

## **RECOMMENDATION**

### **1. Dispute identification**

<b>Complaint No.</b>	<b>:</b>	<b>201509-0004546</b>
<b>Nature of dispute</b>	<b>:</b>	<b>Cancellation fee: air time contract</b>
<b>Adjudicator</b>	<b>:</b>	<b>N Melville</b>
<b>Date</b>	<b>:</b>	<b>8 March 2016</b>

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### **2. Summary of the complaint**

From the voice recording provided by the supplier to CGSO, the complainant took out a two-year air time contract with the supplier after having been contacted by a call centre agent. For R 79 per month, the complainant was to receive R 100's worth of airtime and a funeral policy to the value of R 7 500. The payment for the two aspects of the contract was to be made separately and the amounts were R 30 for the air time and R 49 for the funeral cover. The air time was to be loaded on the complainant's cell phone on the 17<sup>th</sup> of each month.

The complainant was informed he could cancel the agreement in 14 days; the contract would apply to the existing number, which would belong to the supplier, and existing value added services would be deactivated. To reactivate them, the complainant would have to call Customer Care. The terms of the agreement were to be emailed by the supplier to the consumer.

According to the complainant, a month passed after he entered the agreement on 11 March 2015 without anything happening, then his cell phone shut down. He called the service provider (presumably the supplier), who restored the service. However the 1.7 G data and R 135 air time that was loaded on the cell phone was gone. The supplier promised to reload the air time but failed to do so. The complainant then tried to cancel the contract but was told that he would have to pay for the rest of the contract.

### **3. Details of steps taken to resolve the complaint**

Communicated with various people at the supplier.

### **4. Outcome proposed**

The complainant would like to cancel the contract.

### **5. The response of the supplier**

Other than providing CGSO with the voice recording, the supplier did not respond to the complaint

### **6. Consideration of the law and facts**

In this instance, it is not a question of the complainant cancelling the agreement in terms of the Consumer Protection Act (CPA) but of him exercising his common law right to cancel a contract on the grounds of the supplier having breached it.

In the case of *Sandown Travel (Pty) Ltd v Cricket South Africa* [2012] ZAGPJHC 249 at para 30, the court stated:

The legal position regarding the remedies available for an innocent party in circumstances where the other commits an anticipatory breach or repudiation of an agreement has been set out in a number of decided cases. He or she must elect either to treat the contract as binding or terminate it.

In this case, on the complainant's version, which the supplier has not disputed, the supplier breached the contract. This gives the consumer the right to cancel it.

The process for such a cancellation is usually set out in the agreement, which has not been provided to CGSO by the supplier.

### **7. Recommended resolution**

It is recommended that the supplier accepts the cancellation of the agreement without penalty and reimburses the consumer for the data bundles and airtime lost.