities in the marketplace, and prevent the abuse of “significant market power”, by requiring such operators with interconnect with all competitive operators (Samarajiva & Melody, 2000, p. 30).

From a social perspective, effective policy and regulation ensures the network’s optimum functioning, and the inclusion of those excluded (Falconer & Neilson, 2007, p. 20). The network knowledge economy excludes those it deems incapable of contributing to its development – i.e. those insufficiently productive and competitive. It only includes those who contribute as consumers and producers of products traded within the network. The gulf between the two groups has led to numerous global trends of social underdevelopment that policy formulation and regulation should address – inequality, polarization, poverty and misery (Castells, 1999, p. 7). The inequality and polarization trends are conceptually similar – and only differ in severity. Inequality refers to the uneven distribution of wealth, i.e. income and assets, amongst individuals or socio-economic institutions (Castells, 1999, p. 7). Polarization, or extreme inequality, refers to when both the high- and low-end of a wealth distribution scale swell at a rate faster than that of the centre (Castells, 1999, p. 7). Similarly, the poverty and misery trends are conceptually similar – differing only in severity (Castells, 1999, p. 7). Poverty refers to a standard set by a society to determine the level of income essential to have an accepted material quality of life (Castells, 1999, p. 7). Misery, or extreme poverty, refers to the determination of the lowest material

quality of life that threatens the existence of life itself (Castells, 1999, p. 7). Including the excluded should be achieved through various means that result from a pro-competition environment: improving services in and lowering the cost of providing and consumption of telecoms products (Falconer & Neilson, 2007, p. 20).

2.1.3. Justifications for Regulation

Baldwin and Cave provide a number of examples that justify the need for regulation – including, amongst others, "information inadequacies, distribution justice and social policy, externalities, monopolies and natural monopolies" (1999, p. 17). They argue that an industry can use a combination of these justifications on which to base their case for regulation. Two justifications that may relate to the wireless applications industry in South Africa include the "information inadequacies" and the "distribution of justice and social policy".

In the "information inadequacies" justification, the regulatory effort aims to help consumers make informed purchase decisions by "making information more extensively accessible, accurate, and affordable" consumers (Baldwin & Cave, 1999, p. 12). A related instance of "market failure" in the WASP context relates to the lack of transparency around the pricing of WASP services – where consumers would typically be unsure of how much money they are paying, and for what service. In response to this WASPA requires WASPs to send monthly subscription reminder messages to their consumers. The "reminder must follow a format and style specified by WASPA that gives customers more clear and explicit information about the services they subscribe to, the inclusive costs of the services, who the service provider is and how to unsubscribe from the service" (MyBroadband, 2008). The following is an example of one of the reminder message format prescribed:

> You are subscribed to [name of service provider] [content/service description]. Cost [cost of service and frequency of billing]. For help, SMS HELP [optional keyword] to [short code] or call [call centre number + "(VAS)" if applicable]. To unsubscribe, SMS STOP [service keyword] to [short code]. (WASPA, 2010, Section 11.5.2)

In the "distribution of justice and social policy" justification, the regulatory effort aims to "further social policies" of the government (Baldwin & Cave, 1999, p. 15). A related instance of "market failure" in the WASP context relates to children accessing adult content or being exposed to the marketing of adult content. Section 8 of the WASPA Code responds to this by limiting children's access to both adult content and its marketing messages by requiring members to "take reasonable steps to ensure that only persons of 18 years of age or older have access to adult content services. Explicit confirmation of a user's age must be obtained prior to the delivery of an adult content service" (WASPA, 2010, Section 8.1.3). Further, the Code requires that "promotions for adult services must not appear in publications or other media specifically targeted at children" (WASPA, 2010, Section 8.2.2).

2.1.4. Consumer Protection

According to Harker, regulation is employed to control the "conduct and behaviour" of businesses (Harker, 2000, p. 199). This need to control businesses stems largely from "market failure" or "an inefficient or inequitable market practice" (Posner, 1974, p. 336) – where "the uncontrolled market place will, for some reason, fail to produce behaviour or results in accordance with the public interest" (Baldwin & Cave, 1999, p. 9). The "market failure" in the wireless applications industry in South Africa relates to the development of an atmosphere of consumer distrust – which may result in consumers questioning the integrity of an entire industry or some consumers going without products whose purchase would improve their well-being (Muris, 2002, p. 5).

Consumer protection is a recurring theme within academic discussions on regulation (Price & Verhulst, 1999; Harker & Harker, 2000; Muris, 2002; Purchase, 2004). It is essentially about achieving two complementary objectives: ensuring that consumers are able to make well-informed purchase decisions; and that the providers of services fulfill the promises they make to consumers about their offering (Muris, 2002, p. 4). Individual consumer transactions are characterised by asymmetry in information and bargaining power between the providers of services and the consumers thereof. This imbalance is of particular concern in South Africa for numerous reasons: the majority of consumers are poor; many have low levels of literacy; and many reside in rural areas with limited access to complaints-resolution assistance (Department of Trade and Industry, 2004, p. 11). Service providers abuse this asymmetry in access to information "when misleading, deceptive or offensive information is communicated to the marketplace" (Harker & Harker, 2000, p. 156).

Consumer protection in South Africa is governed by various pieces of legislation. The Constitution of the Republic of South Africa Act of 1996 is the supreme law of the country, and its Bill of Rights enshrines the fundamental rights of all citizens (RSA, 1996, Section 7.1). The Electronic Communications and Transactions Act of 2002 is a sector-specific law. It promotes electronic forms of contracting and provides the basis for consumer protection in electronic transactions (RSA, 2002, Section 1.2). The Consumer Protection Act of 2008, which is not yet in force, is intended to provide South Africa with an overarching consumer protection regime – in order to create a consistent legislative and enforcement framework for consumer transactions and agreements (Department of Trade and Industry, 2004, p. 4). The Act is expected to be in force in 2011 (Media Update, 2011).

The WASPA Code of Conduct focuses broadly on consumer protection matters, with advertising standards as an important sub-segment. The Code aims to

protect consumers by enabling them to “use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing associated with those services” and to providing them with access to redress through a framework that provides an “impartial, fair and consistent evaluation and response to any complaints made” (WASPA, 2010, Section 1.2). It “covers issues such as spam (unsolicited commercial communications), subscription services, advertising and pricing, competitions, complaint resolution, and adult services” (MyBroadband, 2008).

2.2. The Regulation Continuum

Table 3 overleaf is a graphic represents the numerous options in carrying out market regulation – with each requiring varying degrees of responsibilities between the state and the regulated organizations within a given industry. Self-regulation, which occurs when a group of companies exerts control over its own membership and their conduct, can be described as a point on a spectrum or continuum between no regulation and classic statutory regulation (Bartle & Vass, 2005, p. 1). The notion of *no regulation* lies on the one end of the continuum – with no explicit controls on the organisations that operate within it. The notion of *statutory regulation* lies on the other end of the continuum – with regulation specified, administered and enforced by the state. The notions of *self-regulation* and *co-regulation* lie between the two poles.

Table 3: Regulation Continuum



Statutory Regulation	Co-Regulation	Self-Regulation	No Regulation
Regulations are specified, administered and enforced by the state	Regulations are specified, administered and enforced by a combination of the state and the regulated organization(s)	Regulations are specified, administered and enforced by the regulated organization(s)	No explicit controls on an organisation

Source: Adapted from Bartle and Vass, 2005, p. 1

2.2.1. No Regulation

There are no explicit controls on firms where regulation is absent. The market mechanism coordinates the allocation of scarce resources for the good of the individual and the collective – i.e. the public interest. For example, a well-functioning competitive market offers a compelling incentive for providers of services to offer the most attractive range of price and quality options to consumers (Department of Trade and Industry, 2004, p. 15). In competitive markets, when consumers are not satisfied with the offering of one provider they can turn to others – and this ability to shift expenditure imposes a rigorous discipline on each provider to satisfy consumer needs (Muris, 2002, p. 4). Competition also motivates providers of services to communicate truthful and useful information about their offerings. This further drives them to fulfill promises made in respect of price, quality, and other terms of sale – as consumers can punish a provider's deceit or it's reneging on promises made by voting with their wallets (Muris, 2002, p. 4). Correspondingly, well informed consumers are seen to give an invaluable impetus for innovation in the marketplace, and are an important driver for competitiveness – by demanding competitive prices, improved product quality and better service (Department of Trade and Industry, 2004, p. 4).

However, there are circumstances where the market allocation of resources is not optimal – imperfect competition, unbalanced market operation, missing markets and undesirable market results. Under these conditions, regulation is one of the methods employed to improve the efficiency in the said allocation (den Hertog, 1999, p. 225).

2.2.2. Statutory Regulation

In statutory regulation the State assumes the responsibility to specify, administer and enforce regulations. According to the public interest theory, statutory regulation is provided in response to the demand of the public for the correction of inefficient or inequitable market practices. The theory is premised on two assumptions – markets will not operate efficiently if left alone and government regulation operates effectively and without cost (Posner, 1974, p. 336). Importantly, the public interest theory puts particular emphasis on the credibility, impartiality and competence of State regulators in the pursuit of stated public interest objectives (Baldwin & Cave, 1999, p. 19).

However, there are numerous views that challenge the validity of the public interest theory (Baldwin & Cave, 1999, p. 20). Firstly, the theory fails to acknowledge that regulation occurs within an environment of multiple and contradictory conceptions of the public interest. Secondly, there is doubt on the actual competence and efficiency that the theory attributes to regulators. Whereas self-regulation lowers the costs associated with accessing industry expertise, statutory regulation shows an increasing knowledge gap. When this gap leads to the interests of those being regulated being ignored it increases the probability of non-compliance (Schulz & Held, 2001, p. A-6). An important inadequacy of statutory regulation is that “government agencies may lack the information and technical competence necessary to make the best policy decisions” (Price & Verhulst, 1999, p. 13). In addition, whereas self-regulation is

more likely to resolve disputes informally, statutory regulation follows more formal, expensive and overly protracted legal processes (Webb, 2004, p. 3). Thirdly, the public interest theory understates the extent to which economic and political power influences regulation – where developments result from the contestation for power between the various groups within the market and between such groups and the State (Baldwin & Cave, 1999, p. 21). The State's intervention in the market is therefore sculpted, not by its pursuit of the public good, but by its response to the competing policy demands of the various interest groups (Posner, 1974, p. 336). Regulation is then "captured" when it fails to act in the interest of the public good, and rather acts in the commercial interests of specific interest groups.

2.2.3. Co-Regulation

Co-regulation is "self-regulation with public oversight or ratified by the state, in other words it is self-regulation with a legal basis" (Latzer, Just, Saurwein, & Slominski, 2003, p. 135). In co-regulation the State and the regulated organisations together specify, administer and enforce regulations. Co-regulation, as the policy-making process involving the widest range of industry players in the regulatory discourse, offers considerable scope for the wishes of all stakeholders to be taken into account, while also potentially offering better transparency in the application of the regulatory initiatives adopted than self-regulation alone (Goggin, 2008, p. 142). A related concept is "Regulated Self-Regulation", introduced by German Constitutional Court judge, Wolfgang Hoffmann-Riem, to describe the evolving role of the State from hierarchical control to a modulation of processes going on within society (Schulz & Held, 2001, p. A-1).

There has been wide global support for the self-regulatory and co-regulatory approaches in the WASP industries in the developed world. There is no Government mandated or legislated mobile content regulatory scheme in the

United States. The industry association, Cable Telecommunications & Internet (CTIA), has been left to develop a self-regulatory scheme in this area through a code of practice (Goggin, 2008, p. 144). Office of Communications (Ofcom) is the communications industry's regulator in the United Kingdom (UK). Under the UK's Communication's Act 2003, Ofcom has the responsibility of regulating premium rate services in that country (PhonepayPlus, 2009, p. 4). PhonepayPlus acts, on Ofcom's behalf, as the regulatory agency for premium rate services in the UK (PhonepayPlus, 2009, p. 4). PhonepayPlus is therefore a co-regulatory scheme as its activities have a statutory basis through the UK Communications Act and enforced by the converged regulator Ofcom – which has the power to set conditions for service provision and the approval of a code regulating the premium rate services (Goggin, 2007, p. 147).

2.2.4. Self-Regulation

In self-regulation regulations are specified, administered and enforced by the regulated organisations – and is seen as "a voluntary restraint that firms are willing to impose on their own conduct" (Lee, 2003, p. 277). The advantages of self-regulation revolve mainly around two principles: expertise and efficiency (Baldwin & Cave, 1999, p. 27). Industry practitioners have more expertise and technical knowledge than public officials, and allow the regulatory effort to "overcome the problem of information deficits of state regulation" (Latzer, *et al*., 2003, p. 142). Importantly, this lowers the costs associated with accessing this knowledge. As a result, it is easier to develop appropriate rules, and this increases the probability of the effectiveness of and compliance to the regulations (Bartle & Vass, 2005, p. 7). Further, self-regulation disputes are more efficiently settled – as they are more likely to be resolved informally avoiding the more onerous recourse to formal legal processes. In addition, from the state's perspective this route is more efficient as the regulatory costs are borne by the industry rather than the state (Bartle & Vass, 2005, p. 7).

Self-regulation has numerous disadvantages. Firstly, it may lead to collusion and other expressions of anti-competitive behaviour (Bartle & Vass, 2005, p. 8). Secondly, self-regulation is often seen as lacking in accountability as there *is* "insufficient participation of democratically elected parliaments" (Latzer, *et al*., 2003, p. 146). Its processes have limited external participation and may lack the credibility associated with democratic political processes (Bartle & Vass, 2005, p. 8). And finally, self-regulation might be accused of not being forceful enough – and therefore ineffective in achieving its objectives (Bartle & Vass, 2005, p. 8). Punishment for transgressions is "limited to reputation or organisational sanctions such as the withdrawal of already granted seals of approval, fines, public reprimands or expulsion of members" (Latzer, *et al*., 2003, p. 141). The self-regulatory body typically does not have the authority to "sanction existentially, by professional disbarment for example" (Latzer, *et al*., 2003, p. 141). The sanctions could therefore potentially be inadequate.

2.3. Evaluating Self-Regulation and Codes of Conduct

As stated above, self-regulation can be described as a point on a continuum between no regulation and classic statutory regulation (Bartle & Vass, 2005, p. 1). Codes of conduct, or voluntary codes, are an essential instrument for business self-regulation (Bondy, 2007, p. 1). Their raison d'être is to control the behaviour of organisations participating in the said self-regulation regime (Webb, 2004, p. 11).

Significantly, commitments to codes of conduct are voluntary – i.e. the law does not require them. However, there still is a strong relationship between codes and the law. The law can have a negative or positive stimulus on codes. The law may have a negative stimulus when a particular industry institutes a self-regulatory scheme and code in response to the perceived threat of impending statutory regulation (Webb & Morrison, 2004, p. 101). The law may have a positive

stimulus when the State explicitly uses legislation to advance the use of codes of conduct in support of particular public policy objectives (Webb & Morrison, 2004, p. 101). For example, in delegated self-regulation the State delegates the implementation of statutory duties to the self-regulatory body (Bartle and Vass, 2005, p. 2).

For any self-regulatory effort to be effective, the participating firms must comply with its code of conduct. The successful design and implementation of the code of conduct is key to the effectiveness of the self-regulation regime.

2.3.1. Evaluation Approach

A distinction is made between the acts of “monitoring” and “evaluation”. Kusek and Rist provide comprehensive and useful definitions for the two phenomena.

They define monitoring as:

> a continuous function that uses the systematic collection of data on specified indicators to provide management and the main stakeholders of an ongoing development intervention with indications of the extent of progress and achievement of objectives and progress in the use of allocated funds.(Kusek & Rist, 2004, p. 227)

According to the definition provided above, one monitors an “ongoing development” based on pre-determined indicators. The act of monitoring is therefore not retrospective, but is concerned with the current and the future. The study into the effectiveness of the WASPA Code is a retrospective – looking at the period between 2006 and 2008. As a result, the act of “monitoring” – with the related activities of identifying the outcomes to monitor, selecting the key indicators for those outcomes and determining the baseline data on the indicators – is necessarily excluded from this study.

Kusek and Rist further define “evaluation” as:

> the systematic and objective assessment of an on-going or completed project, programme or policy, its design, implementation and results. The aim is to determine the relevance and fulfillment of objectives, development efficiency, effectiveness, impact and sustainability. An evaluation should provide information that is credible and useful, enabling the incorporation of lessons learned into the decision-making process of both recipients and donors. (Kusek & Rist, 2004, p. 227)

According to the definition provided above the act of “evaluation” can be retrospective. The “evaluation” methodology is therefore appropriate for the study into the effectiveness of the WASPA Code – as the study is a retrospective look at the period between 2006 and 2008.

Regrettably, the literature review has uncovered limited academic discourse on frameworks to evaluate the effectiveness of codes of conduct. To circumvent this limitation, the researcher has referenced code-evaluation frameworks from a wider sphere than only academic discourse – including, amongst others, publications from government departments and regulatory bodies. However, discussions around the key recurring themes from these frameworks are bolstered by extensive reference to academic discourse. In other words, the evaluation framework is derived from industry sources, but the themes that collectively make up the framework are linked to discourse from established scholars.

As mentioned above, there are numerous Code evaluation frameworks uncovered from the wider literature search (Industry Canada, 2002; PhonepayPlus, 2008; Price and Verhulst, 1999). Industry Canada’s Office of Consumer Affairs has for some time been studying the use of voluntary codes in

Canada and elsewhere in the world and published extensively on the subject – with A Framework for Evaluating Voluntary Codes one such work (Industry Canada, 2002, p. 5). This publication has been a most useful reference in interrogating the broad principles relating to effective and ineffective codes. A Framework for Evaluating Voluntary Codes is structured around the four pillars of "relevance, cost effectiveness or alternatives, and due process" (Industry Canada, 2002, p. 11). PhonepayPlus – the regulatory agency for premium rate services in the United Kingdom – has identified five principles of good regulation: "transparency, accountability, proportionality, consistency and targeting" (PhonepayPlus, 2008, p. 10). Price and Verhulst argue that an evaluation of the effectiveness of any regulatory effort must take into consideration the various elements of the regulatory process, which include: "policy making, legislation, enforcement, and adjudication" (1999, p. 11).

2.3.2. Adapted Code Evaluation Framework

The framework used to evaluate the effectiveness of the WASPA Code is adapted from Industry Canada's *A Framework for Evaluating Voluntary Codes*.

The Industry Canada framework is segmented into four pillars: "relevance, success, cost effectiveness or alternatives and due process" (Industry Canada, 2002, p. 11). "Relevance" investigates issues such as "the need for a voluntary code or its objectives" (Industry Canada, 2002, p. 15). "Success" investigates issues such as "has the code achieved its objectives" (Industry Canada, 2002, p. 16). "Alternative approaches" investigates issues such as "are the most appropriate and efficient means being used to achieve objectives, relative to other approaches to delivery" (Industry Canada, 2002, p. 20). "Due process" investigates issues such as "openness, transparency and fairness" (Industry Canada, 2002, p. 12).

Each of the four pillars – that make up the Industry Canada framework – is broken down into a number of “issues”. For example “relevance” is broken down into two issues – i.e. “Does the voluntary code address a fundamental problem or actual need” and “Are there competing codes or legislative instruments” (Industry Canada, 2002, p. 15). Each “issue” is further broken down into “performance indicators” which “provide guidelines for the questions that might be asked to determine whether due process is respected, whether the code is relevant or successful, or whether an alternative should be explored” (Industry Canada, 2002, p. 11).

Similar to the Industry Canada tool, the analytical framework to be employed for the evaluation of the WASPA Code is made up of five pillars – in this instance rephrased as themes. These themes are institutional positioning, code relevance, stakeholder participation, code enforcement and code impact. Again, the themes are broken down into a number of “issues”. The “institutional positioning” theme is new to the researcher’s framework. However, the “issue” it uses – “is WASPA well established” is borrowed from the Industry Canada framework under the “success” pillar. The “code relevance” theme is borrowed directly from the Industry Canada framework. The “stakeholder participation” theme is also new to the researcher’s framework. However, the “issues” it uses – “Has the WASPA code achieved wide coverage” and “Has the WASPA code development been open, transparent, fair and meaningful” are both borrowed from the Industry Canada framework under the “due process” and “success” pillars respectively. The “code enforcement” theme is also new to the researcher’s framework. Again, the “issue” it uses – “is there a range of appropriate negative consequences and incentives for compliance” – is borrowed from the Industry Canada framework under the “due process” pillar. The “code impact” theme is similar to the “success” pillar from the Industry Canada framework – and has only been rephrased in the researcher’s framework.

Table 4 below outlines the analytical framework used for the evaluation of the effectiveness of the WASPA Code of Conduct.

Table 4: Analytical Framework for WASPA Code

Theme	Issues
Institutional Positioning	• Is WASPA well established?
Code Relevance	• Does the voluntary code address a fundamental problem or an actual need?
Stakeholder Participation	• Has the WASPA code achieved wide coverage?
	• Has the WASPA code development been open, transparent, fair and meaningful?
Code Enforcement	• Is there a range of appropriate negative consequences and incentives for compliance?
Impact of the Code	• Have the objectives of the code been achieved?
	• Are there unintended or negative effects of the code?

2.3.2.1. Institutional Positioning

"Institutional positioning" is a phrase used by the researcher to refer to themes from the literature that relate to the means and capability of the self-regulatory body to effectively carry out its responsibilities.

According to Purchase, code effectiveness "is a function of both coverage and credibility" (2004, p. 83). "For example, if a code dealing with industry environmental or selling practices does not involve a large part of an industry, then it is unlikely to be judged a viable regulatory effort," he says (Purchase, 2004, p. 83). As a result, participation in the self-regulatory effort should represent a considerable industry market share (Purchase, 2004, p. 83).

Price and Verhulst argue that an effective self-regulatory regime must be "impartial, independent" (1999, p. 37). The concepts of "impartiality" and "independence" are not only closely related, but also recurring themes throughout the literature. Harker also argues that an "independent code administrator" is necessary to receive and handle complaints (2000, p. 199). While the theme of independence can have various connotations, a useful interpretation is that offered by Melody, who interprets it to mean independence to "implement policy without undue interference from politicians or industry lobbyists" (Melody, 1997, p. 19). Independence from the industry is particularly important in ensuring that the Code has legitimacy. The opposite of independence is described as regulatory capture, where "the regulators are co-opted by the regulatees and thus lose their legitimacy as regulators" (Sethi, 2005, p. 81).

