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From Locked-In to Knocked Out: Vodacom's million-rand fine by consumer watchdog and what it means for individuals and businesses

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The National Consumer Tribunal recently issued Vodacom with a R1 million fine for contraventions of the Consumer Protection Act (the "**CPA**"). The Tribunal determined that Vodacom breached the CPA by levying an unreasonable cancellation penalty of 75% on consumers who cancelled their fixed-term contracts before expiry. The Tribunal also considered other CPA breaches relating to fixed terms contracts.

In this article we discuss the Tribunal's decision and what lessons consumers and businesses should take from the decision.

The National Consumer Commission ("**NCC**") received various complaints by consumers that Vodacom had breached the Consumer Protection Act No 68 of 2008 ("**CPA**"). After conducting an investigation, it determined that Vodacom had breached the CPA in relation to its fixed term contracts with consumers.

The NCC referred the matter to the National Consumer Tribunal ("**Tribunal**") for determination. We turn to discuss the Tribunal's consideration of certain of the consumer complaints in terms of its decision in *National Consumer Commission* v *Vodacom Proprietary Limited* (Case Number: NCT/260497/2023/73(2)(b)) (the "**Decision**") of 13 October 2023.

Levying an Unlawful Penalty on Cancellation

The first complaint related to Vodacom levying a 75% cancellation penalty on consumers who wished to cancel their respective fixed term contracts before its expiry.

In terms of the CPA, a consumer has the right to cancel a fixed-term contract prior to its expiration at any time, subject to certain conditions being met, including that the supplier of goods and services ("**Supplier**") may charge a "*reasonable*" cancellation penalty.[i]

The CPA and its regulations provide a number of factors to be considered when determining what a reasonable cancellation penalty is, including the amount the consumer owes up to the date of cancellation, the originally intended duration of the agreement, the value of the transaction up to cancellation, the value of any goods which will remain in possession of the consumer after cancellation and the general practices in the relevant industry.

Vodacom's defence to this complaint was that the cancellation penalty had been imposed on SIM-only contracts to recover discounted rates and "*additional benefits*" such consumers enjoyed compared to prepaid consumers.

The Tribunal noted that in October 2022 Vodacom had of its own accord amended its terms and conditions ("**Ts&Cs**") which now provides for a cancellation penalty equal one month's subscription fee. Vodacom also conceded that prepaid contracts had been inflated to "*incentivise customers to enter into fixed term contracts*".

The Tribunal held that that the 75% cancellation penalty was not justifiable and negated a consumer's right to cancel a consumer contract, it therefore breached the CPA. The Tribunal also held that Vodacom's amendment to the Ts&Cs was of no significance to the present complaints as Vodacom still contravened the CPA at the time.

Failure to Process Cancellation Requests Timeously

The next complaint was that Vodacom failed to process cancellation requests timeously. Vodacom's defence was that delays were caused by their third-party service provider who provided call centre services.

Vodacom admitted that the service provider's call centre agents deliberately avoided processing cancellation requests timeously to earn incentives from Vodacom.

The Tribunal found Vodacom liable for the service provider's conduct because the CPA provides that a Supplier is liable for any act or omission committed by an agent (or employee) on its behalf.[ii]

Refusal to Cancel Contracts

The Tribunal also considered complaints relating to Vodacom's refusal to cancel contracts when the contract in question was in arrears and/or the consumer was unable to pay the cancellation penalty. Vodacom argued that they were entitled to these payments prior to allowing the consumers to cancel.

The CPA provides that "*upon cancellation*" of a fixed term contract, the consumer remains liable to the Supplier for any amounts owed in terms of the contact at the date of cancellation.[iii]

The Tribunal confirmed that what the Act provided for was that a consumer remains liable for any outstanding amounts following cancellation but that a Supplier may not prevent a consumer from cancelling their contract due to any arrear amounts or refusal to pay the cancellation penalty.

The Supplier is required to take legal steps to recover any outstanding amounts following cancellation. The Tribunal found that Vodacom had contravened the CPA by refusing to cancel the consumer contracts on these bases.

Where to From Here?: Practical Guidance for Consumers and Businesses

Ultimately, the Tribunal fined Vodacom for the various CPA breaches to the tune of R1 million. The decision has far-reaching consequences because the CPA applies to all contracts between consumers and Suppliers, unless specifically excluded, such as by way of industry standards, other laws or other exclusions in the CPA (for example, transactions with consumers who are juristic entities and whose asset value / turnover exceeds R 2 million).

The following considerations apply to consumers and businesses:

Consumers

Consumers should ensure that they read and understand the Ts&Cs of any good or services before agreeing to them. A consumer can then take up any unfair cancellation terms with a Supplier **before** agreeing to the goods / services or they can explore alternative Suppliers with more favourable terms.

For consumers who have an issue with a Supplier's cancellation terms that they are subject to, they can approach the Consumer Goods and Services Ombud ("**CSGO**").

The CGSO is the consumer goods and services industry's ombud tasked with mediating consumer disputes. Specific consumer-facing industries may have their own dispute resolution bodies and procedures.

For example, the automotive industry has their own ombud: the Motor Industry Ombudsman of South Africa or MIOSA. Other examples of industries with specific bodies and procedures include financial services and the property industry.

Consumers should be aware of which bodies and procedures apply to the services / goods they are purchasing.

Businesses

Businesses should not commit any of the prohibited conduct that Vodacom was found guilty of. Businesses must allow consumers to cancel their fixed term contracts in accordance with the CPA, process cancellation requests timeously and only charge a cancellation penalty that is reasonable in the circumstances.

Businesses are not permitted to refuse to cancel a fixed term contract where the consumer is in arrears or refuses to pay a cancellation penalty. Businesses are required to recover any arrear amounts following cancellation through legal processes. Businesses should have clear cancellation provisions in their Ts&Cs and are well minded to have policies and procedures in place to deal with cancellation requests.

These policies and procedures should extend and apply to their employees and third party service providers, whose actions they can be held liable for.

Footnotes

[i] Section 14 of the CPA grants a consumer the right to cancel a fixed-term contract (i) without penalty or charge upon its expiry or (ii) at any other time by giving the supplier 20 business days' notice in writing or other recorded manner and form, subject to a cancellation penalty. The consumer remains liable for any fees due at cancellation and the supplier must credit the consumer with any amount that remains the property of the consumer upon cancellation.

[ii] The CPA, section 113(1).

[iii] The CPA, section 14(3)(a).

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