

# PRICE - Controls & Contraventions

1985 - 1986



# Fury over massive powers of new coal controller

By JO-ANNE RICHARDS

COAL mining companies, distributors and exporters are furious over draft legislation which seeks to set up a 'coal controller' who will have dictatorial powers over the industry

The measures introduced in the draft Bill have "horrified" local coal mining companies, distributors and exporters, most of whom feel it is being "rushed through with indecent haste"

The Sunday Express has obtained a copy of the draft Coal Control Bill, which is on the agenda for the coming parliamentary session. It is the latest in a series of controversial moves by the government to control or "rationalise" the industry

The Bill creates a government coal controller who will have almost carte blanche powers in the coal industry

It follows the government's acceptance in principle of Competition Board recommendations that it should end its interference in the domestic coal market

This apparent turnabout has been condemned by many, including Mr D Kirsten, chairman of the Independent Coal Producers' Association comprising most independent mining companies

"Why did they spend all that money on a Competition Board inquiry if they intended to do the exact opposite," he said "This legislation is aimed at giving them total control of the industry"

Mr L H Weiss, managing director of the Transvaal Coal Owners' Association — the largest coal producing body for domestic coal, believed there to be no need for the "totally unacceptable" provisions

said Mr Meintjes

Legal opinion is that the Bill lacks "natural justice" and could theoretically open the way for bribery and corruption, were there to be an unscrupulous controller

Coal consumers felt the lasting effects of the Bill would result in a monopoly situation which would lead to coal price rises

Mr Remer Roets, Deputy Director of the Department of Mineral and Energy Affairs, said the Bill was not aimed at creating a monopoly. It was merely a consolidation of provisions at present under a number of Acts

"These have not been changed, but have been adapted to accommodate coal," he said

"It is not being done in haste as the rationalisation of the public service has been going on since 1981"

The extensive powers of the controller did not represent a danger as "he will be an instrument of the government, subject to the decisions of Cabinet," Mr Roets said.

## Responsible

"Our members, who include Barlow Rand, JCI and Anglo American, are responsible companies who don't need the government to dictate to them," he said.

Mr E Meintjes, managing director of Minesa, a coal exporting company, said he was "horrified" by the draft Bill. There was no doubt that the government was trying to exert greater control over the industry

"This horrendous Bill" was seen by a director of Aluchem/Reef Coal, Mr M Rosch, as a real threat to the existence of many small distributors "The controller can put any of us out of business as he sees fit, and we would have very little recourse"

In pushing this Bill through, the department was allowing itself to be swayed by "companies who do not have the interests of the industry at heart, but rather their own specific interests",

# Concern at loss of bread subsidy

BUS DAY  
245  
LINDA ENSOR

WITH their meagre profit margin of 1,5c a loaf, one would expect bakers to welcome removal of the bread subsidy and price controls.

Not so, says Johan Louw, MD of Fedfood, South Africa's fourth largest diversified food company. Owned by Federale Volksbeleggings, it is fast approaching an annual turnover of R1bn.

Wheat milling and baking represented 35% of last year's R819m turnover.

Louw and financial director Francois Rossouw are apprehensive about possible government acceptance of the Davin Commission's recommendations to do away with the bread subsidy, price control and the restrictive registration of bakers.

Louw believes the move away from controls will be a move away from any profits at all.

However, if possible deregulation of the industry is a source of concern, Louw and Rossouw express optimism about other sectors of Fedfood operations in the year ahead.

Lifting controls will mean businesses trying to increase market share by producing more volumes, says Rossouw.

"They will run all over the place. With the cost of distribution what it is today, I cannot see that they will be able to produce bread more cheaply."

Delivery costs represent about 35% of total operating costs. Last year's increase in the fuel bill swallowed up permitted profits completely.

Rossouw believes the present registration of bakers and zoned delivery areas "rationalises" transport costs. He considers this outweighs any possible advantages to be gained by free competition, which would not dish up more attractive profit margins.

On the financial front, management believes the recent R40m rights issue — used to reduce debt — has "dramatically" reduced the interest bill and lowered the gearing ratio from 68% to 50%.

No major capital investment is envisaged for the 1986/87 financial year. Fedfood has spent a large amount on capital expenditure in the past two to three years, which led, says Rossouw, to "an uncomfortable debt:equity ratio in present times".

The group is not closed to the idea of new acquisitions and while Louw would not comment on which areas they would like to enter, he did say they would consider anything suitable which came up.

Exports of Table Top frozen vegetable and Fedfood's Simba snack operation are expected to continue to be money-spinners this year.

# Minister's warning against price fixing

Cape Times 17/11/85  
Own Correspondent

245

**JOHANNESBURG.** — A sharp warning about price fixing was given to the tyre, cement and fertilizer industries yesterday by Dr Dawie de Villiers, the Minister of Trade and Industries.

He said that the Competition Board was preparing to deal severely with any form of collusion

Dr De Villiers said in a statement released yesterday "Joint statements by competitors announcing uniform price increases have recently attracted wide attention

"Conspicuous examples of such price increases were those in respect of tyres, fertilizers and cement

"These announcements are often made by associations representing many, if not all, manufacturers of particular products

"Such joint price increases give rise to a good deal of justified objections

"The question is quite rightly asked how such an apparent elimination by competitors of price competition could be tolerated within the context of a policy of effective

competition"

Dr De Villiers said "The government views this development in a very serious light

"I, therefore, deem it necessary to again invite attention to the Competition Board's announcement in the Government Gazette of November 30, 1984, that it was to embark upon a new and important investigation

"Basically this investigation embraces agreements or arrangements establishing any form of

- Fixing prices (or other conditions of sale) horizontally (that is, between competitors) or vertically (for example, between manufacturers and retailers).

- Market sharing
- Collusion in respect of tender practices

Dr De Villiers said "The purpose of this investigation is to determine whether these agreements or arrangements, with or without exceptions, should summarily be prohibited

"Should such a prohibition be recommended by the board and be accepted by the government, any prohibited

price-fixing, market sharing or tender practice collusion would constitute a serious offence

"I have instructed the board to give very high priority to this investigation

"The board is currently awaiting comments from interested parties and I, therefore, urgently appeal to all concerned to give their full cooperation to the board

"When the board's report and recommendations have been received, appropriate action could be expected soon thereafter"

## Closing gold prices

(In \$ an ounce)

**LONDON:**

**302,70-303,20**

**Fixing am: 302,45**

**Fixing pm: 302,70**

**ZURICH:**

**302,00-305,00**

— Reuter

**UK Govt to**

**UK Govt to**

# Coal bill opposed

CML 7/15 22/3/85 (2) 1245

## HOUSE OF ASSEMBLY.

— South Africa's coal industry needed more competition, not more regulation, Mr Brian Goodall (PFP Edenvale) said yesterday during second-reading debate on the Coal Resources Bill

The bill would give the minister power to regulate prices, prescribe export conditions "as he may deem fit" and withdraw exemptions to conditions laid down in the

bill without giving reasons

"It could happen that we find ourselves in a situation in which we have no oil. But we have so much coal that we are exporting something like 40 million tons a year," Mr Goodall said.

The Competitions Board had recommended relaxation of government control over the industry, and the bill had been opposed by the Chamber of Mines, Asso-com, FCI and initially by Sasol.

Mr John Malcomess (PFP Port Elizabeth Central) said the minister was doing his "level best" to put small entrepreneurs out of business by forcing them to comply with arrangements — for transportation, storage and sale of coal — they could not afford

● Mr S P Barnard (CP Langlaagte) said the bill could lead to big businesses receiving protection they did not need. It was the small trader who needed protection

● The Minister of Mineral and Energy Affairs, Mr Danie Steyn, said he had met 87 small coal distributors and only three opposed the bill.

He said he was prepared to scrap regional regulations governing coal distribution provided suppliers met certain conditions — for instance if they gave the assurance they would provide supplies to all who needed them

The bill was read a second time after a division, in which the PFP and the CP voted against the NRP and the NP.

● South Africa is buying the cheapest oil available on the world market, Mr Steyn said while replying to second-reading debate on the State Oil Fund Amendment Bill

"Oil is freely available and cheap"

However, efforts to cut off the supply to the Republic had intensified and suppliers had warned that if South Africa disclosed where the oil was coming from, supplies would stop immediately.

# Stop price fixing — consumer body

245 Star 23/1/85

By Jackie Unwin,  
Consumer Reporter

The Consumer Council has expressed its strong support for the Competition Board in its fight against price fixing, manipulation and formation of cartels.

The council yesterday urged an investigation into allegations of price manipulation and cartel forming following developments in the cement industry.

Dr Dawie de Villiers, Minister of Trade and Industries, issued a warning about price-fixing to the tyre, cement and fertiliser industries.

The director of the Consumer Council, Mr Jan Cronje, says the cement industry should be subjected to a greater degree of competition, even imports, if this will assist the collapse of monopolies.

"The Consumer Council is eager to assist the Competition Board — following the Government's request — in ending unhealthy monopolies," said Mr Cronje.

Dr de Villiers said last week that "Joint statements by competitors announcing uniform price increases have recently attracted wide attention. Conspicuous examples of such price increases were those in respect of tyres, fertilisers and cement. These announcements are often made by associations representing many, if not all,

manufacturers of a particular product.

"Such joint price increases give rise to a good deal of justified objections. The question is quite rightly asked how such an apparent elimination by competitors of price competition could be tolerated within the context of a policy of effective competition.

"The Government views this development in a very serious light.

"I deem it necessary to again invite attention to the Competition Board's announcement in the Government Gazette of November 30 1984 that it was to embark upon a new and important investigation. Basically this investigation embraces agreements or arrangements establishing any form of:

- Fixing prices (or other conditions of sale) horizontally (ie between competitors) or vertically (eg between manufacturers and retailers).

- Market sharing.

- Collusion in respect of tender practices.

"The purpose of this investigation is to determine whether these agreements or arrangements, with or without exceptions, should summarily be prohibited. Should such a prohibition be recommended by the board and be accepted by the Government, any prohibited price-fixing, market sharing or tender practice collusion would constitute a serious offence."

Small dealers — and a few giants — blackball 'horrible little Bill'

# Blast for coal control

29/5  
SS few  
29/3/85

Jasper Mortimer

SMALL coal merchants are waging a powerful campaign to stop the controversial Coal Resources Bill being steamrollered through Parliament.

They are pinning their hopes on rejection by the House of Delegates — which earned R2 000 million in foreign exchange last year — lies in the hands of 45 Indian MPs

The "horrible little Bill", as the PFP's Brian Goodall calls it, confers all-embracing powers over the price, production, sale and export of coal on the Minister of Mineral and Energy Affairs

This week the National Party swept the Bill through its second-reading debate in the House of Assembly and a similar clear passage is expected in the House of Representatives. But in Natal 20 small coal merchants called the Coal Dealers (Pty) Ltd are trying to persuade both parties in the House of Delegates to oppose the legislation.

"We want the Bill to be scrapped," Coal Dealers chairman A H Limalia, told The Sunday Star

On Tuesday Mr Limalia, who owns the firm Elrays, and Mr B Ramhall of Singh's Wood and Coal in Durban, met Mineral and Energy Affairs Minister Danie Steyn in Parliament. Also present were the chairman of the Council of Minis-

ters and National People's Party leader, Mr Amichand Rabhansi, and more than 20 Indian MPs including Mr Y Mullah, who stood in for opposition Solidarity Party leader, Mr J N Reddy.

"No final decisions were made," said Mr Limalia of the meeting, but he expects representatives of both parties to confer with him before the Bill is debated next week.

If the House of Delegates rejects the Bill, then it will most likely be shelved. Although President Botha could refer the Bill to the President's Council, where the NP majority would push it through, observers believe he would be reluctant to do this when trying hard to create the image of "consensus" politics.

"The President will only refer essential items to the President's Council," said one. "Once he uses that option, he exposes the tripartite system for what it is — loaded in the Nazi favour. He won't want to do that at this early stage."

Mr Limalia and Opposition energy spokesman Brian Goodall oppose the Bill because its "incredibly far-reaching powers" will allow the government to interfere in every aspect of the industry. The Bill also files in the face of the 1983 report of the Competitions Board which recommended that State control be phased out and free enterprise allowed to prevail.

The government's regard in this regard in 1981, when coal prices were disastrous, said Bill's memorandum says the Competitions Board report was accepted only as an objective and could only be implemented "when a combination of circumstances makes this possible".

# Cement, tyre majors admit price pacts

INDUSTRIES threatened with legal action for alleged price fixing are not worried.

By Don Robertson

27/1/85  
245 S. Times

The warning, first given in November by the Competition Board, has been repeated by the Minister of Trade and Industry, Dawie de Villiers.

The Competition Board is investigating alleged price agreements or arrangements, market sharing and collusion in tendering.

If the board's findings are accepted, company managers could be charged. The penalties are a maximum fine of R100 000, or five years' imprisonment, or both.

## Examples

Dr de Villiers singled out the tyres, fertilisers and cement as conspicuous examples of industries which have announced uniform price increases.

The tyre industry concedes that it operates a price cartel, and the largest cement producers agree that they collude on prices. Fertiliser manufacturers deny the allegations.

Mike Waterson, executive director of the South African Tyre Manufacturers Conference, says "Dr de Villiers' statement that we are a price cartel is true — we do fix list prices."

Tyre and tube prices were increased by all manufacturers by 8,1% on December 27.

Mr Waterson says the tyre industry has for many years fixed a common list price, but the practice has been accepted by the Government.

## Monopoly

He says that raw-material prices increase for all producers at the same time. "There's a monopoly on the supply of raw materials, from rubber to nylon."

"Retail price maintenance was abolished in 1978, but manufacturers' price maintenance was left alone."

The tyre industry will make representations to the Competition Board before March 29.

Charles Hollmann, commercial director of Pretoria

Portland Cement (PPC), concedes that the three major producers — PPC, Blue Circle and Anglo-Alpha — fix prices, but says they are usually announced individually.

The price of a pocket of cement on the Reef was increased by 12,6% this month to R4,24 from R3,74. Prices in other centres, however, differ because of varying transport costs from the factories.

The majors have also conspired to cut prices in some Natal areas to beat the threat of imported cement.

Mr Hollman says "Our main motivation for price collusion is to provide a climate suitable for us to recover costs in what is a capital intensive industry."

It takes up to four years to establish a cement manufacturing plant, which can cost over R300-million.

## Price war

The cement industry will also present its case to the Competitions Board soon.

The fertiliser industry denies that it gets together to fix prices. Both Fedmis and AECI's Kynoch say that the accusation is unfair, with Kynoch pointing to a price war in the Cape.

On January 1 all the major producers, with the exception of Sasol, increased prices by an average of 20% and all offered a similar early delivery rebate system. Sasol's prices are, however, expected to follow those of other producers.

Johan van der Walt, chairman of Fedmis, says there is a "sameness" in SA's production of fertiliser, the price of raw materials increasing simultaneously for each producer. In some cases, raw materials are imported collectively to save freight charges. Each company uses similar plant, so price differences are minimal.

For about 40 years, the industry operated under a fixed pricing policy and was only freed in January last year.

Mr van der Walt says "The rebate system is part of tradition and has always been offered to take into account the effects of interest rates."

John Skeen, managing director of Kynoch, says "Obviously our sales representatives walk around with a price list which is used as a reference and is the same as all the others. But what happens in the market place is a totally different story."

## Ridiculous

"Prices in the Cape are ridiculous. There is a bit of a price war there and competition is a little too much."

Another fertiliser producer says he welcomes an investigation by the Competition Board as the industry is undergoing a structural change.

He says "I question the need for the early delivery rebate system."



# Recession rocks McCarthy

By ELIZABETH ROUSE

THE McCarthy Group's interim earnings are down 25%, the interim dividend is cut by 20% and prospects look worse for the second half.

Earnings a share for the six months to December 1984 are 26,7c compared with 35,6c in the same time in 1983 and the interim dividend has been decreased to 10c from 12,5c.

The depressed car and motorcycle market caused turnover to slip slightly by 6% to R417,958m from R443,376m, but margins resulted in a bigger fall of 16% in group operating profit to R12,08m from R14,42m

Loans were kept within bounds, interest charges increased by only 11% to R3,3m (R2,96m) and the group scored by paying 22% less tax at R4,1m (R5,3m)

Results are worse than expected by chairman, Mr Brian McCarthy

In his chairman's review in October last year he estimated a decline of 16% in the car market and an 11% fall in the motorcycle market. At that stage no one could have foreseen the fast deterioration in the economy and the bite of finance charges

The group's vehicle business is predominantly in passenger cars so it felt the full impact of the 23% fall — from 142 271 to 109 570 units — in car sales in the six months to December

The total dealer market for cars declined by 20% in the last six months of 1984 and motorcycle sales were down by 35%.

However, the group's interest in the highly successful Toyota franchise must have cushioned the blow somewhat

The only good news in McCarthy's interim report is that the group increased its share of both the car and motorcycle markets

McCarthy now has to contend with the huge petrol price increase, perks tax, manufacturers' price rises and an almost inevitable increase in sales tax. These adverse factors will not only result in lower sales but will lead to a change in buying patterns, with a swing to smaller cars.

Because of its multi-franchise structure McCarthy should weather the storm better than many of its competitors

COMMENT: McCarthy shares have plunged from the past year's high of 505c to 240c and have one of the highest yields in the motor sector. The low rating of the shares may prove unjustified when other car traders start reporting.

McCarthy shares, being more marketable than most motor shares, have come under pressure lately and may be reaching bottom.

McCarthy achieved its second-highest earnings of 81,4c in 1984 and raised its dividend total to 30c from 1983's 22,5c. Given the prediction of even lower earnings in the six months to June and the need to keep cover to at least two, a cut in the dividend total to 20c-22,5c seems on the cards. At 240c that makes potential dividend yield 9,4%

McCarthy shares, being more marketable than most motor shares and included in institutional portfolios, have come under pressure lately and may be reaching bottom. They should not fall below 200c in the worst of circumstances

ROM

244  
30/1/85

245

# Manual on law for laymen

4/2/86  
By Hannes de Wet

STATE  
are consumer protection, influx control, and the housing, family and labour laws. (245)

A manual to give the layman easy access to basic legal skills is to be launched in Johannesburg tomorrow.

It has been compiled by the Legal Resources Centre, mainly for the use of community centres established to give people free basic legal advice

"It will enable a person without a legal background to train himself in providing legal assistance in a few crucial legal areas," says Mr Paul Pretorius, who co-ordinated the compilation of the manual

Some of the subjects covered

Mr Mahomed Navsa, who put the manual together, said it took almost six years to complete, at a cost of about R50 000.

"Not only did we strive to bring the law closer to the man in the street but we also wanted to give him a tool to do something about his basic legal rights," said Mr Navsa. "We believe we have covered most of the basic problems normally experienced in townships."

The manual has more than 400 pages and will cost R40 a copy. About 200 issues will be printed initially.

(245) (245) (245) Star 22/2/85

# Packaging costs to spiral

By Peter Farley  
Investment Editor

Transvaal packaging customers are heading for a series of substantial price increases following the purchase of independent Marathon by Anglovaal-controlled Consol.

And while profit margins at the three majors — Nampak, Kohler and Consol — have been severely eroded in the past couple of years, some R25 million could now be added to their combined operating profits this year

The price of corrugated packaging has drifted steadily down over the past 10 months, from a peak of nearly R1 500 a tonne in the first half of last year to between R1 100 and R1 200 at present

This is despite a near 10 percent paper price increase last October and an inflation rate currently well in excess of 13 percent.