Price and Verhulst also argue that institutional capability depends on the self-regulatory organisation being "equipped with the necessary powers to evaluate any complaint" (1999, p. 37). Being "equipped" is also a recurring theme – and has various connotations relating to institutional capability and capacity. Melody refers to the ability to "acquire specialised skills" as important to a regulator's effectiveness (1997, p. 19). Harker and Harker refer to the importance of adequate funding for a regulator to be effective (Harker and Harker, 2000, p. 158). The availability of funding can be seen as a precondition for the ability to acquire the necessary skills for effective regulation. Importantly, this capacity also extends to the ability of the self-regulatory body to proactively monitor the activities of the code participants in the market – and generate its own complaints. Particularly in the case of advertising standards, a monitoring tool "covering advertising in all media should be in place in order to generate complaints about advertising which may be potentially unacceptable to society" (Harker, 2000, p. 199).

In addition, the “ability and willingness of the corporation to implement the code” is an important factor in the effectiveness of a code of conduct (Bondy, 2007, p. 2). The willingness for individual service providers to implement the code is encouraged by, amongst others, the code having vocal champions where industry leaders “demonstrate a philosophical commitment to the common good” and “not merely defending entrenched industry interests” (Sethi, 2005, p. 82). The influence of opinion leaders is invaluable to providing credibility within the industry for the code and this support “may increase the possibility of success” for the self-regulatory body (Lee, 2008, p. 279).

2.3.2.2. Code Relevance

“Code relevance” refers to the degree to which the code responds to the needs of the stakeholders in the marketplace. According to Purchase, the ability to “accommodate gradual change” is an important variable in Code effectiveness (2004. P. 91). “Shifts in tastes, technologies and the numbers of buyers or sellers and/or their sophistication can make rules obsolete and in need of elimination or redrafting,” he says (Purchase, 2004. P. 91). To this end, an effective code needs to be updated regularly to reflect these changing conditions (Industry Canada, 2002, p. 15). However, the relevance to the code must also cover the public’s needs and the issues demanded by them “and not merely those preferred by industry” (Sethi, 2005, p. 82).

As mentioned earlier, one of the advantages of self-regulation is that industry practitioners have more expertise and technical knowledge than public officials – and are therefore better placed to develop appropriate rules. This increased relevance enhances the probability of the effectiveness of and compliance to the regulations (Bartle & Vass, 2005, p. 7). Conversely, the probability of non-compliance is increased when the interests of those being regulated are ignored (Schulz & Held, 2001, p. A-6). Lee also raises the importance of industry expertise to the success of a code, and argues “industry members tend to

comply with self-regulation guidelines, if the guidelines are articulated with industry expertise" (2008, p. 279).

2.3.2.3. Stakeholder Participation

Stakeholder participation contributes invaluably to a code's viability – the wider the participation the more effective it is likely to be (Purchase, 2004, p. 83). Conversely, a "low level of industry participation and absence of the bigger companies usually result in failure of self-regulation" (Lee, 2008, p. 279). A code that is viewed as imposed by external parties – e.g. government bodies – has a lower chance of generating the required commitment from the participating firms (Harker & Harker, 2000, p. 157). The credibility drawn from the sense of ownership invaluably strengthens the effort in ensuring compliance. For that reason, the process of setting up the codes and crafting the enforcement regime thereof has to be decidedly consensual among the participating firms (Purchase, 2004, p. 83). Consensual decision-making increases the likelihood of compliant behaviour from the participating firms, while non-consensual approaches raise the likelihood for hostility from those who are affected by the code but excluded from its decision-making processes (Purchase, 2004, p. 83).

However, participation should not be limited to industry players and should also be extended to consumers. One of the important objectives of Codes is to "gain consumer confidence and trust" (Purchase 2004, p. 81). Price and Verhulst argue that effective self-regulation needs the involvement of consumers and citizens throughout its development and implementation – and that "without user involvement, a self-regulatory mechanism will not accurately reflect user needs and will not be effective in delivering the standards it promotes" (1999, p. 15). Harker and Harker also agree that public and consumer groups should participate in the development of the code (2000, p. 158). To this end, regulatory institutions must be proactive in educating it beneficiaries about the code so that they are able to use it for their benefit (Reding, 2007, p. 5).

2.3.2.4. Code Enforcement

For any self-regulatory effort to be effective, the participating firms must comply with its code of conduct. In the majority of instances the voluntary compliance of code participants is the main type of compliance – with each firm putting in place self-restraining and self-monitoring efforts (Purchase, 2004, p. 86). However, to ensure compliance in the majority of instances and enhance the effectiveness of the self-regulatory regime "enforcement mechanisms and power are necessary" (Lee, 2003, p. 280). Code enforcement is greatly enhanced when compliance is not solely dependent on these self-monitoring efforts, and can be monitored by outside parties. To this end, non-compliant conduct should be simple to identify by such outside parties – i.e. by regulators, competitors, members of the public, etc (Purchase, 2004, p. 87). Lee agrees with this view and argues "monitoring compliance by public authorities is believed to enhance industry members' adherence to self-regulation" (Lee, 2003, p. 280).

The appropriate use of sanctions for non-compliance is important in ensuring an effective industry code of conduct (Industry Canada, 2002, p. 16). There are various options within the arsenal of sanctions that self-regulatory regimes can use – including public disclosure, expulsion and financial penalties. The role that sanctions play is two-fold: "to deter the offender (and thus encourage compliance with rules) and to repair or cure a breach of the rules" (Price & Verhulst, 1999, p. 38). Some scholars maintain that compliance may be attained by means of informal methods such as public disclosure or the naming and shaming of those that violate the code (Lenox & Nash, 2003, p. 4). However, there is stronger evidence to suggest that more formal and explicit sanctions are required to more vigorously encourage compliance (Lenox & Nash, 2003, p. 4). There is a strong argument that "the absence of genuinely dissuasive and punitive sanctions is seen as a major weakness in a code" (Price & Verhulst, 1999, p. 37).

2.3.2.5. Impact of the Code

The “impact of the Code” refers to whether the Code has achieved its intended objectives or has had unintended negatives consequences.

As mentioned earlier, self-regulation might be accused of not being forceful enough (Bartle & Vass, 2005, p. 8) as the “reputation or organisational sanctions” for code transgressions are potentially inadequate (Latzer, *et al*., 2003, p. 141). This may lead to the self-regulation effort being ineffective in achieving its objectives (Bartle & Vass, 2005, p. 8). Industry Canada argues that the “key evaluation criteria are results-based indicators that provide information about the achievement of objectives, such as whether accidents are reduced, customers are more satisfied, or environmental quality is improved” (2002, p. 16). Therefore, the achievement of stated objectives is an important determinant of the effectiveness of a Code.

Further, self-regulation efforts may have the unintended negative consequences (Industry Canada, 2002, p. 19) of, amongst other things, leading to “collusion and anti-competitive behaviour” (Bartle & Vass, 2005, p. 8). Further, self regulation codes may place “different burdens on different parties in the same sector” – e.g. small versus big business (Industry Canada, 2002, p. 19). Therefore, an environmental scan of the results of self-regulation – including those not intended – is important in determining the effectiveness of a Code.

2.4. Summary

The evaluation of the effectiveness of the WASPA Code of Conduct touches on numerous concepts. The response to market failure and the requirement to protect consumers give rise to the need for market regulation. The desire to have the most efficient, and potentially effective, form of regulation then leads to the discussion on the notion of self-regulation. The effort of self-regulation is built

around the use of a code of conduct as the central tool – which sets the parameters for what conduct is acceptable and what is not. The successful design and implementation of the code of conduct is key to the effectiveness of the self-regulation regime, and ultimately to high aspiration of consumer protection.

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3. CHAPTER 3: RESEARCH QUESTION AND METHODOLOGY

This chapter looks at the research question and the methodology the study employs. The research question has numerous sub-questions that are structured to mirror the five themes around which the analytical framework is structured. The study uses the interpretive approach – with a qualitative methodology and semi-structured interviews.

3.1. Research Question

WASPs “provide mobile applications and content such as subscription services, competitions, ringtones and news alerts as well as bulk SMS messaging to corporate customers and directly to consumers” (MyBroadband, 2008).

As discussed earlier, the numerous challenges facing the wireless applications industry in South Africa includes, amongst other things, lack of transparency around services and the pricing thereof, minors accessing adult services, competitions and spam. WASPA is the industry’s self-regulatory regime and employs its Code of Conduct as the primary instrument in responding to these challenges. The research problem is that it is unclear whether the WASPA has been successful. The purpose of this study is to evaluate how effective the WASPA Code has been in regulating the behaviour of the WASPs in South Africa. The analytical framework to be employed for the evaluation of the WASPA Code is structured around five key themes from the literature review: institutional positioning, code relevance, stakeholder participation, code enforcement and code impact.

3.1.1. Main Research Question

The main research question for this study is: How effective has the WASPA Code of Conduct been in regulating the behaviour of the Wireless Application Service Providers in South Africa?

3.1.2. Research Sub Questions

The main research question has numerous sub-questions – and these are listed below in Table 5. The sub-questions are structured to mirror the five themes around which the analytical framework is structured – i.e. institutional positioning, code relevance, stakeholder participation, code enforcement and impact of the code.

Table 5: Research Sub-Questions

Theme	Sub-Questions
Institutional Positioning	• Is WASPA well established?
Code Relevance	• Does the WASPA Code address a fundamental problem or an actual need?
Stakeholder Participation	• Has the WASPA Code achieved wide coverage?
	• Has the WASPA Code development been open, transparent, fair and meaningful?
Code Enforcement	• Is there a range of appropriate negative consequences and incentives for compliance with the WASPA Code?
Impact of the Code	• Have the objectives of the WASPA Code been achieved?
	• Are there unintended or negative effects of the WASPA Code?

3.2. Interpretive Approach

There are three main approaches to research studies – positivism, interpretive social science and critical social science (Neuman, 1997, p. 62). The positivism approach is concerned with testing and confirming specific laws as captured in a particular theory, and is therefore associated with quantitative methods that seek precise measures (Neuman, 1997, p. 63). “Quantitative methods lend themselves to testing hypothesized relationships or causal explanations,” (Elliot, *et al*., 1999, p. 216). Some of the important issues that this approach is concerned with include empirical evidence and verifiability of data (Babbie & Mouton, 2001, p. 22). A common criticism of positivism is that it ignores, in its enquiry, the texture of people’s social context and their ability to think and feel (Neuman, 1997, p. 74). Conversely, interpretive social science acknowledges this social context and is more concerned with revealing how people feel and view their world, rather than testing or confirming laws on their behaviour (Neuman, 1997, p. 73). This approach evaluates reality according to how people who experience it on an ongoing basis understand it (Babbie & Mouton, 2001, p. 29). It is therefore associated with qualitative methods that seek to understand rather than measure. An important criticism of interpretive social science is that it treats all views as equal, irrespective of whether or not they are on the right side of social justice (Neuman, 1997, p. 74). Critical social science is similar to interpretive social science in that it acknowledges the social context within which people exist. However, this approach deliberately enquires from a moral perspective, and as a result does not treat all views as equal. Critical social science is seen as a crusader for social justice, and tackles prejudice in whatever sphere of society it manifest itself – including sexism, racism and other forms of discrimination (Neuman, 1997, p. 74).

Table 6 below summarises the differences among the three approaches to research.

Table 6: Differences between Approaches to Research

	Positivism	Interpretive Social Science	Critical Social Science
Reason for research	To discover natural laws so people can predict and control events	To understand and describe meaningful social action	To smash myths and empower people to change society radically
Good evidence	Is based on precise observations that others can repeat	Is embedded in the context of fluid social interactions	Is informed by a theory that unveils illusions
Place for values	Science is value free, and values have no place except when choosing a topic	Values are an integral part of social life: no group's values are wrong, only different	All science must begin with a value proposition; some positions are right, some are wrong

Source: Adapted from Neuman, 1997, p. 83

This research study is grounded in the interpretive social science approach. As stated earlier, the objective of the study is to understand whether the WASPA Code of Conduct has been effective in regulating the behaviour of the Wireless Applications Service Providers in South Africa. The objective of the study is not to test any law relating to the said effectiveness – but to evaluate the effectiveness as understood by the main role-players in the WASP industry. Further, the study does not propose any specific value proposition relating to the justice – or lack thereof – inherent in the conduct of WASPA members as they go about their business. It sees all perspectives, across the variety of role-players, as valid and legitimate. Within this context, the most appropriate approach is the interpretive social science option.

3.2.1. Qualitative Methodology

The most suitable option for the interpretive social science approach to research is a qualitative methodology (Babbie & Mutton, 2001, p. 33). “The goal of qualitative research is understanding issues or particular situations by investigating the perspectives and behavior of the people in these situations and the context within which they act,” (Kaplan & Maxwell, 2005, p. 30). As stated earlier, the intention of this research study is evaluate the effectiveness of the WASPA Code as understood by the main role-players in the wireless applications industry in the country. Therefore the qualitative methodology is appropriate.

There are numerous types of qualitative research designs – and these are listed in Table 7 in the following page. A common characteristic amongst them is that they all entail in-depth examination of phenomena in their natural – or real world – environment (Leedy & Ormrod, 2005, p. 133). “Qualitative research is conducted in natural settings and uses data in the form of words rather than numbers,” (Kaplan & Maxwell, 2005, p. 30). In the case study design, a particular phenomenon is studied for a defined period of time (Leedy & Ormrod, 2005, p. 135). Instead of looking at only one phenomenon, the ethnography design studies an entire group – with a focus on the cultural norms and beliefs shared by members of the said group (Leedy & Ormrod, 2005, p. 137). The phenomenological study “attempts to understand people’s perceptions, perspectives, and understandings of a particular situation” (Leedy & Ormrod, 2005, p. 139). The grounded theory design employs a set of processes for examining data from which to build a theoretical model – i.e. the theory is grounded in the data (Leedy & Ormrod, 2005, p. 140). This design is particularly useful when there are no theories about a specific phenomenon, or when the current ones are insufficient (Leedy & Ormrod, 2005, p. 140). The content analysis design is a methodical inspection of the contents of typically some form of communication material – e.g. books, music, films, etc – with the intention of discovering patterns or themes (Leedy & Ormrod, 2005, p. 142).

Table 7: Qualitative Designs

Design	Purpose
Case Study	To understand one or more phenomena in great depth
Ethnography	To understand how behaviours reflect the culture of a group
Phenomenological Study	To understand an experience from the participants' perspective
Grounded Theory Study	To derive a theory from data collected in a natural setting
Content Analysis	To identify the specific characteristics of a body of material
Source: Adapted from Leedy & Ormrod, 2005, p. 144	

3.2.2. Phenomenological Study

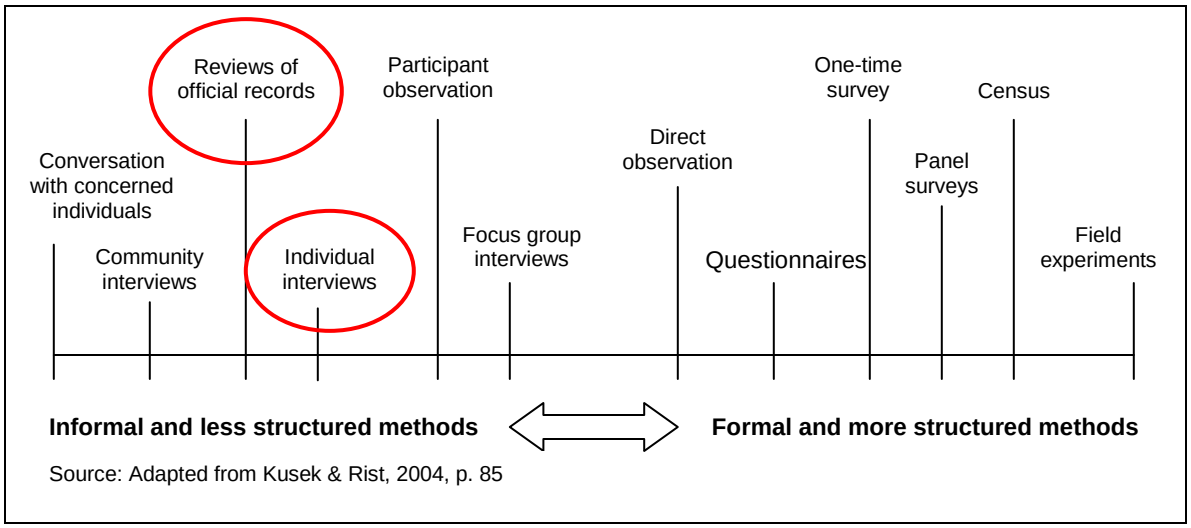
While the study into the effectiveness of the WASPA Code has some characteristics of a single case study, it does not meet all the requirements to be categorised as one. It does not, in the strict sense of the term, study the WASPA Code "in depth for a defined period of time" – as defined per Leedy and Ormrod's definition of case studies (2005, p. 135). The study more closely displays the characteristics of a phenomenological study, where the researcher tries to understand the WASP industry stakeholders' "perceptions, perspectives, and understandings of a particular situation" (Leedy & Ormrod, 2005, p. 139). According to Welman and Kruger (as cited in Groenewald, 2004), the researcher in this type of study is "concerned with understanding social and psychological phenomena from the perspectives of people involved," (Groenewald, 2004, p. 5).

3.3. Data Collection

There is a wide variety of data collection approaches available. Figure 1 in the

following page plots the various approaches along a continuum from the less structured and informal options to the more structured and formal (Kusek & Rist, 2004, p. 86). The options on the formal side – e.g. experiments, census, surveys, and questionnaires – are expected to provide relatively more precise quantitative data. Conversely, the options of the informal side – e.g. review of official records and interviews – are expected to provide more in-depth qualitative insights. The informal and less structured methods are more appropriate for a qualitative study such as this – and "phenomenological researchers depend almost entirely on lengthy interviews (perhaps one or two hours in length) with a carefully selected sample of participants (Leedy & Ormrod, 2005, p. 139).

Figure 1: Data Collection Methods



Source: Adapted from Kusek & Rist, 2004, p. 85

3.3.1. Triangulation

Any research study is accompanied by a requirement to verify the validity of the information uncovered (Tellis, 1997, p. 5). The use of triangulation – i.e. the use of multiple data sources to improve the validity of evaluation findings and eliminate bias - fulfils this requirement (Tellis, 1997, p. 5). In general, triangulating multiple sources of data is expected to result in a single proposition about the phenomenon being studied – i.e. what Mathison calls "convergence" of the various data (Mathison, 1988, p. 13). However, "convergence" is only one of

three possible outcomes (Mathison, 1988, p. 13). In the “inconsistency” outcome the range of data might not correspond to this single viewpoint about a social phenomenon. Rather, the facts from data sources might present different propositions – i.e. not conforming, but also not conflicting (Mathison, 1988, p. 15). In “contradiction”, the difference in the viewpoints from the various data sources goes a step further and now conflict with each other (Mathison, 1988, p. 15). Importantly, all three outcomes are used in research studies. The researcher accepts that, in many instances, the interview participants hold different views on particular aspects of the effectiveness of the WASPA Code. These views may be informed by, amongst other things, the type of organisation they represent, and its bargaining power relative to other players within the industry. These differences – and similarities – are invaluable as they contribute to the conception of patterns from the data.

The research study uses two main data sources from the numerous options discussed above for triangulation. These sources are official records and interviews. As an example, data is not only compared between the various individual interview participants, but also between the interview outcomes and data from the official records. The study is divided into two phases – the review of official records takes place in phase one; and the interviews take place in phase two. The official records are employed to reveal important historical data and decision-making patterns on, amongst other things, Code revisions and enforcement. The interviews are employed to reveal insights from influential and well-informed professionals in the wireless application industry. Importantly, the interviews are employed to uncover those insights that are not available from official records. Therefore, the two data sources may be viewed as complementary.

3.3.2. Review of Official Records

The WASPA website is, compared to other sources, the central input information for the review of official records – with rich quantitative data on the

implementation of the Code from inception to date. All historical adjudications, Code of Conduct versions and other pertinent publications can be found on the WASPA website. However, it is important to note that the study looks only at data from the period years 2006 to 2008. Data from the first year of the Code's operation, i.e. 2005, is excluded from the study, as the Code was not sufficiently established in its maiden year for the researcher to perform a credible evaluation of its performance. Similarly, at the time of data collection the Code's 2009 data was still incomplete and would compromise the evaluation for that year's performance.

The data from the website is used mostly as a guide for the interview process. For example, knowing which companies are serial Code transgressors helps identify interview participants with a "serial Code transgressor" perspective; and knowing how frequently the Code is revised draws attention to "the impact of frequent Code revisions" as an important interview discussion.

3.3.3. Individual Interviews

The individual interview is an established data collection tool in qualitative research (Babbie & Mouton, 2004, p. 289). The various types of individual interviews employed in qualitative research approaches include open-ended and focused or semi-structured (Tellis, 1997, p. 7). In an open-ended interview, the researcher is able to question and probe – which gives participants the space to respond in their own words (Babbie & Mouton, 2004, p. 289). In a semi-structured interview, the researcher is guided by the interview protocol. This type of interview is relatively brief and quick to the point as it follows a focused framework (Tellis, 1997, p. 7). This research study uses the semi-structured interview approach. As with the research sub-questions, in interview protocol is structured to mirror the five themes around which the analytical framework is structured – i.e. institutional positioning, code relevance, stakeholder participation, code enforcement and impact of the code. The researcher pilots the

interview with a respondent who is familiar with the subject, in order to verify that the interview protocol is appropriate – prior to conducting the interviews.

There are sixteen participants interviewed – who are selected as a result of their high interest in the effectiveness of the WASPA Code of Conduct and according to specific criteria guided by their job specifications. As stated earlier, the interviews are employed to reveal insights from well-informed industry professionals.

The semi-structured interview allows the researcher to engage the participants and collect their responses by personal means from personal interaction. Further, in all interviews a tape recorder is used to ensure accurate data collection. The interview is preceded by a brief introduction, which outlines the purpose of the study and some of the key principles that guide it – e.g. confidentiality. The interviewer also records valuable demographic data before the interview begins – e.g. name, company, etc. The content of the interview is broken down into five sections: institutional positioning, code relevance, stakeholder participation, code enforcement and impact of the code.

Annexure 1 outlines the case study interview protocol used in this research study.

3.3.4. Purposive Sampling

Sampling approaches are segmented into two broad categories: probability and non-probability. In a probability sampling approach every unit or element in the population has a chance of being selected in the sample – and that "non-zero probability" can be determined (Cooper & Schindler, 2003, p. 183). In other words, "every element in the target population must have a known chance of being selected into the sample," (Terre Blanche & Durrheim, 1999, p. 276). Importantly, the random selection approach reduces sampling bias and increases

the sample's representivity of the population from which it is taken. Conversely, in a non-probability sampling approach not all units in the population have a known "non-zero probability" of being selected (Cooper & Schindler, 2003, p. 183). Some units actually have a "zero probability" of being selected. Therefore, the selection approach here is not "statistical randomness" (Terre Blanche and Durrheim, 1999, p. 279) – and units selected must fit particular criteria.

