

COMPLAINTS AND COMPLIANCE COMMITTEE

Case number: 49/2011

Date of the hearings:

29 June 2011

In the matter between:

INSPECTOR TSHEPI LEKGANYANE
and

Complainant

YODATA ELECTRONICS (PTY) LTD

Respondent

COMPLAINTS AND COMPLIANCE COMMITTEE

Vas Soni SC
Prof JCW van Rooyen
Ms N Ntanjana
Mr J Tlokana

(Chairperson)
(CCC Member)
(CCC Member)
(CCC Member)

Findings

1. The complaint that formed the subject-matter of the hearing before the Complaints and Compliance Committee (the CCC) concerned a contravention by the Respondent of s35(1) of the Electronic

Communication Act¹ (the ECA), read with the applicable Regulations. The Respondent did not dispute the fact of the contravention. Instead, its response to the charge sheet that was served on it was that the contravention constituted a technical infringement.

2. Fortunately, the parties agreed to settle the dispute between them. They presented the CCC with a "settlement proposal" which they wish the Council of the Independent Communications Authority of South Africa ("the Council") to approve.

3. Having considered the matter and also having heard the parties, the CCC is of the view that the Council should approve the settlement as proposed by the parties. The details of the proposed settlement are set out in the proposal that they signed and handed in to the CCC on the day of the hearing. A copy is annexed hereto, marked "A".

4. In view of the fact that the matter has become settled, subject of course to Council's approval, it is not required to set out in this decision the details of the charges preferred against the Respondent. However, it is necessary to place on record the following matters. First, the charge against the Respondent was that various items of electronic communications equipment which it had supplied to a discount house equipment did not have affixed on them, as is required by the applicable Regulations, the requisite labels. Second,

¹ Electronic Communications Act (ECA) No 36 of 2005

nevertheless each piece of equipment had in fact been type approved. Third, the equipment had been seized by the Inspectorate of the Johannesburg Region of ICASA. Fourth, following an application to the High Court, whilst samples of the equipment were retained by the Inspectorate, the rest was returned to the Respondent. Fifth, all that was in issue in the matter before us was whether there had been a contravention and if so what the penalty should be.

5. In light of the foregoing, it was clear that both parties were correct: there had been a contravention of the Regulations, but it could be said that it was a technical contravention. Consequently, the desire of the parties to settle is understandable. The imposition of a fine and the amount thereof in our view strikes a fair balance between the need to uphold the law and yet reserve severe sanctions for serious and substantive offences.

6. Two further points relating to this dispute are deserving of mention.

7. The first is that at some stage reservation had been expressed about whether or not the CCC had jurisdiction to entertain the complaint. In order to be fair to the parties, they were informed about the fact of the reservation. To the credit of the Respondent, it did not use the opportunity to avoid dealing with the merits of the complaint. It decided that it was best that the dispute was brought to finality at the

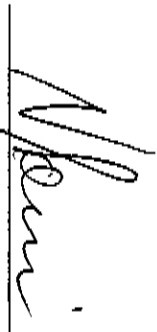
hearing. We must commend it for its approach, which was consistent with its stance that there had been a contravention, but that it had been more of a technical nature. We must also commend Mr Lekganyane, who until the settlement was finalized, pressed firmly for a ruling from us as to our jurisdiction. In the light of the settlement, however, it was not necessary to give a ruling.

8. The second matter that must be mentioned is the delay in finalizing this decision. As the chairperson who was tasked to pen this decision, I take full responsibility for the delay. I place on record that I was required to be abroad in the first week of July. I also had to prepare a number of complex documents for that trip. I had thought that I would be able to squeeze this in before I departed. Regrettably, attending to my travel arrangements and those documents made it impossible for me to prepare this decision before my departure. I have attended to it as soon as time permitted on my return. I deeply regret the inconvenience I have caused. Without wishing to underplay the remissness, I take comfort from the fact that all the parties involved in this dispute, including the other members of the CCC who sat in this matter, were well aware of the outcome.

9. Finally, we would urge the Council to approve the settlement proposal which the parties have agreed upon. However, in order to enable Council to make an informed decision, we also annex hereto, marked

"B", a copy of the charge sheet.

Dated in Sandton this 17th day of August 2011



Vas Soni SC

Acting Chairperson

The above judgment was concurred in by the following members of the CCC,
namely Prof. JCW van Rooyen, Mr. J. Tlokana and Ms. N. Ntanjana.