A recovery of these costs now appears inevitable. But customers also seem set for a "double-whammy" with another major

paper price increase scheduled for April that is, this time, almost certain to be passed straight on in increased packaging prices

Throughout the country corrugated packaging prices have been held down in the areas where the independents sprung up — notably Durban, the Eastern Cape and around Cape Town — only to be sharply marked-up once the independents either folded or succumbed to overtures from one of the majors

The Transvaal corrugated market is estimated to be around 150 000 tonnes a year, with Nampak holding a dominant 40-plus percent, Kohler a little over 30 percent and now Consol with slightly more than 20 percent

Marathon survived, despite intense pressure and competition from the majors, for a little over a year. And despite remonstrations to the contrary was beginning to achieve the volumes necessary for a bottom-line profit

MD Mr Tony Crosby says that

output was on target for just over 1 100 tonnes in February, with orders on hand suggesting almost 1 500 tonnes in March

And he points out that though this was not a substantial market share, their lower overheads meant that they were able to sharply undercut the majors' pricing structures

This is evidenced, he said, by the fact that Consol increased the offer to Marathon's parent SA Bias twice, before it was finally accepted. And he pointed out that this bidding was done completely blind, as Consol executives did not visit the operation until after a price had been accepted

Hardly the sort of baling-out operation suggested by Consol management

In the end the price of R10 million — which though it restrains SA Bias for five years only precludes Mr Crosby, for two years — is an expensive way of increasing market share

But it is an extremely cheap means of vastly enhancing overall margins

# Supermarket chain will keep selling cheaper petrol



Mr Raymond Ackerman

PETROL stations operated by Pick'n Pay will continue to sell fuel at discount prices until Monday, says chairman Mr Raymond Ackerman.

He denied today that any Government order had been received banning his company from selling petrol at below the official prices.

"In terms of the Petroleum Act the Minister may issue an edict forcing me to stop selling at discount prices, but until that happens we carry on as before.

"Two major oil companies have continued to supply me with petrol, but one has refused. I know that the Government is working feverishly with the oil companies to stop me," he said.

BP yesterday told Pick'n Pay hyperamas that they would no longer be supplied with petrol. This was in the wake of Mr Ackerman's announcement that its petrol price was being dropped three days before the Government's scheduled date.

Mr Ackerman charged that there was a "strong feeling of a monopoly and a cartel" in the oil industry.

"It is evil. It is bad. And I believe anybody who forms a cartel should go to jail." The only reason BP had adopted such strong-arm tactics, according to Mr Ackerman, was because of he was "totally and utterly opposed to price-fixing" and his introduction of discount petrol.

"I don't need the Government to tell me what to do,"

said an indignant Mr Ackerman.

"At our Boksburg outlet we have set a precedent and have been allowed to sell petrol at discount prices for 10 years. Now they have the audacity to ask us to stop.

"The authorities have shown a lack of sensitivity and flexibility by not wanting to deregulate the supply of petrol to the public," Mr Ackerman said. — Staff Reporter and The Argus Pretoria Correspondent.

INSIDE: Weather 2, Women 12, Letters 14, Finance 16-17, Racing 18-19, Sport 19-20. TV — Page 3 in

Call Times 4/3/86

# New plan to beat fuel price

**Own Correspondent**  
**JOHANNESBURG** — Pick 'n Pay is expected to announce today plans to offer discount food coupons at its 12 filling stations countrywide, a move which could cause the retail giant to run headlong into another dispute with government and major oil companies

Oil industry sources said that the rationale behind the move was that Pick 'n Pay would be passing on to the consumer savings made on its petrol sales

Pick 'n Pay would therefore be able to argue that consumer savings were in line with government's call for food price reductions following the petrol price decrease

However Pick 'n Pay chairman Raymond Ackerman would neither confirm nor deny the plan yesterday. He said a major statement could be expected today

## Price cuts

Pick 'n Pay and its major retail competitors, OK Bazaars and Checkers, have announced price cuts on various items following the petrol price decrease

If Pick 'n Pay do go ahead with this scheme, it could herald another clash between itself and government, and possibly the oil companies

Three oil companies last week cut off supplies to Pick 'n Pay filling stations after they had reduced the price of petrol three days ahead of schedule

Mr Gardiner called for an objective inquiry into the selling of oil products and questioned the fact that companies,

including Pick 'n Pay, which owned car and truck fleets, were able to get discounts from suppliers, while the man in the street could not buy discounted petrol

Dr Louw Alberts, Director-General of the Department of Mineral and Energy Affairs, said the relationship between the wholesaler and the retailer did not affect the man in the street, provided the retail price was fixed

## Soared

He believed the discount obtained by bulk buyers from suppliers was only about two-thirds of a cent per litre

In Cape Town yesterday petrol sales soared after prices dropped by 10c/l for 93-octane petrol and 8c/l for 98-octane at one minute past midnight yesterday morning

Mr George Beckman, national chairman of the South African Motor Traders' Association and Cape Town service station owner, said his sales yesterday were 30 to 40 percent higher than usual on a Monday

A Rondebosch service station owner said "customers were saying that petrol was sold out all over the place"

● The Boland Poultry Producers Association yesterday announced they would recommend a 4 cents per dozen drop in the egg price with immediate effect because of "a drop in production costs mainly as a result of the improved exchange rate and lower price of petrol"

The association hoped the lead would be taken up by other suppliers to the industry

Mercury 8/3/85 (245)

# Gencor's income drops 17pc

group

Mercury Correspondent

**JOHANNESBURG**—Gencor's income attributable to ordinary shareholders dropped 17 percent to 322c a share in the year to December from 388c a share the previous financial year.

8,00 - 8,45 am  
 8,45 - 1,00 pm  
 1,00 - 2,00 pm  
 2,00 - 4,30 pm  
 4,30 - 5,15 pm  
 5,15 - 6,30 pm  
 6,30 onwards

THURSDAY APRIL 19

8,00 - 8,45 am  
 8,45 - 10,45 am  
 10,45 - 11,15 am  
 11,15 - 1,00 pm  
 1,00 - 2,00 pm  
 2,00 - 3,30 pm  
 3,30 - 4,00 pm  
 4,00 - 5,30 pm  
 6,00 - 7,30 pm

An unchanged final dividend of 135c a share has been declared to maintain the total payout for 1984 at an unchanged 190c

Gencor has calculated its earnings figures taking into account the convertible preference and debenture shares issued last year on the basis that these shares form part of the permanent capital as they must be converted to ordinary shares.

A calculation based on the income attributable to shareholders taken after extraordinary items and the payment of interest and dividends on the preference and debenture shares shows an earnings drop of 19 percent.

### Income

Gencor's source income — operating income, investment income and surplus on realisation of investments — rose by 24 pc to R 887,8 m (R715,4m).

However, financing charges soared to R480,2m from the previous year's R180,5m

Gencor chairman Mr Ted Pavitt told a Press conference in Johannesburg yesterday that while he was not happy with the results he felt the group as a whole did reasonably well in the exceptional circumstances that had to be coped with in 1984

The point I should like to stress is that Tedelex

and Kanhym, like the problems at Kohler, Impala and Trans-Natal, largely represent extraordinary, one-off situations

'We have taken them on the chin in 1984 and we are confident that the managements concerned are doing what is necessary to prevent them from recurring,' he said.

### The rand

Mr Pavitt said that 1985 should not be worse than 1984 for Gencor and 'may be better

He said the weakness of the rand did not fully benefit the group's export sales in 1984 but he expected it to do for 1985 on Gencor's major exports of gold, platinum, coal, pulp and paper, base metals and minerals

'Sappi, which is a significant contributor to group profits, will start benefitting from its expansion programme in 1985 and is well placed to capitalise on the shortage of kraft board in the US which is expected to persist from another two to three years'

Mr Pavitt also said Trans-Natal will be able to finance its planned expansion programme to a greater extent from retained earnings because of the favourable exchange rate and the group's substantial increase in exports through Richards Bay

The full effect on

Gencor of Samancor's substantial profit improvements will be felt during 1985 while the group will also get some R100m back from its investment in Beatrix which will also start to pay back other outstanding loans.

'In general, we believe that 1985 will mark the lowest point of the recession and that we will see a turnaround in the economy.'

Mr Tom de Beer, Gencor executive director — finance — said the 1984 results made a complete disclosure of the group's forex situation.

'This is the iceberg and not just the tip of the iceberg. We believe that the way we have handled the forex situation is the correct way although there is some debate at present on the topic,' he said

### Results

The results show that, included in Gencor's finance charges, were realised currency losses of R5,9m as well as a provision for the amortisation of unrealised currency differences of R39,6m.

Unrealised currency losses deferred for amortisation in future amounted to R77,1m of which, Mr de Beer said, Gencor's share would be R66,8m

He said the effect on future earnings would be to lower earnings a share before tax by 23,2c in 1985, 22,2c in 1986, 15,5c in 1987, 5,6c in 1988 and 3,7c in 1989

Roman 20/3/85 (245)

# Messina has massive loss of R121,04m

By DAVID ROSS

MESSINA has reported a massive net loss of R121,04m for the year to December, compared to a profit of R3,56m in the previous 15-month period.

As forecast in Business Day on Monday, a major capital restructuring of the company is suggested in a separate statement with the results

The bones of the plan are for Sanlam, which acquired 50,5% of Messina at the end of 1984, to buy Messina's major investments in Nissan Holdings and Magnus Holdings — its motor manufacturing interests — for R8,5m.

The plan as a whole is the result of agreements between Messina, its bankers, and Sanlam, and also follows agreements of assistance from major suppliers.

If agreed by shareholders, the plan will take effect as from January 1, 1985. Sanlam will not be voting its shareholding on the proposals, expected to be offered for shareholders' approval after the annual meeting on June 3.

The proposed restructuring will "enhance Messina's prospect of an earlier return to profitability and resumption of dividend payments," says the statement.

The losses in the past year amounted to 985c a share.

They occurred, first, because Nissan Holdings incurred an operating loss before forex losses of R50,8m. Demand for passenger and light commercial vehicles fell by 30% during the second six months of 1984. Import costs rose by about 40% during the year.

Second, group losses on foreign loans amounted to R71,8m. Included in this figure is a full provision in

respect of unrealised losses on foreign loans totalling \$72m, for which no forward cover was held at end-December.

Since then, some foreign loans have been repaid at rates close to R150/c. Of the balance of \$62m still outstanding, \$42m has been covered since the year-end at an average rate of 50/c. The intention is to cover all remaining and future rand dollar obligations.

On turnover of R857,8m (R949m), group operating loss was R15,44m (R36,76m). Interest paid amounted to R35,03m (R26,07m). Following currency losses realised of R9,47m (R45 000), and unrealised of R62,38m (R10,97m), net pre-tax loss was R122,32m (R329 000).

All figures in brackets refer to the previous 15-month period.

COMMENT: Messina's net asset value at end-December would have been reduced to a pro-forma 360c if

the restructuring had been effected at that date, compared to 1389c at end-December 1983. On the same basis the arrangement would have reduced Messina's loss a share to 100c.

Dr Fred du Plessis of Sanlam says there is no intention to relist Nissan. "We don't want to get minority shareholders into the position where they may be asked to cough up funds every other year," he says.

The new Messina will effectively be a motor component company. An objective of the restructure is to separate the manufacture and component sides, which it is hoped will give Messina companies access to the whole motor manufacturing market.

The shares at 235c may offer opportunity for long-term holders if the scheme goes through. At least the majority of foreign borrowings will be gone.



FRED DU PLESSIS... no intention to relist Nissan.

ADM 28/3/85 (245)

Interim earnings fall to meagre R22m

# Massive setback for Minorco

By DAVID ROSS

**MINERALS & Resources Corporation (Minorco) has reported disastrous results for the six months to December.**

Looking ahead to the June year-end, the directors expect a substantial reduction in net earnings.

However, they believe earnings from operations will permit dividends for the current year to be maintained at 22US cents. The interim dividend has been maintained at 6USc.

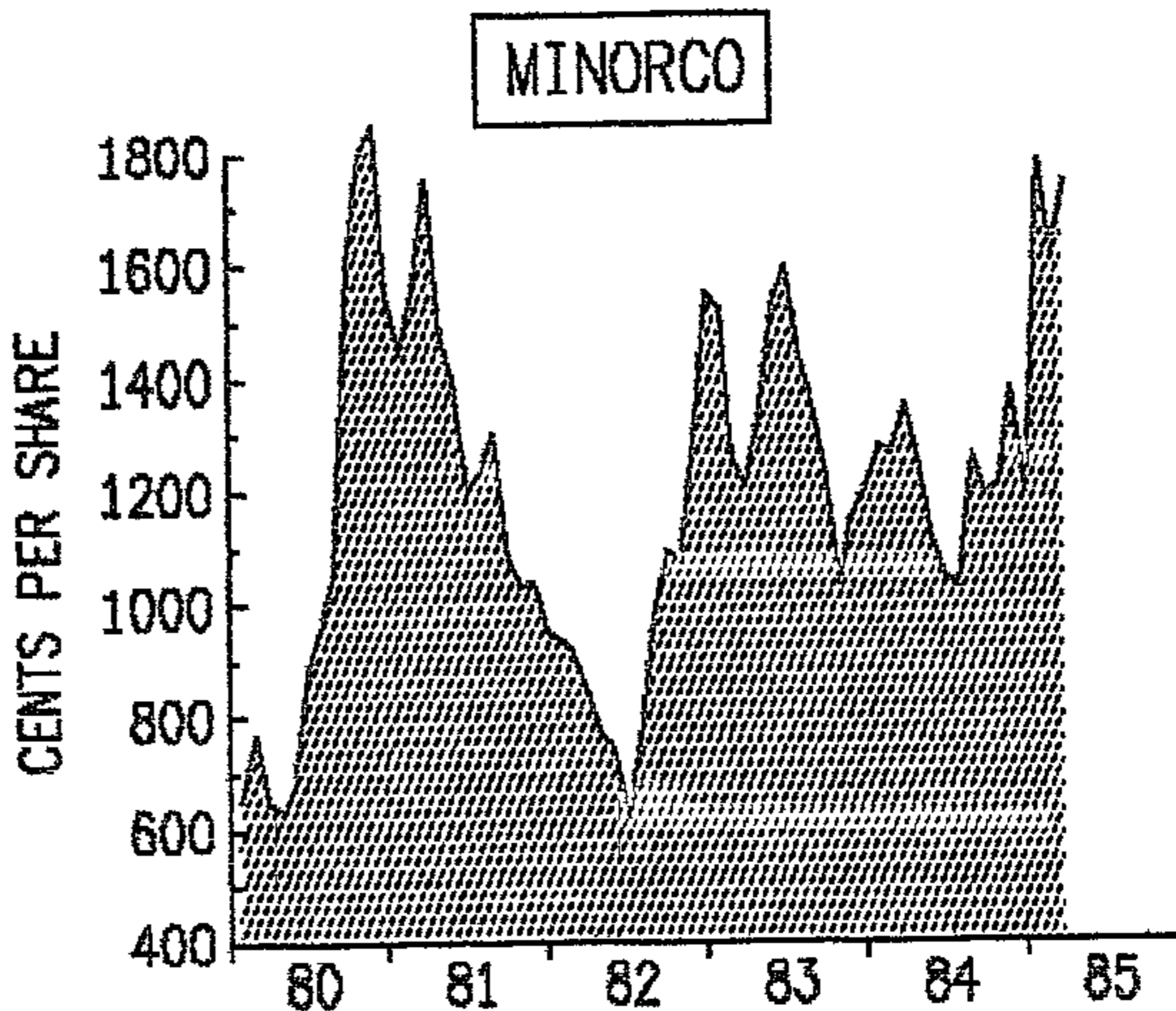
Anglo's Bermuda-registered investment company, with worldwide mineral and other interests, had net earnings at the interim stage of \$22m, against \$205.7m in the previous comparable period and \$217.1m for the whole of the year to last June.

A major item in the interim earnings crash was an extraordinary write-off of \$40.4m, representing the equity share of Charter Consolidated's losses. These arose from its investments in Johnson Matthey and Cape Industries (the asbestos company), and Engelhard Corporation's losses on closure of metal refinery operations.

In the corresponding prior period there was an extraordinary profit of \$130.3m relating mainly to the sale of part of the holding in Philbro-Salomon.

Without either of the extraordinary items, earnings were 17% lower — \$62.4m (\$75.4m). These consisted of \$28.5m, compared with \$33.7m, in earnings from operations and a \$34.5m (\$42.3m) share of undistributed equity-accounted earnings.

There were unchanged dividends from all the major companies in which Minorco has invested, with the exception of Englehard Corp,



which is involved in speciality chemicals and metals worldwide. Engelhard increased its dividend in the first quarter of the current financial year.

But the dollar value of dividends received from two other major investments, Charter Cons and Consolidated Goldfields, in which latter Minorco has 29%, declined by 15% as a result of the progressive weakening of sterling.

Lower cash balances and interest rates caused interest income to decline.

The directors say the decrease in equity-accounted earnings of \$7.8m was due mainly to the decline in earnings of Philbro-Salomon for the six months to June and of Charter Consolidated for the six months to September. But these were partly offset by improved results from other investments.

At the last year-end, Minorco held 22% of Philbro-Salomon, which

is involved in marketing of commodities worldwide and in investment banking. It also held 36% of Charter Cons.

They say, however, that Minorco's equity-accounted share of earnings for the full year may be less than those reported for the interim period. For the past year the share was \$77.6m.

They say the expected drop will stem from results already reported by Minorco's North American investments. These followed on from the severe impact on low base-metal, energy and commodity prices, together with certain non-recurring items.

Another major impact upon Minorco's annual earnings will be that in the second half of the current year Philbro-Salomon will account for its share of a substantial after-tax special charge relating principally to the write-off of its oil interests in the Beaufort Sea.

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# Big maize price increase ahead

Cape Times 28/3/85 (245)  
Own Correspondent

PRETORIA — The country will have to brace itself for a big increase in the price of maize products from the beginning of May

At a meeting here yesterday, the National Maize Producers' Organization (Nampos) recommended a price increase of 23 percent to R277 a ton

The Maize Board's key recommendation to the National Marketing Council is expected to vary only marginally

Economists said yesterday the maize price rise would help boost the country's inflation rate upwards to 20 percent by mid-year

Nampos economist Dr Kit le Clus said yesterday the price rise and its ripple effect on other basic foods would raise the inflation rate for lower-income groups by at least one percent

The all-items index of the consumer price index would rise by about 0,5 percent

Living costs of higher-income groups would be boosted by 0,31 percent

Nampos estimates that if the price is raised by 23 percent, the price of eggs will be affected by four percent, poultry by 3,2 percent, beef by 8,5 percent and dairy products by 2,1 percent

At yesterday's meeting, Nampos called for an "adequate" subsidy to keep consumer prices as low as possible

It recommended that the subsidy be maintained at R282-million in the new financial year — slightly up on the R274-million in the 1984/85 financial year

However, earlier this week, when Minister of Agriculture Mr Greyling Wentzel announced the inevitability of a bread price rise, he warned that the government was set on a course of phasing out subsidies

If this was so, economists said, it looked as if the consumer would have to bear the full weight of any increase in the producer price of maize

Children collect

**RDM NZ to charge for visas**  
SOUTH AFRICANS will now have to pay for visas to visit New Zealand, the Immigration Minister, Mr Kerry Burke, said yesterday. He also said that New Zealand no longer recognised Rhodesian passports.

11/4/85  
245

(245) C.P.R. 2/5/85

CARTELS, market agreements, price-fixing, and other restrictive trade practices seem to be widespread.

