

**THE *CONSUMER PROTECTION ACT* 68 OF 2008 AND PROCEDURAL
FAIRNESS IN CONSUMER CONTRACTS**

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SUMMARY

In general, the concept "contractual fairness" can be narrowed down, described and analysed with reference to the two interdependent types of fairness – substantive and procedural fairness. Measures aimed at procedural fairness in contracts address conduct during the bargaining process and generally aim at ensuring transparency. One could say that a contract is procedurally fair where its terms are transparent and do not mislead as to aspects of the goods, service, price and terms. Despite the noble aims of legislative measures aimed at procedural fairness there are certain limits to the efficacy of procedural measures and transparency. The special procedural measures which must be considered in terms of the *Consumer Protection Act* 68 of 2008 in order to decide if a contract is fair are analysed in this article, as are other measures contained in the Act, which may also increase procedural fairness, and are discussed so as to allow suppliers to predict whether their contracts will be procedurally fair or not in terms of the Act. The special procedural measures can be categorised under measures requiring disclosure and/or mandatory terms, and measures addressing bargaining position and choice. It is concluded that owing to the nature of all these factors and measures related to procedural fairness, it is clear that openness and transparency are required by the CPA.

KEYWORDS: consumer protection; unfair contracts; contractual fairness; procedural fairness.

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