Importantly, one of the instances where researchers use non-probability sampling is when "planning in-depth qualitative research" (Terre Blanche & Durrheim, 1999, p. 279). Therefore, the sampling method used for the interviews in this research study is purposive sampling, a form of non-probability sampling – which is considered by some academics as "the most important kind of non-probability sampling," (Groenewald, 2004, p. 8). All the interview participants are "a carefully selected sample of participants" (Leedy and Ormrod, 2005, p. 139) according to the researcher's judgment and the objectives of the study (Groenewald, 2004, p. 8). The interview participants are the primary unit of analysis (Groenewald, 2004, p. 9) – and the study attempts to understand their "perceptions, perspectives, and understandings" of the effectiveness of the WASPA Code.

The sampling process begins with the researcher deciding what precondition the interview participants must meet to be interviewed (Merriam, 2002, p. 12). Purposive sampling requires that the interview participants selected are "information-rich cases" (Merriam, 2002, p. 12). In this instance the participants are selected from senior management in the WASP or related industries. It is important to reflect on the viability of a sampling plan in terms of, amongst other things, the availability of time and monetary resources (Curtis, Gesler, Smith and Washburn, 2000, pg. 1003). The availability of these resources – or lack thereof in the case of this research study – has a significant bearing on how practical it is to implement any sampling plan. The users of WASP services are the direct

beneficiaries of WASP services and their perspective is important to this study. However, they are excluded from the sample because of limited time resources.

Another important step in the sampling process is to ensure that sample selected improves the “generalizability” of the findings (Curtis, et al., p. 1003). The sample must enable the researcher to use the perspectives of the sampled interview participants to arrive at deductions that can be generalized to the overall population. To that end, the selection of interview respondents is further informed by the requirement to get a wide range of views – in order to improve the “generalizability” of the findings. As a result, they are selected from organisations with varying roles in the industry value-chain. The views sought include those from representatives of, amongst others: the WASPA organisation, WASPA member companies, companies that are non-WASPA members, network operators and independent industry commentators.

A further step in the sampling process is determining the appropriate sample size. In phenomenological studies, “a typical sample size is from 5 to 25 individuals, all of whom have had a direct experience with the phenomenon being studied” (Leedy & Ormrod, 2005, p. 139). The sample size for this study is sixteen interview participants.

3.3.5. Data Analysis

The “central task during the data analysis is to identify common themes in people’s descriptions of their experiences” of the WASPA Code (Leedy & Ormrod, 2005, p. 140). Importantly, the unearthed data is classified and analysed in terms of the themes from the analysis framework – which takes the same structure as the interview protocol. Both tools are sculpted from the themes identified from the literature review. The researcher looks wider than the views of individual role players on the issues raised and also takes into account the views of groups of role players – and how they relate to each other (Tellis, 1997, p. 5).

Finally, the researcher pulls together all the themes to create a singular picture of the effectiveness of the WASPA Code.

3.4. Summary

The research question for this research study is: *How effective has the WASPA Code of Conduct been in regulating the behaviour of the Wireless Application Service Providers in South Africa?* In addition, the main research question has numerous sub-questions. These sub-questions are structured to mirror the five themes around which the analytical framework is structured.

This research study is grounded in the interpretive social science approach – which is concerned with revealing how people feel and view their world (Neuman, 1997, p. 73). Similarly, the objective of the study is to evaluate the effectiveness of the WASPA Code as understood by the main role-players in the WASP industry. This is a qualitative study – with a phenomenological approach, where the researcher tries to understand the WASP industry stakeholders' "perceptions, perspectives, and understandings" of the Code (Leedy & Ormrod, 2005, p. 139). The qualitative study employs the more informal and less structured data collection methods – i.e. review of official records and semi-structured interviews. The WASPA website is the central source of input information – historical Code adjudications, numerous Code versions, etc – for the review of official records. The sampling method used for the interviews is purposive sampling.

The next chapter is a discussion of the research study's results. The chapter is divided into two sections – results from the review of official records and results from the individual interviews.

4. CHAPTER 4: RESULTS FROM QUALITATIVE RESEARCH

As discussed earlier, the analytical framework employed for the evaluation of the WASPA Code is structured around five key themes from the literature review: institutional positioning, code relevance, stakeholder participation, code enforcement and code impact. In addition, the research sub-questions and the interview protocol are both structured to mirror these five themes around which the analytical framework is structured. Further, the discussion around the results of the research study follows a similar structure. This applies to both the results from the review of official records and the results from the semi-structured interviews.

4.1. Review of Official Records

The WASPA website is, compared to other sources, the central input information for the review of official records – with rich data on historical adjudications, Code of Conduct versions and other pertinent publications. The data from the website is used mostly as a guide for the interview process. For example, knowing which companies are serial Code transgressors helps identify interview participants with a "serial Code transgressor" perspective; and knowing how frequently the Code is revised draws attention to "the impact of frequent Code revisions" as an important interview discussion.

4.1.1. Institutional Positioning

4.1.1.1. Industry Support

WASPA membership stood at more than one-hundred organisations by the end of the period under review between 2006 and 2008 (Perlman, 2008). Importantly, two out of the three main mobile network operators as at 2008 make membership to the organisation a prerequisite to doing business with them (Perlman, 2006).

“MTN requires all content providers providing content via its network to belong to WASPA and adhere to its Code of Conduct” (Senne & Burows, 2005). There are some indications that Vodacom has “WASPs using its network for content distribution which are not WASPA members” (Muller, 2008). This suggests that Vodacom is the one operator where WASPA membership is not a prerequisite for doing business – and that Cell C is the other operator that makes WASPA membership compulsory. The enforcement of the WASPA Code also extends to “information providers” (Perlman, 2006). According to clause 2.13 of the WASPA Code, an “information provider” is “any person on whose behalf a wireless application service provider may provide a service, and includes message originators” (WASPA, 2010). Clause 1.6 of the WASPA Code below – which was introduced in Code version 4.3 on 20 April 2006 – refers to this extension of the WASPA Code to “information providers”.

> Some companies may be required to comply with the WASPA code by virtue of a contract with one or more network operators and/or a contract with one or more voting WASPA members. In such cases, all clauses in the Code of Conduct and the WASPA Advertising Rules that are binding on WASPA members shall be deemed to be binding on those companies, irrespective of whether or not those companies are members of WASPA. (WASPA, 2010)

WASPA’s self-regulation enforcement is partially funded by the three mobile network operators in the market as at 2008 – Vodacom, MTN and Cell C (Perlman, 2006). In addition, the WASPA membership fees pay for the organisation’s day-to-day activities of industry promotion (Perlman, 2006).

4.1.2. Code Relevance

4.1.2.1. Evaluation and Revision of the Code

Code revision is seen as important as it keeps the Code relevant. As mentioned earlier, the CodeCom is responsible for developing and implementing the WASPA Code of Conduct – and this includes its revision. Membership to the CodeCom is open to any individual or entity that wishes to join – and participating in the Code revision forums is the main responsibility of a CodeCom member. These include the quarterly Code review workshops and the e-mail discussion forums. Table 9 below lists the steps followed by the CodeCom in revising the Code (WASPA, n.d.).

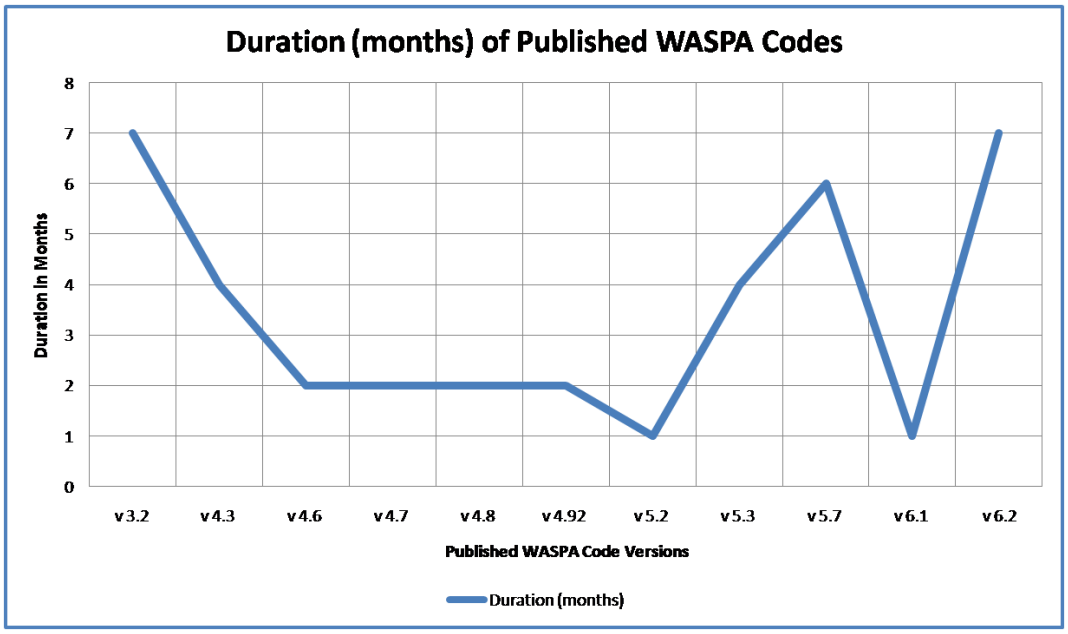
Table 8: Code Change and Ratification Process

Note: T = Date of a CodeCom workshop.	
Step 1: T - 1 week	Deadline for any proposed changes to the current version of the Code to be submitted to the Secretariat.
Step 2: T	CodeCom meets to review an annotated version of the Code, and to discuss any proposed changes.
Step 3: T + 1 or days	Secretariat circulates a revised version of the Code for CodeCom to comment on.
Step 4: T + 1 week	Deadline for CodeCom to comment on the revised draft.
Step 5: T + 1 week + 1 or 2 days	Secretariat circulates the revised draft to ManCom, including any subsequent comments made by CodeCom.
Step 6: T + 2 weeks	Deadline for ManCom to comment on the revisions.
Step 7: T + 3 weeks	Secretariat circulates a revised version, taking ManCom changes into account, to CodeCom for a final round of comment.
Step 8: T + 4 weeks	Deadline for final comments from CodeCom.

Step 9: T + 4 weeks + 1 or 2 days	ManCom teleconference held to review any final comments from CodeCom, and to ratify some or all of the changes.
Step 10: T + 5 weeks	Revised version of the Code promulgated.
Source: Adapted from WASPA, n.d.	

There have been eleven versions of WASPA Code of Conduct in force during the period under review – i.e. 2006-2008 (WASPA, n.d.b.). Figure 2 on the following page shows how long each of the eleven published versions was in force for. The terms of the various Code versions vary considerably – and range between one and seven months long. The terms of the first and the last Code versions extend to before and beyond the period under review respectively – and were in operation for the longest duration of seven months each. Version 3.2 was in operation from 1 September 2005 to 20 April 2006, and version 6.2 from 14 August 2008 to 25 March 2009. Versions 4.6, 4.7, 4.8 and 4.92 were in force for approximately two months each – which represents the second shortest term. Versions 5.2 and 6.1 had the shortest terms of one month each.

Figure 2: Duration of Published WASPA Code Versions



The WASPA Code has had fourteen chapters across all the eleven Code versions during the period under review – i.e. 2006-2008. The chapters are (WASPA, 2010):

- Introduction
- Definitions
- General provisions
- Customer relations
- Commercial communications
- Advertising and pricing
- Children's services
- Adult services
- Competitions
- Contact and dating services
- Subscription services
- Miscellaneous

- Complaints procedures
- References

The nature and scope of the Code revisions across the eleven versions vary considerably. These revisions include, amongst other things, re-numbering of clauses, changing section heading, adding new definitions and enhancing the power of certain clauses in contentious areas. The headings of all the sections, except one, have remained unchanged during the period under review. The “Miscellaneous” section was called “Charitable promotions” in version 3.2 of the Code; then revised to “Other services” in version 5.2; and finally revised to “Miscellaneous” in version 5.3. The number of revisions to clause 5.1.3 suggests it has been one of the more contentious areas. The clause has been revised four times. It was introduced in version 3.1, and revised in versions 4.3, 4.92, 6.1 and 6.2. It is captured within section five – which deals with “Commercial communications” – and sub-section 5.1 – which deals with “Sending of commercial communications”.

Clause 5.1.3’s original wording in Code version 3.2 is fairly vague. The clause reads:

> Where feasible, customers should be able to unsubscribe from any subscription service using no more than two words, one of which must be 'STOP'. (WASPA, 2010, p. 12)

The last guise of clause 5.1.3 is more than four times longer than the original wording. In this instance, the Code goes into considerably more detail. It includes, amongst other things, the type of communications affected by the clause, and an example of how the customers should be guided in “opting out” of such “commercial communications”. In Code version 6.2, clause 5.1.3 reads:

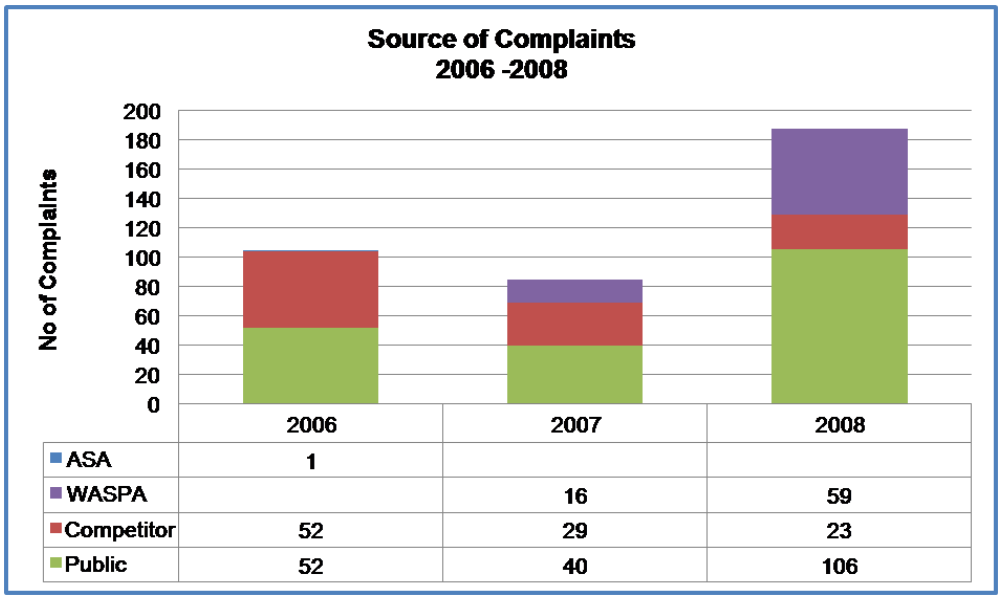
> For SMS and MMS communications, a recipient should be able to stop receiving messages from any service by replying with the word 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate. The reply '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. (WASPA, 2010, p. 12)

4.1.3. Stakeholder Participation

4.1.3.1. Sources of Complaints

Figure 3 below shows the spread of the source of complaints from 2006 to 2008 across the Advertising Standards Authority or ASA, WASPA, WASPA members or competitors, and the public. In 2006 the sources of complaints from members of the public and WASP competitors were equal at fifty-two each or fifty percent each – with the Advertising Standards Authority contributing only one complaint or less than one percent. In 2007 WASPA through, amongst others, the Media Monitor, lodged sixteen complains or nineteen percent of overall complaints – with the public now the leading source of complaints at forty complaints or forty-seven percent and WASP competitors at twenty-nine complaints or thirty-four percent. In 2008, WASPA's contribution rose sharply to fifty-nine or thirty-one percent and the public's role grew significantly to one-hundred and six complaints or fifty-six percent – while complaints lodged by WASP competitors declined to twenty-three complaints or twelve percent.

Figure 3: Source of Complaints



4.1.4. Code Enforcement

4.1.4.1. Processing Complaints

The WASPA Code of Conduct contains procedures to be followed in the event of a complaint lodged against any WASPA member. These complaints are segmented into informal and formal. Informal complaints comprise ninety percent of the complaints WASPA deals with and these are usually resolved in forty-eight hours. Informal complaints – which are mostly made-up of "unsubscribe requests" (ICTL2, interview, 3 July 2010) – are explained further below. Formal complaints requiring an adjudication process comprise just ten percent of the complaints handled by WASPA (MyBroadband, 2008). In 2006 the total number of formal complaints was one-hundred and eighteen, with a fifteen percent drop in 2007 to one-hundred complaints, and a one-hundred and eleven percent increase in 2008 to two-hundred and eleven complaints (WASPA website, un-dated).

The complaints process begins when a consumer or competitor complainant

submits to WASPA a complaint via Web, email, fax, direct contact, or through the mobile network operator's customer care, with the details of the alleged offence and the service provider involved. WASPA's Media Monitor service – that monitors and proactively checks for compliance – can also submit complaints. The Media Monitor uses television and print-media clipping services to monitor services – and has a range of live SIM cards to test for, amongst other things, reminder messages, spam, quality or service and correct billing (Perlman, 2008, p. 22).

The WASPA secretariat then forwards a copy of the complaint to the service provider to respond, or resolve if required, within five business days. Failure to respond within the allotted time is an infringement of the Code of Conduct, and attracts default sanctions. The case is closed only if the complainant indicates that the issue has been satisfactorily resolved – and this is deemed an informal resolution. However, if the complainant is not satisfied that the issue has been resolved, the WASPA secretariat deems the case to be serious, and escalates it to formal adjudication (Perlman, 2008, p. 28).

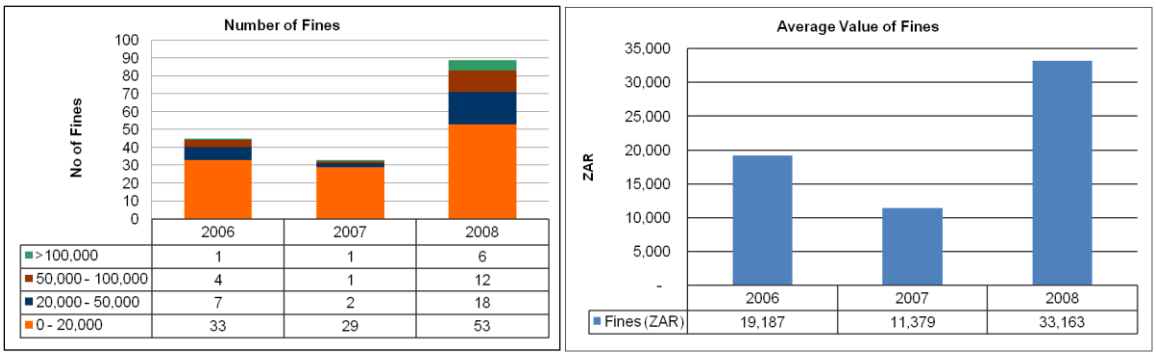
There are fourteen independent adjudicators – all ICT lawyers. Each case is assigned to one adjudicator, and the resolution thereof can take anything from one to five weeks. Importantly, every decision can be appealed. A WASP has to pay an amount of ten thousand rands to lodge an appeal. However, the full amount is refunded if the appeal is successful.

4.1.4.2. Number and Value of Fines

The use of fines is an important part of WASPA's arsenal of sanctions. Other sanctions include, amongst other things, public disclosure through the WASPA website of details of the complaints and revocation of WASPA membership. The number of fines greater than R100 000 was constant for both 2006 and 2008 – at only one in each year. The number increased sharply to six in 2008. The trend of

sharp increases in 2008 is consistent across all categories of fines. This is also reflected in the corresponding increase in the average value of fines – from R11 379 in 2007 to R33 163 in 2008. Figure 4 below shows the number and value of fines from 2006 to 2008.

Figure 4: Number and Value of Fines



4.1.5. Impact of Code

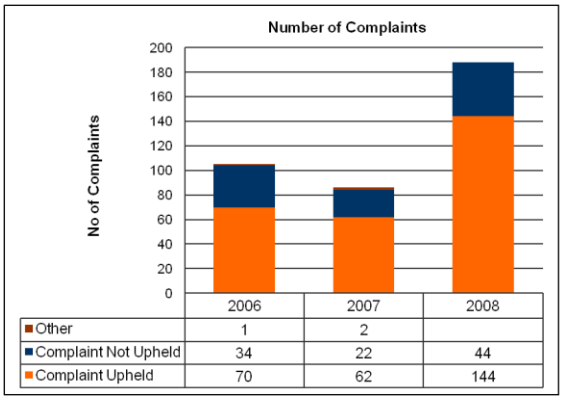
4.1.5.1. Number and Nature of Complaints

The number of “complaints not upheld” fell marginally from thirty-four in 2006 to twenty-two in 2007 – and increased by one-hundred percent in 2008 to forty-four. The number of “complaints upheld” decreased by eleven percent from seventy in 2006 to sixty-two in 2007, and grew by one-hundred and thirty-two percent to one hundred and forty-four in 2008.

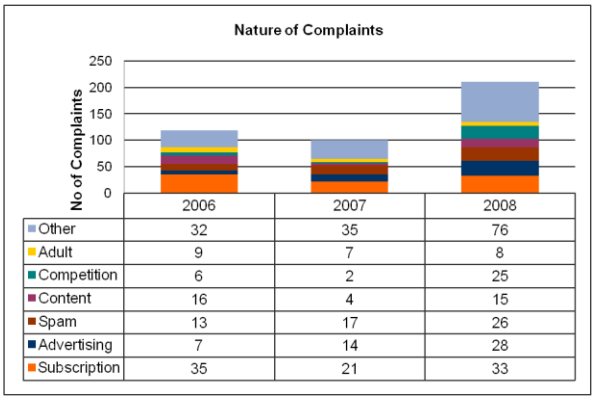
The “nature of complaints” is dominated by subscription services. These services represent the largest single contributor of complaints between 2006 and 2008 – at thirty-five in 2006, twenty-one in 2007 and thirty-three in 2008. Complaints related to advertising have grown considerably – from the fifth individual contributor in 2006 to the second in 2007 and 2008. In 2008 the biggest areas of concern were subscription services, advertising, spam and competitions. Figure

5 below is a graphic representation of the number and nature of complaints from 2006 to 2008.