This is the conclusion of the Competition Board chairman, Dr Stef Naude, who made it clear when he announced the investigation last year that he believed these restrictive practices to be rife.

Dr Naude said that evidence suggested these practices existed to a far greater extent than even he had expected.

The board's field work was com-

# CB finds wide range of cartels

By CHRIS CAINCROSS

pleted and its report was being put together, Dr Naude said.

But it seems as though findings must still be thrashed out at a full board meeting in Pretoria this month, after which they will be submitted to the Cabinet.

The board had given the investigation and its findings priority, and hoped to see the probe act as precursor to an umbrella body of legislation

But it was also submitted that many of the monopolies that fall under Government ambit — like the parastatals — should be included if the probe were to be comprehensive.

The board's eventual ability to effect change if, indeed, any is needed will ultimately lie with the Minister of Trade and Industries, who has the final say on recommendations made and accepted.

Fuelled by Government's treatment of past CB recommendations, like those concerning the coal sector, there is scepticism as to how far the board will be allowed to go with this latest, and eagerly-awaited, study.

Dr Naude stressed that while all restrictive practises brought to the board's attention would be scrutinised, it was not the CB's intention to "injure any healthy tissue".

The avoidance of disruptions within the economy was vital from the point of view of policy, Dr Naude said.

Govt to block discount petrol

# Row breaks over petrol price move

55 (245) B. Day  
16/5/85

A FURIOUS row has erupted over government's bid to outlaw the sale of petrol at discount prices with Mineral and Energy Affairs Minister Danie Steyn being told to keep his hands off the free market.

A proposed amendment in the Petroleum Products Amendment Bill — the so-called "Pick 'n Pay" clause — has been strongly attacked by opposition MPs, organised commerce and consumer spokesmen

The clause empowers government to set the price of fuel at any outlet. If defied supplies could be cut off

The Bill effectively turns off the discount tap which Pick 'n Pay opened at its Boksburg hypermarket eight years ago

Steyn can expect sharp criticism during his Budget vote next week on the role of his portfolio in the economy particularly in view of his latest move to fix prices

During this session, he has already introduced the Coal Resources Bill with embodies a similar provision to that of the Petroleum Bill.

Pick 'n Pay joint-MD Hugh Herman told *Business Day* that when the price of fuel went up almost 40% in January, the discount at the Boksburg hypermarket was increased from 1c to 4c/l

Turnover at Boksburg — a self-service outlet — rocketed from 450 000

## Petrol price untouchable despite the firmer rand

By PAUL BELL  
Political Correspondent

DESPITE an international oversupply of oil and declining prices South Africa's petrol price is not likely to be reduced in the near future.

There have been suggestions that Mineral and Energy Affairs Minister Danie Steyn might announce a decrease

By PAUL BELL and GERALD REILLY

litres a month to about 1-million litres a month

It had since stabilised at about 850 000 litres a month.

"The consumer has voted with his wheels," commented PFP energy spokesman Brian Goodall

"The Minister is interfering with free market mechanisms by setting prices himself, without regard to supply and demand."

Herman said that, while he thought the Petroleum Products Act had probably always contained the Minister's right to stop discounting, the proposed amendment had not made the move explicit

Representations to the Department of Mineral and Energy Affairs had met without success.

The chain had also made submissions to the Competition Board in its present inquiry into cartels

An Assocom spokesman said his organisation was "strongly opposed" to the amendment, and informed government of its opposition when the amending Bill was first published

Goodall disputed government's claim that discounting was a threat to employment.

"To suggest — as the Minister has done — that the jobs of 45 000 petrol attendants will be jeopardised if discounting is not stopped, is simply hysteria. The trend in retail is towards self-service. It should be a matter of consumer choice whether to go for self-service at a cheaper price or not.

National Association of Automobile Manufacturers (Naamsa) director Nico Vermuelen said Naamsa followed free market principles which allowed for price to be adjusted at the discretion of traders.

The Consumer Council's chief professional officer, Lou van der Merwe, said the council would welcome greater competition between petrol outlets provided this held long-term advantages for consumers

A spokesman for the Automobile Association said, however, it served no purpose if one outlet in some part of the country sold petrol at lower prices.

"Our view is that an urgent investigation should be launched into the merits and demerits of freeing the retail price from control."

He stressed the AA would back any decision which was clearly to the advantage of the motoring public.

Meanwhile, South Africa's 20 000

defied supplies could be cut off.

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## Petrol price untouchable despite the firmer rand

By PAUL BELL  
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DESPITE an international oversupply of oil and declining prices South Africa's petrol price is not likely to be reduced in the near future.

There have been suggestions that Mineral and Energy Affairs Minister Dame Steyn might announce a decrease in the price of petrol during his Budget vote next week.

It is understood, however, that Steyn would wish to see the exchange rate stabilise at about 52 US cents to the rand for at least three months before a price cut is considered.

The speculation follows an easing of world oil prices and an international oversupply of about 1,8-million barrels in the months since January when the poor rand/dollar exchange rate persuaded government to raise petrol prices by 40%.

That decision was taken on the basis of the prevailing exchange rate of 46,5 US cents to the rand.

PFP energy spokesman Brian Goodall has argued that the consumer should now be given the benefit of the recent improvement in the exchange rate, which has been hovering at just over \$0,50.

But yesterday sources in the Department of Mineral and Energy Affairs poured cold water on suggestions of an imminent price cut.

Steyn warned earlier in the year that, if the rate did not improve, the price might have to go up by another 4c/L.

Instead, the relative improvement in the rand/dollar rate would simply permit government to prevent a further increase.

Departmental sources said government was just beyond breaking even on the petrol price, but other petroleum products were still heavily subsidised.

The exchange rate will have to improve beyond 50 US cents before petrol prices are cut.

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"Our view is that an urgent investigation should be launched into the merits and demerits of freeing the retail price from control."

He stressed the AA would back any decision which was clearly to the advantage of the motoring public.

Meanwhile, South Africa's 20 000 sales representatives, hard hit by the high price of petrol and car repairs, have asked the authorities to lower the price of fuel.

Hillie Feldman, founder of the Professional Sales Representatives' Association of South Africa, said the livelihood of thousands of freelance sales representatives had been seriously affected by the rising costs of motoring.

● See Page 4

TCOA opposes call for interdict

# Coal traders in court fight over 'breach of deal'

*(Handwritten: 245, B. Day 12/7/85)*

By LINDA ENSOR

THE Transvaal Coal Owners' Association (TCOA) has been accused of using its monopoly on coal supplies to prevent a wholesaler executing its orders

Reef Coal claimed in the Rand Supreme Court yesterday the TCOA had breached an agreement to supply it with coal, but TCOA denies the existence of any such agreement

TCOA is opposing Reef's urgent application for an interim interdict ordering it to accept and execute all its coal orders except impossible ones

The hearing was postponed by Judge A J Heyns until Wednesday to allow TCOA time to reply to Reef's allegations

TCOA has exclusive control over the marketing, distribution and sale of coal mined by its 21 members

Until its closure in June, Highveld Coal Traders (HCT) operated as TCOA's wholesale distributor supplying coal mined by TCOA members to small and medium secondary industry and domestic markets. HCT had a 90% share of the wholesale coal market in the Transvaal

When HCT stopped operating, Reef Coal decided to fill the gap, said director and shareholder Michael Rosch

TCOA's support of the plan was essential, Rosch stated, as Reef needed its volumes and grades of coal to be able to supply to HCT's former customers

TCOA's marketing GM Alan Howell allegedly confirmed that HCT's customers were "up for grabs" and on June 19 allegedly agreed to supply Reef with the necessary coal

Customers were canvassed and orders were taken by Reef which allegedly placed them with TCOA. TCOA, howev-

er, confirmed neither the agreement nor the orders

Last week Reef was allegedly told TCOA had issued instructions that no coal was to be supplied to Reef and Reef allegedly learnt from two TCOA employees that TCOA wanted — on account of an old grievance — Reef customers to take their business elsewhere. TCOA denies these allegations

TCOA was allegedly contacting alternative coal suppliers and instructing them to supply the customers for whom Reef had placed orders

Unless an immediate arrangement was made to meet the coal needs of Reef's customers, they would be permanently lost, Rosch said. "Certain of the customers who placed orders with Reef are in urgent need of coal which TCOA is able to supply"

Reef was, he said, under contract to supply 350 tons of coal a week to Chatotte Holdings, Naschem, Nufcor and Delta Manganese Company, and could face claims for damages by failing to do so

TCOA denies the existence of the agreement saying there were only discussions

"It was never at any stage communicated to Reef Coal that TCOA were prepared unconditionally to supply them with coal for wholesale operations," said a letter written by TCOA's attorneys

Any loss or prejudices suffered by Reef were "entirely their concern and results from their own actions", the letter said

Rob Wise instructed by William Aronsohn & Goodman appeared for Reef and John Myburg instructed by Webber Wentzel for TCOA

OTHER

08/15
Nelspruit 08/16
Ladysmith 06/10
Durban 07/16
Type of rain: Drizzle, D
London 15: Showers S
Thunderstorms T
Snow SN
CAPE
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police

arwal of riot men resident ed elsewhere or meetings e toured the i KwaThema

Johannesburg	SA202
Frankfurt	SA254
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Johannesburg	SA253
London	BA054
	SA234
Johannesburg	SA235
	BA057

18/7/85 @ Maize (18) (245) B Day

# Nampo explains Triomf deal

By GERALD REILLY

THE maize price was kept artificially low for political reasons to the disadvantage of farmers, according to the National Maize Producers' Organisation (Nampo)

Justifying its purchase of a 50% interest in Maizechem, in its journal *Maize*, Nampo said maize farmers could reduce their mountain of debt and arrear interest payments only with profits earned from maize production

Through the deal, Maizechem

had acquired the Louis Luyt group shareholding in Lanchem, and this transaction would enable Nampo to gain control "in time" of Triomf Fertilizer

The decision was taken after careful consideration and in view of prevailing circumstances within the fertiliser industry, which could soon result in the survival of only two suppliers

This would not be conducive

to free enterprise, and the organisation was convinced the transaction would greatly benefit members of Nampo and other users of fertiliser. Its involvement in the fertiliser industry — which supplies one of the most important agricultural inputs — would, likewise, be in the interests of the industry

It had contacted other suppliers of fertiliser to discuss its objectives, and believed joint action by fertiliser manufacturers could save costs

(245) B Day  
27/8/85

# Price control of oil must stay, warns Total

TOTAL is concerned at the prospect of abolition of price control in the oil industry

An editorial in the August edition of its house journal, *Total in SA*, warns that de-control of fuel prices would also have to encompass the abolition of other controls on the oil industry

It says there is a climate of encouraging free competition and a moving away from forms of control

This would immediately open up a "hornet's nest of related problems"

□ The principles of a free market with regard to the oil industry do not exist because SA does not have access to world markets,

□ The future development of synfuel projects will be at risk in an environment of price instability, which would follow de-control of prices,

□ Geographic pricing inconsistencies would develop, against the national interest,

□ Cross-subsidisation would inevitably follow, with major retailers with diversified interests using petrol as a loss leader to the detriment of the average retailer,

□ The viability of the small businessman would be seriously challenged,

□ Concentration of power would increase, cancelling out any possible initial benefits

The strategic nature of oil in South Africa and the absence of free access to work markets, coupled with the urgent

LAWRENCE BEDFORD

necessity to develop our own indigenous production, have led to the comprehensive legislation, carefully developed over many years, as a safeguard in the national interest, says Total

Chairman Alfonso Hough writes in a separate article in the magazine that the cost structure of fuels is strictly controlled by government and that this in turn simultaneously controls the profit margin on the oil companies as well as that of fuel retailers

The rationale behind cost control is often not understood and often unfounded and ill-conceived criticism is directed at this form of control, Hough says



# Price fixing and collusion banned

245 B. Day 4/10/85

THE government has accepted recommendations of the Competition Board outlawing price fixing and collusion in market sharing and tender practices, Trade and Industry Minister Dawie de Villiers announced in Pretoria yesterday.

The background to the decision is a comprehensive report by the board on malpractices in the economy.

A ministerial notice setting out the tough new measures to stamp out the malpractices will appear in a *Government Gazette* in Pretoria later today.

De Villiers said in essence that the implementation of the recommendations entailed a prohibition of certain practices, which would be put into operation on May 2 next year.

"These practices occur quite frequently in the economy, and each has a significantly restrictive effect on competition."

Pretoria Bureau

"The prohibitions apply to the following practices:

Resale price maintenance, which occurs when a supplier of a commodity compels a reseller to charge a particular price or a particular minimum resale price.

The supplier may, however, recommend a resale price.

Horizontal price collusion: an agreement between competitors to charge a particular, or a particular minimum, price or to use a recommended price.

Horizontal collusion on conditions of supply, which means an agreement between competitors to supply commodities only on particular conditions or to use recommended conditions.

● To Page 2 →

## Price fixing rules are outlined

245 ← B. Day 4/10/85 ● From page 1

Horizontal collusion on market sharing: an agreement between competitors to divide the market between them territorially or quantitatively.

Collusive tendering This is where tenderers agree that one, or some, or all would not submit a tender, or where tenders which have been agreed on be-

tween the tenderers are submitted. Exemption, De Villiers said, was given where collusion related to export goods or where it occurred between wholly-owned subsidiaries in company groups.

# Many goods hit by ban on price-fixing

24 5  
B. Day 7/20/85

A WIDE range of businesses — from advertising and stockbroking to petrol to frozen food — will be affected by government's ban on price-fixing and other trade restrictive practices which comes into effect on May 2.

The new regulations are the result of a comprehensive inquiry by the Competition Board which appears to have been accepted by government in full.

The board found that these restrictive practices occur "fairly generally, in fact more than was supposed originally".

The board received allegations of collusion and price-fixing in more than 60 industries and commodities

It does not necessarily agree with all allegations but the list starts with accountancy services and ends with frozen vegetables.

Some of the more prominent industries alleged to be involved in some form of restrictive practice are advertising, alcoholic beverages, building activities, electrical household appliances, estate agents, frozen food, freight forwarding services, short-term insurance services, legal services, prescription medicines, milk, newspapers, paint, petrol, stockbroking services and travel agency services.

The list excludes very many other price agreement situations

JOHN TILSTON

At this stage it is not clear whether all these industries will have to mend their ways by May.

There is provision for exceptions to the regulations, and no doubt many industries will apply for exemption on "special" grounds.

Doctors, lawyers and probably selected accountancy services are already granted exemption from certain of the regulations in terms of a clause which allows the issue of "a tariff of recommended fees as a guide" for qualified professionals

Exemptions from the ban on restrictive practices are provided for wholly-owned subsidiaries of common holding companies and for dealings between a holding company and its wholly-owned subsidiary.

Further exemption is available for what might be termed infant industries which are competing with large organisations.

A third category of temporary exemption is available for situations in which unduly hasty imposition of regulations

● To Page 2

## Price-fixing ban hits hard

24 5  
B. Day 7/20/85

would be disruptive to the industry concerned.

The final exemption is for all export dealings outside the rand monetary area.

The board's report, strongly critical of collusion, calls on the State to adhere to the anti-collusive measures as well.

It says "While active steps are being taken to promote efficient competition, the State itself is, in various respects, responsible for serious distortions and restrictions of competition which sometimes give rise to further restrictions by businessmen in the relevant regulated industries."

The board also criticised tender arrangements

Businessmen polled by *Business Day*

7/10/85  
● From page 1  
were reluctant to comment until the full text and regulations of the announcement had been studied

Roger van Niekerk, a spokesman for the Free Market Foundation, said the measures were a step in the wrong direction. "Government should instead concentrate on removing barriers to entry (for prospective entrants into the various industries) and then the various evils described would not eventuate."

Marketing consultant Mike Perry says the effect of the measures goes far beyond getting "the bad boys of business" to toe the ethical line. They will entail substantial changes to marketing in SA

X FM 11/10/85  
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245

combined 89,1% stake in the baking market, would be substantially affected if government accepts the Davin recommendations

These recommendations include

- The abolition of price control on wheat flour and standard government bread from October 1 1986,
- The abolition of restrictive registration in the milling and baking industries from the same date, opening the door to free entry,
- Switching the bread subsidy from the end product to the WB in order to keep the price of wheat, flour and bread as low as possible, and
- Continued WB control over the quality of wheat sold and over the quality of certain standards of bread

Van Aarde expects the new bread subsidy to be substantially below the current R200m a year. And he doubts if the WB could exercise effective quality control over a number of new bakers after deregulation.

Agriculture Minister Greyling Wentzel

has already asked the WB and other parties for their comments on the Davin recommendations. Van Aarde says the WB will meet on November 20 and its comments should reach Wentzel by the end of November.

Pick 'n Pay CE Raymond Ackerman, a commission member, is adamant that the virtually free market that would follow implementation of the recommendations would benefit consumers.

"Although some smaller retailers could up their prices after deregulation, other forces — in the form of major retail groups — will ensure that

prices are kept low. Competition in the free market will ensure that consumers get the best deal," he says.

## BREAD PRICE

### Cheaper options?

SA's wheat, milling and baking industries are taking stock of the Davin Commission's controversial recommendations to deregulate the industries and create a virtual free market.

At stake is the profitability of the R650m a year wheat producing industry, the near R1 billion a year wheat milling industry and retail bread sales worth more than R1 billion a year. But will deregulation lead to higher, or lower, bread prices? Opinions differ.

Cheaper bread prices could result from a punch-up between competing millers at one level and free competition between independent bakers on the other. Together they control a market of some 1,8

billion loaves a year. But some sources say there could be sharp price rises after deregulation as smaller retailers increase their profit margins from the present 2c a loaf. The new margin, they say, will be around 8c a loaf.

"I can foresee bread prices increasing by about 50% above the latest levels as soon as price control is abolished," says Wheat Board (WB) GM Dennis van Aarde.

Six major milling groups, controlling 98,8% of SA's milling industry and with a



P 'n P's Ackerman ... seeks lower prices

## PUBLISHING

### Perils for print

There seems to be no relief in sight for SA's embattled newspaper industry. The latest adspend figures show that the press contin-

BIFSA

## Cracks in the cartel

The Building Industries' Federation's (Bifsa) restrictions on tendering procedures — which have forced its members to toe the line over the years — are to be outlawed from May 2 next year.

In terms of the latest Competition Board recommendations which have been accepted by government the building industries federation will thereafter be barred from enforcing certain rules. According to the SA Property Owners Association (Sapoa) these rules effectively give Bifsa the power to

- Expel members for tendering in competition with non-members
- Force members to use prescribed Bifsa tendering conditions
- Insist that members embargo a particular project if Bifsa feels the developer is trying to breach its standard contract documentation, and
- Refuse to allow builder-members to use time-saving as an incentive to obtain contracts

### Recommendations

Once the recommendations come into force builders who fail to comply will fall foul of the Maintenance and Promotion of Competition Act which provides for fines of up to R100 000 or imprisonment of up to five years.

But there is a provision for exemptions. And, although Bifsa executive director Lou Davis refuses to comment, there seems little doubt that his federation will seek to make use of it before May 2.

In terms of the recommendations, however, exemptions would be permitted on a temporary basis only. Competition Board director Nic Vermeulen explains that since some practices have been in force for many years, it may be difficult to outlaw them overnight.

"It is not our intention to cause chaos in the market and we will consider well-motivated applications for exemption although there is no certainty that they will be granted," he says. "We will certainly not be over-generous in the granting of exemptions."

