

Consumer Protection Bill

section 47: over-selling and over-booking

Business Unity SA

involvement with the Bill:

- NEDLAC negotiations
- various submissions

- aims of the Bill are to be praised
- law is fragmented
- difficult to know where to find the laws and common law complex
- but: easy to criticise legislation

*Si fractum non sit, noli
id reficere!*

**If it ain't broke, don't
fix it!**

purpose of the Bill

section 3

= promote and advance the social and economic welfare of consumers in South Africa

3rd version of the Bill

- improvements
- concerns remain, such as changes to common law, vagueness, broad application and regulations
- once made public, engage further with DTI
- must look at the objects of the Bill and see if they are met
- self-regulation?
- industry codes (s 82)

s 47:

over-selling & over-booking

(was s 48)

- aim of section
- 2nd version v 3rd version:
 - deleted: loss of anticipated use or enjoyment
 - defence in subsection (5)
- examples: person books ticket to Country X or car dealership where car reserved

what does the section say?

- special order goods excluded
- supplier must not accept consideration for goods/services if supplier has no reasonable basis to assert an intention to supply them or intends to supply them but they are materially different

- supplier makes a reservation/commitment to supply goods/services on a specified date/time, but fails to do so because of insufficient stock/incapacity to supply or unable to supply similar/comparable goods/services of same or better quality, class or nature
- in this case: supplier must refund the consumer: the amount paid & interest (rate?) AND compensate consumer for consequential damages for eco harm sustained (unless subsection (5) is applicable) (deleted re loss of anticipated use/enjoyment)

new provision:

- It is a defence against the failure to supply the goods/services if:
 - supplier offered to supply/procure another person to supply comparable goods/services of the relevant kind to satisfy the consumer's request AND
 - the consumer accepts and the supply has occurred OR the consumer unreasonably rejects that offer

- when will the supplier not be liable for consequential damages?
 - if shortage of stock/capacity is due to circumstances beyond the supplier's control AND
 - supplier took reasonable steps to inform the consumer as soon as it was practicable in the circumstances

circumstances beyond the supplier's control?

circumstances beyond the supplier's control?

- a shortage of stock/capacity is NOT due to circumstances beyond the supplier's control if the shortage results:

partially, completely, directly/indirectly from a failure on the supplier's part to adequately and diligently carry out any ordinary or routine matter pertaining to the supplier's business

- however – wording is extremely broad
- should limit wording of subsection (6) to relevant matters and not just “any ordinary and routine matters”

conclusion

- balance needs of consumer and business
- nothing can replace good customer relations & communication
- laudable aims of the Bill but.....it goes too far