Figure 5: Number and Nature of Complaints



	2006	2007	2008
Other	1	2	
Complaint Not Upheld	34	22	44
Complaint Upheld	70	62	144

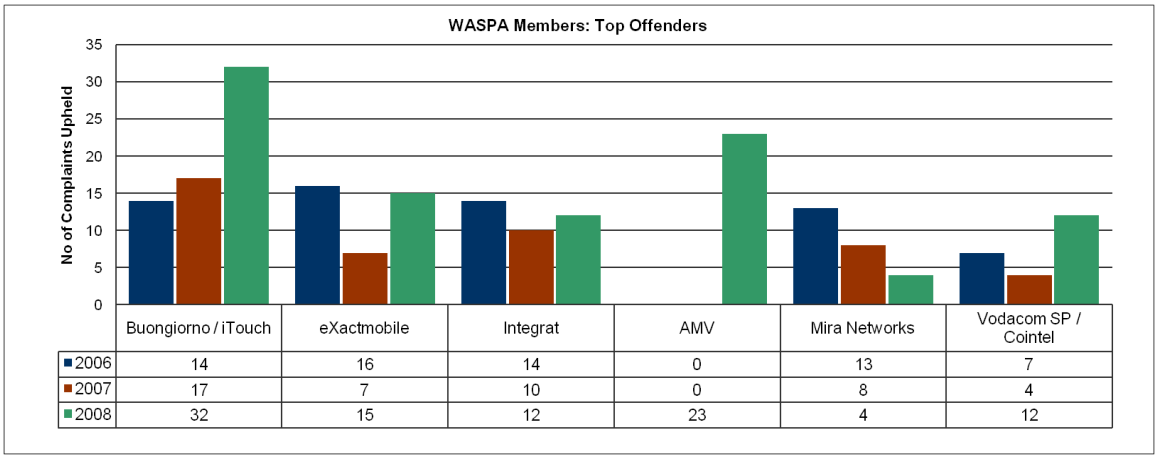


	2006	2007	2008
Other	32	35	76
Adult	9	7	8
Competition	6	2	25
Content	16	4	15
Spam	13	17	26
Advertising	7	14	28
Subscription	35	21	33

4.1.5.2. Top Offenders

The highest repeat offenders are also some of the biggest WASPs in the market. According to documentation submitted by Vodacom and Cointel to the Competition Tribunal, during its 2005 consideration of the merger between the two firms, forty-nine percent of Vodacom WASP revenue came from the top five providers: iTouch, Exactmobile, First National Bank, Cointel and Foneworx. It is highly probable that these ratios would be duplicated in relation to MTN and Cell C (Manoim, 2006, p. 2). Exactmobile, Cointel/ Vodacom and iTouch/ Buongiorno are also the in the top six transgressors of the WASPA Code for the period 2006 to 2008. Figure 6 below shows the top WASPA Code offenders for the period 2006 to 2008.

Figure 6: Top Offenders



	Buongiorno / iTouch	eXactmobile	Integrat	AMV	Mira Networks	Vodacom SP / Cointel
2006	14	16	14	0	13	7
2007	17	7	10	0	8	4
2008	32	15	12	23	4	12

4.2. Individual Interviews

This section is a summary of the results from the individual interviews. Each interview – as per the interview protocol – is divided according to the main themes from the analytical framework employed in this research study.

Table 8 in the following page outlines the sixteen interview participants – and the reasons for their selection. Sixteen respondents we interviewed. Fifteen of them were engaged in face-to-face interviews and one telephonically. Further, eight respondents from the face-to-face interviews were interviewed in pairs. The interviewees are current or past senior management in the WASP or related industries – with the majority representing WASP firms with varying sizes and service focus. The type of organisation the interview respondents work for – and its role within the broader industry value chain – seems to influence their perceptions of the WASPA organisation and the WASPA Code quite significantly. With this in mind, the selection of interview respondents was informed by the researcher's requirement to get various views – and therefore interview respondents from organisations with varying roles in the industry value-chain.

The identities of the interview participants – and in most instances the organisations they work for – have been withheld. The participants include:

- An independent ICT industry analyst;
- A representative from the WASPA organisation;
- A representative from one of the network operator's WASP partner management divisions;
- Three ICT lawyers who are either current or past WASPA adjudicators;
- Ten representatives from both large and small WASP firms.

In some instances, the researcher used the snowball sampling method in order to access additional participants to interview. "Snowballing is a method of expanding the sample by asking one informant or participant to recommend others for interviewing," (Groenewald, 2004, p. 9). ICTL1 was particularly helpful in this regard. Further, in all interviews – bar one with "WR", which was telephonic – a tape recorder is used to ensure accurate data collection.

Table 9: Interview Participants

Interview Participant's Code	Reason for Selection
Mr. Seshego Mahlo (SM)	Interview pilot with "Senior Content Specialist" from Vodacom
ICT Industry Analyst (ICTIA)	Independent voice
WASPA Representative (WR)	Insider's perspective
Network operator Representative (NOR)	Key player in value-chain
WASP Firm Representative 1 (WFR1); WASP Firm Representative 2 (WFR2); WASP Firm Representative 3 (WFR3);	Part of top five WASPs in revenue and offences. (WFR2 and WFR3 interviewed together)
WASP Firm Representative 4 (WFR4); WASP Firm Representative 5 (WFR5); WASP Firm Representative 6 (WFR6)	WASPA members and established B2B aggregators. (WFR5 and WFR6 interviewed together)

WASP Firm Representative 7 (WFR7); WASP Firm Representative 8 (WFR8)	Emerging WASP (WFR7 and WFR8 interviewed together)
WASP Firm Representative 9 (WFR9); WASP Firm Representative 10 (WFR10)	Non-WASPA member (WFR9 and WFR10 interviewed together)
ICT Lawyer 1 (ICTL1); ICT Lawyer 2 (ICTL2); ICT Lawyer 3 (ICTL3)	Present or past WASPA adjudicator

The interview participants provide different perspectives. The ICT analyst provides a perspective with no conspicuous vested interest – and that independent voice is invaluable. The WASPA voice is important for its insider's perspective on the complexities of administering the self-regulatory regime. The network operators have a large and ever-present dominance over the industry and the delivery and billing of WASP services run over their networks. Their views on all matters WASP related are taken very seriously by the industry. The voice of the numerous WASPs – business-to-consumer players selling content products, business-to-business aggregators selling marketing services, companies with a presence in both areas, big companies with considerable resources, emerging companies with limited resources, WASPA members, non-WASPA members – is invaluable. As the regulated entities, their perception of the effectiveness of the WASPA Code is of the outmost importance. To that end, the WASPs make up most of the interview participants. The adjudicators are at the coal-face of Code enforcement and have a very practical sense of how the Code interacts with the WASPA membership.

4.2.1. Institutional Positioning

Table 11 overleaf is a snapshot of the interview respondents' views regarding WASPA's institutional positioning. This is followed by a more detailed view of the results of the interviews.

Table 10: Institutional Positioning - Summary of Responses to Interview Questions

Institutional Positioning	Yes	No	Un-clear
Do you consider WASPA to be a credible and legitimate organisation?	6	8	2
Do you think the WASPA Code enjoys widespread support from the players in the industry?	8	6	2
Does WASPA have sufficient resources and expertise to enforce the Code?	11	5	0

4.2.1.1. WASPA Legitimacy and Credibility

Six interview respondents out of sixteen believe that WASPA is a legitimate regulator of the WASP industry. It draws this legitimacy from the widespread acceptance and recognition of this role by the various stakeholders across Government, mobile network operators and the WASP industry. Importantly, most of the respondents who held negative sentiments towards WASPA still accepted and recognised this legitimacy. According to one respondent **"**the companies that make real money are all involved in WASPA because they all want to protect their revenue streams and make sure that everybody in the industry complies with consumer protection principles," he says (WFR4, interview, 4 June 2010). In addition, another respondent sates that "the Department of Trade and Industry uses WASPA as a case study for self-regulation" (WR, interview, 2 June 2010). Further, the network operators "have all given the undertaking to WASPA that they will support them if it is necessary to switch-off any WASP" (WR, interview, 2 June 2010).

However, eight interview participants questioned WASPA's credibility – arguing that the organisation's leadership is "conflicted" by its dual role as industry players and WASPA representatives. According to one respondent, WASPA is

"conflicted" because of its two objectives that sometimes fight against each other – i.e. looking out for the consumers versus looking out for the WASPs (WFR2, interview, 4 June 2010). Another respondent believes that the "people that created WASPA were the same people who created the need for it" (WFR5, interview, 16 July 2010). This view is echoed by WFR7, who states that "WASPA is a referee and a player at the same time" as the same people who run the rogue WASPs also run WASPA (WFR7, interview, 13 August 2010).

Worryingly, a number of interview participants argue that WASPA has been captured by the established firms in the industry. According to one interview respondent the WASPA organisation is a "boys club" or "cartel" that is run by the big WASP firms – and this fact compromises their independence. "They run WASPA for the benefit of the big players," she says (WFR1, interview, 1 June 2010). WFR8 adds that the lack of separation between the "player and referee" has resulted in WASPA being run by a "group of business owners who are protecting their turf" instead of focusing on the consumer protection mandate (WFR7 and WFR8, interview, 13 August 2010). Further, both WFR7 and WFR8 believe that the Code is used to fight competitive battles within the WASP community – where certain companies are "targeted" with penalties while the bigger players are exempt from punishment (WFR7 and WFR8, interview, 13 August 2010).

4.2.1.2. Support for WASPA Code

Eight interview participants out of sixteen believe that the WASPA Code enjoys wide support from the industry. One respondent believes that both WASPA and its Code enjoy some level of support from the network operators (ICTL2, interview, 3 July 2010). However, the degree of support differs between the three operators. To illustrate the point, he in indicates that MTN makes WASPA membership compulsory to doing business with them, and Vodacom makes signing up to the Code compulsory (ICTL2, interview, 3 July 2010). According to

another respondent “the network operators have all given the undertaking to WASPA that they will support them if it is necessary to switch-off any WASP” – which gives WASPA considerable teeth (WR, interview, 2 June 2010). Further, ICTL1 argues that a lot of the WASPs are structuring their business around the Code (interview, 10 June 2010). While some might be unhappy with the penalties and the enforcement mechanism thereof, the majority should recognize why the enforcement is necessary. WR believes that “all the WASPs respect the Code, and sometimes maybe fear it, out of necessity” (interview, 2 June 2010).

However, there are some differences in how the various WASPs relate to the Code. According to one respondent the WASPA members have differing views on the Code – and these are largely influenced by their business focus. “If your focus is bulk SMS and applications you might take a different view on content and the importance of content versus those WASPs for whom content and subscriptions are their primary business,” ICTL2 argues (interview, 3 July 2010). He contends that the more established players probably display greater support for the Code – as they have relatively more at stake should the Code, and therefore the industry fail. “The guys who were pushing the envelope last year are now the incumbent players in the industry and are trying to protect the industry,” he says. “Because of the low barriers to entry in the industry, there is always a new crowd knocking at the door and sometimes getting up to mischief” (ICTL2, interview, 3 July 2010).

4.2.1.3. WASPA Resources

Eleven interview respondents out of sixteen believe that WASPA is adequately resourced to carry out its mandate. According to one interview respondent his organisation’s contribution to WASPA is in the region of tens of thousands of rands every quarter – and therefore believes the collective financial contribution of all the network operators to be enough funding (NOR, interview, 4 June 2010). Membership fees also contribute to WASPA’s coffers (WFR1, interview, I June

2010; WFR2, interview, 4 June 2010). Further, there is a view that WASPA has "people with the right expertise" on board both from a technical and legal perspective (NOR, interview, 4 June 2010) – with Leon Perlman, the WASPA chairman and the "driver" of the organisation, singled out as having a good reputation in the industry (WFR5, interview, 16 July). It seems WASPA does have sufficient resources to make sure that the cases are adjudicated – even though the adjudicators "are not paid industry-related fees" (ICTL1, interview, 10 June).

There are dissenting views that argue that WASPA is not adequately resourced. "There are over one hundred and fifty WASPs in South Africa, all running more than one service" (WFR5, interview, 16 July). However, the WASPA Monitor is too thinly resourced – manned by one or two people – to monitor what is going on out there in the market (WFR5, interview, 16 July). As a result, WASPA has become reactive and mostly acts as a response to complaints (ICTIA, interview, 14 July).

4.2.2. Code Relevance

Table 12 below on the following page is a snapshot of the interview respondents' views regarding the relevance of the WASPA Code. This is followed by a more detailed view of the results of the interviews.

Table 11: Code Relevance - Summary of Responses to Interview Questions

Code Relevance	Yes	No	Un-clear
Are the objectives of the WASPA Code still relevant today?	14	2	0
Are the processes to evaluate and revise the Code effective and inclusive?	9	6	1

4.2.2.1. Code Objectives

All the interview respondents – bar the two whose company is not a member of WASPA – agree that the WASPA Code's objectives are relevant and that it seeks to address crucial industry problems. According to one interview respondent the aim of "protecting the industry from itself, protecting it from the risk takers and the troublemakers" is still valid (ICTL2, interview, 3 July 2010). "Every time a consumer is caught with a bad service, the likelihood of them using a legitimate service in the future is impacted," he says (ICTL2, interview, 3 July 2010). The Code has a good framework in place that deals with the main themes – i.e. spam, subscription services, advertising conduct and adult service (ICTL1, interview, 10 June 2010). The themes will remain relevant for long time – but the provisions within these broad themes need to be updated constantly to respond to changes in the environment (ICTL1, interview, 10 June 2010). Changes are sparked by numerous stimuli – e.g. the need to close existing loopholes that are exploited by the unscrupulous WASPs, responding to new technology and aligning the Code with new legislation (ICTL1, interview, 10 June 2010).

There is a dissenting view from two interview participants that questions the relevance of the WASPA Code's objectives. Two interview respondents believe that WASPA is not able to respond to the requirements of the business-to-business aggregators. This view alleges that WASPA was started by the business-to-consumer WASPs selling primarily content services – like ringtones, subscriptions, etc. As a result its focus, objectives and skills-set have been shaped and informed by trends within this environment (WFR9, interview, 12 June 2010). Therefore WASPA membership would not be of much value to a business-to-business aggregator selling primarily marketing solutions to its clients. "We follow the law and not the WASPA Code of Conduct", he says (WFR9, interview, 12 June 2010).

WASPA has therefore erroneously grouped all the firms involved in messaging via the mobile network into a single regulatory regime. The suggestion is that a separate regulatory scheme is required to meet the specific requirements of business-to-business aggregators. Such a regulatory scheme would not focus as much on consumer protection issues – but rather on industry standards setting and vetting members against these (WFR10, interview, 12 June 2010). The assumption here is that corporate brands would not involve themselves in underhanded practices similar to those of mobile content business-to-consumers players. They are not in the business of monetising mobile content and therefore have no commercial incentive to incentive to infringe on consumer rights – at least as they relate to the mobile content space. The focus here should therefore be more on industry standards setting and vetting members against these to ensure that "you only have quality guys connecting to your network – who understand the operator, understand the handset and understands the consumer" (WFR10, interview, 12 June 2010). A suggestion put forward is that the Mobile Marketing Association (MMA) – currently only an association, not a regulatory body – could be better placed to regulate the business-to-business aggregator industry (WFR10, interview, 12 June 2010).

One interview respondent raises the potential conflict between legislation that deals with the WASP services and the Code as an issue. "The Consumer Protection Act and the Protection of Personal Information Bill have very specific requirements as to how one engages with a consumer and what one can do with a consumer's personal information" (ICTL1, interview, 10 June 2010). The Code needs to take these requirements into account in order to avoid conflict between the legislation and the Code. Failure to do so will lead to WASPs questioning whether they should be practicing in line with the legislation or in line with the Code – and in that scenario the law of the land will always win. In addition, the National Lotteries Board Act of 1997 impacts on the use of premium rated services in competitions (ICTL1, interview, 10 June 2010). According to section 54 of the Act a promotional competition is legal, amongst other things, if taking

part in the competition does not increase the price paid for the goods or services (ICTL1, interview, 10 June 2010). Therefore an SMS used to enter the competition may not cost more than the network operator's standard tariff – which erodes any potential profit for WASPs. Similarly, the Code needs to take this into account to avoid conflict between the legislation.

4.2.3. Stakeholder Participation

Table 13 below is a snapshot of the interview respondents' views regarding stakeholder participation in WASPA processes. This is followed by a more detailed view of the results of the interviews.

Table 12: Stakeholder Participation - Summary of Responses to Interview Questions

Stakeholder Participation	Yes	No	Un-clear
Does the WASPA Code apply to the entire industry (both WASPA members and non-members)?	6	6	4
Have all the players in the industry (including the small players), been meaningfully involve in industry Code development?	7	6	3

4.2.3.1. Code Coverage

The number of interview participants who believe the WASPA Code applies to the entire industry is equal to those who believe it does not. The main difference in what informed the two views seems to be the definition of the WASP industry. The former group, on one hand, interprets the membership of the industry as limited to WASP firms and excludes the VAS services of network operators. The latter group, on the other hand, interprets the membership of the industry to include both WASP firms and the VAS services of network operators.

The interview participants who believe the WASPA Code applies to the entire industry view the role played by the network operators as central to the Code's success in this regard. According to one respondent both Vodacom and MTN insist, as a condition for doing business with them, that all WASPs sign up to the WASPA Code – Vodacom only makes Code acceptance compulsory, and MTN makes both WASPA membership and Code acceptance compulsory (ICTL2, interview, 3 July 2010). As a result, all WASPs that go through Vodacom's and MTN's networks – who collectively have the lion's share of the market-share – must sign-up to the WASPA Code. As mentioned elsewhere in this report, network operators play a central role in industry's value chain as they provide WASPs with two key services: distribution of content through the network and micro-payment billing. In other words without a relationship with the network operators it is almost impossible for a WASP to operate its business.

The interview participants who don't believe the WASPA Code applies to the entire industry strongly believe that WASPA's mandate must be extended to include the network operators' related activities. The network operators benefit commercially from all WASP activities – including the ones that contravene the Code. According to WFR6 the network operator gets "to keep all their money made from ill-gotten gains", whereas the WASPs "get nailed with a hefty fine" (WFR5 and WFR6, interview, 16 July 2010). WFR5 agrees, and argues that the operators pretend to be just a "dumb pipe" and not involved in the crime – but make a lot of money from the ill-gotten gains. Both argue that if network operators were required to forgo all revenues gained from WASP transgressions, then they would have an added incentive to put an end to these transgressions (WFR5 and WFR6, interview, 16 July 2010).

In addition, the network operators have VAS services – i.e. WASP services – that are excluded from WASPA's regulation. WFR5 argues that "MTN and Vodacom run their own value-added services campaigns" and "currently they act with

impunity" (WFR5 and WFR6, interview, 16 July 2010). The examples he mentions are the "100 Days 100 Cars" from Vodacom and "Yellow 15 from MTN" – both SMS based competition campaigns. The WFR7 and WFR8 believe that the network operators "have no respect for WASPA" and do as they please (WFR7 and WFR8, interview, 13 August 2010). They are perceived as above the other players in the WASP community – and their VAS services are not subject to the same rules as everybody else. ICASA "should have come up with a mechanism to protect the end-user" from the network operators (WFR7 and WFR8, interview, 13 August 2010). However, with ICASA being a "useless organisation" means that the network operators continue to do as they please. They argue that WASPA must be accountable to ICASA – as the latter should have jurisdiction over the entire ICT industry (WFR7 and WFR8, interview, 13 August 2010).

4.2.3.2. CodeCom Processes and Inclusivity

A slight majority of the interview respondents – with a numerical advantage of one – believe that all the players in the industry have been meaningfully involved in the Code development. One respondent believes that the Code revision processes are "open" and that "anyone can contribute" (NOR, interview, 4 June 2010). Another respondent argues that the process of developing the Code "was inclusive of the big players" (ICTIA, interview, 14 July 2010). "Once the big players were on board all the smaller players would come on board" (ICTIA, interview, 14 July 2010). This was important in order for the Code to have any kind of power. In addition, the WR believes there is every opportunity for all interested parties to participate in discussions around the Code – through the face-to-face meetings or e-mail (interview, 2 June). "Anybody who goes to the meetings, responds to e-mails and participates gets included" (WFR3, interview, 4 June 2010). However, it seems that that "the higher you are in the pecking order, the more included you are" (WFR3, interview, 4 June 2010).

Six interview participants raised concerns regarding the inclusiveness of Code development processes. Four participants indicated that they have never been part of CodeCom Code revision processes (WFR5 and WFR6, interview, 16 July 2010; WFR7 and WFR8, interview, 13 August 2010). In addition, there is a view that the insufficient stakeholder participation within the WASP community comes from the fact that "different people have different passions; different companies have different priorities; and different people have limited time and resources" (ICTL2, interview, 3 July 2010). For example, some companies have a dedicated resource for the WASPA Code, while in other companies the resource has to juggle regulatory issues with marketing and other commitments. Participation also depends on the business focus of the WASPs. For example, a WASP that focuses on subscription services will participate heavily on all matters related to subscription services as these matters have a direct impact on their bottom line (ICTL2, interview, 3 July 2010). Importantly, it seems that WASPA does not have a forum WASPA to engage the broader public and consumers – and as a result they don't get their views heard (ICTL2, interview, 3 July 2010). WASPA's limited public profile limits the extent to which members of the public are able to interact with it. "One of the problems is that there isn't a big enough awareness amongst the public about WASPA, what WASPA offers and if you have complaints that you can go to WASPA" (ICTL3, interview, 21 July 2010).

According to the ICTL1, another limitation is the fact that the main method for members of the public to contact WASPA is an online mechanism. However, the people who use WASP services don't necessarily have access to the Web and e-mail. As a result, there is a gap between the people who use the WASP services and the resources that are necessary in order to enforce their rights under the Code (interview, 10 June 2010).

4.2.4. Code Enforcement

Table 14 below is a snapshot of the interview respondents' views regarding Code enforcement. This is followed by a more detailed view of the results of the interviews.

Table 13: Code Enforcement - Summary of Responses to Interview Questions

Code Enforcement	Yes	No	Un-clear
Are the penalties for non-compliance proportional to the transgression?	1	12	3
Are the penalties a sufficient deterrent?	1	12	3
Do companies benefit from complying with the WASPA Code (competitive advantage, financial advantages, industry rewards, etc)?	4	6	6

4.2.4.1. Punitive Measures

Defaulting providers face numerous sanctions. WASPA has the powers to impose punitive fines, order refunds to consumers, suspend the defaulting WASP, withhold revenues, shut down services and expel providers from WASPA. According to one respondent the fines range from about a thousand rands to about two-hundred thousand rands (WFR6, interview, 16 July 2010). In addition to the fine, WASPA will require a subscriber to be refunded if a WASP has "fraudulently taken money out of the subscriber's account" (NOR, interview, 4 June 2010). Alternatively the network operator will withhold the WASP's revenue for that particular service (NOR, interview, 4 June 2010).

Worryingly, twelve interview respondents don't believe that the penalties for non-compliance are proportional to the transgression. Further. The same twelve respondents also don't believe that penalties are a sufficient deterrent. One respondent argues that fines should be employed only as warnings to the WASPs when they over-step the boundaries – and that if they continue to do so they might lose WASPA membership. This is the ultimate sanction as "there are certain resources they would not have access to if they lose their membership status" (ICTIA, interview, 14 July 2010). Other respondents agree with this sentiment that "the ultimate penalty would be to expel a member who continues to infringe the Code" (ICTL3, interview, 21 July 2010) and that repeat offenders' connections "should be terminated" (WFR5, interview, 16 July 2010).