Sapoa, for one, will be seeking to ensure that the promise is kept. The association has long criticised Bifsa's rules as inflationary and contrary to free market principles.

Only last week, Sapoa delivered a strongly-worded memorandum to the Competition Board calling again for a clampdown on Bifsa's restrictions. Executive director Pieter Erasmus tells the *FM* that Sapoa is particularly incensed by the rule which embargoes Bifsa members from dealing with certain developers. He considers this rule the "most pernicious practice currently employed in the industry."

As Sapoa explains it "Bifsa through its constituent members the master builders associations has adopted the practice of threatening to embargo a particular tender should it feel that the standard contract documentation rule is being breached or that non-members are being invited to tender in competition with members.

"The threat of having no Bifsa members tendering — or withdrawing tenders — is so great that owners are forced to comply with these rules. This association is of the opinion that the practice constitutes a boycott in its worst form and should be stopped immediately."

Effectively, this means that non-members never get a chance to tender. New entrants to the market have no choice but to become members of Bifsa for fear of being locked out of the tendering process. And existing members must remain for the same reason.

Sapoa says that although the embargo

claim may be denied, it can produce evidence to support its case. But it says there have been few recent cases because "as has been explained, the mere threat of embargoes has meant that they have actually not been put to very much use lately. Furthermore, the embargo threats are invariably conveyed by telephone which makes proof more difficult."

As for Bifsa's insistence on standard documentation, Sapoa says it is not against the idea in principle. However, it sees it as essential to allow variations which could be incorporated in an addendum to make alterations readily distinguishable to all parties.

And Bifsa's view on it all? None. As usual it is not talking. ■

### DUTCH EMBASSY

## Who pays?

The Dutch government opened a legal Pandora's box when it refused to hand a portion of its former Pretoria embassy back to landlords Nedbank after the lease expired on September 30.

Apart from the thorny questions of international law that still need to be settled, it landed Nedbank in a situation in which it could have been sued by tenants who were supposed to move in on October 1.

In terms of the original lease the Dutch government rented the first and second floors for its embassy. When the lease expired, it vacated the first floor and a portion of the second floor — but not the portion occupied by political fugitive Klaas de Jonge. De Jonge, of course, is wanted by the SAP for questioning on a number of security-related charges.

Despite numerous requests, the Dutch government has consistently refused to vacate because, by going, it would have left De Jonge without a diplomatic haven.

Nedbank then had a problem. The new tenants could not continue operating in their old premises which they were obliged to hand back to their former landlords on September 30.

Had Nedbank not found a short-term solution to the problem that met with their approval the new tenants could have found themselves in the street and would, no doubt, have had more than adequate grounds to claim substantial damages from the bank.

Goodwill prevailed on both sides, however. An interim agreement was negotiated and the new tenants are now housed in temporary premises on the first floor.

At one stage it was thought they would be

### 'PARLIAMENT' MEETS

Bookings for next week's Sapoa conference in Durban are healthy despite the parlous state of the property market.

But then again it could be that more property people than usual are looking for the kind of guidance which the Sapoa get-together invariably provides.

They may not get definitive answers of course, but they can at least join in the inevitable soul searching and tea-time tips on how to ride out the recession.

As far as the formal proceedings are concerned guest speaker Barney Horowitz's talk on comparative perspectives of property investment in SA and the US should be one of the highlights. For the enlightenment of newcomers Horowitz is the former CE of Pioneer Holdings (since converted by Sage into the Pioneer Trust) and is now based in the US where he acts as a private investment consultant.

As usual, however, the business and technical workshops are likely to produce the nitty-gritty on the major problems currently being encountered in the specialist sectors.

Of those sessions, the future of the construction industry has attracted the most bookings — even though Sapoa is basically an association of developers and property investors.

The convention will be held at the Elangeni Hotel from October 15-17.

for businesses closing down only part of their operations

But the Income Tax Act is not crystal clear on the scrapping allowance, neither has reported case law produced a set of hard cases

Indeed, the scope of the scrapping allowance is widely misunderstood, says Ernst & Whinney's Kay O'Connor "Businessmen — and many accountants — believe that before a scrapping allowance can be claimed the asset concerned should be physically deteriorated, in scrapheap condition, and that the allowance is only claimable if the asset is disposed of as part of a going concern

"But there is no rule of law to support any of these beliefs"

The scrapping allowance is computed as the difference between *the cost to the taxpayer of the asset, reduced by any (initial and/or wear and tear) allowance previously granted, and the amount or value of any advantage received by the taxpayer from the asset's sale or other disposal*

O'Connor notes that a test developed in ITC 631 has been followed where the requirements are the decision "to scrap the asset" and "to use it no longer" The court said that where both factors exist, a scrapping and subsequent disposal, or perhaps valuation, determines the amount that may be allowed

O'Connor says ITC 631's principle, supported in subsequent cases, is that the taxpayer, in good faith, regards the goods as useless or unsuitable for further use It matters not that the goods may still be usable in another business

Another clear principle which has emerged is that a *decision* to scrap may be taken in advance of *implementation* of that decision

Reported cases illustrate the practical obstacles of successfully claiming the scrapping allowance O'Connor says the dividing line

chosen by the courts appears to be whether the part of the business disposed of was an adjunct of the taxpayer's main operations, or a material element in its own right

In the case of a restaurant closure, the court concluded that certain losses were not deductible The taxpayer operated a café and a restaurant in adjoining premises Under strain from economic conditions, the restaurant was closed, resulting in a loss on disposal of the fixtures and fittings The court said the disposal was not an act performed in the "ordinary course of business" It was, rather, a direct result of the taxpayer's decision to discontinue his restaurant business

The restaurant was a separate branch of the business, the closure represented the surrender of a valuable asset, the liquor licence This was a radical change in the scope of the business

In another case where the taxpayer was successful, the court concluded that the business disposed of was carried on in conjunction with the taxpayer's main business The taxpayer carried on the same business in two separate locations, one was terminated when the relevant lease was cancelled Part of the furniture and equipment was transferred to the remaining operations, the balance was offered to employees for no consideration

O'Connor says several conclusions can be drawn from these cases

Firstly, there is the situation where a distinctly separate and independent business is disposed of or closed down Here it may be extremely difficult for the taxpayer to show that the disposal of assets was more closely connected to day-to-day operations than to the decision to dispose of the business In other words, says O'Connor, the taxpayer may not have decided to scrap the assets, rather, the decision was to sell

Secondly, it may be that an ancillary or subsidiary activity is shut down Such a disposal is looked at as part and parcel of the

normal business operations, an example is discontinuance of one of a number of product lines

245  
**COMPETITION POLICY**

## Big words, no action

Pretoria's planned May 1986 ban on price-fixing in what is left of the private sector, creates further jobs for bureaucrats and adds another prong to government interventionism, while doing nothing to get to the core of the problem

A huge slice of the economy will be left unaffected since public monopolies such as Escom cannot, by definition, be involved in price-fixing

The proposed notice, accompanied by a lengthy memorandum from Stef Naude of the Competition Board, is littered with loopholes and exemptions It ignores the real stimulus of competition deregulation Practical examples of terminating potential healthy competition by over-regulation abound

Naude

For example, a backyard furniture-maker in Natal closed his business after a visit from a health inspector He was told to install facilities costing over R100 000 if he planned to continue business Without going bankrupt in the free market sense, he had to shut down A potential threat to established furniture manufacturers and lower prices for the consumer, was excised from the economy Jobs were lost

The proposed rules are classic chicken-and-egg, as no deleterious price-fixing can exist without government support Recognising that price-fixing is undesirable, Pretoria proposes rules to end it with a welter of exceptions The sceptic may well ask what came first price-fixing or government support of price-fixing?

Legal and accounting services, for example, are governed by legal edict — rules drawn up by professionals and rubber-stamped by government These activities are included in the 64-category list of alleged price-fixing Yet in the same breath, professions are granted a partial exemption from horizontal price collusion

The proposed measures sacrifice rule uniformity to the interests of pressure groups exemptions are given not only to qualified professionals, but also to wholly-owned subsidiaries of common holding companies and "infant" industries There is also a blanket exemption for applications on "special" grounds

Any vested interest which cannot find a hole in these rules would have to be on fragile ground indeed A gap of atom-bomb size is

## BUILDERS SHORING UP

The already battered building industry must brace itself for even worse conditions, judging by the latest building survey conducted by the Bureau for Economic Research (BER), which anticipates further unemployment and bankruptcies in the sector

Demand for work is expected to remain low, while costs will rise The price of building materials and labour is expected to increase by 10% this year, but stiff competition in tendering — and higher productivity — will hold the annual increase in the Building Cost Index below 7%

In the first half of this year the value of building plans passed, an important leading indicator, was 19,9% lower than for the same period last year The residential

market was affected the most, with a decline of 38,7% in plans passed It fared even worse in the latest quarter to September — down 55% compared to the first quarter of 1985

Overall, says the report, the statistics suggest "a potential drop in real terms of about 25% in fixed investment in housing by the private sector during the next 12 months — down to levels that were recorded in 1981"

The BER house price index was 3,2% lower for the first five months of this year than for the corresponding period in 1984 BER expects house prices to start increasing towards the end of the year The statistics for building plans passed tend to lead those for buildings completed by between six and 12 months

(245) FM 11/20/85

available from this provision, for instance "this notice shall not apply (to price-fixing) in existence prior to the commencement of this notice likely to cause disruption to the industry concerned"

Just how long such "disruption" may last is a moot point But as the board notes, price-fixing affects many economic activities "It is clear that these practices are found to exist in a large number of industries and a wide range of commodities"

The State "is bound" by the proposed rules "in so far as the State is concerned in the manufacture and distribution of commodities" The types of price-fixing named — from resale price maintenance to collusive tendering — presuppose the absence of a monopoly This implicitly exempts all State and parastatal concerns and 21 agricultural control boards from the rules' ambit

The proposed rules have scant chance of working in practice It is argued by some, for example, that professional bodies' power to control fees and prices by legal edict are the worst monopolies and closed shops in the country

The restrictive practices of the professions — lawyers, accountants, doctors and stockbrokers — include barriers to entry, minimum fees or commissions, and the sole right to undertake certain work These restrictive trade practices are increasingly followed by other interest groups travel agents, estate agents and valuers Last year certain dog parlours called for regulation of their trade

Professional bodies promote the interests of (relatively few) members at the expense of the general public and other and existing would-be practitioners Some even consider professional monopolies as a form of guild

socialism, a factor that helped keep the world in the dark ages for so long

Some researchers of US anti-trust laws — similar to SA's proposed new rules — conclude that such attempts to increase competition actually decrease it Businessmen, for example, have been fined for pricing above market prices (gouging), at market prices (collusion), and below market prices (predatory pricing)

The research also concludes that government should go to the cause and not the symptoms of monopolies By deregulating, barriers of entry are dismantled and entrepreneurs, such as the defunct Natal furniture-maker, can grow and prosper

To quote US academic, Dominic Armantano "The only principled and practical way to end monopoly power is to end it at source Government regulation, entry control, subsidisation, and antitrust, are all manifestations of a governmental interventionist power that has been employed by private firms to private advantage and to the detriment of society" ■

### BENEFIT ILLUSTRATIONS

#### Limiting loopholes

Life assurers are past masters at finding loopholes Their dodges round the sixth schedule to the Income Tax Act are almost legendary And even the industry's own agreements face continual testing by eager marketeers, including the Benefit Illustrations Agreement

This was established by the Life Offices' Association (LOA) in 1983 to bring some

order to the methods used by companies for projecting future returns on their products But apparently certain assurers have been finding ways round the maximum quotable limits by attaching smoothed bonus returns to market-linked products and calling them conventional policies

The original agreement laid down two sets of rules, one for market-related policies and one for conventional products

The difference between the two is basically one of performance reward Under market-related types the policyholder usually receives an investment return on his premiums related to the actual rates achieved by the assurer His return will fluctuate with market values

The conventional product provides a guaranteed bonus, regardless of investment performance of the underlying portfolios, plus discretionary bonuses during the term of the policy

Life offices have to register their products at the LOA, classified either as market-related or conventional This is supposed to prevent offices from changing the definition of their products in circumstances convenient to their marketing aims

The agreement calls for two projections based on net rates, that is those stripped of all taxes, charges and deductions, including management fees, shareholders' dividends and commissions

The first illustrative benefit is based on an assumed gross investment return of 10% a year brought to a net figure after the above deductions The second illustrative benefit is based on the last five years' actual net investment returns, dampened by a special formula, with a maximum figure of 15% a year This is then grossed up to include the above costs A third figure may be used to show past performance without any dampening

Conventional policy quotes, on the other hand, must include the projected value based on current vesting bonus rates plus a second value based on the vesting bonuses plus non-vesting bonuses It amounts to whatever rate the actuary feels the company can continue to return in future years

National Mutual started the ball rolling last year when it raised the projected rate on its Fidelis retirement annuity contract to 16% The product itself had been running since 1978, but it was only this development that started other life assurers, trapped with their maximum 15% quotes on market-linked products, jumping around and pointing fingers at National Mutual for "contravening" the rules

But Geoff Tomlinson, GM at National Mutual, says the Fidelis contract was difficult to classify since it neither conformed to a straightforward conventional contract nor a market-linked contract In the end the LOA agreed to register it as a conventional product so the company was doing nothing wrong Though Fidelis provided a market-related performance the return was paid on a smoothed bonus concept

"More recently we have been offering a

### FM INVESTMENT CONFERENCE

You could say that staging an FM investment conference without Gerhard de Kock is like serving gin without tonic But delegates to the two-day conference at the Carlton Hotel this year need have no fears — tonic is on the menu

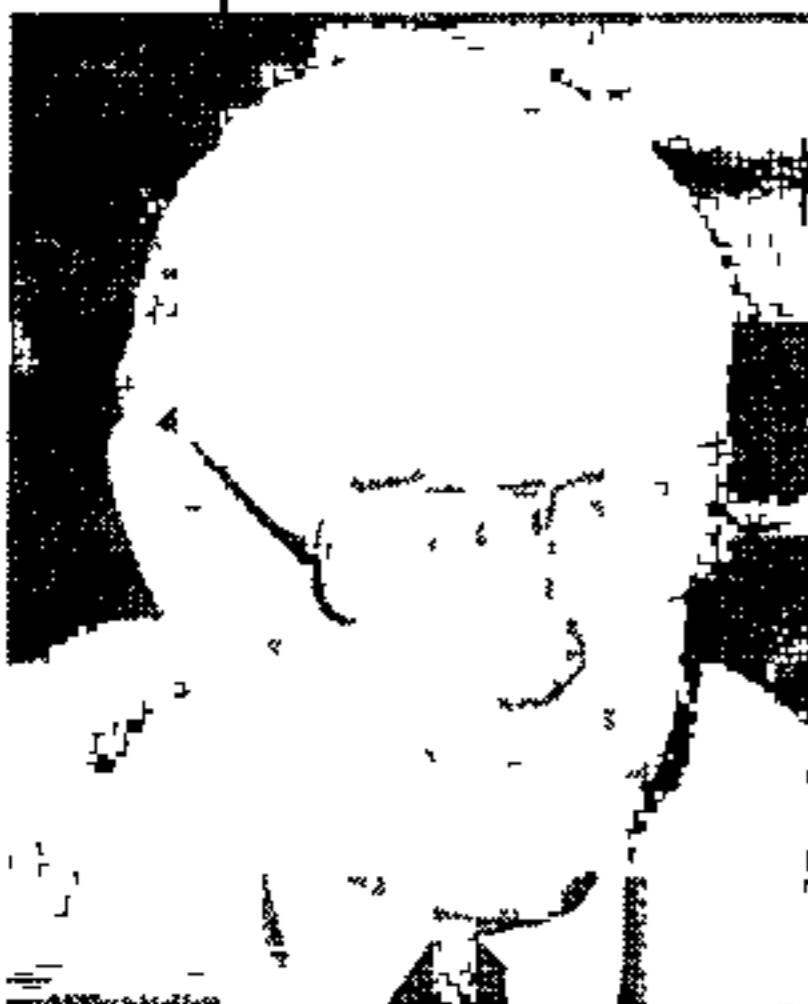
Indeed, the Reserve Bank Governor will start the main event at 9 10 am on Thursday November 14 His 35-minute talk will deal with "Monetary Policy and Economic Recovery in 1986." It's a broad topic but, after all that De Kock has been through this year, it needs to be

His travels around the world in search of a solution to the debt crisis have been well chronicled, but he should be able to provide a few new insights into the economic state of the nation

Whatever he says, however, his audience is unlikely to be disappointed As delegates to previous conferences well know, a dull speaker the Governor is not

He hardly needs an introduction to South African businessmen, of course, but, briefly for the record, his academic and career paths have run thus BA, MA Economics, AM and Ph D Economics at the University of Pretoria and Harvard, senior lecturer in economics at Tukkies in 1951, head of Reserve Bank Economics department, special adviser to the Treasury, alternative executive director of the IMF, deputy-Governor of the Reserve Bank, senior deputy-Governor and, finally, Governor in 1981

Delegates are therefore advised to take their places early But anyone who wishes to attend and has not yet booked, should hurry because the conference is now all but sold out Contact Yvonne Courtney, FM Promotions Department, PO Box 9959, Johannesburg 2 000 or phone (011) 710 2480 The telex number is 4-88921



# Industries contest price-fixing allegations

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B. Day  
11/10/85

ALLEGATIONS of price fixing and other restrictive trade practices have been denied by industries listed in a recent *Government Gazette*.

Most of the industries contacted by *Business Day* denied allegations by the Competition Board, and were determined to apply for exemption from inclusion on the list.

Exemptions can be made on several grounds, such as if price collusion takes place between two wholly-owned subsidiaries of a holding company, if collusion is in the public interest, or if prohibition would have a disruptive effect on an industry.

It was not clear on which grounds those industries contacted wished to apply for exemption.

A wide range of businesses — from advertising and architectural services to prescription medicines and frozen vegetables — will be affected.

The new regulations, published in a *Government Gazette* last Friday, and due to come into effect on May 12 next year, are the result of a comprehensive inquiry by the Competition Board.

The Department of Trade and Industry lists more

FRED STIGLINGH and  
STEPHEN CRANSTON

than 60 industries and commodities allegedly involved in collusion and price-fixing.

The board does not necessarily agree with all allegations but found that restrictive practices occur "fairly generally". It is not clear whether all these industries will have to mend their ways by May.

SA Association of Freight Forwarders president Pat Henegan vehemently denied the board's allegations of horizontal price recommendations.

"Forwarding is a fiercely competitive business," said Henegan. "There are no minimum tariffs, and tariffs are published for guidance purposes only."

Forwarding was a complex business, and agencies needed guidance to run their service profitably. The association would not apply for exemption, as the allegations were untrue, he said.

Federated Hotel Association of SA operations director Fred Therman said the board's allegations of horizontal price recommendations were unfounded.

The federation, with about 2,500 member busi-

nesses, issues guidelines on liquor prices, but members ultimately charge according to their overheads.

"Large bottle-store chains and big hotels invariably work out their own pricing," he said, "but the small-hotel entrepreneur welcomes our administrative guidelines."

He said the association had been in contact with the Competition Board concerning exemption.

Association of Advertising Agencies president Graham de Villiers was uncertain whether the board's alleged horizontal price collusion referred to agencies' 16.5% commission from the media.

"Otherwise, each agency certainly charges what it wants to. Prices are not colluded," said De Villiers.

The association, he said, had talks with the Competition Board last year and would apply for exemption.

