

Vodacom to pay R1m fine after negating consumers' right to cancel fixed-term contracts

Vodacom has to pay an administrative fine of R1m after the National Consumer Tribunal (NCT) found that the company's conduct was unconscionable and prohibited when it imposed terms and conditions that negated the consumers' right to cancel their fixed-term contracts.



Source: © 123rf [123rf](#) Vodacom has to pay an administrative fine of R1m after the National Consumer Tribunal finding on the company's conduct on fixed-term contracts

The National Consumer Commission (NCC) has welcomed the decision.

“The Commission welcomes this judgment as we believe that it is going to deter other suppliers/operators from engaging in the same conduct,” says acting National Consumer Commissioner Thezi Mabuza.

“We further see this as a victory for South African consumers who for the longest period were subjected to contracts that were in favour of the supplier,” adds Mabuza.

Numerous compliants received

Between the 2020/21 and 2021/22 financial years, the NCC received and investigated numerous complaints of alleged contravention of various sections of the Consumer Protection Act (CPA) by Vodacom.

Consumers alleged that Vodacom denied them the right to cancel their fixed-term contracts by imposing a cancellation penalty of 75%.

Moreover, Vodacom required payment of all outstanding fees and the cancellation penalty before contracts were terminated on request.

Consumers further alleged that they were coerced to sign the acceptance quotation letter (that was valid for 12 days) and return the letter to Vodacom with proof of payment.



Suppliers obligated to protect consumers

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Complaints during Covid-19

The Mabuza said that the Commission's investigation revealed that Vodacom had engaged in prohibited conduct by contravening Section 14 of the CPA read with Regulation 5.

"The NCC received the bulk of these complaints during the pick of Covid-19 when many complainants lost their jobs or their salaries were cut, making it impossible for them to proceed with the Sim Only contracts," says Mabuza.

75% cancellation penalty

Section 14 (3) (b) (i) provides that the supplier may impose a reasonable cancellation penalty with respect to any goods or services supplied to the consumer.

Regulation 5(2) lists the relevant considerations in deciding on a reasonable cancellation penalty and Regulation 5 (3) of the CPA states that a supplier may not impose a cancellation penalty that has the effect of negating the consumer's right to cancel.

Vodacom's imposition of a 75% cancellation penalty constituted a contravention of this section.

Vodacom failed to cancel consumers' contracts timeously after having been notified by consumers and as required by the CPA, thus contravening Section 14(2) (b)(i)(bb).

Contravention of sections of the CPA

The refusal to cancel consumers' contracts on the basis that any cancellation is subject to payment of a cancellation fee before the cancellation can be affected constituted a contravention of section 14(2) (b).

Vodacom also failed to cancel consumers' contracts within 20 business days of consumers' notice of cancellation, instead, the supplier sent consumers quotation letters with a cancellation penalty of 75%, contravening Sec 14 (3) of the Act.

Section 14(2)(c) provides that, in the case of a fixed-term consumer agreement, the supplier must inform the consumer in writing or other recordable form not more than 80 nor less than 40 business days before the expiry of the contract of the impending expiry date, including any material changes that would apply if the agreement is to be renewed or may otherwise continue beyond the expiry date and the options available to the consumer.

Vodacom's failure to inform consumers that their contracts were about to expire and to advise them of their options contravened section 14 (2)(c).



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Repeatedly denying consumers the right to cancel

"Vodacom unconscionably imposed an unreasonable cancellation penalty of 75% negating consumers from cancelling the contracts. Moreover, Vodacom required payment of all outstanding fees and the cancellation penalty before contracts were terminated on request, exacerbating the consumers' financial wellbeing at that time. This conduct is not in the spirit of the promotion of the CPA," says the Tribunal.

The Tribunal also found that Vodacom's conduct is unconscionable in that Vodacom continued to bill consumers after they duly cancelled their contracts or attempted to do so, and by referring such consumers to debt collectors, blacklisting them with credit bureaus, and threatening them with legal action.

By repeatedly denying consumers the right to cancel the contracts, Vodacom contravened section 40(1)(b) and (d) of the Act.

Lastly, the supplier contravened section 29(b)(i)(ii) and (v) read with section 41(3) by marketing a data bundle package that was not available and not provided.

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