However, one of the interview respondents seemed to recall an instance where a WASPs connection has actually ever been switched off. A possible explanation for this is that there seems to be little incentive for the network operators to switch off offending WASPs as they make significant revenue from their activities. There is an argument that the operators should "be accountable in some way for allowing illegal activity to happen through their network, as opposed to just standing back" (WFR6, interview, 16 July 2010). Importantly, the there is a view that the WASPs who have been found to have committed fraud should be subject to criminal proceedings. "WASPA would have to take these matters to court on behalf of the consumers" (ICTIA, interview, 14 July 2010). Putting a WASP operator in jail would be one of the clearest messages ever sent to the industry (ICTL3, interview, 21 July 2010). This is currently not included in the WASPA regime. "A link between transgressing the Code and criminal proceedings is an important gap that needs to be closed" (ICTIA, interview, 14 July 2010).

Another important point raised is that the WASPA adjudicators are struggling to access key market intelligence to make their fines proportional to the transgressions. The adjudicators would not know "what the WASP's earnings are

in proportion to their fines" – making it difficult to determine the fines' appropriateness (ICTL1, interview, 10 June 2010). "Trying to assign a value to transgressions is always incredibly difficult" (ICTL2, interview, 3 July 2010). Because of bilateral non-disclosure agreements, the network operator will not divulge to third-parties the amount of money a WASP had made of a specific campaign. It is then difficult for WASPA, without the benefit of understanding the extent of the crime, to make the penalties an effective deterrent.

Within that context, there is a view that research around whether the fines are a sufficient deterrent is important (ICTL1, interview, 10 June 2010). "Adjudicators need a better rand and cents understanding of how the industry works" (ICTL2, interview, 3 July 2010). This will give them a better understanding of the impact of their judgments – as sometimes they give fines that are too high, and sometimes they give fines that are too low. Further, in cases "where there are campaigns that flout the rules, the offending WASP must disclose the value of the proceeds thereof" (ICTIA, interview, 14 July 2010). The fine then has to be in line with how much money they have made. In addition, there should be an obligation placed on the network operators that in such instances they should disclose the revenue figures associated with these violations – as they have sight of the revenues generated with such campaigns.

4.2.5. Impact of the Code

Table 15 overleaf is a snapshot of the interview respondents' views regarding the impact of the WASPA Code. This is followed by a more detailed view of the results of the interviews.

Table 14: Impact of the Code - Summary of Responses to Interview Questions

Impact of the Code	Yes	No	Un-clear
Have the objectives of the WASPA Code been achieved?	7	6	3
Has it affected the behaviour of the WASPs?	8	4	4
Has it affected the behaviour of consumers?	5	2	9
Has the public reputation of the industry improved?	3	9	4
Are there unintended or negative effects of the Code?	11	1	4

4.2.5.1. WASP Behaviour

The majority of interview respondents – with a slight numerical advantage of one – believe that the WASPA Code has achieved its objectives. One of the expressions of that success is seen in the improved behaviour of the WASPs. Eight interview respondents believe that the WASPA Code has had a positive impact on WASP behaviour generally. One respondent believes “WASPs are now a lot more careful about violating consumer rights” (ICTIA, interview, 14 July 2010). Another respondent states that if the Code was not in existence, each WASP “would do whatever they want to do, however they want to do it, to whoever they want to do it” (NOR, interview, 4 June 2010). The Code therefore sets standards and WASPs now have rules to comply with. Another view that echoes this sentiment is that that spamming “is not a vicious as it used to be” and credits the Code for this reduction (WFR7 and WFR8, interview, 13 August 2010).

4.2.5.2. Reputation of WASP Services

Worryingly, six of the interview respondents don't believe that the WASPA Code has achieved its objectives. One of the expressions of this failure is that the reputation of the WASP industry has not improved – despite the introduction of the WASPA Code. Nine interview respondents don't believe that the public reputation of the industry has improved. One respondent's view is that "the network operators don't trust WASPs" and "members of the public don't trust subscription services – even if the services are above board" (WFR1, interview, 1 June 2010). A similar view is that the public reputation is not improving "largely because the network operators themselves are not very transparent in their costs structures" (ICTIA, interview, 14 July 2010). Therefore, until the network operators themselves are more transparent then the WASP industry is not going to be seen as any more honest than the network operators. "This is a mobile ecosystem issue, rather than a WASPA issue" (ICTIA, interview, 14 July 2010).

4.2.5.3. Unintended Consequences: The Cost of Managing the Code

The overwhelming majority of interview participants – eleven in all – believe that the WASPA Code has had unintended negative consequences. The regular Code revisions are seen to impact negatively on the ability of the small WASPs to manage the Code – and therefore on their ability to compete in the marketplace. There seems to be too many and too frequent changes to the Code. According to one respondent this puts a considerable strain on the WASPS as they constantly have to change their products, and sometimes technology, to keep up to date with the Code (WR, interview, 2 June 2010). Another respondent argues that the frequent Code revisions make it difficult for WASPs to comply with it, as "it is impossible to comply with something that keeps changing" (WFR2, interview, 4 June 2010). Another view is that the small WASPs don't have adequate resources to constantly tweak their services to respond to a constantly changing Code, or can't afford to hire a Code compliance

officer (ICTL1, interview, 10 June 2010). Perhaps more can be done to educate the WASPs on the interpretation of the Code as “there seems to be a lack of understanding of the provisions of the Code, and how the provisions of the Code relate to other legal requirements” (ICTL1, interview, 10 June 2010).

There are suggestions that “the Code is used to limit competition” (WFR1, interview, 1 June 2010). This view alleges that the directors of the established WASPs – who also run the WASPA organisation – use fines as a tool to thwart competition from emerging WASPs. Another respondent believes the small WASPs are likely to transgress the Code at some point – as a result of their lack of resources to manage the Code (ICTL1, interview, 10 June 2010). In addition, the small players don’t have the necessary experience and expertise to defend themselves from complaints. “They can’t properly represent themselves – even to appeal for the fine to be reduced or written off” (WFR1, interview, 1 June 2010). As a result, it is very difficult for small players to survive the first year or two in business.

4.3. Summary

This qualitative study employs the more informal and less structured data collection methods – i.e. review of official records and semi-structured interviews The WASPA website has rich data on, amongst other things, historical adjudications and Code revisions. The data from the website is used mostly as a guide for the interview process – knowing which companies are serial Code transgressors helps identify interview participants with a “serial Code transgressor” perspective; and knowing how frequently the Code is revised draws attention to “the impact of frequent Code revisions” as an important interview discussion. The type of organisation the interview respondents work for seems to influence their perceptions of the WASPA organisation and the WASPA Code quite significantly. As a result, the selection of interview respondents was

informed by the researcher's requirement to get various views – and therefore interview respondents from organisations with varying roles in the industry value-chain.

The next chapter is an analysis of the research results. The analysis is structured around the research questions and the five pillars of the evaluation framework employed – i.e. institutional positioning, code relevance, stakeholder participation, code enforcement and impact of the code.

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5. CHAPTER 5: ANALYSIS OF RESEARCH RESULTS

As discussed earlier, the objective of this research study is to evaluate the effectiveness of the WASPA Code of Conduct as understood by the main role-players in the wireless applications industry in South Africa – i.e. the researcher tries to understand their "perceptions, perspectives, and understandings" (Leedy & Ormrod, 2005, p. 139). The "central task during the data analysis is to identify common themes in people's descriptions of their experiences" of the WASPA Code (Leedy & Ormrod, 2005, p. 140). The unearthed data is classified and analysed in terms of the themes from the analysis framework – which takes the same structure as the research sub-questions and the interview protocol.

5.1. Whether the Organisation is in Good Standing

5.1.1. Support for the Organisation and Code

WASPA is viewed as a legitimate regulator of the WASP industry. Even the respondents who held negative sentiments towards WASPA still accepted and recognised the organisation's legitimacy as the official and legal regulator of the wireless applications industry. Importantly, its Code also enjoys wide acceptance from across the industry.

WASPA membership stood at more than one-hundred organisations by the end of the period under review between 2006 and 2008 (Perlman, 2008). In addition, the WASPA Code is enforced on "information providers" – i.e. "any person on whose behalf a wireless application service provider may provide a service, and includes message originators" (WASPA, 2010). Importantly, two out of the three main mobile network operators as at 2008 make membership to the organisation a prerequisite to doing business with them (Perlman, 2006) – i.e. MTN and Cell C. There are some indications that Vodacom has "WASPs using its network for content distribution which are not WASPA members" (Muller, 2008). According to

one interview respondent “the network operators have all given the undertaking to WASPA that they will support them if it is necessary to switch-off any WASP” – and this gives the organisation considerable teeth (WR, interview, 2 June 2010). This support from industry leaders “may increase the possibility of success” for the self-regulatory regime (Lee, 2008, p. 279). In addition, interview respondent believes that “all the WASPs respect the Code, and sometimes maybe fear it, out of necessity” (WR, interview, 2 June 2010). The role that sanctions play is two-fold: “to deter the offender (and thus encourage compliance with rules) and to repair or cure a breach of the rules” (Price & Verhulst, 1999, p. 38). As a result, the appropriate use of sanctions for non-compliance is important in ensuring an effective industry code of conduct (Industry Canada, 2002, p. 16).

The support and acceptance of the Code has helped entrench it in the industry. According to one interview respondent, lot of the WASPs structure their business around the Code (ICTL1, interview, 10 June 2010) – and this “ability and willingness of the corporation to implement the code” is an important factor in its effectiveness (Bondy, 2007, p. 2). This strengthens the institutional positioning the self-regulatory regime within the industry.

5.1.2. WASPA Organisation Captured by Established Players

While WASPA is accepted as a legitimate and lawful regulator of the wireless applications industry, there are questions around the credibility with which it goes about its business. There are strongly held views amongst the smaller, emerging WASPs that WASPA has been captured by their more established counterparts.

According to this view, the WASPA leadership is “conflicted” by their dual role as industry players and WASPA representatives – and this compromises the independence of their regulatory effort (WFR2 and WFR3, interview, 4 June 2010). This lack of independence is described as “regulatory capture”, where “the regulators are co-opted by the regulatees and thus lose their legitimacy as

regulators" (Sethi, 2005, p. 81). WFR7 argues that "WASPA is a referee and a player at the same time" as the same people who run the rogue WASPs also run WASPA (interview, 13 August 2010). It would seem that this perceived lack of independence is a serious concern. Price and Verhulst argue that an effective self-regulatory regime must be "impartial" and "independent" (1999, p. 37). In addition, the smaller WASPs believe that WASPA is a "boys club" or "cartel" that is run by the big WASP firms "for the benefit of the big players" (WFR1, interview, 1 June 2010). This implies some level of collusion amongst the bigger players – which is not uncommon in self-regulatory regimes (Bartle & Vass, 2005, p. 8).

5.1.3. WASPA Resources

WASPA's resourcing revolves around two inter-related issues: financial resourcing and organizational capacity.

WASPA's self-regulation enforcement is partially funded by the three mobile network operators in the market as at 2008 – Vodacom, MTN and Cell C (Perlman, 2006). In addition, the WASPA membership fees pay for the organisation's day-to-day activities of industry promotion (Perlman, 2006). Fines paid by Code-contravening WASPs are another source of funding. There is a strong view from the interview participants that WASPA is adequately financially resourced (NOP, interview, 4 June 2010; WFR1, interview, 1 June 2010; WFR2 and WFR3, interview, 4 June 2010). Harker and Harker recognise the importance of adequate funding, and contend that it strengthens a regulator's effectiveness (2000, p. 158). This resourcing is therefore invaluable in enhancing WASPA's ability to carry-out its duties.

The issues that were raised around organizational capacity included the types of skills available, their level of motivation and amount of the skilled personnel available. Melody refers to the ability to "acquire specialised skills" as important to a regulator's effectiveness (1997, p. 19). One interview respondent believes

WASPA has “people with the right expertise” on board – both from a technical and legal perspective (NOP, interview, 4 June 2010). In addition, another interview respondent states that WASPA has – in its well-motivated team of adjudicators – more than sufficient capacity to deal with its cases (ICTL1, interview, 10 June 2010). Price and Verhulst appreciate the value of a well-resourced adjudication facility, and argue that institutional capability depends on the self-regulatory organisation being “equipped with the necessary powers to evaluate any complaint” (1999, p. 37). Importantly Leon Perlman, the current WASPA chairman, stood out as an important driving force behind the organisation – and seems to command considerable respect in the industry (WFR5, interview, 16 July).

However, the WASPA Monitor is one area that was raised repeatedly by the dissenting view that WASPA is not adequately resourced. Monitoring is especially important in the case of advertising standards, where a monitoring tool “covering advertising in all media should be in place in order to generate complaints about advertising which may be potentially unacceptable to society” (Harker, 2000, p. 199). The WASPA Monitor is seen as perhaps thinly resourced to monitor what is going on out there in the market – and as a result has become reactive and mostly acts as a response to complaints (ICT Industry Analyst, interview, 14 July). Lee stresses the importance of this function and argues “monitoring compliance by public authorities is believed to enhance industry members' adherence to self-regulation” (Lee, 2003, p. 280).

5.2. Responding to the Market’s Needs

5.2.1. Code Relevance

“Code relevance” refers to the degree to which the Code responds to the needs of the stakeholders in the marketplace. All the interview respondents – bar two whose company is not a member of WASPA – agree that the WASPA Code’s objectives are relevant and that it seeks to address crucial industry problems.

According to one respondent the aim of “protecting the industry from itself, protecting it from the risk takers and the troublemakers” – as well as protecting the general public – is still valid (ICTL2, interview, 3 July 2010). However, there is a compelling argument that the Code’s relevance is falling short on two fronts: responding to the requirements of the business-to-business aggregators and evolving with the relevant legislation.

The organisation’s focus, objectives and skills-set have been shaped and informed by trends within the business-to-consumer environment. Lee argues that “industry members tend to comply with self-regulation guidelines, if the guidelines are articulated with industry expertise” (2008, p. 279). In this instance, a different type of expertise is required to regulate the business-to-business players. The business-to-business regulatory effort should not focus as much on consumer protection issues – but rather on industry standards setting and vetting members against these to ensure that “you only have quality guys connecting to your network – who understand the operator, understand the handset and understands the consumer” (WFR9 and WFR10, interview, 12 June 2010).

The WASPA Code must be aligned to pertinent legislation that has a big impact on the industry. One respondent raises the potential conflict between, on one hand, the Consumer Protection Act, the National Lotteries Board Act and the Protection of Personal Information Bill and on the other, the WASPA Code (ICTL1, interview, 10 June 2010). For example, according to section 54 of the National Lotteries Board Act of 1997 a promotional competition is legal, amongst other things, if taking part in the competition does not increase the price paid for the goods or services (RSA, 1997, Section 54). Therefore an SMS used to enter the competition may not cost more than the network operator’s standard tariff – which erodes any potential profit for WASPs. The Code needs to take this into account to avoid conflict between the legislation.

5.3. How Far the Reach Extends

5.3.1. Organisations Included

As a result of the WASPs dependency on the mobile network operator – for the delivery and billing of services – the operator controls the WASPs' access to the market. Through this power, the operator has the ability to ensure wide industry coverage for either WASPA membership or its Code – i.e. by making either one, or both, a prerequisite for the access of its network by any WASP. Without significant Code coverage regulation "is unlikely to be judged a viable regulatory effort" (Purchase, 2004. P. 83). Importantly, MTN and Cell C make WASPA membership to the organisation – and therefore the WASPA Code as well – a prerequisite to doing business with them. There are suggestions that Vodacom only makes signing-up to the Code compulsory. This would imply that the WASPA Code has complete coverage of all WASPs. In addition and as stated earlier, the WASPA Code is enforced on "information providers" (WASPA, 2010).

Importantly, a number of interview participants strongly believe that WASPA's mandate must be extended to include the network operators' related activities. The network operators benefit commercially from all WASP activities – including the ones that contravene the Code. The argument is that if network operators were required to forgo all revenues gained from WASP transgressions, then they would have an added incentive to put an end to these transgressions (WFR5 and WFR6, interview, 16 July 2010). There are suggestions that the network operators "currently they act with impunity" in how they run their VAS services – which compete directly with WASP services (WASP Representative 6, interview, 16 July 2010). The "absence of the bigger companies" from Code coverage is seen as a significant drawback as it can limit the success of the self-regulation regime (Lee, 2008, p. 279).

5.4. Code's Openness and Transparency

5.4.1. CodeCom Processes and Inclusivity

There seems to be two main schools of thought regarding WASPA's CodeCom processes – those who believe the processes are generally inclusive, and those who think otherwise.

According to WASPA, membership to the CodeCom is open to any individual or entity that wishes to join. The important discussions around Code revisions take place during the quarterly Code review workshops and subsequent e-mail discussion forums – and, according to one interview participant, there is every opportunity for all interested parties to participate in these CodeCom discussions around the Code (WR, interview, 2 June). "Anybody who goes to the meetings, responds to e-mails and participates gets included," the WFR3 says (WFR2 and WFR3, interview, 4 June 2010). Stakeholder participation contributes invaluably to a code's viability – the wider the participation the more effective it is likely to be (Purchase, 2004, p. 83). Conversely, a "low level of industry participation" may render the self-regulatory effort ineffective (Lee, 2008, p. 279). WASPA has a very thorough Code change and ratification process. The process includes, amongst others, the submission of proposed changes to the Secretariat; CodeCom meeting to review the proposed changes; e-mail circulation of revised Code version to CodeCom members and submission of the members' comments thereof; ManCom comments on the revised version; CodeCom final comments; and ManCom final comments and ratification of all or some of the Code changes (WASPA, n. d.a.). Eleven versions of WASPA Code of Conduct were published between 2006 and 2008 (WASPA, n.d.b.).

However, there are dissenting views that the CodeCom processes are not inclusive – for a number of reasons. Firstly, while WFR3 believes the CodeCom processes are broadly inclusive of all stakeholders, there is a concern that "the higher you are in the pecking order, the more included you are" (WFR2 and

WFR3, interview, 4 June 2010). Another interview respondent believes that the bigger companies are seen to have relatively more influence in WASPA processes (ICTIA, interview, 14 July 2010). This hierarchical "pecking order" approach may lead to those who are affected by the Code excluded from its decision-making processes – raising the likelihood for hostility (Purchase, 2004, p. 83). Secondly, according to another interview respondent, any given company's participation is based on its priorities and resources (ICTL2, interview, 3 July 2010). The reality is that in many companies a single resource "has to juggle regulatory issues with marketing and other commitments"; and companies whose business focus is subscription services participate considerably more on subscription-related discussions – to the exclusion of other discussions (ICTL2, interview, 3 July 2010).

5.4.2. External Participation

According to one interview respondent there is no forum for WASPA to engage the broader public and consumers – and as a result they don't get their views heard (ICTL2interview, 3 July 2010). Self-regulation processes potentially have limited external participation (Bartle & Vass, 2005, p. 8). External participation also includes members of the public and consumers – i.e. the beneficiaries of the Code. Price and Verhulst argue that "without user involvement, a self-regulatory mechanism will not accurately reflect user needs and will not be effective in delivering the standards it promotes" (1999, p. 15). Another interview respondent believes that WASPA's poor public profile limits the extent to which members of the public are able to interact with the Code (ICTL3, interview, 21 July 2010). To this end, regulatory institutions must be proactive in generating publicity for the Code (Harker and Harker, 2000, p. 158), so that they are able to use it for their benefit (Reding, 2007, p. 5). In addition, a third interview respondent believes another limitation is the fact that the main method for members of the public to contact WASPA is an online mechanism – resulting in a gap between the people

who use the WASP services and the resources that are necessary in order to enforce their rights under the Code (ICTL1, interview, 10 June 2010).

However, the statistics paint a different picture – where the public is the leading source of complaints. In 2006 the sources of complaints lodged were split in half between members of the public and WASP competitors. In 2007 the public was the leading source of complaints at forty-seven percent and WASP competitors at thirty-four percent. In 2008, WASPA's contribution rose sharply to thirty-one percent and the public's role grew marginally to fifty-six percent – while complaints lodged by WASP competitors declined sharply to twelve percent.

5.5. Ensuring Code Compliance

5.5.1. Punitive Measures

The appropriate use of sanctions for non-compliance is important in ensuring an effective industry code of conduct (Industry Canada, 2002, p. 16). There are various options within the arsenal of sanctions that self-regulatory regimes can use – including public disclosure, expulsion and financial penalties. WASPA has the powers to impose punitive fines, order refunds to consumers, suspend the defaulting WASP, withhold revenues, shut down services and expel providers from WASPA. The role that sanctions play is two-fold: "to deter the offender (and thus encourage compliance with rules) and to repair or cure a breach of the rules" (Price & Verhulst, 1999, p. 38). The use of fines is the most widely used part of WASPA's arsenal of sanctions. The number of fines greater than R100 000 was constant for both 2006 and 2008 – at only one in each year. The number increased sharply to six in 2008. The trend of sharp increases in 2008 is consistent across all categories of fines. This is also reflected in the corresponding increase in the average value if fines – from R11 379 in 2007 to R33 163 in 2008.

5.5.2. Heavier Penalties

One interview respondent argues that fines should be employed only as warnings to the WASPs when they over-step the boundaries – and that if they continue to do so they might lose WASPA membership (ICTIA, interview, 14 July 2010). Another respondent agrees that "the ultimate penalty would be to expel a member who continues to infringe the Code" (ICTL3, interview, 21 July 2010). The challenge with enforcement in self-regulation is that punishment for transgressions is "limited to reputation or organisational sanctions such as the withdrawal of already granted seals of approval, fines, public reprimands or expulsion of members (Latzer, *et al.*, 2003, p. 141). The self-regulatory body typically does not have the authority to "sanction existentially, by professional disbarment for example" (Latzer, *et al*., 2003, p. 141). The sanctions could therefore potentially be inadequate.

There is a strong argument that "the absence of genuinely dissuasive and punitive sanctions is seen as a major weakness in a code" (Price & Verhulst, 1999, p. 37). The ICTIA argues that WASPs who have been found to have committed fraud should be subject to criminal proceedings (interview, 14 July 2010). The ICTL3 agrees and argues that where there has been fraudulent activity, WASPA should lay the criminal charges on behalf of the consumers (interview, 21 July 2010).

5.5.3. Disclosure of "Crime" Proceeds

As mentioned earlier, self-regulation is meant to lower the cost of accessing the expertise and technical knowledge that industry practitioners have (Baldwin & Cave, 1999, p. 27). As a result, it is easier to develop appropriate rules, and this increases the probability of the effectiveness of and compliance to the regulations (Bartle & Vass, 2005, p. 7).