Institute of Estate Agents spokesman Gerrie van Niekerk was reluctant to discuss why estate agents should be exempted, in the light of a possible meeting between the institute and the Competition Board.

The institute would also apply for exemption.

AECI Paints general marketing manager Peter

Kirby denied the board's alleged price collusion in the paint industry.

SA Associated Newspapers MD John King denied the Competition Board's allegation of horizontal price collusion in the newspaper industry.

"When a paper puts up its cover price to meet a competitor's, it is not collusion — it is an act of self-defence," he said.

"If a market leader puts up a cover price, a competitor could either remain at its old price or follow suit to cover losses."

However, he said, the newspaper fraternity would try to get their products on the market at the lowest possible price, as a rise in cover prices meant losses in circulation and advertising.

SAAN's own experience, he said, was contrary to collusion, as *Business Day* is priced "way above" competitors' products and *Financial Mail* is also priced independently.

SA Phillips financial director Jan Lobbezoo denied price fixing in the domestic-appliance industry.

"Our prices are determined by our fight to get products sold," he said.

# Breweries<sup>1a</sup> in froth over beer plan by supermarket

30 (12/25) 241  
Staff Reporter

BEER will go on sale for the first time in five Cape supermarkets next week — but South African Breweries has taken legal advice which indicates the move could be illegal.

Pick'n Pay said it had found a legal loophole allowing it to sell beer with alcohol content under two percent. It will be selling a new brand, Windhoek Light, brewed by South West Breweries, with an alcohol content of between 1,5 and 1,9 percent.

The beer is already on sale in their supermarkets in the Transvaal.

Mr Alan Baxter, chief buyer for the Western Cape, said yesterday that six-packs and cases of 340ml dumpies and cans would be on sale in Cape branches with wine licences — Constantia, Gardens, Kenilworth, Goodwood and Mitchell's Plain.

The cases would sell for less than R12, against bottle store prices of about R13, and six-packs for about R3,15.

## COMPETITIVE

"I believe our price is very competitive but we are not giving it away. We will still be making a nice profit."

Mr Garry May, SAB public affairs manager, said: "Our interpretation of the legal aspect is that it contravenes the legislation as it stands."

He said the Foodstuffs, Cosmetics and Disinfectants Act published in August clearly said no beverage produced from cereals with an alcohol content exceeding 0,5 percent would be allowed to be distributed by supermarkets.

Pick'n Pay based its decision on the Liquor Act, which prohibits supermarkets from selling liquor with an alcohol content above two percent.



Cape Times 19/10/82  
**Row looms  
over plan  
to sell beer**

WHILE a large super-  
market chain plans to  
start selling beer in the  
Cape next week, South  
African Breweries is  
preparing a battle over  
the legitimacy of the  
move.

Pick n' Pay plans to  
sell beer in five of its  
stores next week after  
finding a loophole in the  
Liquor Act allowing  
sales of beer with alco-  
hol content of lower than  
two percent

The beer is Windhoek  
Light, brewed by South  
West Breweries and it is  
already on sale in the  
group's Transvaal super-  
markets

"We have gone into  
this very seriously," said  
Pick and Pay's chief buy-  
er for the Western Cape,  
Mr Alan Baxter.

"We know that what  
we are doing is legal  
The beer will be sold in  
36 of our 88 stores where  
we have liquor sales  
licences."

A case will sell for less  
than R12 — average  
price elsewhere is R13  
— and six-packs for  
R3,15, Mr Baxter said

Mr John Seton, region-  
al director of SA Brew-  
eries, yesterday con-  
firmed that the company  
would legally contest the  
move

He said the company  
was prepared to sell  
beer anywhere it was  
legally allowed

Asked about the "two  
percent loophole" the  
supermarket chain had  
found, Mr Seton replied  
that this applied to one  
act governing the sale of  
liquor, but not another

CAPE TIMES  
4/11/88

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## Legal bodies ask to meet Le Grange

### Political Staff

A MEETING with the Minister of Law and Order, Mr Louis le Grange, has been requested by the Association of Law Societies and the Cape Bar Council to discuss recent events in the Western Cape

In a statement, the Cape Bar Council said. "The conduct of the police in quelling disturbances and maintaining order must necessarily affect the administration of justice and the attitude of the public to

the legal process

"While the council is mindful of the problems encountered by the police in carrying out their duties, the persistent allegations of police misconduct or over-reaction on their part in dealing with the disturbances are, therefore, of serious concern to all members of the legal profession"

At the meeting, the council hoped to explore steps which could "avert the tragic spiral of violence and counter-violence of recent weeks"

*Cape Times 7/1/85*  
**S Traders**  
*(#) 2450*  
**commend**  
**Mr Heard**

**Staff Reporter**

THE Western Cape Traders' Association (WCTA) and the Chamber of Muslim Meat Traders (Commtra) yesterday issued a joint statement commending the editor of the Cape Times, Mr A H Heard, for publishing an interview with ANC leader Mr Oliver Tambo

The statement said the interview was "educational and elucidating", adding "However, we are perturbed at the impending State action against Mr Heard

"Commtra and the WCTA therefore urge oppressed people of the land to support those who align themselves with us by buying the paper which is in keeping with the times"

● Our Paris correspondent reports that the restrictions on the South African press and the Tambo interview drew wide comment in France this week

The influential Le Monde, as well as the daily papers Liberation and Humanité carried articles explaining why Mr Heard deliberately defied censorship laws to bring the ANC views to public attention

The possible prosecution of Mr Heard was also widely reported in the British media yesterday

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Our Restaurant is  
 of CAPTAIN and  
 DIFFERENT & UNUSUAL

MONDAY TO  
 LUNCH



1pm & 2pm

TO CELEBRATE

2 SHOW

LADIES FREE

1st BIRTHDAY

**CESA**

2 Cape Times

**KONN**

52/5

ay, November 28 1985

Assocom drafts debt collection proposals

# Commerce calls for overhaul of HP law

245  
28/11/85  
B Day

**ORGANISED** commerce is to make representations to government early next month for an overhaul of legislation governing instalment sales.

The aim is to make it easier for businesses to recover the costs incurred in collecting outstanding debts.

Section 19(d) of the Credit Agreements Act confines a creditor — in terms of an instalment sale — to recovering only what is owed and to repossessing the goods concerned

No court order can be made for any balance out of income outstanding or for the likely

**CHRIS CAIRNCROSS**

costs incurred in the recovery of goods

Businessmen say the legislation penalises a creditor by not allowing him to use the most suitable way to recover the full amount owing.

They say the legislation adversely affects debtor morality and leads to an increase in costs which must ultimately be borne by those who do not default on their obligations.

"The situation merely encourages early repossession of goods and no uncontrolled arrears," said a Cape businessman.

The Association of Chambers of Commerce (Assocom) has the responsibility of drawing up recommendations for amending the legislation.

These are due to be presented to government in about 10 days.

The recommendations are expected to be received favourably.

At Assocom's Cape regional congress held in Worcester in June, Director-General of Commerce and Industry Sarel du Plessis indicated that government would be prepared to consider amending legislation if the necessary submissions were made.

CAPE TOWN 28/12/81  
**Argus probe official**

PRETORIA. Official notification of the Competition Board's intended investigation into the Argus group's acquisition of the Durban morning newspaper, the Natal Mercury, was published in the Government Gazette yesterday.

Anybody may submit representations on the matter to the board within the next 30 days.

The announcement recently that Argus Printing and Publishing would acquire the newspaper interests of Robinson and Company led to a controversy over newspaper monopolies. The Minister of Trade and Industry, Dr Dawie de Villiers, said he had instructed the Board to investigate the matter.

The Argus group owns the Durban afternoon newspaper, the Daily News.

According to yesterday's notice, the board is to ascertain whether an "acquisition has been, is being or is proposed to be made; and the nature and extent of the controlling interest held and acquired, being acquired or proposed to be acquired" — Sapa

# Consumer Price Index leaps 16,9 p c in a year

Mercury  
Correspondent

31/12/85 Mercury 245

JOHANNESBURG—  
The Consumer Price Index for all income groups leaped by 16,9 percent from November, 1984, to November this year

Even in the month from October to November, 1985, the index increased by 1,3 percent

Figures released by Central Statistical Services indicate the increase in the past month was due mainly to rises in the price of meat, fats and oils, fruit, vegetables, furniture and household appliances

Meat went up by 3,4 percent, fruit by 2,5 percent, furniture by 3,5 percent and motor vehicles by 4,7 percent

Statistics show that over the past year the

higher income group was hardest hit by CPI increases. The figure for that group rose by 17,7 percent. In the middle income group this figure stood at 17 percent and in the lower income group 14,4 percent

Indices for urban areas show that the biggest annual increases occurred in Kimberley (18,5 percent), Pietermaritzburg (18,9 percent), Pretoria (18,0 percent) and the Vaal Tri-

angle (18,1 percent)

The statistical news release emphasises that the CPIs for the different urban areas do not permit inter-urban comparisons of price levels. They do not indicate whether it is more expensive to live in one city or another

The release says they indicate for each urban area, independently of any of the other urban areas, the price changes which have taken place from time to time

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CME Trans 3/3/86

245

# Govt asked to step in in petrol price saga

Own Correspondent

PORT ELIZABETH. — The Progressive Federal Party spokesman on energy and mineral affairs, Mr John Malcomess, called yesterday on the State President, Mr P W Botha, to intervene in the petrol price dispute between Pick 'n Pay and major oil companies

Petrol supplies to Pick 'n Pay have been cut on the instructions of the government and by Saturday the discount chain's 12 outlets had begun to run dry.

Mr Malcomess said he strongly objected to the action of the large oil companies in cutting supplies of petrol to Pick 'n Pay, pointing out that the man in the street was being penalized.

"Their only reason is that Pick 'n Pay is selling petrol to the public at a discounted price. The main villain is of course the government (which is) forcing the private

sector to sell at its price and no lower"

Mr Malcomess said the Motor Industries Federation should also share the blame "for encouraging the government to take this action in order to protect their own vested interest"

"I am calling on the State President to intervene and if he will not take action then I accuse him of contravening a national goal as set out in the Constitution Act of South Africa. The goal concerned is 'to further private initiative and effective competition'," Mr Malcomess said

Meanwhile, director of Pick 'n Pay Mr Sean Summers said yesterday that there had been "total chaos" at the Boksburg service station on Friday and Saturday with queues of up to 60 cars. On Friday 58 000 litres were pumped — one-third more than usual

Today Pick 'n Pay is to announce the price of petrol at its Boksburg outlet, where it has in the past discounted petrol by 4c/l. The government ordered it to stop doing so from midnight on Friday and it is uncertain how it will get around to discounting on the cut petrol price.

## 'Not the end'

"It's not the end of the petrol saga," Mr Summers said yesterday, but he declined to disclose what the company intended to do until today's announcement.

Mr Summers said the oil companies would resume their supplies to Pick 'n Pay from today when the new petrol price goes into operation at all service stations

Executive director for Pick 'n Pay Mr Alan Gardiner said he thought the government behaviour regarding discounting petrol was tough, unreasonable and disgusting

In the past Pick 'n Pay had had no reaction from the government when it sold old stocks of petrol at a discounted price before scheduled price cuts or rises

"There is no precedent for the government's harsh action," he said

Pick 'n Pay defied the government by dropping its petrol price by 8c/l and 10c/l four days before the specified date. At the Boksburg hypermarket where it usually discounts by 4c/l it dropped its price by 12c/l and 14c/l respectively.

# New petrol-coupon scheme in trouble

CAP 7/15 5/3/88 (245)

By RENEE MOODIE

PICK 'N PAY yesterday announced a move to give a 4-cent coupon, redeemable on other purchases at their stores, for every litre of petrol bought at their service stations.

But the move seemed set to be blocked by the government.

Mr Theuns Burger, deputy director of the Department of Mineral and Energy Affairs, said yesterday afternoon the new system was considered a petrol discount and fell under a ban on petrol sales to outlets not selling at the official price.

## 'Savings'

Pick 'n Pay announced yesterday that customers at their 12 service stations across the country would receive a 4-cent coupon for every litre of petrol bought, and they could redeem these coupons at any Pick 'n Pay store on any item except petrol.

Savings could amount to R2,50 to R5 a tank of petrol.

Mr Burger said the government directive issued on Friday was still in force and it was now up to the oil companies to decide on any action.

The directive signed by Mr Danie Steyn, Minister of Mineral and Energy Affairs, said that in terms of the powers vested in him by the Petroleum Products Act he prohibited the supply of petrol to any outlet at which petrol was offered for sale or supplied to customers.

● "at any price other than the price

agreed upon, in respect of the area concerned, between the department, the wholesale petrol suppliers and the organized petrol outlets industry, and

● "under an arrangement in terms of which any refund or any other consideration of whatsoever nature is made or offered to consumers in respect of such sale, or

● "other than against a monetary consideration"

The directive was read to Mr Raymond Ackerman, chairman and joint managing director of Pick 'n Pay, who said his company had launched the new system after "poring" over its agreements with the oil companies, and after carefully consulting the Trade Coupons Act.

## 'Agreements'

"The coupon system does not break any of our agreements and is in line with the Trade Coupons Act," he said.

"It seems to me that the minister is not only superseding carefully negotiated, long-standing commercial agreements, which fully comply with the Petroleum Act, but that he is also superseding the Trade Coupons Act, issued by another department, and which allows coupons or discounts to be given on one item for another item."

He said Pick 'n Pay was still receiving petrol from its suppliers and added that the chain would continue with the discount system for the time being.



# Discount petrol price row grows

ARGUS 6/3/86

THE growing controversy over discount petrol widened today with the Government's commitment to free enterprise being challenged.

Queries were raised about why organised commerce and industry remained silent while the Government intervened directly to keep fuel prices high.



Mr Ackerman

## Discounting

In terms of the scheme introduced to coincide with fuel price cuts this week, Pick'n Pay is offering a 4c coupon for every litre of petrol bought, redeemable on any merchandise except fuel.

The department views this as a form of petrol discounting.

Mr Gardiner claimed that the Government was waging a vendetta against his group because many petrol stations "are giving away everything from half-sheep to free car washes and free service to their customers".

He also charged that petrol companies themselves were engaged in "backroom prac-

(Turn to Page 3, col 1)

Mr John Malcomess, the Progressive Federal Party's spokesman on energy, today challenged the Government's propping-up of the petrol price by preventing Pick'n Pay from discounting petrol.

He also demanded that the price of petrol be reduced because of the increase in the value of the rand and the continued softening of international oil prices.

Pick'n Pay today claimed that it was being victimised by the Government over its petrol coupon scheme as a head-on confrontation loomed between the company and the Minister of Mineral and Energy Affairs, Mr Danie Steyn.

## Deadline

The company has given Mr Steyn a deadline of midday today to reply to a letter protesting against a department directive to oil companies on Friday to stop supplying Pick'n Pay with petrol.

If no reply was received the company would apply tomorrow for an urgent interdict against the Department of Mineral and Energy Affairs, the national manager, Mr Alan Gardner, said.

Mr Malcomess called on President P W Botha to intervene in the discounting controversy.

"If he is in favour of deregulation and private enterprise he cannot sit back and allow the Government to force up prices, and still retain his credibility," he said.

## "So quiet"

"Why also are organisations such as Assocom, the Afrikaanse Handelsinstituut and the Chamber of Industries so quiet?"

He also asked why the Automobile Association had supported the amending legislation that had given the Government the power to force the petrol companies to stop supplying the supermarket chain.

A spokesman for the Department of Mineral and Energy Affairs confirmed that the department had served notice on the petrol companies to stop supplying fuel and it was now up to the supermarket company to follow whatever course it wanted.

He confirmed that the current price was set on an exchange rate of 47 US cents to the rand and not to the current exchange rate of more than 50 cents.

ARGUS 6/3/86

~~30/11/1985~~

## Discount fuel row growing

Continued from Page 1

tics" involving discounts to customers.

"Why single out Pick'n Pay which gives food coupons?"

"If the Minister has the power under his directive issued on Friday, why is the Government victimising only Pick'n Pay?"

The joint managing director of Pick'n Pay, Mr Hugh Herman, said that his company was not looking for confrontation with the Minister, but believed it was a relevant matter and would therefore not back down.

"We are willing to sit and negotiate with him.

"We have taken advice from our lawyers and senior counsel and my company is not in contravention of the Petroleum Act or the Trade Practices Act."

Opening the annual meeting of the Queenstown Chamber of Commerce last night Mr Raymond Ackerman, the managing director of Pick'n Pay, said the argument that strategic considerations justified Government control of fuel prices did not apply in the present situation of a world oil glut and falling prices.

"There may have been reason to protect oil 10 years ago but there is no longer a strategic interest," Mr Ackerman said. — Political Staff and Sapa.

# Petrol: <sup>OMK - Trans</sup> 6/3/86 Interdict next step? <sup>2/4</sup>

PETROL supplies to rebel discounters Pick 'n Pay were stopped yesterday for the second time in a week — and the company says it will seek an urgent interdict to counter this if the government does not respond favourably to a letter it has sent to the Minister of Mineral and Energy Affairs, Mr Danie Steyn

The retail chain's two major suppliers, Shell SA and Trek Petroleum, as well as BP SA, which supplies petrol to only one station, all confirmed yesterday that deliveries to Pick 'n Pay's 12 service stations had been halted in compliance with last week's government directive ordering suppliers not to deliver fuel to outlets that discounted petrol.

The notice was issued by Mr Steyn when Pick 'n Pay began selling petrol at a discount price several days before Monday's official price drop

Petrol supplies were cut off on Friday and resumed on Monday when Pick 'n Pay again sold petrol at the discounted price.

Joint MD Mr Hugh Herman delivered the letter to Mr Steyn yesterday afternoon

Mr Herman said the directive had been issued three days before Pick 'n Pay introduced the discount coupon system, and therefore could not apply to the coupon system

## Company 'not discounting petrol'

He added that Pick 'n Pay was not discounting petrol. It was sold at the normal price, but Pick 'n Pay gave a 4c discount coupon for every litre sold. This was exchangeable at its supermarkets.

Pick 'n Pay believed Mr Steyn had acted beyond his powers with regard to the coupon scheme. The Petroleum Products Act dealt with the supply and procurement of fuel, while the issue of discount coupons fell under the Trade Practices Act.

He said these matters had been pointed out to Mr Steyn in the letter

Mr Herman said he hoped Mr Steyn would reply by today. If the response was negative Pick 'n Pay would seek an urgent court interdict compelling the oil companies to recommence deliveries.

Mr Theuns Burger, deputy director of the Department of Mineral and Energy Affairs (DMEA), said it had issued the directive because it felt it had no alternative.

He said Pick 'n Pay's argument that the DMEA was encroaching on commercial agreements was a matter of opinion. — Staff Reporter, Sapa and Own Correspondent

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# Petrol dispute goes to court

SALDRU  
SCHOOL OF ECONOMICS  
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CAL  
Tim B  
7/3/86

245

**THE petrol discount/coupon controversy will be taken to the Supreme Court today as Pick 'n Pay seeks an urgent interdict to set aside a government notice which prevents oil companies from supplying petrol to outlets selling petrol at a discount.**

Pick 'n Pay decided to take this step after receiving an unfavourable reply from the Minister of Mineral and Energy Affairs, Mr Danie Steyn, to a letter to him in which they protested against the notice

The Pick 'n Pay letter, delivered to the minister on Wednesday by joint MD Mr Hugh Herman, questioned several aspects of the notice

Mr Steyn had replied saying the notice was still in force and was aimed at preventing the direct or indirect discounting of petrol

## MP pleased

A spokesman for the Department of Mineral and Energy Affairs (DMEA) confirmed that a reply had been sent to Pick 'n Pay but would not comment on the content of the letter

Reacting on the issue yesterday the PFP's spokesman on energy, Mr John Malcomess, said he was "pleased" that Pick 'n Pay had decided to take the government to court in the light of its intransigence in the petrol discounting controversy.

