Introduction

In South Africa, e-commerce transactions are regulated by the Electronic Communications and Transactions Act 25 of 2002 (ECTA) and the Consumer Protection Act 68 of 2008 (CPA).

The ECTA seeks to facilitate and regulate electronic communications and transactions in South Africa by inter alia (i) removing and preventing barriers to electronic communications and transactions, and (ii) developing a safe, secure and effective environment for the consumer, business and government to conduct and use electronic transactions. The purpose of the ECTA is to enable and facilitate electronic communications and transactions in the public interest and to promote the understanding, acceptance and growth of electronic transactions in South Africa.

The CPA aims to promote responsible consumer behaviour and advance ethical business practices by reducing the barriers which are faced by consumers when obtaining goods or services. The CPA generally applies to all transactions that occur in South Africa, including electronic transactions, unless the application of the CPA is expressly excluded. The CPA provides for various protections and remedies to consumers, to ensure that they are not exploited or harmed.

However, the ECTA also makes provision for protections and remedies to consumers. Accordingly, there is an interplay between the ECTA and the CPA as these Acts overlap in certain respects. This is recognised by section 2(9) of the CPA which provides that where there is inconsistency between the CPA and another Act (such as the ECTA) the provisions of both Acts must be applied concurrently, to the extent possible, without contravening the second Act. However, where this is not possible, the Act that gives the greater protection to a consumer must be applied (unless an Act expressly states that another Act would apply in circumstances where the same issue is regulated by that other Act).

We discuss below a few examples of the interplay between the CPA and ECTA.

Examples of the interplay between the CPA and the ECTA

Cooling-off period
In terms of section 44 of the ECTA, a consumer is entitled to cancel an electronic transaction (or any related credit agreement) for the supply of goods or services without reason and without penalty within seven days from the date of receipt of the goods or conclusion of the agreement (as applicable). In other words, the consumer has a seven-day cooling-off period under the ECTA.
On the other hand, section 16(3) of the CPA provides that a consumer may cancel a transaction for the supply of goods within five business days after the later of the goods being delivered or the agreement being concluded, where the transaction results from direct marketing. In other words, the consumer has a five-day cooling-off period under the CPA, if the transaction resulted from direct marketing.

However, section 16(1) of the CPA states that section 16 of the CPA does not apply to a transaction if section 44 of the ECTA applies to that transaction. Accordingly, should an electronic transaction result from direct marketing, the consumer will be entitled to a seven-day cooling-off period (as contemplated in section 44 of the ECTA) as opposed to the five business days cooling-off period (in terms of section 16(3) of the CPA). Accordingly, the ECTA will trump the CPA as the CPA expressly states that the ECTA would apply in these circumstances.

**Delivery and performance**

Section 46 of the ECTA and section 19 of the CPA both deal with delivery and performance. Section 46 of the ECTA states that the supplier must execute an order within thirty days from the day on which the supplier received the order, unless the parties have agreed otherwise.

Section 19 of the CPA states that the supplier is responsible for delivering the goods and performing the service on the agreed date and at the agreed time or otherwise within a reasonable time after concluding the transaction or agreement. However, section 19(1)(b) of the CPA states that this section does not apply to a transaction if the performance of that transaction is governed by section 46 of the ECTA.

Accordingly, in instances where an electronic transaction has been concluded, the supplier must execute the order within thirty days and not within a “reasonable time” as required by the CPA. However, the parties may agree for delivery to take place at a later or earlier date.

**Display of pricing**

Section 23 of the CPA prohibits retailers from displaying goods for sale without displaying the price of those goods. Furthermore, section 23 sets out the requirements for an adequately displayed price and other related matters regarding the displayed price.

Section 43 of the ECTA, on the other hand, sets out the information disclosure requirements with which suppliers are required to comply in respect of electronic transactions. These include disclosing the full price of the goods or services (including transport costs, taxes and any other fees or costs). In addition, suppliers are required to display information on their website relating to their legal status, accreditation, code of conduct and physical address.

Section 23 of the CPA expressly states (with regard to electronic transactions) that the information disclosure obligations set out in section 43 of the ECTA trump the obligations set out in the CPA.

**Conclusion**

The consumer protection mechanisms contained in each of the ECTA and the CPA both regulate the system of conducting business over the internet. It is important that companies doing business over the internet are aware of the nuances of these two pieces of legislation and when either of the two is applicable. In certain instances, the remedies available to a consumer are set out in the ECTA and not in the CPA. Accordingly, both businesses and consumers must be aware of the different pieces of legislation applicable to consumer transactions to enable them to exercise their rights to the fullest extent.

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