However, the WASPA adjudicators are struggling to access a key component of the industry expertise and technical knowledge. According to one interview respondent the major challenge facing the adjudicators is that they would not know “what the WASP’s earnings are in proportion to their fines” – making it difficult to determine the fines’ appropriateness (ICTL1, interview, 10 June 2010). Because of bilateral non-disclosure agreements, the network operator will not divulge to third-parties the amount of money a WASP had made of a specific campaign. It is then difficult for WASPA, without the benefit of understanding the extent of the crime, to make the penalties an effective deterrent.

5.6. Achieving the Code’s Objectives

5.6.1. WASP Behaviour

The “impact of the Code” in part refers to whether the Code has achieved its intended objectives. The “reputation or organisational sanctions” for Code transgressions are potentially inadequate (Latzer, *et al*., 2003, p. 141) and not forceful enough (Bartle & Vass, 2005, p. 8) – resulting in the Code not achieving its objectives. Industry Canada argues that the “key evaluation criteria are results-based indicators that provide information about the achievement of objectives” (2002, p. 16).

The number of “complaints upheld” rose from sixty-two in 2007 to one hundred and forty-four in 2008 – which suggests the WASP behaviour is not improving. In 2008 the biggest areas of concern were subscription services, advertising, spam and competitions. The most notorious serial offenders are also some of the biggest WASPs in the market. In 2005, forty-nine percent of Vodacom WASP revenue came from the top five providers: iTouch, Exactmobile, First National Bank, Cointel and Foneworx. It is highly probable that these ratios would be duplicated in relation to MTN and Cell C (Competition Tribunal Republic of South Africa, 2006, p. 2). Exactmobile, Cointel/ Vodacom and iTouch/ Buongiorno are

also the in the top six transgressors of the WASPA Code for the period 2006 to 2008.

The statistics above paint a picture of WASP behaviour not improving – with the market leaders the primary transgressors. However – almost in contradiction – many of the interview participants believe that the Code has had a positive impact on WASP behaviour generally. One interview respondent argues that "WASPs are now a lot more careful about violating consumer rights" (ICTIA, interview, 14 July 2010). Another respondent agrees, and states that if the Code was not in existence, each WASP "would do whatever they want to do, however they want to do it, to whoever they want to do it" (NOR, interview, 4 June 2010). The Code therefore sets standards and WASPs now have rules to comply with. WFR7 and WFR8 believe the Code has had a positive impact on the industry (WFR7 and WFR8, interview, 13 August 2010). As an example, WFR7 says that spamming "is not a vicious as it used to be" and credits the Code for this reduction (WFR7 and WFR8, interview, 13 August 2010).

5.6.2. Reputation of WASP Services

One of the important objectives of Codes is to "gain consumer confidence and trust" (Purchase 2004, p. 81) – amongst other stakeholders. However, this change in behaviour discussed above has not translated into an improvement in the reputation of the industry. WFR1 believes "the network operators don't trust WASPs. Members of the public don't trust subscription services – even if the services are above board," she says (interview, 1 June 2010). The ICTIA agrees that the public reputation is not improving. "This is largely because the network operators themselves are not very transparent in their costs structures," he says (interview, 14 July 2010). Therefore, until the network operators themselves are more transparent then the WASP industry is not going to be seen as any more honest than the network operators. "This is a mobile ecosystem issue, rather than a WASPA issue" he says (ICTIA, interview, 14 July 2010).

5.7. Unintended Consequences

5.7.1. The Cost of Managing the Code

The ability to "accommodate gradual change" is an important variable in Code effectiveness (Purchase, 2004. P. 91). "Shifts in tastes, technologies and the numbers of buyers or sellers and/or their sophistication can make rules obsolete and in need of elimination or redrafting," he says (Purchase, 2004. P. 91). However, regular Code updates impact negatively on the ability of the small WASPs to manage the Code – and therefore on their ability to compete in the marketplace. According to one interview respondents there are too many and too frequent changes to the Code – which results in constant changes to their businesses to keep up to date with the Code (WR, interview, 2 June 2010). There have been eleven versions of WASPA Code of Conduct in force during the period under review – i.e. 2006-2008 (WASPA, n.d.b.). The terms of the various Code versions range between one and seven months long.

The "ability and willingness of the corporation to implement the code" is an important factor in the effectiveness of a code of conduct (Bondy, 2007, p. 2). Worryingly, WFR2 believes that the frequent Code revisions make it difficult for WASPs to comply with it. "It is impossible to comply with something that keeps changing," she says (interview, 4 June 2010). In addition – according to ICTL1 – the small WASPs don't have adequate resources to constantly tweak their services to respond to a constantly changing Code, or can't afford to hire a Code compliance officer (ICTL1, interview, 10 June 2010). She believes more can be done to educate the WASPs on the interpretation of the Code as "there seems to be a lack of understanding of the provisions of the Code, and how the provisions of the Code relate to other legal requirements" (ICTL1, interview, 10 June 2010).

One of the disadvantages of self-regulation efforts is that they may lead to collusion and other expressions of anti-competitive behaviour (Bartle & Vass,

2005, p. 8). This has led to suggestions that “the Code is used to limit competition” (WFR1, interview, 1 June 2010). There are suggestions that the big WASP directors – who also run WASPA – use fines as a tool to thwart competition from emerging WASPs. Another interview respondent believes the small WASPs are likely to transgress the Code at some point – as a result of their lack of resources to manage the Code (ICTL1, interview, 10 June 2010). In addition, the WFR1 believes small players don’t have the necessary experience and expertise to defend themselves from complaints. “They can’t properly represent themselves – even to appeal for the fine to be reduced or written off,” she says (interview, 1 June 2010). As a result, there are suggestions that it is very difficult for small players to survive the first year or two in business.

5.8. Summary

The data unearthed from the research study is classified and analysed in terms of the themes from the analysis framework – which takes the same structure as the research sub-questions and the interview protocol. Some of the more important themes from the analysis include, amongst others, the following: WASPA’s alleged capture by the established players in the industry; the alleged insufficient Code focus on aggregators; the need for the Code to evolve with the changing legislative environment; the proposal to cover the network operators’ VAS services in the WASPA regulatory regime; and the requirement for network operators to disclose the value of Code transgression proceeds.

The next chapter is the report’s conclusion. Its objective is to pull together all the themes from the analysis to create a singular picture of the effectiveness of the WASPA Code.

6. CHAPTER 6: CONCLUSION

As discussed earlier, the research question for this research study is: *How effective has the WASPA Code of Conduct been in regulating the behaviour of the Wireless Application Service Providers in South Africa?*

In addition, the main research question has numerous sub-questions. These sub-questions are structured to mirror the five themes around which the analytical framework is structured. These are:

- *Institutional Positioning: Is WASPA well established?*
- *Code Relevance: Does the WASPA Code address a fundamental problem or an actual need?*
- *Has the WASPA Code achieved wide coverage?*
- *Stakeholder Participation: Has the WASPA Code development been open, transparent, fair and meaningful?*
- *Stakeholder Participation: Is there a range of appropriate negative consequences and incentives for compliance with the WASPA Code?*
- *Impact of the Code: Have the objectives of the WASPA Code been achieved?*
- *Impact of the Code: Are there unintended or negative effects of the WASPA Code?*

The answers to the research question and sub-questions – as framed by the themes discussed above – are detailed below.

In addition, the researcher tables a number of recommendations on improving the effectiveness of the WASPA Code.

6.1. Answering the Research Questions

6.1.1. Institutional Positioning: WASPA's Standing

WASPA is viewed as a legitimate regulator of the WASP industry – and its Code enjoys wide support from the industry.

However, there are some questions around WASPA's credibility – with suggestions that it has been captured by the established firms in the industry. There is a strongly held view that WASPA's mandate must be extended to include the network operators' related activities – in order to cover the entire industry.

WASPA is generally seen to be adequately resourced to carry out its adjudication functions. However, the WASPA Monitor is seen to be too thinly resourced to effectively monitor the market activity – and as a result WASPA has become reactive than proactive.

6.1.1.1. Recommendation: Co-Regulation

Self-regulation processes potentially have limited external participation (Bartle & Vass, 2005, p. 8) and are often seen as lacking in accountability as there is "insufficient participation of democratically elected parliaments" (Latzer, *et al*., 2003, p. 146)., p. 5).Co-regulation is "self-regulation with public oversight or ratified by the state, in other words it is self-regulation with a legal basis" (Latzer, *et al.*, 2003, p. 135).

The WASPA regulatory regime must include some form of State participation and evolve to co-regulation in order to liberate itself from the clutches of industry capture and have the necessary clout to regulate the network operators' VAS services – both recurring themes in the research study. This State participation would most likely come in the form of the Independent Communications Authority of South Africa (ICASA). A potential model in the global context is PhonepayPlus,

which acts, on Ofcom's behalf, as the regulatory agency for premium rate services in the UK (PhonepayPlus, 2009, p. 4). PhonepayPlus is a co-regulatory scheme as its activities have a statutory basis through the UK Communications Act and enforced by the converged regulator Ofcom – which has the power to set conditions for service provision and the approval of a code regulating the premium rate services (Goggin, 2007, p. 147).

6.1.2. Code Relevance: Response to Market Needs

WASPA Code's objectives are generally viewed as relevant and addressing crucial industry problems. The Code has a good framework in place that deals with the main themes – i.e. spam, subscription services, advertising conduct and adult service – and constantly updated provisions within these broad themes to respond to changes in the environment. However, there are strong views that the Code can be better aligned to pertinent legislation to improve its relevance to the market. Further, WASPA's focus, objectives and skills-set have been shaped and informed by trends within the business-to-consumers market – and as a result is not able to respond sufficiently to the requirements of the business-to-business aggregators.

6.1.2.1. Recommendation: Align Code with Legislation

According to Purchase, the ability to "accommodate gradual change" is an important variable in Code effectiveness (2004. P. 91). To this end, an effective Code needs to be updated regularly to reflect these changing conditions (Industry Canada, 2002, p. 15). New legislation forms part of these changing conditions – as in many cases, there is reciprocal reinforcement between the law and codes of conduct. A weak legal instrument may be partly bolstered by using a voluntary approach, and vice-versa (Webb and Morrison, 2004, p. 102). To this end, the WASPA Code must be aligned to pertinent legislation that has a big impact on the industry. These include, amongst others, the National Lotteries Board Act and the pending Consumer Protection Act.

6.1.2.2. Recommendation: Separate Regulation for Aggregators

Lee raises the importance of industry expertise to the success of a code, and argues “industry members tend to comply with self-regulation guidelines, if the guidelines are articulated with industry expertise” (2008, p. 279).

There is a view is that WASPA is not able to respond to the requirements of the business-to-business aggregators. Its focus, objectives and skills-set have been shaped and informed by trends within the business-to-consumer environment dominated by content services – like ringtones, subscriptions, etc. A separate regulatory scheme is required to meet the specific requirements of business-to-business aggregators. Such a regulatory scheme would not focus as much on consumer protection issues – but rather on industry standards setting and vetting members against these.

6.1.3. Stakeholder Participation: Code’s Reach

The support of the three leading mobile network operators was highlighted as particularly important to ensuring wide coverage of the WASPA Code – all WASPs that go through Vodacom’s and MTN’s network must sign-up to the WASPA Code.

6.1.3.1. Recommendation: Extend Coverage to Operators’ VAS Services

Wide coverage contributes invaluably to a code’s viability (Purchase, 2004, p. 83). It is particularly important for the Code to cover the major industry players, as “absence of the bigger companies” can limit the success of the self-regulation regime (Lee, 2008, p. 279).

WASPA’s mandate must extend to the value added services from the network operators in order to truly have industry-wide coverage. The network operators

benefit commercially from all WASP activities – including the ones that contravene the Code. If network operators were required to forgo all revenues gained from WASP transgressions, then they would have an added incentive to put an end to these transgressions. In addition, the network operators have their own value added services that are excluded from WASPA's regulation – e.g. the "100 Days 100 Cars" from Vodacom and "Yellow 15" from MTN, both SMS based competition campaigns. The network operators are perceived as above the other players in the WASP community – and their VAS services are not subject to the same rules as everybody else. Co-regulation should provide the necessary muscle to effectively regulate the network operators.

6.1.4. Stakeholder Participation: Openness and Transparency

The majority view is that the Code development processes are inclusive of the players within the WASP community. There is every opportunity for all interested parties to participate in discussions around the Code.

However, different companies have different resources, priorities and passions. There are some companies who are willing and able to spend more time on the Code than others. For example, some companies have a dedicated resource for the WASPA Code, while in other companies one resource has to juggle regulatory issues with marketing and other commitments. Participation also depends on the business focus of the WASPs. For example, a WASP that focuses on subscription services will participate heavily on all matters related to subscription services as these matters have a direct impact on their bottom line.

6.1.4.1. Recommendation: Public Awareness Campaign

External participation in Code processes also includes members of the public and consumers – i.e. the beneficiaries of the Code. Price and Verhulst argue that effective self-regulation needs the involvement of consumers and citizens throughout its development and implementation – and that "without user

involvement, a self-regulatory mechanism will not accurately reflect user needs and will not be effective in delivering the standards it promotes" (1999, p. 15).

To this end, regulatory institutions must be proactive in generating publicity for the Code (Harker and Harker, 2000, p. 158), so that they are able to use it for their benefit (Reding, 2007, p. 5). WASPA must engage the broader public and consumers about the Code, their rights and redress processes and channels in instances when their rights have been abused.

6.1.5. Code Enforcement: Ensuring Compliance

Defaulting providers face numerous sanctions. WASPA has the powers to impose punitive fines, order refunds to consumers, suspend the defaulting WASP, withhold revenues, shut down services and expel providers from WASPA. The use of fines is the most widely used part of WASPA's arsenal of sanctions. However, the WASPA adjudicators are unable to access information on "what the WASP's earnings are in proportion to their fines" – making it difficult to determine the fines' appropriateness.

There is a strong argument that the sanctions could be inadequate. Fines should be employed only as warnings to the WASPs when they over-step the boundaries – with the ultimate sanctions being the rarely used expulsion from WASPA and having their connections with the operators switched-off. Further, WASPA should lay criminal charges – on the consumers' behalf – against those WASPs who have been found to have committed fraud.

6.1.5.1. Recommendation: Publish Value of Transgressions

The appropriate use of sanctions for non-compliance is important in ensuring an effective industry code of conduct (Industry Canada, 2002, p. 16). The role that sanctions play is two-fold: "to deter the offender (and thus encourage compliance

with rules) and to repair or cure a breach of the rules" (Price and Verhulst, 1999, p. 38).

However, because of bilateral non-disclosure agreements, the network operator will not divulge to third-parties the amount of money a WASP had made of a specific campaign. It is then difficult for WASPA, without the benefit of understanding the extent of the crime, to make the penalties an effective deterrent. An effective way to close this information gulf is for network operators to provide information on the value of transgressions to the WASPA adjudicators.

6.1.6. Impact of the Code: Achieving Objectives

The rising number of "complaints upheld" paints a picture of WASP behaviour not improving – with the market leaders the primary transgressors. In 2008 the biggest areas of concern were subscription services, advertising, spam and competitions.

However – almost in contradiction – many of the interview participants believe that the Code has had a positive impact on WASP behaviour generally where "WASPs are now a lot more careful about violating consumer rights". This perceived change in behaviour has not translated into an improvement in the reputation of the industry and its services – as network operators and members of the public don't trust still don't trust WASPs and their services.

6.1.6.1. Recommendation: Stronger Sanctions

As mentioned above, sanctions are partly meant "to deter the offender (and thus encourage compliance with rules)" (Price and Verhulst, 1999, p. 38). However, there are a number of serial Code offenders – primarily the big WASPs – who seem undeterred by the fines against them.

It is difficult to establish if the high number of offences by the big WASPs is simply a by-product of the sheer scale of their business – as in the higher number of services and customers in itself potentially increases the probability of Code transgressions – or if the offences result from an unethical approach to doing business. What is clear is that the illicit conduct of these big companies – and the resultant punitive fines – does not seem to have had a negative impact on the viability of their business. In other words, at least for the big players, there does not appear to be any commercial incentive to avoid punitive fines and comply with the Code. If that is indeed the case, then WASPA needs to implement stronger punitive measures. The best way to ensure compliance to the Code is to start cutting off connections – from the network operators – for repeat offenders. Those offenders who not only transgress the WASPA Code, but have also break the law of the country, must have criminal charges brought against them.

6.1.7. Impact of the Code: Unintended Consequences

There are too many and too frequent changes to the Code. This puts a considerable strain on the WASPS as they constantly have to change their products, and sometimes technology, to keep up to date with the Code. Worryingly, the small WASPs don't have adequate resources to constantly respond to a changing Code – and as a result are likely to transgress the Code at some point. They would not have the necessary experience and expertise to defend themselves from complaints. Consequently, this affects their ability to compete in the marketplace – and makes it very difficult for them to survive the first year or two in business.

6.1.7.1. Recommendation: Code Education for Smaller Players

The "impact of the Code" in part refers to whether the Code has had unintended negatives consequences. The "ability and willingness of the corporation to implement the code" is an important factor in the effectiveness of a code of

conduct (Bondy, 2007, p. 2). According to Purchase, “shifts in tastes, technologies and the numbers of buyers or sellers and/or their sophistication can make rules obsolete and in need of elimination or redrafting,” he says (2004. P. 91). However, the regular updates to the WASPA Code have had negative consequences.

The regular Code updates impact negatively on the ability of the small WASPs to manage the Code. WASPA can play an important role in educating the WASPs on the interpretation of the Code as “there seems to be a lack of understanding of the provisions of the Code, and how the provisions of the Code relate to other legal requirements” (ICTL1, interview, 10 June 2010).

6.2. Summary

According to WASPA Chairman, Leon Perlman, WASPA’s central objective is “protecting consumers from rogue services that negatively impact consumer confidence and the industry,” (Rasool, 2010). The organisation employs its Code of Conduct as the primary instrument in achieving this high aspiration. The overall verdict from this research study is that the WASPA Code of Conduct has not been effective in regulating the behaviour of the Wireless Application Service Providers in South Africa.

The findings from the research study suggest that the WASPA Code has more weaknesses than strengths. A significant finding is that WASPA is viewed as a legitimate regulator of the WASP industry – and its Code enjoys wide support from the industry. However, there are some questions around the organisation and the Code’s credibility in a number of important areas. Some of the more important negative findings include, amongst others, the following: WASPA might have been captured by the established players in the industry; the WASPA Code seems to have insufficient focus on business-to-business aggregators; the Code

might enhance its relevance by evolving with the changing legislative environment; the WASPA regulatory regime must cover the network operators' VAS services in order to ensure more meaningful industry coverage; and the requirement for network operators to disclose the value of Code transgression proceeds to ensure better alignment between the value of transgressions and sanctions.

The researcher has tabled numerous recommendations to enhance the effectiveness of the WASPA Code. One of the said recommendations relates to the possible inclusion of some form of State participation in WASPA to evolve its regime to co-regulation. The suggestion is that this will help liberate WASPA from the clutches of industry capture and provide it with have the necessary clout to regulate the network operators' VAS services. However, this research study failed to explore – in significant detail – the State participation options available. A possible further area of research could look into the possible forms of State participation in the WASPA regulatory regime.

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8. BIBLIOGRAPHY

Andersson, C., Freeman, D., James, I., Johnston, A., & Ljung, S. (2006). *Mobile Media and Applications - From Concept to Cash.* West Sussex: John Wiley & Sons Ltd.

Babbie, E., & Mouton, J. (2001). *the practice of social research.* Cape Town: Oxford University Press.

Baldwin, R., & Cave, M. (1999). *Understanding Regulation: Theory, Strategy and Practice.* Oxford: Oxford University Press.

Bartle, I., & Vass, P. (2005). *Self Regulation and the Regulatory State - A Survey of Policy and Practice.* University of Bath, School of Management. Bath: Centre for the Study of Regulated Industries.

Bondy, K. (2007). Evaluating the Potential Effectiveness of Codes: The Statement Strength Evaluation Method (SSEM). *Corporate Social Responsibility and Environmental Management , 14*, 1-15.

Bratsberg, H. F., & Wasenden, O. C. (2004). *Changing regulation – impacts on mobile content distribution.* Telecommunications Policy Research Conference, September 2004. Retrieved January 4, 2011, from http://web.si.umich.edu/tprc/papers/2004/373/bratsberg_wasenden_tprc04_mobile_content_distribution_final.pdf

Brody, N. (2001). Type or hype. *Design Indaba Magazine. 1st Quarter.* Cape Town: Interactive Africa (PTY) LTD.

Castells, M. (1999). Information Technology, Globalisation, and Social Development. *United Nations Research Institute for Social Development , Discussion Paper No. 114*.

Comninos, A., Esselaar, S., Gillwald, A., Moyo, M., & Naidoo, K. (2010). South African ICT Sector Performance Review 2009/10. *Volume Two*.

Cooper, D., & Schindler, P. (2003). *Business Research Methods* (8 ed.). Singapore: McGraw-Hill.

Curtis, S., Gesler, W., Smith, G., & Washburn, S. (2000). *Approaches to sampling and case selection in qualitative research: examples in the geography of health*. Social Science & Medicine, 50, 1001-1014.

den Hertog, J. (1999). General Theories of Regulation Methods for Conducting Sound Research. *Economic Institute/ CLAV , 5000*, 223-270.

Department of Trade and Industry. (2004). Green Paper on Consumer Protection. Pretoria, Republic of South Africa: Government Printers.

Dingle, S. (2010). *Vodacom launches mobile TV.* Fin24, 2 August. Retrieved January 4, 2011, from www.fin24.com/Companies/Vodacom-launches-mobile-TV-20100802

Dobardziev, A., Zoller, E., & Mackenzie, M. (2010). *Mobile content and applications in emerging markets: the future.* London: Ovum.

Elliot, R., Fischer, C. T., & Rennie, D. L. (1999). Evolving guidelines for publication of qualitative research studies in psychology and related fields. *British Journal of Clinical Psychology* , 215-229.

Esselaar, S., Gillwald, A., & Stork, C. (2006). South African Telecommunications Sector Performance Review 2006. *LINK Centre Public Policy Research Paper Series , 8*.

Falconer, C., & Neilson, B. (2007). *SA Telecoms Market: New Laws, New Rules.* Johannesburg: BMI-TechKnowledge.

Galperin, H. (2004). Beyond Interests, Ideas, and Technology: An Institutional Approach to Communication and Information. *The Information Society , 20*, 159-168.

Goggin, G. (2008). Regulating Mobile Content: Convergences and Citizenship. *International Journal of Communications Law & Policy , 12*, 140-160.

Groenewald, T. (2004). A Phenomenological Research Design Illustrated. *International Journal of Qualitative Methods , 3* (1).

Harker, D. (2000). Complaints about advertising: what's really happening? *Qualitative Market research: An International Journal , 3* (4), 198-206.

Harker, D., & Harker, M. (2000). The Role of Codes of Conduct in the Advertising Self-Regulatory Framework. *Journal of Macromarketing , 20* (2), 155-166.