He repeated his challenge to President P W Botha to take a personal hand in the mushrooming controversy, particularly in view of "the President's stated commitment to deregulation and free enterprise"

However, Mr Botha yesterday refused to be drawn into the row, saying the issue should be dealt with by Mr Steyn and the oil companies.

Mr Malcomess also questioned the "deafening silence" of commerce, industry and other political parties in Parliament in the face of direct government intervention to artificially prop up fuel prices

He challenged Assocom, the Afrikaans Handelsinstituut, the Chambers of Industries, the Automobile Association, the Labour Party and the National People's Party to demonstrate their support for "the man in the street" and publicly object to the government's stand.

The government notice was issued on Friday last week after Pick 'n Pay began selling petrol at a discount price several days before Monday's official price drop.

Petrol supplies were resumed on Monday, but cut off again on Wednesday when a discount coupon system announced by Pick 'n Pay was held by the DMEA to be a form of discounting petrol.

Mr Herman yesterday said: "Direct or indirect discounting of petrol is precisely what we are not doing. We are offering coupons, redeemable on other purchases, for litres of petrol purchased. We are still selling petrol at the prescribed price."

He said the interdict was being sought on the basis that the directive was issued on Friday last week, while the coupon scheme was only announced on Tuesday and on the basis that Mr Steyn was acting beyond his powers

Petrol supplies from Shell SA, Trek Petroleum and BP SA, were still cut off yesterday

The managing director of Total South Africa, Mr Bernard Lafitte, said in a press statement yesterday that allegations that the oil companies in South Africa were being protected by the government to the detriment of the consumer, were untrue

## Fixed margin

The oil industry enjoyed a fixed margin, which was less than that of the oil pipeline costs, the levy for the National Road Fund and the amount being collected for GST.

Mr Lafitte said that about one-third of the cost of petrol went towards taxes and levies which were unrelated to the actual cost of fuel.

He said the oil industry was only allowed to make a certain profit on its assets before taxation and if the industry did not make the allowed profit there was no mechanism to make up the difference. — Staff Reporter, Political Staff and Own Correspondent

# Petrol battle: Court rules

By PETER DENNEHY  
Supreme Court Reporter

Earlier Mr P Hodes, for the State, had asked the court to turn down Pick 'n Pay's application on the grounds that all parties with a substantial interest in the matter, particularly its three petrol suppliers, Shell, BP and Trek, were not involved in the proceedings.

### 'Subordinate'

However, Mr Justice Rose-Innes ruled that the minister's directive in question was subordinate legislation and it could not be expected that all affected parties need be involved in the litigation. The matter was postponed until March 17

Mr Justice L Rose-Innes presided. Mr S Aaron SC, with Mr L Wenkove and instructed by Sonnenberg, Hoffmann and Galom-P Hodes SC, with Mr D van Reenen and instructed by the State Attorney's office, appeared for the minister.

aside because the minister had acted beyond his powers, or had been too vague, or had abused his powers, according to Mr Herman's affidavit.

Mr Herman also said the letter should not affect the supply of petrol to Pick 'n Pay as the company had not made any "arrangement" with its customers, but adopted a scheme available to all members of the public.

The Director of Energy Supply, Mr Lourens van den Berg, said in an affidavit that he believed Pick 'n Pay was making a profit of 6,25c a litre without the coupon scheme.

If the company dropped the scheme while the minister was given time to respond in court, its petrol supply would be resumed and it could continue to profit, he said.

Mr Justice L Rose-Innes said he was not disposed to make an interim order which clashed with the minister's regulation, which "might be valid".

Mr Herman said in his affidavit that the minister, Mr Danie Steyn, had sent a letter to petrol wholesalers last Friday prohibiting them from supplying outlets which sold petrol for less than the formally agreed price, even if "under an arrangement".

Pick 'n Pay's suppliers had stopped supplying petrol to the company yesterday. Pick 'n Pay took the minister to court, seeking an urgent order setting aside his notice, or declaring that it did not prevent companies from supplying Pick 'n Pay. The notice should be set-

PICK 'N PAY Retailers (Pty) Ltd have been forced to drop their coupon scheme of selling petrol at an effective discount until the Supreme Court decides on the legality of the matter.

Petrol supplies to the company's 12 outlets had been cut off and some outlets expected to run out yesterday, Mr Hugh Herman, a director of Pick 'n Pay Retailers, said in an affidavit before the Supreme Court yesterday.

Mr Sam Aaron SC, who appeared for Pick 'n Pay, requested permission to sell under the scheme while the court hearing was postponed for the Minister of Mineral and Energy Affairs to draw up an answering affidavit. "Nobody would be harmed People benefit, they don't suffer," Mr Aaron said



Mr Raymond Ackerman, chairman of Pick 'n Pay, leaves court yesterday.

# 79 000 sign petrol petition

Staff Reporter

A PETITION bearing more than 79 000 signatures of people concerned about the high price of fuel was presented to the government yesterday

A pensioner and a housewife from Johannesburg — with no help from any organization — raised the signatures over two months since January 7.

Mr Jack Huber said

yesterday: "When the price of petrol went up in January, I felt I had to do something. So Mrs Jill Perkiss and I — simply as two concerned citizens — went on a drive to get public support

"The result has been this incredible mass of signatures, which I have presented to the Minister of Transport Affairs, Mr Hendrik Schoeman"

Yesterday morning Mr Huber had a meeting

with Mr Schoeman, "who was astounded by our support and promised to take the matter to his colleagues"

The petition reads "We, the undersigned, object in the strongest terms possible to continual increases in the fuel price. The government should help to combat inflation by using the massive profits of the oil pipeline to reduce the cost of petrol"

Mr Huber said the petition had first been published in a Johannesburg newspaper, "and then got splash treatment in all the major Transvaal papers

"And although the price of fuel went down recently, our objections still hold good

"We were inundated by calls for petition forms from as far afield as Somerset West. One man alone brought in

more than 1 100 signatures

"I think it high time the government understood the plight of the man in the street. I made it clear to Mr Schoeman that this has been purely an effort of the people, and cannot be ignored"

Mr Huber said that Mr Schoeman had said he would make a public statement on the matter once it had been fully discussed.

# Jubilation as Pick 'n Pay <sup>245</sup> beats Govt in petrol battle <sup>STAR</sup> <sup>20/3/76</sup>

By Jackie Unwin

Consumer groups and motorists have welcomed the Supreme Court ruling that Pick 'n Pay can continue with its petrol-coupon scheme

A jubilant Mr Raymond Ackerman, joint managing director of the supermarket chain, described it as a "victory for the man in the street and a blow against inflation"

Yesterday a Supreme Court order overturned a Government directive to oil companies to cut supplies to the supermarket chain after the introduction of a 4c redeemable coupon scheme by the chain. The coupon can be used to purchase any item, apart from petrol, at Pick 'n Pay stores

The Supreme Court in Cape Town ruled that the Minister of Mineral and Energy Affairs, Mr Dame Steyn, had acted beyond the scope of his powers in stopping petrol supplies to Pick 'n Pay

Mr Justice Rose-Innes ordered that the Ministerial directive of February 28 to three major oil companies be set aside immediately and ordered the Minister to pay costs.

Counsel for the Minister gave notice of intention to appeal

Pick 'n Pay immediately began distributing its coupons at all its petrol stations

throughout the country

Mr Ackerman said "It is fantastic. It is victory for the consumer, who feels squeezed between big business and big government. In most Western nations, the consumer feels totally powerless. From this point of view, we are really thrilled

"The move is also fighting inflation because petrol is one of the big determinants. Although we are not cutting prices at the pump, people will receive a discount on food, which will help people at a time when they desperately need it

## CONGRATULATIONS

"From a personal point of view, I have been fighting like mad against monopolies, collusion and cartels for 20 years. In fact, it was my reason for going into retailing. I feel it is the vindication of years of fighting

"The phone just hasn't stopped ringing and people have been pouring in with messages of congratulation"

Yesterday was a double celebration at the Boksburg hypermarket — which had been discounting petrol for 10 years before being stopped — for it also celebrated its 11th birthday. Some motorists received birthday cake as well as their 4c coupons when they pulled up at

the pumps

"It's the best birthday present we could have had," said general manager Mr Mike van de Merwe

Motorists at Boksburg yesterday were delighted. Comments were

"I'm very happy — this place is for the people and not for the Government," said Mr Frik Vivers

"It's beautiful. I'm delighted about it," commented Mr Tony Cloete of Benoni.

"I am very glad. I hope many more petrol stations do the same," said Mr Adam Esterhuizen of Impala Park

Mr Brian Goodall, PFP spokesman on mineral and energy affairs, said "It is a pity that Pick 'n Pay has had to resort, because of the law, to a system whereby people are given coupons rather than just being given a cash discount on their petrol"

Mrs Betty Hirzel, chairman of the Consumer Union, said "Anything towards the free market system and making competition work is for us

Mrs Joy Hurwitz, president of the Housewives' League, said "I am pleased that Pick 'n Pay has won its case"

Mr Sarel Steyn, managing director of supplier Trek, said he was unable to comment at this stage as he had received no formal advice

Courts

STAR

# rt's petrol ruling: price war looms

now

20/3/86

~~30~~ ~~31~~ ~~32~~

245

By Jackie Unwin

A petrol price war could follow the Cape Town Supreme Court decision allowing Pick 'n Pay to sell discount fuel.

Members of the Motor Industries Federation are upset over the supermarket chain's redeemable petrol coupon system being allowed to continue, says Mr S Druckman, chairman of the Southern Transvaal division.

The 4c-a-litre coupons are redeemable on purchases at Pick 'n Pay stores

"There could be reaction, with petrol stations making special offers to compete with the supermarket chain," says Mr Druckman

"It's early days I don't think this will develop at this stage. People will be low for a while. There may be an appeal. This is why I don't feel there will be a tremendous reaction right at the moment

But, he added, a battle "could easily happen in the future".

The MIF is bitterly opposed to the discounting of petrol and self-service garages

The managing director of the oil division of Shell, Mr John Drake, said the court decision could result in "retaliation from other sides"

But it would be up to individual dealers and the big pumpers of

petrol to decide if they were going to compete for sales. This would depend on factors such as locations

"It depends on how effective the voucher scheme is. It has had a lot of publicity, but it may not be effective," he said

He felt dealers would wait for a decision on any appeal by the Government

The Star's Political Staff report that existing legislation might be changed to prevent petrol coupon schemes

This was predicted by an opposition spokesman today, but a Department of Mineral and Energy Affairs official said it could be considered "as a last resort"

The department is to study the court decision before deciding on an appeal.

It objects to the discounting of petrol because of the effect it could have on petrol stations in certain areas and on work opportunities for pump attendants.

Progressive Federal Party MP Mr Brian Goodall said today that it was a pity the Government could not accept that the public wanted price competition

# Pick 'n Pay's sales of petrol in SA 'treble'

Staff Reporter

PETROL sales at Pick 'n Pay's 12 service stations country-wide were yesterday up to three times higher than normal as the retail chain resumed its food coupon system — with, however, mixed reaction from independent garage owners

Mr Alan Gardiner, executive director of Pick 'n Pay, said yesterday that when the coupon system was first introduced, sales had trebled compared with petrol sold at the normal price

Late yesterday after-

noon he said there were queues at every pump at the Brackenfell hypermarket service station

"We have a long-standing intention to expand service stations to other Pick 'n Pay centres, as well as opening garages on free-standing sites. So there is a possibility there will be more Pick 'n Pay garages, but we are waiting until the coupon scheme is well established," he said

Mr George Beckman, national chairman of the South African Motor Traders' Association, said most members of

his association felt the situation was an unfair trading practice. He called on garage owners to act responsibly and not to start a price war with Pick 'n Pay by starting similar schemes. "We should wait for the government to make its move," he said.

A survey of independent garage owners showed that most people in the vicinity of the hypermarket were upset at what they called a "gimmick" on the part of Pick 'n Pay, while opinions in other areas varied

Mr Frank Weetman, owner of a Kuils River garage, said his profit margin was 5.2 cents. "How can I afford to give 4c away?" he asked

Mr H Osman, manager of a Mitchells Plain garage, said he felt it was unfair, as the small dealer could not join the bandwagon. "I can't offer anything to the community I serve, and they are losing out if they remain loyal to me," he said



# Petrol coupon battle looms

Art Timp 25/3/6

Own Correspondent

**JOHANNESBURG.** — South Africa's retailing giants are gearing themselves up for a petrol discount coupon war with Pick 'n Pay.

Retailers Clicks, Checkers and Dions yesterday confirmed that preliminary planning was under way with a view to launching similar coupon schemes to that of Pick 'n Pay at its 12 petrol outlets at the end of February.

OK Bazaars and Spar are also believed to have expressed interest.

Investigations into various petrol coupon schemes started as soon as Pick 'n Pay won its landmark Supreme Court action last week against the government's executive banning of the practice in terms of the Petroleum Products Act.

## Finalized

Independent garages also wanting to offer discount coupons soon contacted chairman Mr Raymond Ackerman.

Mr Ackerman said his company was prepared to assist independent garages wanting to reduce profits and increase turnover. But he said Pick 'n Pay would wait for the matter to be finalized before taking negotiations any further.

Meanwhile, dissatisfied garage owners near Pick 'n Pay's popular Boksburg filling station say the company's move to provide discount vouchers for supermarket products to people buying petrol is unfair to independent operators without a retailing empire to back them up.

A spokesman for the Boksburg Pick 'n Pay said it would welcome competition from supermarket chains or independent operators

## Enticements

Mr Tony Corrolo of Belaphil Motors said he had noticed a drop-off of about 1 000 litres a day in the past week.

He had introduced a 24-hour service to counter Pick 'n Pay competition, but would consider taking customer enticements further if the competition "prevents me from making a living".

A Motor Industries Federation spokesman, asked if Pick 'n Pay's move could set a precedent for new petrol marketing strategies, said an MIF committee was looking into the issue.

Some garages on the Reef have introduced redeemable vouchers for workshop or garage services and for raffles.

# Competition Board probing restrictive practices in the professions

245

After 1/5/88

## Financial Staff

THE Competition Board is investigating restrictive practices in the professions.

Among the organisations with which it already has held discussions and reached agreements are the South African Council for Professional Engineers, the South African Council for Architects and the South African Council for Quantity Surveyors

It says in its annual report that it is also holding discussions with the General Council of the Bar of South Africa and the Institute of Estate Agents.

Stating its policy towards professional bodies, the board says that it accepts that in a profession restrictions can be desirable and even essential and that circumstances can vary from one profession to another.

However, from a competition policy point of view the question is whether or not the restrictions can be justified in the public interest.

As these restrictions invariably serve the interests of all or some of its members, resistance from

some members against essential adjustments is predictable.

However, the board expresses its appreciation for the open and responsible manner in which official representatives of the professions dealt with so far have approached the matter.

It says there is an appreciation that artificial restrictions that served no other purpose than to benefit an interest group at the expense of the community can no longer continue.

The board says that where restrictions such as on entry, work reservation, fixed or minimum fees and prohibition of advertising are contained in legislation these can be adjusted only by changes in the relevant Act.

In such instances the board acts as the Government's adviser and recommends the relevant amendments

These recommendations are never made without prior in-depth discussions with the relevant profession whose members are given ample opportunity to state their views.

# Price of cars to rise

EVE POST  
14/5/86  
(245)  
(14)  
(2)

By BOB KERNOHAN  
Business Editor

CARMAKERS' problems of falling sales will soon be compounded by further price rises

Two more increases of between 4% and 5% will have to be introduced between now and year-end for manufacturers to recover their costs, industry sources said today

The news comes a day after it was announced that manufacturers' executives are to meet Government Ministers in Cape Town "within the next few days" to discuss the plight of the industry amid fears of further retrenchments

Mr Ronnie Kruger, public affairs manager of Volkswagen in Uitenhage, said today: "With the present economic recession, low volumes and the low value of the rand against foreign currencies, further price increases are inevitable in order for manufacturers

to recover the higher cost of manufacturing"

The first increase is likely to be introduced next month and the second before the end of the year, so adding a further 8% to 10% to the 35% rises already introduced over the past 18 months

Disturbing news for the industry is that despite these increases, there is still little turnaround in manufacturers' financial position

Manufacturers point to dropping foreign exchange rates as having been the major factor in their increasing costs, with the introduction of perks tax and too short hire purchase payments exacerbating the situation

Mr Kruger said that although the rand's value against the German mark had halved in the past 18 months and local component costs had increased, the price rises on cars had not been as much

AREA A: Boksburg, Germiston, Johannesburg, Pretoria, Roodepoort, Springs, and Wonderboom and the Municipal Area of Sandton.

AREA B: Alberton, Benoni, Brakpan, Kempton Park, Krugersdorp, Nigel, Oberholzer, Randburg, (excluding the Municipal area of Sandton), Randfontein, Sasolburg, Vanderbijlpark, Vereeniging, and Westonaria.

AREA C: Delmas, Klerksdorp, and Potchefstroom.

AREA D: Heidelberg (TV1), Highveld Ridge and Witbank.

Coal <sup>ONE TRIP (20)</sup>  
<sup>20/5/86</sup> de-regulated <sup>(21)</sup>

Political Staff <sup>24/5</sup>

THE distribution of coal is to be de-regulated as far as possible, the Minister of Mineral and Energy Affairs, Mr Danie Steyn, said yesterday.

The move follows an earlier announcement abolishing price control at both the wholesale and retail levels.

Mr Steyn said that the recommendations as far as de-regulation were concerned were applicable where coal was sold directly to consumers by coal merchants.

Certain exceptions would be made.

Mr Steyn said it was important that cognisance should be taken of the fact that coal should be readily available at all times at market related prices and that coal distribution had to be disciplined.

The government would play a monitoring role in this regard, he added.

# PETROL COUPONS BANNED

ARGUS 2/6/86 (2) (2) (2) 245

The Argus Correspondent

PRETORIA. — A special Government Gazette today will clamp an outright ban on all petrol coupon discount schemes.

But Pick'n Pay, who run the most prominent of the schemes, intend to contest the ban.

The notice comes after the Government tried, and failed, to have the schemes banned in the Supreme Court in March.

