THE E-COMMERCE REGULATORY LANDSCAPE IN SOUTH AFRICA

Category: Commercial Law
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Electronic Commerce ("**e-commerce**") refers to the trading of goods and services over the internet. Over the past year, South Africa has seen a significant rise in e-commerce. A study conducted on online retail in South Africa revealed that South Africa passed the R50 billion growth milestone in 2022. In 2023, South Africa is expected to see an even bigger growth in e-commerce as Small and

Medium Enterprises ("**SMEs**") and big international companies ("**Big Tech**") enter the e-commerce market. This article aims to provide a high-level overview of South Africa's keys laws that apply to e-commerce.

The primary piece of legislation that deals e-commerce regulation in South Africa is the Electronic Communications and Transaction Act, 25 of 2022 ("**ECTA**"). The purpose of ECTA is to facilitate and regulate electronic communication and transactions. It addresses among other things, legal requirements of and communication of data messages as well as consumer protection in electronic transactions. ECTA covers areas including the information that suppliers must make available to consumers, performance and cooling off periods.

The Protection of Personal Information Act, 4 of 2013 ("**POPIA**") is South Africa's data protection legislation. The purpose of POPIA is to, among other things, safeguard personal information when it is processed by a responsible party. POPIA also establishes the office of the Information Regulator ("**Regulator**"). The duties of the Regulator include monitoring and enforcing compliance by public and private bodies with POPIA. In the context of e-commerce, POPIA is applicable in respect of payments for and the direct marketing of good and services by suppliers. To make payments, consumers may need to share their personal information and the supplier is required to process the personal information in accordance with POPIA. Consumers are also given certain rights regarding the direct marketing of goods and services by means of unsolicited electronic communications.

The Cybercrimes Act, 19 of 2020 ("**Cybercrimes Act**") came into operation in December 2021. The purpose of the Cybercrimes Act is to create offences such as cyber fraud, forgery and extortion. In the context of e-commerce, the Cybercrimes Act protects consumers from fraud, forgery and extortion in e-commerce transactions and establishes offences in relation to e-commerce transactions.

The Consumer Protection Act 68 of 2008 ("**CPA**") applies to electronic transactions. The purpose of the CPA is to promote a fair, accessible and sustainable marketplace for consumer products and services. Among other things, it addresses cooling off periods which gives consumers the right to cancel a transaction within a specified time where the transaction results from direct marketing. It is worth noting that in the context of e-commerce certain provisions of the CPA do not apply to transactions where certain provision of ECTA apply. For example, the provision on cooling off period in the CPA states that the provision does not apply to a transaction where section 44 ECTA, being the provision on cooling off periods, applies.

Another noteworthy development that might change the e-commerce regulatory landscape is the Online Intermediation Platforms Market Inquiry ("**Inquiry**") that was launched by the Competition Commission ("**Commission**") in 2021. The Inquiry was initiated because the Commission had reason to believe that there exists market features within online platforms which impede, distort or restrict competition. In the context of e-commerce, the Inquiry was limited to digital platforms that facilitate transactions between business users and consumers. The Commission released the Inquiry Provisional Report in July 2022. The provisional report chapter on e-commerce can be accessed here. The final Inquiry report will be released in April 2023.

SMEs and Big Tech looking to enter the South African e-commerce space, need to ensure that their business practices are aligned with the current e-commerce regulatory landscape. This will enable them to continuously grow and thrive and ultimately promote healthy competition in online markets.

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