Hudson, R. (2006). Regions and place: music, identity and place. *Progress in Human Geography , 30* (5), 626-634.

Industry Canada. (2002). *A Framework for Evaluating Voluntary Codes.* Retrieved June 4, 2009, from Industry Canada: http://www.ic.gc.ca/eic/site/oca-bc.nsf/vwapj/EvaluationFramework.pdf/$FILE/EvaluationFramework.pdf

Kaplan, B., & Maxwell, J. (2005). Qualitative Research Methods for Evaluating Computer Information Systems. In J. Anderson, & A. Carolyn (Eds.), *Evaluating the Organizational Impact of Healthcare Information Systems* (pp. 30-55). New York: Springer.

Kemp, I. (2010). *Mobile Operator Strategies Free Falling.* Total Telecom Plus, October 2010. Retrieved January 4, 2011, from http://www.totaltele.com/res/plus/tote_OCT2010.pdf

Kusek, J. Z., & Rist, R. C. (2004). *A Handbook for Development Practitioners: Ten Steps to a Results-Based Monitoring and Evaluation System.* Washington DC: The World Bank Publications.

Latzer, M., Just, N., Saurwein, F., & Slominski, P. (2003). Regulation Remixed: Institutional Change through Self and Co-Regulation in the Mediamatics Sector. *Communications & Strategies , 50* (2nd quarter), 127-157.

Lee, Y. (2003). Will self-regulation work in protecting online privacy? *Online Information Review* , 276-283.

Leedy, P. D., & Ormrod J, E. (2005). *Practical Research Planning and Design* (8 ed.). Pearson Education International.

Lenox, M. J., & Nash, J. (2003). Industry Self-Regulation and Adverse Selection: A Comparison Across Four Trade Association Programs. *Business Strategy and the Environment , 12*,

Manoim, L. (2006). In the Merger Between: Vodacom Group (PTY) LTD and Cointel VAS (PTY) LTD, 52/LM/Jun05 (Competition Tribunal Republic of South Africa April 19, 2006).

Mathison, S. (1988). Why Triangulate? *Educational Researcher , 17* (2), 13-17.

McCleod, D. (2006). *Code is the consumer's ally.* MyBroadband, 22 July. Retrieved January 6, 2009, from http://mybroadband.co.za/nephp/?m=show&id=3609

Media Update (2011). *The year ahead for SMS.* Media Update, 5 January. Retrieved January 6, 2011, from http://mediaupdate.co.za/?IDStory=33239

Melody, W. (1997). Interconnection: Cornerstone of Competition. In W. Melody (Ed.), *Telecom Reform Principles, Policies and Regulatory Practices* (pp. 49-61). Lyngby, Denmark: Den Private Ingeniørfond, Technical University of Denmark.

Merriam, S. B. (2002). *Introduction to Qualitative Research*. In Merriam, S. B. (Ed.), Qualitative research in practice: examples for discussion and analysis 1st edition (pp. 1-17). San Francisco: Jossey-Bass.

Mokgoro, Y. (2002). *Judicial Independence in Contemporary Society: The Need for Politician Support.* Speech delivered at Commonwealth Magistrates' and Judges' Association Annual Conference, November 2002. Barbados.

MTN Group. (2010, March). *From the Group President and CEO*. Retrieved January 6, 2011, from MTN Group: http://www.mtn.com/AboutMTNGroup/Default.aspx

MTN Group. (n.d.). *South Africa - MTN Group*. Retrieved January 4, 2011, from MTN Group: http://www.mtn.com/AboutMTNGroup/GroupFootprint/SouthAndEastAfrica/SouthAndEastAfrica_SouthAfrica.aspx

Muller, R. (2008). *Watch your airtime.* MyBroadband, 23 August. Retrieved February 26, 2009, from http://mybroadband.co.za/news/Cellular/4952.html

Muris, T. (2002). The Interface of Competition and Consumer Protection. *The Fordham Corporate Law Institute's Twenty-Ninth Annual Conference on International Antitrust Law and Policy.* New York.

MyBroadband. (2008). *Cyberlaw expert joins WASPA.* MyBroadband, 10 November. Retrieved January 6, 2009, from http://mybroadband.co.za/news/Cellular/5925.html

MyBroadband. (2008). *New mobile ad rules.* MyBroadband, 3 November. Retrieved January 6, 2009, from http://mybroadband.co.za/news/Cellular/5822.html

MyBroadband. (2008). *Rogue mobile providers beware.* MyBroadband, 22 October. Retrieved January 6, 2009, from http://mybroadband.co.za/news/Cellular/5683.html

MyBroadband. (2008). *Your airtime disappearing?* MyBroadband, 11 August. Retrieved February 26, 2009, from http://mybroadband.co.za/news/Cellular/4785.html

Neuman, W. L. (1997). *Social Research Methods Qualitative and Qualitative and Quantitative Approaches* (3 ed.). Boston, United States of America: Allyn and Bacon.

Ofcom. (n.d.). *Premium rate services*. Retrieved January 11, 2011, from Ofcom: http://stakeholders.ofcom.org.uk/telecoms/policy/premium-rate-services/

On Demand Group. (2010). *Aug '10 - On Demand and Vodacom Launch Africa's first-ever Mobile TV SVOD service to millions of 3G Users.* On Demand, August 2010. Retrieved January 4, 2011 from: www.ondemand.co.uk/news-a-press/177-aug-10-on-demand-and-vodacom-launch-africas-first-ever-mobile-tv-svod-service-to-millions-of-3g-users

Pandey, S., Clarck-Dickson, C., & Moss, J. (2009). *Mobile Content and Services 7th Edition.* Informa UK Ltd.

Perlman, L. (2008). Lessons In SA Mobile Self Regulation. Presentation at dti Consumer Law Conference, 13 March 2008.

Perlman, L. (2006). WASPA South Africa Overview. *ICSTIS.* Manchester.

PhonepayPlus. (2008). *Code of Practice.* PhonepayPlus, April 2008. Retrieved 11 18, 2010, from: http://www.phonepayplus.org.uk/upload/PhonepayPlus_Code_of_Practice.pdf

PhonepayPlus. (2009). Governance Statement relating to the constitution, powers and funding of Phonepayplus. Phonepayplus, December, 2009.

Posner, R. (1974). Theories of economic regulation. *The Bell Journal of Economics and Management Science , 5* (2), 335-358.

Price, M. E., & Verhulst, S. (1999). The Concept of Self Regulation and the Internet. In J. Waltermann, & M. Marcel (Eds.), *Protecting our children on the Internet. Towards a new culture of responsibility.* Gütersloh: Bertelsmann Foundation Publishers.

Purchase, B. (2004). The Political Economy of Voluntary Codes. In K. Webb (Ed.). Ottawa, Canada: Carleton Research Unit for Innovation, Science and Environment, Carleton University.

Rasool, F. (2010). *Waspa to extend its reach.* ITWeb, 9 July. Retrieved December 23, 2010, from http://www.itweb.co.za/index.php?option=com_content&view=article&id=34717:waspa-to-extend-its-reach&catid=260

Reding, V. (2007). Self regulation applied to interactive games: success and challenges. *Speech at ISFE Expert Conference.* Brussels.

RSA. (1996). Constitution of the Republic of South Africa Act. Pretoria, Republic of South Africa: Government Printers.

RSA. (2002). Electronic Communications and Transaction Act. Section 71. Pretoria, Republic of South Africa Government Printers, August 2002.

Samarajiva, R., & Melody, W. (2000). ITU Fixed-Mobile Interconnection Briefing. Geneva: International Telecommunications Union.

Schulz, W., & Held, T. (2001). *Regulated Self-Regulation as a Form of Modern Government - Interim Report.* University of Hamburg. Hamburg: Hans Bredow Institute for Media Research.

Senne, D., & Burows, T. (2005). *Mobile operators unite on content.* MyBroadband, 3 November. Retrieved January 6, 2009, from http://mybroadband.co.za/nephp/?m=show&id=1106

Sethi, P. (2005). The effectiveness of industry-based codes in serving public interest: the case of the International Council on Mining and Metals. *Transnationational Corporations , 14* (3), 55-100.

Tellis, W. (1997). *Introduction to Case Study.* Nova Southeastern University, July 1997. Retrieved January 9, 2011, from http://www.nova.edu/ssss/QR/QR3-2/tellis1.html

Terre Blanche, M., & Durrheim, K. (1999). *Research in Practice: Applied Methods for the Social Sciences.* Cape Town: University of Cape Town Press.

Venter, J. (2001). *Government and Politics in the new South Africa* (2 ed.). Pretoria, Gauteng, South Africa: Van Schaik Publishers.

Vodacom. (n.d.). *Vodacom Annual Report - 2009 - Group at a glance*. Vodacom. Retrieved January 4, 2011, from http://www.vodacom.com/reports/ar_2009/gr_group_glance.php

Vodacom. (2003). *Vodacom Annual Report 2003.* Vodacom.

Vodacom. (2009). *Vodacom annual report 2009*. Vodacom. Retrieved January 4, 2011, from http://www.vodacom.com/reports/ar_2009/bus_sa.php

WASPA. (n.d.a). Code Change and Ratification Process. Wireless Applications Service Providers Association (WASPA), Johannesburg.

WASPA. (n.d.b). *WASPA Code of Conduct and Advertising Rules Archive*. Wireless Applications Service Providers Association (WASPA), Johannesburg. Retrieved January 11, 2011, from: http://www.waspa.org.za/code/archcoc.shtml

WASPA. (2004). *Comment on The Proposed Guidelines For Recognition of Industry Representative Bodies In Terms of Chapter XI of the Electronic Communications And Transactions Act 2002 In Terms of Notice 1951 of 2004.* Wireless Applications Service Providers Association (WASPA), Johannesburg.

WASPA. (2008, May). *WASPA Structure*. Wireless Applications Service Providers Association (WASPA), Johannesburg, 5 May. Retrieved January 04, 2011, from http://www.waspa.co.za/about/structure.shtml

WASPA. (2009). *Why join WASPA?* Wireless Applications Service Providers Association (WASPA), Johannesburg, 15 May. Retrieved January 04, 2011, from www.waspa.org.za/join/whyjoinwaspa.shtml

WASPA. (2010). WASPA Code of Conduct Version 9.0. 30 March, 2010. Wireless Applications Service Providers Association (WASPA), Johannesburg.

Webb, K. (2004). Understanding the Voluntary Codes Phenomenon. In K. Webb (Ed.), *Voluntary Codes: Private Governance, the Public Interest and Innovation* (pp. 3-32). Ottawa, Canada: Carleton Research Unit for Innovation, Science and Environment, Carleton University.

Webb, K., & Morrison, A. (2004). The Law and Voluntary Codes: Examining the "Tangled Web". In K. Webb (Ed.), *Voluntary Codes: Private Governance, the Public Interest and Innovation.* (pp. 97-174). Ottawa, Canada: Carleton Research Unit for Innovation, Science and Environment, Carleton University.

White, J. (2004, April). Introduction: An Overview of the South African Legal System and the History of the Liberalisation and Re-Regulation of The South African Telecommunications Sector. *Global Telecommunications Law and Practice* , 5210-5274.

8.1. Interviews

ICTIA. (2010, July 14). An Industry View of the Effectiveness of the WASPA Code of Conduct . (I. Mokgoro, Interviewer)

ICTL1. (2010, June 10). An Industry View of the Effectiveness of the WASPA Code of Conduct. (I. Mokgoro, Interviewer)

ICTL2. (2010, July 3). An Industry View of the Effectiveness of the WASPA Code of Conduct. (I. Mokgoro, Interviewer)

ICTL3. (2010, July 21). An Industry View of the Effectiveness of the WASPA Code of Conduct. (I. Mokgoro, Interviewer)

NOR. (2010, June 4). An Industry View of the Effectiveness of the WASPA Code of Conduct. (I. Mokgoro, Interviewer)

Mahlo, S. (2010, May 28). Pilot Interview for An Industry View of the Effectiveness of the WASPA Code of Conduct. (I. Mokgoro, Interviewer)

WR. (2010, June 2). An Industry View of the Effectiveness of the WASPA Code of Conduct. (I. Mokgoro, Interviewer)

WFR1. (2010, June 1). An Industry View of the Effectiveness of the WASPA Code of Conduct. (I. Mokgoro, Interviewer)

WFR2 and WFR3 (2010, June 4). An Industry View of the Effectiveness of the WASPA Code of Conduct. (I. Mokgoro, Interviewer)

WFR4. (2010, June 4). An Industry View of the Effectiveness of the WASPA Code of Conduct. (I. Mokgoro, Interviewer)

WFR5 and WFR6. (2010, July 16). An Industry View of the Effectiveness of the WASPA Code of Conduct. (I. Mokgoro, Interviewer)

WFR7 and WFR8. (2010, August 13). An Industry View of the Effectiveness of the WASPA Code of Conduct. (I. Mokgoro, Interviewer)

WFR9 and WFR10. (2010, July 12). An Industry View of the Effectiveness of the WASPA Code of Conduct. (I. Mokgoro, Interviewer)

9. ANNEXURES

9.1. Interview Protocol

Introduction	**The interview will be preceded by the following introductory remarks.**
This is an independent study	
The research is confidential and anonymous	
The purpose of this research study is to evaluate how effective the WASPA code of conduct has been in regulating the behaviour of the Wireless Applications Service Providers in South Africa.	
The full research report will be available to you.	
May I record the interview to help with note-taking?	
Demographic Information	**The following information on the interview participants should be provided.**
Name	
Job Title	
Company	
Industry	

Qualitative Information	**The following questions (within the identified themes) will guide the interview.**
Institutional Positioning	
• Do you consider WASPA to be a credible and legitimate organisation? • Do you think the WASPA Code enjoys widespread support from the players in the industry? • Does WASPA have sufficient resources and expertise to enforce the Code?	
Code Relevance	
• Are the objectives of the WASPA Code still relevant today?	

• Comment on the processes to evaluate and revise the Code to reflect changing conditions. • How effective are the processes? • Are they inclusive?
Stakeholder Participation
• Does the WASPA Code apply to the entire industry (both WASPA members and non-members)? • Have all the players in the industry (including the smaller players), been meaningfully involved in industry code development?
Code Enforcement
• Are the penalties for non-compliance proportional to the transgression? • In other words does the punishment fit the “crime”? • Are the penalties a sufficient deterrent? • Do companies benefit from complying with the WASPA Code (competitive advantage, financial advantages, industry rewards, etc)?
Impact of the Code
• Have the objectives of the WASPA Code been achieved? • What has been the impact of the Code in the sector • Has it affected the behaviour of the WASPs? • Has it affected the behaviour of consumers • Has the public reputation of the industry improved? Important. • Are there unintended or negative effects of the Code? • For example, does the code limit competition or innovation? • Does the code place different burdens on different parties in the same sector (e.g. smaller versus big business)?
Source: Adapted from Industry Canada, 2002, p. 12-21

9.2. WASPA Complaint Report 2006-2008

Year	WASPA Member	Service description	Source	Result	Fines	Fine Range
2006	Mira Networks	Content	Competitor	Complaint partially upheld	1000	0 - 20,000
2006	AfriGIS	Advertising	Public	Complaint upheld	1000	0 - 20,000
2006	Viamedia	Content	Competitor	Complaint upheld	1500	0 - 20,000
2006	eXactmobile	Content	Public	Complaint upheld	2000	0 - 20,000
2006	Strike Media	Competition	Public	Complaint upheld	2000	0 - 20,000
2006	Viamedia	Subscription	Competitor	Complaint upheld	2500	0 - 20,000
2006	Gozomo	Pricing	Competitor	Complaint upheld	4000	0 - 20,000
2006	Worldplay	Subscription	Competitor	Complaint upheld	5000	0 - 20,000
2006	iTouch	Content	Competitor	Complaint upheld	5000	0 - 20,000
2006	TelePlay Communications	Adult	Public	Complaint upheld	5000	0 - 20,000
2006	Cellfind	Content	Competitor	Complaint upheld	6000	0 - 20,000
2006	Integrat	Competition	Competitor	Complaint upheld	6000	0 - 20,000
2006	eXactmobile	Subscription	Competitor	Complaint upheld	7500	0 - 20,000
2006	eXactmobile	Competition	Public	Complaint upheld	7500	0 - 20,000
2006	Worldplay	Subscription	Competitor	Complaint upheld	8000	0 - 20,000
2006	Cellfind	Commercial	Competitor	Complaint upheld	9400	0 - 20,000
2006	Clickatell	Unsolicited Message	Competitor	Complaint upheld	10000	0 - 20,000
2006	Mira Networks	Subscription	Public	Complaint partially upheld	10000	0 - 20,000
2006	eXactmobile	Subscription	Competitor	Complaint upheld	10000	0 - 20,000
2006	Vending for Africa	Other	Public	Complaint upheld	10000	0 - 20,000
2006	eXactmobile	Adult	Public	Complaint upheld	10000	0 - 20,000
2006	TelePlay Communications	Adult	Competitor	Complaint upheld	10000	0 - 20,000
2006	Mira Networks	Content	Public	Complaint upheld	12500	0 - 20,000

2006	Cointel	Adult	Public	Complaint upheld	13000	0 - 20,000
2006	Cointel	Pricing	Competitor	Complaint upheld	13500	0 - 20,000
2006	Wireless Warriors	Unsolicited Message	Public	Complaint upheld	15000	0 - 20,000
2006	eXactmobile	Subscription	Competitor	Complaint upheld	15000	0 - 20,000
2006	iTouch	Subscription	Competitor	Complaint upheld	15000	0 - 20,000
2006	eXactmobile	Subscription	Competitor	Complaint upheld	15000	0 - 20,000
2006	Cointel	Competition	Competitor	Complaint partially upheld	15000	0 - 20,000
2006	eXactmobile	Advertising	Competitor	Complaint partially upheld	15000	0 - 20,000
2006	iTouch	Other	Competitor	Complaint upheld	16000	0 - 20,000
2006	Sybase 365	Content	Competitor	Complaint upheld	16000	0 - 20,000
2006	iTouch	Advertising	Competitor	Complaint upheld	20000	20,000 - 50,000
2006	Viamedia	Advertising	Competitor	Complaint upheld	22500	20,000 - 50,000
2006	Integrat	Subscription	Competitor	Complaint upheld	24000	20,000 - 50,000
2006	Cointel	Adult	Public	Complaint upheld	25000	20,000 - 50,000
2006	eXactmobile	Subscription	Competitor	Complaint upheld	40000	20,000 - 50,000
2006	iTouch	Adult	Competitor	Complaint upheld	45000	20,000 - 50,000
2006	eXactmobile	Advertising	Competitor	Complaint partially upheld	47500	20,000 - 50,000
2006	Peach Mobile	Subscription	Competitor	Complaint upheld	50000	50,000 - 100,000
2006	Integrat	Subscription	Competitor	Complaint upheld	50000	50,000 - 100,000
2006	Mira Networks	Subscription	Competitor	Complaint upheld	65000	50,000 - 100,000
2006	Mira Networks	Dating	Public	Complaint upheld	80000	50,000 - 100,000
2006	Buongiorno UK!	Subscription	Public	Complaint upheld	100000	>100,000
2006	eXactmobile	Unsolicited Message	Public	Complaint upheld		
2006	Grapevine Interactive	Unsolicited Message	Public	Complaint partially upheld		
2006	Cointel	Unsolicited Message	Public	Complaint upheld		
2006	Mira Networks	Unsolicited Message	Competitor	Complaint partially upheld		

2006	Always Active Technologies	Unsolicited Message	Public	Complaint not upheld		
2006	Starfish Mobile	Unsolicited Message	Public	Complaint not upheld		
2006	Integrat	Unsolicited Message	Public	Complaint not upheld		
2006	Nashua Mobile	Unsolicited Message	Public	Complaint upheld		
2006	SMS Cellular Services	Unsolicited Message	Public	Complaint upheld		
2006	Intermobile	Unsolicited Message	Public	Complaint dismissed		
2006	Integrat	Unsolicited Message	Public	Complaint not upheld		
2006	Viamedia	Subscription	Competitor	Complaint dismissed		
2006	Integrat	Subscription	Public	Complaint not upheld		
2006	Internal WASP Service of MTN	Subscription	Public	Complaint upheld		
2006	iTouch	Subscription	Public	Complaint not upheld		
2006	Integrat	Subscription	Competitor	Complaint upheld		
2006	Integrat	Subscription	Competitor	Complaint not upheld		
2006	eXactmobile	Subscription	Competitor	Complaint not upheld		
2006	Integrat	Subscription	Competitor	Complaint not upheld		
2006	Integrat	Subscription	Competitor	Complaint not upheld		
2006	Viamedia	Subscription	Competitor	Complaint not upheld		
2006	Mira Networks	Subscription	Competitor	Complaint not upheld		
2006	Integrat	Subscription	Public	Complaint dismissed		
2006	Buongiorno UK!	Subscription	Public	Complaint upheld		
2006	iTouch	Subscription	Public	Complaint not upheld		
2006	Worldplay	Subscription	Advertising Standards Authority of South Africa	Advisory report		
2006	Buongiorno UK!	Subscription	Competitor	Complaint not upheld		
2006	Mira Networks	Subscription	Competitor	Complaint not upheld		
2006	Viamedia	Subscription	Competitor	Complaint not upheld		
2006	Integrat	Subscription	Public	Complaint not upheld		

2006	Integrat	Subscription	Public	Complaint upheld		
2006	MyBeat Interactive	Pricing	Public	Complaint upheld		
2006	Mira Networks	Pricing	Competitor	Complaint upheld		
2006	Integrat	Premium rated SMS	Public	Complaint not upheld		
2006	Marketel	Other	Public	Complaint not upheld		
2006	Vending for Africa	Other	Public	Complaint upheld		
2006	eXactmobile	Other	Public	Complaint not upheld		
2006	Vending for Africa	Other	Public	Complaint upheld		
2006	iTouch	Content	Public	Complaint dismissed		
2006	iTouch	Content	Public	Complaint upheld		
2006	eXactmobile	Content	Competitor	Complaint not upheld		
2006	Cointel	Content	Public	Complaint not upheld		
2006	Viamedia	Content	Competitor	Complaint not upheld		
2006	Always Active Technologies	Content	Public	Complaint upheld		
2006	eXactmobile	Content	Public	Complaint upheld		
2006	Mira Networks	Content	Competitor	Complaint not upheld		
2006	Mira Networks	Content	Competitor	Complaint not upheld		
2006	iTouch	Competition	Competitor	Complaint dismissed		
2006	Cointel	Competition	Public	Complaint not upheld		
2006	Worldplay	Communication	Competitor	Complaint upheld		
2006	Grapevine Interactive	Commercial	Public	Complaint upheld		
2006	Mira Networks	Commercial	Public	Complaint upheld		
2006	Intermobile	Bulk messaging	Public	Complaint dismissed		
2006	iTouch	Bulk Messaging	Public	Complaint upheld		
2006	Autopage Cellular	Billing	Public	Complaint upheld		
2006	eXactmobile	Advertising	Competitor	Complaint upheld		