Discount petrol schemes are being run by an increasing number of petrol outlets

A spokesman for the Department of Mineral and Energy Affairs, Mr Theuns Burger, today said the proclamation was wide-ranging and would stamp out the practice of giving motorists discount coupons for other commodities — a round-about way of discounting

Mr Richard Frieslich, general manager of Pick'n Pay auto centres, said they had not yet seen the Gazette

However, he said: "The Government has played this close to the chest. We don't see how they could take any action against us whatever happens today we will contest it"

## Another method

Since the Government stopped the store's direct petrol discounting to self-service customers at its Boksburg Hypermarket this year — bringing in the so-called "Pick'n Pay Act" — the chain has found another method of providing discounts for customers

People who buy petrol at Pick'n Pay garages receive coupons which entitle them to discounts on items bought at the chain's supermarkets

The Government tried in March to strangle this scheme by prohibiting oil companies from supplying the chain — but Pick'n Pay had the ruling set aside in the Cape Town Supreme Court

## Opposed

Since then one petrol outlet in central Johannesburg and three in Pretoria have started similar schemes — and Checkers and OK Bazaars indicated they might follow suit

The authorities favour uniform price-fixing and the oil companies are also understood to be against deregulation of the price

The spokesman for the Department of Mineral and Energy Affairs said in terms of today's notice, made in terms of Section 2(1)(d) of the Petroleum Products Act, no person entitled to sell petrol could

- Supply or offer petrol other than by way of sale "for a wholly monetary consideration and at the prescribed price", or

- Offer as a condition of or as a result of any sale of petrol any benefit to the consumer

The term "benefit" has a wide definition in terms of the proclamation

Pick'n Pay chief Mr Raymond Ackermann said the clampdown was the "worst thing which could happen to the consumer, who is facing rising prices everywhere"

The ban will probably stop all discounting schemes, including those which offer motorists "lucky draw" prizes or free holidays for patronising certain garages

- The board of Pick'n Pay is meeting in Cape Town today and intends to discuss the contents of the Gazette

CAPE TIMES 3/6/86  
Discount  
petrol ban

under fire

Own Correspondent

JOHANNESBURG — Strong criticism from industry and consumer organizations greeted the government's gazetted ban yesterday on petrol discounting

"It gives the lie to Pretoria's lip-service support of free enterprise," was the snap reaction of one opposition MP

Pick 'n Pay executives were planning a counter-move in a day-long emergency board meeting in Cape Town despite the edict ruling out further court action

The PFP spokesman on energy affairs, Mr Brian Goodall, described the ban as deplorable "Pretoria should not be above the law," he said

The Automobile Association said government should have delayed any ban on discounting while an investigation into the petrol price was under way

The deputy director of the Department of Mineral and Energy Affairs, Mr Theuns Burger, said the main reason behind the ban was to protect small businesses threatened by large retailers

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solation on the stroke of  
included 82mm at Wyn-  
berg, 72mm at Newlands

Newlands, hampered  
morning rush-hour traf-

ers had to work on the  
moves dreamed up by Yugo  
noon, a Port Captain's  
office spokesman said call

# Chain to continue banned petrol scheme

Staff Reporter

PICK 'N PAY garages countrywide will continue their discount petrol scheme in defiance of a government ban on all petrol discounts

Mr Alan Gardiner, Pick and Pay executive director, said yesterday that the discount scheme would continue. The company was consulting lawyers on the ban and may seek the advice of senior counsel

Mr Gardiner said there had been a huge consumer "uproar" condemning the ban

"The government has really put its foot in it this time

"The government has upset so many ordinary South Africans with this

ridiculous and pathetic action that it really is a great shame," Mr Gardiner added

Pick 'n Pay started discounting petrol in November last year when under its self-service scheme motorists paid four cents less than the standard price on a litre of petrol

The government then prohibited this but Mr Raymond Ackerman said he would defy this ban. A government directive was then sent to petrol companies in March this year, to stop them selling petrol to outlets not selling at the prescribed price.

Pick 'n Pay continued discounting petrol until its tanks ran dry

Another scheme was started in March when motorists received a four-cent coupon for every litre of petrol bought. These were redeemable on goods bought at Pick 'n Pay

Petrol deliveries to the food-chain's garages were once again stopped by suppliers in March

Pick 'n Pay then sought an urgent Supreme Court interdict in the same month to set aside the government notice which prevented oil companies from supplying petrol to outlets selling petrol at a discount.

The company won a court victory in March which enabled it to immediately reinstate the petrol-coupon scheme.

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ARGUS 5/6/86

CITY/NATIONAL

# Petrol discount ban: Pick'n Pay steers for court

The Argus Correspondent

JOHANNESBURG —

Pick'n Pay is to go to the Supreme Court for the second time in a bid to prevent the banning of its discount petrol coupon scheme

Mr Alan Gardiner, company director, said "We believe the regulations in the special Government Gazette issued this week banning our scheme are invalid

"On that basis we are going to take the matter to the Supreme Court

"It would be reasonable in the meantime if we were allowed to continue with our voucher scheme

"I am sure that the Department of Mineral and Energy Affairs will allow us at least time to test the validity of the scheme in the Supreme Court."

He said the case should come to court within a few days

A spokesman for the Department of Mineral and Energy Affairs, Mr Theuns Burger, said "It has been reported by the media that Pick'n Pay is to institute legal proceedings, but we have no official knowledge of that.

"It is Pick'n Pay's prerogative to do so and we will have to take it from there."

The question of allowing the chain to continue the coupon scheme "depends on how soon legal proceedings are instituted and on the type of proceedings — whether an interdict from the judge is requested".

He added "Time is running out. If the company does not institute legal proceedings soon then the department will take action. I cannot comment on the type of action. We have various options.

## Second time

"If Pick'n Pay does not take action today and still carries on with its petrol-coupon activities, then it will be quite clear it is flouting the law"

If legal proceedings are instituted it will be the second time this year the company has sought an interdict against the Government

The first time was when a court set aside a ministerial directive to oil companies to stop supplying petrol to discount outlets



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*AM Trip 5/6/66*

# Petrol coupon controversy heading for courts again

By ANDRE KOOPMAN

THE discount petrol coupon controversy will be taken up in the Supreme Court for the second time this year in an ongoing fuel battle between Pick 'n Pay and the government.

An executive director of Pick 'n Pay, Mr Alan Gardiner, yesterday said the food chain had decided to seek an urgent interdict in the Supreme Court to set aside a government notice effectively prohibiting petrol coupon discount schemes.

Mr Gardiner, who described the move as "ridiculous and pathetic", said the chain believed the regulations to be "invalid".

He said it would be "reasonable" for the company's garages to continue selling petrol in the meantime.

## May prejudice legal action

The director-general of the Department of Mineral and Energy Affairs, Dr Louw Alberts, yesterday said he was not prepared to comment since this might prejudice any legal action.

If the matter comes to court it will be the second time this year that Pick 'n Pay has sought an interdict against the government.

The Minister of Mineral and Energy Affairs, Mr Danie Steyn, issued a directive in March this year forbidding the supply of petrol to outlets which sold petrol "other than against a monetary consideration".

At the time Pick 'n Pay had been issuing 4c coupons for every litre of petrol bought. These were redeemable on goods bought at Pick 'n Pay stores.

The chain then sought, and was granted, an interdict setting this aside when the judge ruled that the minister had acted "beyond his powers".

## Fix the price of petrol

At the end of last month the minister once again gazetted an order in terms of which petrol could not be sold by outlets "other than by way of sale for a wholly monetary consideration and at the price so prescribed" or "give or offer any benefit to the consumer".

A spokesman for the Department of Mineral and Energy Affairs said at the time that the only purpose of the directive was to "fix the price of petrol".

The latest ministerial order is the third attempt by the department to stop discounts on petrol.

In November last year the minister prohibited Pick 'n Pay from selling petrol at 4c less than the standard price. The company initially defied this order and said it would continue selling petrol until "its tanks run dry".

*1/11/66*

to dish out 4c/litre discount coupons redeemable in its shops, will be the hardest hit. The group increased pump sales from less than 3 M/a month to about 7 M/a month at its 12 petrol outlets since the court ruling. "And we're still making more profit on petrol sales than we did previously," says P'n P's Alan Gardner.

Meanwhile, P'n P continues with the coupon scheme while it awaits legal advice. The Department of Mineral and Energy Affairs (DMEA) says it has been carefully monitoring the situation since the court ruling, and "in the interests of wholesalers and small businesses it decided to stop the practice."

DMEA deputy director Theuns Burger says he hopes all retailers will comply with the new law. "The DMEA saw the coupon scheme was creating problems for smaller retailers, which employ around 45 000 people. The discounting scheme was found to conflict with government's policy to promote small business."

Burger says discounting also distorted the market for wholesalers because those which supplied discounters were increasing market share at the expense of those which did not. "This could cause a full price war at wholesale level, and reduce the viability of certain oil companies in SA," he says.

He points out that the ban is restricted to "the present," and he says the DMEA constantly studies price control and petrol pricing with a view to making appropriate changes.

Nevertheless, the action has been slammed by many consumer organisations, including Assocom. It says market-related forces should determine prices and strategies in the sale of fuel. Also, it questions the broad terms of the prohibition which not only control price but also outlaw previously legitimate marketing devices. ■

FIN MAIL 6/6/86

PETROL DISCOUNTS

## Back into battle

While SA's 60-odd petrol discounters smart under this week's ban on price-cutting, reaction from elsewhere has been loud and furious (see page 35).

Pick 'n Pay (P'n P), which won a Supreme Court action to maintain the right

*Cape Times 7/6/66* 245

# Pick 'n Pay goes to court again

Supreme Court Reporter

PICK 'N PAY has taken the Minister of Mineral and Energy Affairs to court again, alleging that the minister has exceeded his power by forbidding petrol sellers to offer "any benefit" to buyers

The hearing has been postponed by agreement until Wednesday to allow the minister time to file answering affidavits, but Pick 'n Pay's case is set out in papers already before the court

An affidavit from director Mr Hugh Herman sets out the history of the chain store's battle to maintain a scheme in terms of which people buying petrol receive coupons discounting Pick 'n Pay goods other than petrol

A crisis was reached when petrol supplies to Pick 'n Pay were cut off after a letter from the minister forbade the supply of petrol to outlets where "any refund or any other consideration" was offered to consumers

Pick 'n Pay took the minister to court on March 6 and on March 19 the court ruled that the section of the Petroleum Products Act relied on by the minister did not give him the power to act as he had done

On June 2 the minister published a notice in terms of another section of the Act, forbidding petrol sellers from offering "any benefit" to buyers

Pick 'n Pay argues that while the minister is empowered to regulate business practices which he thinks are "calculated to influence" the price of petrol, this does not empower him to forbid their coupon scheme which, they contend, has no bearing on the price of petrol

Mr Justice H Berman presided Mr S Aaron, SC, with Mr L Weinkove and instructed by Sonnenberg, Hoffmann and Galombik, appeared for Pick 'n Pay Mr P B Hodes, SC, with Mr D van Reenen and instructed by the State Attorney's Office appeared for the minister

CME Title  
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# Petrol sales: Store loses court action

## Supreme Court Reporter

THE Supreme Court "hoisted Pick 'n Pay" by its own petard" yesterday, quoting the chain's own advertising campaign in ruling that its petrol sales coupon scheme did influence the price of petrol

Pick 'n Pay had applied for a court order against the Minister of Mineral and Energy Affairs, arguing that he had exceeded his powers by forbidding petrol sellers to offer "any benefit" to buyers

Pick 'n Pay argued that while the minister was empowered to regulate business practices he thought would influence the price of petrol, he had exceeded his powers because their coupon scheme had no bearing on the petrol price

Dismissing the application, with costs, Mr Justice H Berman said the truth of the matter was that the coupon scheme was "primarily calculated and intended to influence the volume of sales" At the same time it was an exercise in public relations

The judge said the consumer who bought petrol under Pick 'n Pay's coupon scheme did not pay the fixed price of petrol and separately

obtain goods at a discount

"Rather, to use the minister's language, his pecuniary position has been diminished by the fixed price of the petrol he has purchased less the monetary value of the benefit he received

"To go further and hoist Pick 'n Pay by its own petard by way of reference to the eye-catching statement in its own advertising campaign, the customer saves 4 cents on every litre, the obvious connotation being that the customer is paying 4 cents less per litre at the Pick 'n Pay outlet."

## Appeal

Finding that the consumer therefore paid less than the prescribed price of petrol at Pick 'n Pay outlets, Mr Justice Berman ruled that their coupon scheme did affect the price of petrol

He granted Pick 'n Pay leave to appeal to the Appellate Division on the grounds that another court might come to a different decision

Mr S Aaron, SC, with Mr L Weinkove and instructed by Sonnenberg Hoffman and Galombik, appeared for Pick 'n Pay. Mr P B Hodes, SC, with Mr D van Reenen and instructed by the State Attorney's Office, appeared for the minister

## Youths get bail

Supreme Court Reporter  
A KNYSNA magistrate's refusal of bail to two youths accused of sabotage was overturned on appeal by the Supreme Court yesterday.

The two Knysna youths, aged 16 and 17, are accused of cutting two telephone cables carrying 50 lines between them outside Knysna on February 19. They were arrested on February 26 and 28 respectively and have since been in custody.

A bail application was heard in the Knysna Magistrate's Court on April 8, 9 and 10. The State opposed bail because the case was still being investigated, there was general unrest in the area and the accused might become involved in similar offences or endanger the public safety.

In the Supreme Court yesterday Miss Justice L van den Heever and Mr Justice P W E Baker said they had read the papers and were disposed to grant bail.

The State asked for a short recess for consultation with the Attorney-General's office and bail was subsequently fixed at R500 in chambers.

Mr John Whitehead, instructed by Y Ebrahim and Co appeared for the two youths. Mr A D R Stephen appeared for the State.

# Soweto costs you more

Sowetan 24/07/86

245  
2000

SOWETO residents fork out more for sewerage disposal and garbage removal than many of their affluent white counterparts in plush Johannesburg suburbs, a Consumer Corner investigation can reveal

Tariffs for these services in Soweto constitute about 30 percent of the monthly rents, which are now the centre of controversy between residents and the Soweto City Council

Whenever the council made proposals to increase rents, it argued that it was not increasing rents, but service charges in order to meet the workers' rising wage demands.

Residents in Soweto pay R7,93 a month for sewerage disposal and R4 a month for refuse collection

Our investigation found that the average resident of an elite Randburg suburb pays R2,12 a month for sewerage disposal — about three times less than his Soweto counterpart

For refuse collection, Randburg residents pay only R1,75 a month — R2,25 less than what Soweto people pay

A spokesman for the Randburg Town Council said these amounts came into effect at the beginning of July when the council decided to increase tariffs. The Soweto City Council has not yet increased its rates for some time

## Consumer Corner

By SY MAKARINGE



In Krugersdorp, Consumer Corner found residents paid more for refuse removal. But when the amounts are added together, Soweto tariffs are about R3 a month higher.

A spokesperson for the Krugersdorp municipality said residents paid an average of R6 a month for garbage collection and R48,75 a year for sewerage disposal — about R3 a month

### Affluent

However, the Johannesburg City Council, which has suburbs such as Lower Houghton, Northcliff and other affluent suburbs under its jurisdiction, charges people living on property not exceeding 500 square metres R39 half-yearly for refuse removal

When the figure is broken down, it shows that they pay only R2,50 more than Soweto residents

But, according to our information, the biggest site in Soweto is about 321 square metres. The average is about 178 square metres

Mrs Ellen Kuzwayo, president of the Black Consumer Union, said it was disgusting and frustrating that Soweto people did not get the services they were paying for

"There are heaps and heaps of filth everywhere in Soweto, but we are expected to sit pretty and say everything is all right. We are being exploited everywhere... at our workplaces and at our homes. It is disgusting," Mrs Kuzwayo said

She said conditions under which people in the sprawling Soweto live were extremely bad that their rates should not even be compared with those of whites, let alone coloured people

A breakdown of the services Soweto residents pay for includes:

- Refuse collection (R4);
- Sewerage (R7,93),
- Administration (R5,45),
- Maintenance of roads (74 cents),
- Maintenance of electricity reticulation and street lighting (46 cents),
- School levy (38

cents);

- Water reticulation (12 cents);
- Maintenance of clinics (50 cents), and
- Planning (30 cents)

## Council

Mr Nico Malan, chief executive officer of the Soweto Council, said as far as he knew, his council was not charging consumers the highest tariffs on services

He said he could substitute this with his own figures. The figures had not yet been made available to the *Sowetan* when we went to Press

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245

Mrs Marlene Davidson at her koeksister stall with helpers Tarryn Davidson, Shandelle van Loggerenberg and Shaun and Ursula Davidson.

DD 31/07/86

## Woman barred from selling koeksisters

Dispatch Reporter

EAST LONDON — A divorcee who sells koeksisters in Oxford Street to boost the family income has been ordered by the municipality to stop trading as she does not have a licence.

Mrs Marlene Davidson said the order from the chief health inspector, Mr Raymond Kriel, came shortly after the success of her operation was featured in the Daily Dispatch's Industrial Review.

"This is a real blow to me and I don't know how I am going to support my three children on the small maintenance I receive from my ex-husband. I also get a small social welfare grant," said Mrs Davidson who sells at least 1 500 koeksisters a week from her table in an alcove at a men's outfitters.

She said she desperately needed the R120 a week profit she made "otherwise we are going to starve".

Mr Kriel said yesterday he had taken action as Mrs Davidson was selling foodstuffs outside the confines of the law.

"The ordinance states that she is not allowed to sell in the street and that the kitchen in which the foodstuff is prepared must be passed by us."

Mr Kriel said he had invited Mrs Davidson to see him tomorrow when he would try to sort something out for her.

"We will try to regularise her position and then she will be able to make koeksisters to her heart's content but she will only be able to sell to home industries outlets," he said.

But the home industries idea does not appeal to Mrs Davidson who is hoping "to go legal" when the kitchen at her Evans Street home in Milner Estate has been completed.

"I telephoned the home industries people but they say they have women who make their koeksisters for them. Even if they did buy from me, it would only be a few because they do not sell many."

"The position of my table enables me to sell a lot of koeksisters. People don't go into the shops to buy. Mine is really a passing trade and I feel I am providing a service," she said.

The city councillor for the ward in which Milner Estate falls, Mr Phillip Rohtbart, said he sympathised with Mrs Davidson in the light of the recession and he would do all in his power to see that her position is regularised within the framework of existing laws.

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# Board set to break up 50 cartels

Own Correspondent

**JOHANNESBURG** — As part of its ongoing crackdown on illegal trade practices, the Competition Board expects to break up more than 50 cartels by the new year.

Sources close to the board have supplied a short-list of industries almost certain to be affected by board action.

The list includes short-term insurers, stockbroking services, Fedhasa, coal, advertising, newspapers, building activities, cement and timber.

The sources say a list of 62 industries alleged to be involved in illegal trade practices, published last year in the Government Gazette, gives a reasonably accurate view of affected industries.

Economists predict price wars by early 1987 as companies try to grab markets in free competition.

The board would not comment

on companies and industries involved in the shake-up.

Board chairman Stef Naude says fewer than 10 permanent exemptions have been granted from the more than 90 applications received since the board began reviewing applications from industry groups in May.

Exempted groups include Spar, Bonus, Plus, Family Circle, and advocates.

Exemptions are granted only if they serve the public interest or because of dangerous uncertainty or disruption in the economy.

Although Naude would not specify industry groups, he said "a few of the largest and best known cartels" have been given a one or two-year transition period to phase out illegal practices. Most smaller cartels have been

given three to six months to bring their industries in line with the prohibition announced in May.

In cases where the board is of the opinion an industry has been engaged in collusion on prices, market sharing or tender practices, the decision is confidential between the industry and the board.

Naude said the consumer would not benefit from broken cartels until early in 1987, when most industries' transition periods expire.

The cartel crackdown was welcomed by the director of the SA Co-ordinating Consumer Council, Jan Cronje. He expects board action in the milk, tyre, cement and coal industries, among others.

The penalties for operating illegal cartels are fines of R2 000 to R100 000 or prison terms up to five years.