2006	Mira Networks	Advertising	Competitor	Complaint not upheld		
2006	MyBeat Interactive	Adult	Public	Complaint not upheld		
2006	Marketel	Adult	Public	Complaint upheld		
2006	Marketel	Adult	Public	Complaint upheld		
2007	eXactmobile	Content	WASPA	Complaint upheld	1000	0 - 20,000
2007	eXactmobile	Content	Public	Complaint upheld	1500	0 - 20,000
2007	Internal WASP Service of MTN	Unsolicited Message	Public	Complaint upheld	2000	0 - 20,000
2007	eXactmobile	Content	Public	Complaint upheld	2000	0 - 20,000
2007	Vodacom Service Provider	Subscription	Public	Complaint upheld	2500	0 - 20,000
2007	iTouch	Commercial	Competitor	Complaint partially upheld	2500	0 - 20,000
2007	iTouch	Commercial	Competitor	Complaint partially upheld	2500	0 - 20,000
2007	Sybase 365	Advertising	Competitor	Complaint upheld	2500	0 - 20,000
2007	eXactmobile	Advertising	WASPA	Complaint upheld	2500	0 - 20,000
2007	Vodacom Service Provider	Adult	WASPA	Complaint upheld	2500	0 - 20,000
2007	Vodacom Service Provider	Adult	WASPA	Complaint upheld	2500	0 - 20,000
2007	Vodacom Service Provider	Adult	WASPA	Complaint upheld	2500	0 - 20,000
2007	Autopage Cellular	Unsolicited Message	Public	Complaint upheld	5000	0 - 20,000
2007	Internal WASP Service of MTN	Unsolicited Message	Public	Complaint upheld	5000	0 - 20,000
2007	Sybase 365	Subscription	Competitor	Complaint upheld	5000	0 - 20,000
2007	SMSNET-SA	Advertising	Competitor	Complaint upheld	5000	0 - 20,000
2007	iTouch	Advertising	WASPA	Complaint upheld	6000	0 - 20,000
2007	Autopage Cellular	Unsolicited Message	Public	Complaint upheld	7500	0 - 20,000
2007	Autopage Cellular	Unsolicited Message	Public	Complaint upheld	7500	0 - 20,000
2007	Integrat	Subscription	Competitor	Complaint upheld	7500	0 - 20,000
2007	Integrat	Advertising	Competitor	Complaint partially upheld	7500	0 - 20,000
2007	iTouch	Commercial	Public	Complaint upheld	8500	0 - 20,000

2007	iTouch	Unsolicited Message	Public	Complaint upheld	10000	0 - 20,000
2007	Autopage Cellular	Unsolicited Message	Public	Complaint upheld	10000	0 - 20,000
2007	iTouch		Public	Complaint upheld	10000	0 - 20,000
2007	iTouch	Unsolicited Message	Public	Complaint upheld	11000	0 - 20,000
2007	iTouch	Commercial	Competitor	Complaint partially upheld	11000	0 - 20,000
2007	Mira Networks	Advertising	Competitor	Complaint upheld	15000	0 - 20,000
2007	Buongiorno UK!	Advertising	Competitor	Complaint partially upheld	17500	0 - 20,000
2007	Integrat	Subscription	Competitor	Complaint upheld	25000	20,000 - 50,000
2007	Sybase 365	Advertising	Competitor	Complaint upheld	25000	20,000 - 50,000
2007	GMA	Subscription	Competitor	Complaint upheld	50000	50,000 - 100,000
2007	Mira Networks	Bulk messaging	Public	Complaint upheld	100000	>100,000
2007	Celerity Systems	Unsolicited Message	Public	Complaint upheld		
2007	Mira Networks	Unsolicited Message	Public	Complaint upheld		
2007	Mira Networks	Unsolicited Message	Public	Complaint upheld		
2007	iTouch	Unsolicited Message	Competitor	Complaint dismissed		
2007	Stouf Communications	Unsolicited Message	Public	Complaint upheld		
2007	iTouch	Unsolicited Message	Public	Complaint dismissed		
2007	iTouch	Unsolicited Message	Public	Complaint upheld		
2007	Nashua Mobile	Unsolicited Message		Complaint dismissed		
2007	Nashua Mobile	Unsolicited Message	Public	Complaint partially upheld		
2007	Buongiorno UK!	Subscription	Competitor	Complaint upheld		
2007	Integrat	Subscription	Public	Complaint dismissed		
2007	Zed Mobile	Subscription	Competitor	Complaint upheld		
2007	Buongiorno UK!	Subscription	Public	Complaint dismissed		
2007	Sybase 365	Subscription	Competitor	Complaint dismissed		
2007	Sybase 365	Subscription	Competitor	Complaint dismissed		

2007	Sybase 365	Subscription	Competitor	Complaint dismissed		
2007	eXactmobile	Subscription	Public	Complaint dismissed		
2007	Integrat	Subscription	WASPA	Complaint upheld		
2007	Integrat	Subscription	WASPA	Complaint partially upheld		
2007	Sybase 365	Subscription	Competitor	Complaint dismissed		
2007	Playfon	Subscription	Public	Complaint dismissed		
2007	Integrat	Subscription	Competitor	Complaint upheld		
2007	Integrat	Subscription	Public	Complaint dismissed		
2007	Buongiorno UK!	Subscription	Public	Complaint dismissed		
2007	2waytraffic	Subscription	Public	Complaint partially upheld		
2007	eXactmobile	SMS offers	WASPA	Complaint not upheld		
2007	eXactmobile	SMS offers	WASPA	Complaint partially upheld		
2007	MyBeat Interactive	Pricing	WASPA	Complaint upheld		
2007	iTouch	Other	Competitor	Complaint dismissed		
2007	Mira Networks	Free SMS service	Public	Complaint upheld		
2007	Mira Networks	Free SMS service	Public	Complaint dismissed		
2007	Sam Click	Content	Competitor	Complaint upheld		
2007	Clickatell	Competition	Public	Complaint partially upheld		
2007	Sybase 365	Competition	WASPA	Complaint upheld		
2007	Nashua Mobile	Communication	Public	Complaint upheld		
2007	MIG	Commercial	Public	Complaint upheld		
2007	Grapevine Interactive	Commercial	Public	IP notice issued		
2007	Cellsmart	Commercial	Public	IP notice issued		
2007	Autopage Cellular	Bulk messaging	Public	Complaint upheld		
2007	Marketel	Bulk messaging	Competitor	Complaint not upheld		
2007	Mira Networks	Bulk messaging	Public	Complaint upheld		

2007	Blinck Mobile	Advertising	Competitor	Complaint dismissed		
2007	Marketel	Advertising	WASPA	Complaint upheld		
2007	Integrat	Advertising	WASPA	Complaint upheld		
2007	Sybase 365	Advertising	Competitor	Complaint dismissed		
2007	Integrat	Advertising	Competitor	Complaint dismissed		
2007	iTouch	Advertising	Public	Complaint upheld		
2007	Opera Telecom	Adult	Competitor	Complaint upheld		
2007	Mira Networks	Adult	Public	Complaint not upheld		
2007	TelePlay Communications	Adult	WASPA	Complaint upheld		
2007	MyBeat Interactive	Adult	WASPA	Complaint upheld		
2007	Clickatell		Public	Complaint not upheld		
2007	Sybase 365		Competitor	Complaint partially upheld		
2008	iTouch	Unsolicited Message	Competitor	Complaint upheld	2000	0 - 20,000
2008	eXactmobile	Unsolicited Message	Public	Complaint upheld	2500	0 - 20,000
2008	iTouch	Subscription	Public	Complaint upheld	2500	0 - 20,000
2008	Grapevine Interactive	Competition	WASPA	Complaint upheld	2500	0 - 20,000
2008	Grapevine Interactive	Competition	WASPA	Complaint upheld	2500	0 - 20,000
2008	ABSA	Commercial	Public	Complaint upheld	2500	0 - 20,000
2008	Marketel	Advertising	WASPA	Complaint upheld	2500	0 - 20,000
2008	SMSNET-SA	Subscription	Public	Complaint upheld	3000	0 - 20,000
2008	Vodacom Service Provider	Advertising	WASPA	Complaint partially upheld	3000	0 - 20,000
2008	Sybase 365	Service levels	WASPA	Complaint upheld	3500	0 - 20,000
2008	eXactmobile	Unsolicited Message	Public	Complaint partially upheld	5000	0 - 20,000
2008	iTouch	Unsolicited Message	Public	Complaint upheld	5000	0 - 20,000
2008	iTouch	Unsolicited Message	Public	Complaint upheld	5000	0 - 20,000
2008	Marketel	Unsolicited Message	Public	Complaint upheld	5000	0 - 20,000

2008	Marketel	Unsolicited Message	Public	Complaint upheld	5000	0 - 20,000
2008	AMV	Subscription	Public	Complaint upheld	5000	0 - 20,000
2008	Vodacom Service Provider	Service levels	WASPA	Complaint upheld	5000	0 - 20,000
2008	iTouch	Service levels	WASPA	Complaint upheld	5000	0 - 20,000
2008	Vodacom Service Provider/Always Active Technologies	No cost of SMS	WASPA	Complaint upheld	5000	0 - 20,000
2008	AMV	Content	Public	Complaint upheld	5000	0 - 20,000
2008	AMV	Content	Public	Complaint upheld	5000	0 - 20,000
2008	Opera Telecom	Competition	WASPA	Complaint upheld	5000	0 - 20,000
2008	Clickatell	Competition	WASPA	Complaint upheld	5000	0 - 20,000
2008	AMV	Advertising	Competitor	Complaint partially upheld	5000	0 - 20,000
2008	Vodacom Service Provider	Advertising	WASPA	Complaint upheld	7000	0 - 20,000
2008	iTouch	Unsolicited Message	Public	Complaint upheld	7500	0 - 20,000
2008	iTouch	Unsolicited Message	Public	Complaint upheld	7500	0 - 20,000
2008	eXactmobile	Unsolicited Message	Public	Complaint upheld	7500	0 - 20,000
2008	iTouch	Advertising	Public	Complaint upheld	7500	0 - 20,000
2008	Mobile Messenger	Advertising	Competitor	Complaint upheld	7500	0 - 20,000
2008	Two Screens	Unsolicited Message	Public	Complaint upheld	10000	0 - 20,000
2008	AMV	Subscription	Public	Complaint partially upheld	10000	0 - 20,000
2008	Integrat	Subscription	Public	Complaint upheld	10000	0 - 20,000
2008	Vodacom Service Provider	Subscription	Public	Complaint upheld	10000	0 - 20,000
2008	Vodacom Service Provider	Subscription	Public	Complaint upheld	10000	0 - 20,000
2008	Buongiorno UK!	Subscription	WASPA	Complaint upheld	10000	0 - 20,000
2008	Integrat	Pricing	WASPA	Complaint upheld	10000	0 - 20,000
2008	2waytraffic/Invicta	Other	WASPA	Complaint upheld	10000	0 - 20,000
2008	Vodacom Service Provider	No cost of SMS	WASPA	Complaint upheld	10000	0 - 20,000
2008	Buongiorno UK!	No cost of SMS	WASPA	Complaint upheld	10000	0 - 20,000

2008	AMV	Disputed refund	Public	Complaint upheld	10000	0 - 20,000
2008	Buongiorno UK!	Content	Public	Complaint upheld	10000	0 - 20,000
2008	AMV	Content	Public	Complaint upheld	10000	0 - 20,000
2008	AMV	Content	Public	Complaint upheld	10000	0 - 20,000
2008	AMV	Content	Public	Complaint upheld	10000	0 - 20,000
2008	Opera Telecom	Competition	Competitor	Complaint upheld	10000	0 - 20,000
2008	Opera Telecom	Competition	WASPA	Complaint upheld	10000	0 - 20,000
2008	Digital Mall	Advertising	WASPA	Complaint upheld	10000	0 - 20,000
2008	iTouch	Adult	WASPA	Complaint upheld	10000	0 - 20,000
2008	Marketel	Advertising	WASPA	Complaint upheld	12000	0 - 20,000
2008	Vodacom Service Provider	Disputed refund	Public	Complaint upheld	15000	0 - 20,000
2008	AMV	Content	WASPA	Complaint upheld	15000	0 - 20,000
2008	eXactmobile	Unsolicited Message	Public	Complaint upheld	20000	0 - 20,000
2008	Buongiorno UK!	Refund	Public	Complaint partially upheld	20000	20,000 - 50,000
2008	Endemol SA	No cost of SMS	WASPA	Complaint upheld	20000	20,000 - 50,000
2008	SMSNET-SA	Advertising	Competitor	Complaint partially upheld	20000	20,000 - 50,000
2008	eXactmobile	Subscription	Public	Complaint upheld	21000	20,000 - 50,000
2008	Opera Telecom	Subscription	WASPA	Complaint upheld	22000	20,000 - 50,000
2008	Buongiorno UK!	Other	WASPA	Complaint partially upheld	22500	20,000 - 50,000
2008	AMV	Subscription	Public	Complaint partially upheld	25000	20,000 - 50,000
2008	Integrat	Subscription	WASPA	Complaint upheld	25000	20,000 - 50,000
2008	SMS Portal	No cost of SMS	Public	Complaint upheld	25000	20,000 - 50,000
2008	AMV	Content	Competitor	Complaint upheld	25000	20,000 - 50,000
2008	TIMw.e. New Media	Competition	Public	Complaint upheld	25000	20,000 - 50,000
2008	Sybase 365	Advertising	Competitor	Complaint upheld	25000	20,000 - 50,000
2008	Blinck Mobile	Bundling	Competitor	Complaint upheld	30000	20,000 - 50,000

2008	Buongiorno UK!	Advertising	Competitor	Complaint upheld	30000	20,000 - 50,000
2008	IWS	Unsolicited Message	Public	Complaint upheld	35000	20,000 - 50,000
2008	SMSNET-SA	Subscription	Public	Complaint upheld	35000	20,000 - 50,000
2008	iTouch	Subscription	WASPA	Complaint upheld	35000	20,000 - 50,000
2008	Africa2You	Subscription	Competitor	Complaint upheld	35000	20,000 - 50,000
2008	iTouch	Unsolicited Message	Public	Complaint upheld	50000	50,000 - 100,000
2008	AMV	Unsolicited Message	Public	Complaint upheld	50000	50,000 - 100,000
2008	Buongiorno UK!	Subscription	Public	Complaint upheld	50000	50,000 - 100,000
2008	Buongiorno UK!	Service levels	WASPA	Complaint upheld	50000	50,000 - 100,000
2008	eXactmobile	Service levels	Public	Complaint upheld	50000	50,000 - 100,000
2008	Mira Networks	Adult	Public	Complaint upheld	50000	50,000 - 100,000
2008	iTouch	Various breaches	Competitor	Complaint upheld	52000	50,000 - 100,000
2008	Buongiorno UK!	Web site	Competitor	Complaint upheld	56000	50,000 - 100,000
2008	Clickatell	Advertising	WASPA	Complaint upheld	60000	50,000 - 100,000
2008	eXactmobile	Service levels	WASPA	Complaint upheld	65000	50,000 - 100,000
2008	Mira Networks	Unsolicited Message	Public	Complaint upheld	75000	50,000 - 100,000
2008	SafikaTel	Competition	Public	Complaint upheld	75000	50,000 - 100,000
2008	AMV	Various breaches	Public	Complaint upheld	100000	>100,000
2008	AMV	Adult	Public	Complaint upheld	100000	>100,000
2008	Integrat	Other	WASPA	Complaint upheld	150000	>100,000
2008	AMV	Unsolicited Message	Public	Complaint upheld	250000	>100,000
2008	Teljoss	Adult	Public	Complaint upheld	300000	>100,000
2008	MoloAfrika	Competition	Competitor	Complaint upheld	500000	>100,000
2008	AMV	Various breaches	Public	Complaint dismissed		
2008	eXactmobile	Unsolicited Message	Public	Complaint not upheld		
2008	Integrat	Unsolicited Message	Public	Complaint dismissed		

2008	eXactmobile	Unsolicited Message	Public	Complaint upheld		
2008	eXactmobile	Unsolicited Message	Public	Complaint dismissed		
2008	Nashua Mobile	Unsolicited Message	Public	Complaint partially upheld		
2008	Celerity Systems	Unsolicited Message	Public	Complaint dismissed		
2008	Celerity Systems	Unsolicited Message	Public	Complaint upheld		
2008	Autopage Cellular	Unsolicited Message	Public	Complaint upheld		
2008	The NXT Thing Now	Unsolicited Message	Public	Complaint upheld		
2008	Integrat	Unlawful conduct	Public	Complaint dismissed		
2008	Vodacom Service Provider	Unlawful conduct	Public	Complaint dismissed		
2008	Integrat	Unlawful conduct	Public	Complaint dismissed		
2008	Sybase 365	Subscription	Competitor	Complaint upheld		
2008	eXactmobile	Subscription	Public	Complaint partially upheld		
2008	Buongiorno UK!	Subscription	Public	Complaint not upheld		
2008	Atinco SA	Subscription	Public	Complaint upheld		
2008	Vodacom Service Provider	Subscription	Public	Complaint upheld		
2008	AMV	Subscription	Public	Complaint dismissed		
2008	Mira Networks	Subscription	Competitor	Complaint upheld		
2008	SMSNET-SA	Subscription	Public	Complaint dismissed		
2008	TIMw.e. New Media	Subscription	Competitor	Complaint dismissed		
2008	Buongiorno UK!	Subscription	WASPA	Complaint upheld		
2008	SMSNET-SA	Subscription	Public	Complaint upheld		
2008	eXactmobile	Subscription	Public	Complaint dismissed		
2008	SMSNET-SA	Subscription	Public	Complaint dismissed		
2008	Blinck Mobile	Subscription	Public	Complaint dismissed		
2008	Sybase 365	Subscription	Public	Complaint upheld		
2008	iTouch	Subscription	Public	Complaint dismissed		

2008	Worldplay	Subscription	Public	Complaint upheld		
2008	Mediadeck SA	Service levels	Public	Complaint dismissed		
2008	Celerity Systems	Service levels	WASPA	Complaint upheld		
2008	Buongiorno UK!	Service levels	WASPA	Complaint upheld		
2008	Smartcall Technology Solutions	Pricing	Competitor	Complaint upheld		
2008	Buongiorno UK!	Pricing	Competitor	Complaint not upheld		
2008	Mobile Messenger	Pricing	Competitor	Complaint upheld		
2008	SA Funclub	Other	Public	Complaint upheld		
2008	iTouch	Other	Public	Complaint partially upheld		
2008	Vodacom Service Provider	Service levels	Public	Complaint not upheld		
2008	AMV	Disputed refund	Public	Complaint dismissed		
2008	eXactmobile	Disputed refund	Public	Complaint dismissed		
2008	mBill	Disputed refund	Public	Complaint upheld		
2008	Viamedia	Disputed refund	Public	Complaint dismissed		
2008	Buongiorno UK!	Disputed refund	Public	Complaint dismissed		
2008	Viamedia	Disputed refund	Public	Complaint dismissed		
2008	SMSNET-SA	Disputed refund	Public	Complaint upheld		
2008	Mira Networks	Customer Care	WASPA	Complaint dismissed		
2008	iTouch	Customer Care	WASPA	Complaint not upheld		
2008	Vodacom Service Provider	Customer Care	Public	Complaint upheld		
2008	AMV	Content	Public	Complaint dismissed		
2008	Integrat	Content	Public	Complaint dismissed		
2008	AMV	Content	Public	Complaint upheld		
2008	AMV	Content	Public	Complaint upheld		
2008	AMV	Content	Public	Complaint upheld		
2008	AMV	Content	Public	Complaint upheld		

2008	Integrat	Content	Public	Complaint not upheld		
2008	Cellfind	Competition	WASPA	Complaint upheld		
2008	Opera Telecom	Competition	WASPA	Complaint upheld		
2008	eXactmobile	Competition	WASPA	Complaint upheld		
2008	Celerity Systems	Competition	WASPA	Complaint upheld		
2008	Strike Media	Competition	WASPA	Complaint upheld		
2008	Opera Telecom	Competition	WASPA	Complaint upheld		
2008	Blinck Mobile	Competition	Public	Complaint dismissed		
2008	mBill	Competition	Public	Complaint upheld		
2008	mBill	Competition	Public	Complaint upheld		
2008	mBill	Competition	Public	Complaint upheld		
2008	mBill	Competition	Public	Complaint upheld		
2008	mBill	Competition	WASPA	Complaint upheld		
2008	mBill	Competition	WASPA	Complaint upheld		
2008	mBill	Competition	Public	Complaint upheld		
2008	mBill	Competition	Public	Complaint upheld		
2008	mBill	Competition	Public	Complaint upheld		
2008	Blinck Mobile	Commercial	WASPA	Complaint partially upheld		
2008	Grapevine Interactive	Commercial	Public	Complaint upheld		
2008	Smartcall Technology Solutions	Billing	Public	Complaint upheld		
2008	Smartcall Technology Solutions	Billing	Public	Complaint not upheld		
2008	Integrat	Advertising	WASPA	Complaint dismissed		
2008	Sybase 365	Advertising	Competitor	Complaint dismissed		
2008	Vodacom Service Provider	Advertising	WASPA	Complaint upheld		
2008	Marketel	Advertising	WASPA	Complaint not upheld		
2008	Integrat	Advertising	WASPA	Complaint partially upheld		

2008	Sybase 365	Advertising	WASPA	Complaint not upheld		
2008	SMSNET-SA	Advertising	Competitor	Complaint partially upheld		
2008	Sybase 365	Advertising	WASPA	Complaint not upheld		
2008	eXactmobile	Advertising	WASPA	Complaint dismissed		
2008	iTouch	Advertising	WASPA	Complaint upheld		
2008	Integrat	Advertising	WASPA	Complaint dismissed		
2008	Viamedia	Advertising	WASPA	Complaint dismissed		
2008	Blinck Mobile	Advertising	Competitor	Complaint dismissed		
2008	Buongiorno UK!	Advertising	Competitor	Complaint upheld		
2008	Integrat	Advertising	WASPA	Complaint dismissed		
2008	Blinck Mobile	Advertising	WASPA	Complaint upheld		
2008	Peach Mobile	Adult	Public	Complaint not upheld		
2008	Wap Network Group	Adult	Public	Complaint upheld		
2008	iTouch	Adult	WASPA	Complaint not upheld		
2008	Marketel	Adult	WASPA	Complaint partially upheld		
2008	Autopage Cellular		WASPA	Complaint upheld		
2008	iTouch		Public	Complaint dismissed		
2008	AMV		Public	Complaint upheld		