# Consumer 'needs more safety'

lined a number of areas where there was no consumer safety, protection, honesty, fair agreements, privacy and hearing

The areas include

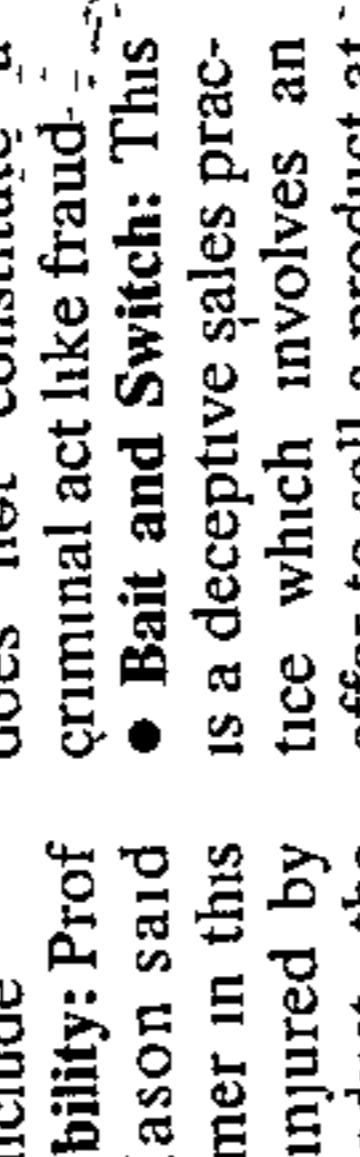
• **Right to Honesty:** There is very little protection for consumers against dishonesty in the marketplace, which does not constitute a criminal act like fraud.

• **Bait and Switch:** This is a deceptive sales practice which involves an offer to sell a product at what sounds like a very good price, almost too good to be true. Once the consumer is in the store, the product turns out to be less appealing. He is then referred to higher priced items

• **Product Liability:** Prof McQuoid-Mason said once a consumer in this country was injured by an unsafe product, the matter was governed by common law

As South Africa has become more industrialised, it seems that the time is ripe for the imposition of strict liability on manufacturers in this

country," he said



BY SY MAKARINGE

Act with the scope and powers of the English Fair Trading Act and the Australian Trade Practices Act

"There is (also) a need for a high-powered executive consumer administrator who will have the authority to exercise control in respect of breaches of consumer laws," Prof McQuoid-Mason said

In his speech, Prof McQuoid-Mason outlined

Act with the scope and powers of the English Fair Trading Act and the Australian Trade Practices Act

"There is (also) a need for a high-powered executive consumer administrator who will have the authority to exercise control in respect of breaches of consumer laws," Prof McQuoid-Mason said

Prof McQuoid-Mason said unlike the mass of legislation protecting consumers in the United States, there was very little safety law in South Africa, apart from what was to be found in common law and preventative legislation

He said the Trade Practices Act of 1976, which came into effect in 1977, had only 25 sections which controlled activities which "might directly injure the relations between businesses and consumers"

The Act's counterpart in Australia had 172 sections, he said

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# PRICES - CONTROLS & CONTRAVENTIONS

1987 - 1989

# Beef prices could be 50% higher in 1987 — report

245 E. Post  
MEAT.

By DAWN  
BARKHUIZEN

BEEF prices in the first five months of 1987 could be 50% higher than last year, according to a report released by the University of the Orange Free State.

This, said Professor Kobus Laubscher of the university's Agricultural Economics Department, would follow a slight decrease — the seasonal drop — which should last until March.

But even this seasonal drop was not as low as in 1986 and January's

prices were, on average, 14% higher than last year, he found.

Port Elizabeth's prices, however, showed a 20% increase over last January.

The steepest increase, up to 50%, was expected in supergrade beef, with the most dramatic increase expected around May, according to the report.

This week prime beef prices in Port Elizabeth were already over R4 a kg — 50% higher than last January's prices.

copy 1/10/82 26/5/82

# Millions transfer starts cartel probe

Own Correspondent

JOHANNESBURG — The transfer of one of the largest corporate insurance portfolios in South Africa, running into millions of rands, from an insurer who had held the business for many years, to another insurer, has led to an investigation into the existence of an insurance cartel.

In an interview with a spokesman for SARIMA (the South African Risk and Insurance Management Association), he indicated that its members had become increasingly dissatisfied with what appears to have been a cartel-type arrangement between most short-term insurers over the past two or three years.

SARIMA was formed last year to represent the interests of most of South Africa's largest corporate insurance buyers

It says the arrangement, loosely known as the "market agreement", has severely curtailed what should be a free market and has secured massive rate increases for its adherents

The agreement operates by laying down that a "signatory" will only accept business of another party at the same rates and conditions the holding insurer is offering. The agreement holds unless there is a significant difference in the type of risk to be covered, or revised rates offered by the holding insurer are 20%-25% higher than the previous rate.

## Barriers

SARIMA says it was aware of the movement of several other insurance portfolios, also motivated by "the intolerable negotiating positions insurance buyers have been placed in by the agreement"

A SARIMA spokesman said this week that legislative barriers to the entry of new insurance companies worked against an environment of genuine free enterprise if existing registered insurers used their privileged position to enforce rate increases through cartel arrangements

He said insurers had a duty to allow free competition, given their advantageous position "In fact, we feel it is in their interests to guard their protected position jealously by avoiding any suspicion of cartel arrangements, let alone any proof"

Those corporations with large insurance portfolios, and often with assets exceeding their insurers, are compelled to spread their business throughout the market, because, in terms of reinsurance treaties, insurers will not underwrite more than a certain amount of risk

The copying of policy and premium documents to all co-insurers for these large placements ensures adequate policing of the "market agreement" by its members as the rates and terms set by any "new" lead insurer were notified to all co-insurers

Mr Theo Vels, GM of Mutual & Federal, denied there was "an agreement" between insurers, although he said there was a "loose understanding" that a holding insurer would be consulted when one of its corporate accounts was being taken over

## Co-operation

He said the lack of market co-operation and undue competitiveness in rating in the past five to seven years had had a detrimental effect on underwriting profits and had led to diminishing reinsurance support. The industry, in acknowledging the need to sort out its books, had accepted the need for greater co-operation among members in rate-setting, in order to get sensible returns for reinsurers

Mr Brian Wilkinson, GM of SA Eagle, admitted that a "co-operation agreement" existed between the major short-term insurers "to avoid a repeat of the AA Mutual collapse"

Spokesmen for the Competition Board and the Insurance Association could not be reached for comment

Opp Times 26/5/87 - (24) ~~24~~

# Government issues 'cartel' warning

By CHRIS CAIRNCROSS

GOVERNMENT has found it necessary to re-issue a stern warning to businessmen that they will face stiff penalties, including possible imprisonment, if they persist in making use of collusive practices and cartels

In a statement released in Parliament yesterday, Economic Affairs and Technology Minister Danie Steyn indicated that the gloves have now been taken off and the authorities intend to take harsh action against anyone transgressing the laws laid down in May last year

The "alarming incidence of collusion in the economy"

which resulted in a clamp-down being imposed has apparently continued

According to Steyn, the stage has been reached where businessmen who continue with these practices and have not been given official exemption will have to bear the consequences

These amount to a maximum fine of R100 000 and/or imprisonment of five years

He said the past official practice of informally informing businessmen and companies that they were contravening the law is to be abandoned — and more direct action is now in store

The prohibition relates es-

entially to the five well known restrictive practices of resale price maintenance, price collusion, collusion on conditions of supply, collusion on market sharing and collusive tendering

Steyn said these five practices were selected because of their general occurrence in the economy, their serious restrictive effect on competition and because they cannot easily be justified in the public interest

He said that 91 applications for exemption for the prohibition have been received, but exemptions had only been granted to members of the

Newspaper Press Union, the advocate profession, the Association of Ship's Agents and Brokers and the International Air Transport Association (IATA)

Steyn said that temporary exemptions have been granted in 44 cases, mainly to enable the parties concerned to phase out their relevant practices

Periods of exemption have varied from three months to three years

Steyn said that a final decision on what to do over conditions in the building industry — which has applied for exemptions — will be reached by the middle of the year

AKGAS 28/5/87

# Insurance merger: Competition probe

THE Competition Board is to investigate growing concentration in the finance sector after announcements that the Old Mutual and Colonial Mutual plan to merge.

The board's chairman, Dr S J Naude, said smaller life assurance companies were finding it increasingly difficult to compete effectively.

"Part of the reason for the merger is that Colonial Mutual has various reasons for wanting to sever its links with Australia, where the company was founded in 1873."

The Old Mutual and Colonial Mutual are the oldest mutual life assurance companies in South Africa. Old Mutual has the largest premium income in the country and Colonial Mutual is the 12th largest assurer.

Old Mutual said in its take-over announcement yesterday that Colonial Mutual policy-holders would become Old Mutual policy-holders and Colonial Mutual's assets and liabilities would be taken over.

Old Mutual will accommodate all Colonial Mutual staff. — Sapa.

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**ECONOMY**

# Price collusion: Board to act against offenders

**The Argus Correspondent**

DURBAN — The Competition Board was aware that some price collusion was going on surreptitiously and it would act against offenders, its chairman Dr Stef Naude has warned

He said the board, which recently had made great strides in promoting competition, was being kept informed of price collusion "by customers" and it would not hesitate to act

He said the board now had the necessary legal teeth to promote effective competition in areas not entrenched in statutes. Where law was involved, it made recommendations to the Government — and five Bills were currently before Parliament

Dr Naude said the Government did not deny that in the past it had been responsible for restriction of competition

However, the board was investigating areas where competition was being impeded and advising the Government on where this now was in conflict with policy.

It also was involved in special investigations into "problem areas" for deregulation

However, it was not directly involved in looking into the controversial area of marketing boards because the National Marketing Council had been instructed to investigate the 22 marketing boards.

At present it was looking into black taxis, food-stuffs, licensing, industrial centres and the professions

In the board's view professional minimum tariff

structures had more to do with protection of professionals themselves than with the much-claimed role of guaranteeing standards to the public

The economic power concentration in the South African economy was under investigation. While it was true that there were a number of competing financial institutions, the background role of a handful of powerful mining houses and industrial giants probably was unparalleled anywhere else

The board's previous investigations had showed the economy had been riddled with cartels which limited competition, he said

Subsequent to its outlawing of five restrictive practices (such as retail price maintenance and price collusion) in May last year, he said the board had received 91 applications for exemptions

It had bent over backwards to help businessmen but had been careful not to make these permanent. Only nine permanent exemptions had been allowed. The only one of significant size was that of the Spar organisation

The board's licensing investigation showed there were about 80 activities requiring licensing procedures. Only eight or nine were justified

The problem was it had to deal with four legislatures in each of the provinces in seeking reform

The board now was drawing up a set of model regulations

It was possible that, if they were accepted, licensing could completely disappear and be replaced with a registration system

Board no political instrument

# Competition Act

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applicable to <sup>CMT, TMS</sup> 30/9/87

## newspapers — Naudé

By AUDREY D'ANGELO  
Financial Editor

IT is vital for the Competition Board to retain its credibility and not to be seen as a political instrument or susceptible to the influence of any vested interest, its chairman, Sef Naudé, told members of the Newspaper Press Union (NPU) yesterday.

He said at the NPU conference in Cape Town that the Maintenance and Promotion of Competition Act, 1979, "and hence competition policy, are fully applicable to newspapers."

"In contrast to the relevant laws of several other countries, our Act contains no provisions specifically designed for newspapers."

### General policy

"This means that in terms of general policy the aim is to promote effective competition by taking action, where justified, against any restrictive practice, monopoly situation, or acquisition in the newspaper industry."

Naudé said it also implied that, in principle, resale price maintenance, horizontal collusion on prices, horizontal collusion on conditions of supply, horizontal collusion on market sharing, and collusive tenders were illegal.

However, he went on, it was always important to understand the basics of any industry to which competition policy was being applied.

"This is probably exceptionally true in regard to the newspaper business, which is often regarded as a special case because of the importance of 'many and diverse voices stating facts and expressing opinions'."

### Characteristics

The fact was that the newspaper industry had unique structural and behavioural characteristics which distinguished it from other industries, Naudé continued.

"A newspaper does not make its profits from selling newspapers. The price of a newspaper rarely covers the total cost of production."

"Advertising is the main source of revenue, and advertising rates are tied to circulation. Hence there is an interdependence of circulation and advertising rates. This will tend to keep the retail price of each newspaper low enough to attract as many readers as possible."

"The newspaper industry lacks a basic similarity of interest between manufacturer and dealer, which usually exists in the common goal of maximizing sales revenue. The number of subscribers is more important to a newspaper than its sales revenues."

"While a newspaper would prefer to sell 500 newspapers for 10c each, a carrier would make the same profit, with less effort, by selling 50 newspapers for R1 each."

"A newspaper is more willing than an independent dealer to ensure availability of the paper in areas that entail high distribution costs."

"At the same time, the newspaper faces the brunt of customer dissatisfaction about a price increase because most subscribers do not understand that the carrier who has raised his price is not a newspaper employee."

"Properly viewed a newspaper is not a manufactured commodity sold for its physical embodiments in paper, ink and type. A newspaper is rather a package of services in a printed medium," said Naudé.

Pointing out that a newspaper was "an extremely perishable product," he said that since they could not be stockpiled for sale later their efficient marketing was essential for economic survival. Deadlines and daily press runs add unique burdens to costs.

### Revenues

"Every daily newspaper in a small town or metropolitan area serves its community emphasizing local news, local issues and local advertising. In all but the largest cities the population can probably hardly support two independent competing local newspapers."

"Due to the interrelation of quality, circulation, and advertising funds, newspapers face a threat of rapid loss in revenues that can probably be triggered by a small price change."

Emphasizing that there was widespread concern about the concentration of the media including newspapers into fewer hands, Naudé said SA's competition law was flexible enough to take the realities of any particular industry, including newspapers, into account.

The only actual investigation of a takeover in the newspaper industry carried out by the Competition Board in this country concerned the acquisition by Argus of The Natal Mercury.

"The board concluded that competition was indeed restricted by the regrettable loss of its independence by an independently owned newspaper."

"However, it applied the 'failing company' principle recognized by all developed systems of competition law, saying that 'it would be extremely shortsighted to prevent the acquisition of a failing company where it is clear, from the surrounding circumstances that it will in any case disappear as a competitor in the market'."

Naudé added "Proposed newspaper acquisitions which have not been proceeded with after confidential consultations with the board, can clearly not be disclosed."

Naudé said publishers of newspapers and magazines had been granted a special exemption allowing resale price maintenance, which operated vertically. But horizontal collusion — agreement between themselves to charge a certain price — would not be allowed.

Discussing the franchise agreement under which newspapers keep to their authorized hours, Naudé said this was a market sharing arrangement but it seemed to him that, since it was linked to hours and days, the prohibition was not applicable.

"But this, of course, is not necessarily the end of the story," he warned.

"If it is a practice restricting competition it is still vulnerable — and the crucial question will then be whether peculiarities of the industry or other circumstances justify it in the public interest."

## SA imported no newsprint for 3 years

### Political Staff

SOUTH AFRICA imported no newsprint the past three years, the Minister of Economic Affairs and Technology, Danie Steyn, said yesterday.

In a written reply to a question tabled in the House last week by the Conservative Party MP for Witbank, Wynand van Wyk, the minister said there were only two local manufacturers of newsprint, Sappi (Ltd) and Mondi Paper Company (Ltd).

Both supplied newsprint direct to members of the Newspaper Press Union — as well as supplying a small volume used for other purposes than the printing of newspapers.



248 *[Signature]* c/c AREAS 10/10/87

# THE BIG

# RIP OFF

**SPECIAL REPORT**  
by MARK STANSFIELD  
Weekend Argus Reporter

**PENINSULA** business man recently made more than R500 000 by selling water at six rands a litre to unsuspecting customers

### Shocked?

You probably are — but only because his unscrupulous practice has now been brought to your — and the courts' — attention, otherwise you, too, may have been a victim

Another trader took two slices of bread out of every sliced pack he sold and used the "filched" bread to make up sandwiches in the fast-food take-away section of his business. He scored both ways from the unwary — by selling loaves below the legal mass, and by charging hungry customers for the "free" bread they consumed in the form of a snack

A Peninsula maternal seller carefully cut the brass metre measuring unit stuck to his counter in several places and rejigged the pieces back together, which by now was missing a few essential centimeters — void, he had invented the shortest metre rule in Cape Town — which earned him mega bucks from those who thought they were buying a genuine metre of material

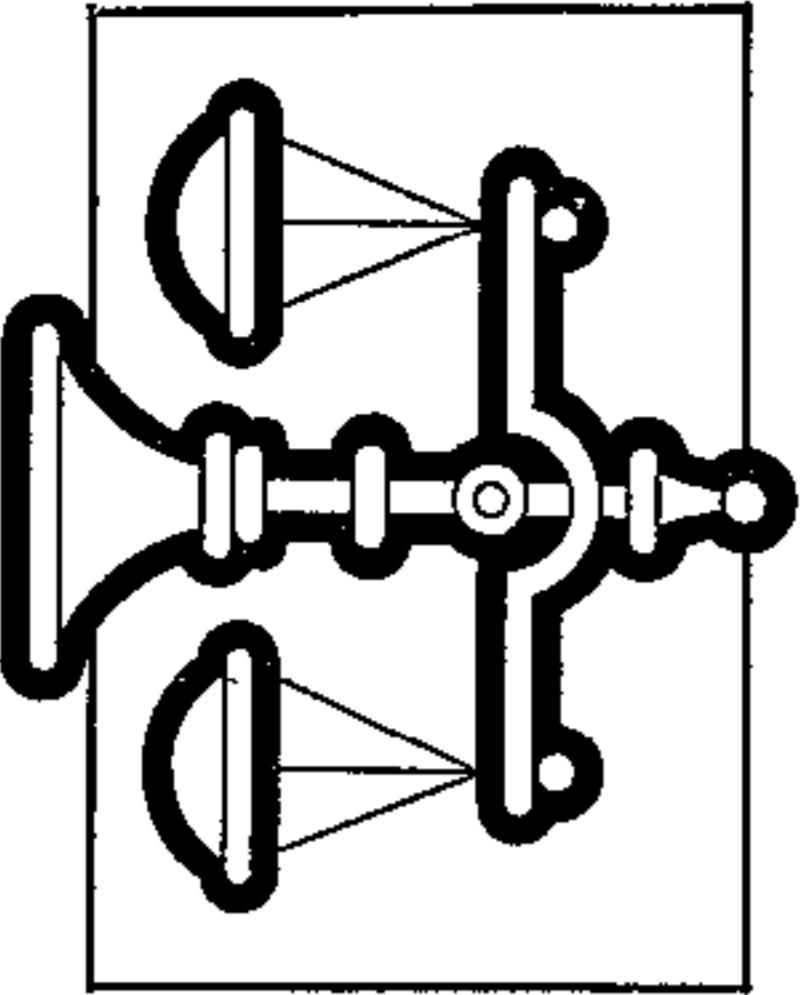
And then there was the café owner who operated

richer water seller able to get people to buy water at six rands a litre?

### Simple

He was selling his product packed in ice so 40 percent of the total mass of the product was a solidified crystal-clear liquid not worth even a cent a litre

Do these incidents sound like fiction?



They're all true and were recounted by Mr. L. I. T. Venter, regional inspector, Directorate of Trade and Industries — a little-known government department based in a nondescript

that manufacturers, wholesalers and retailers stick to the law in regard to five essential pieces of legislation passed by Parliament

These are the Trade Metrology Act (the old Weights and Measures Act), the Price Control Act, the Trade Practices Act, the Credit Agreements Act and the National Measuring Units and Measuring Standards Act

One member of the directorate spends hours pouring over every publication printed in the country looking for those out to dupe the public by using bad trade practices. But more could be done to stop these businessmen if the public are aware that there is a department willing to fight for their legal rights when it comes to unscrupulous practices in business

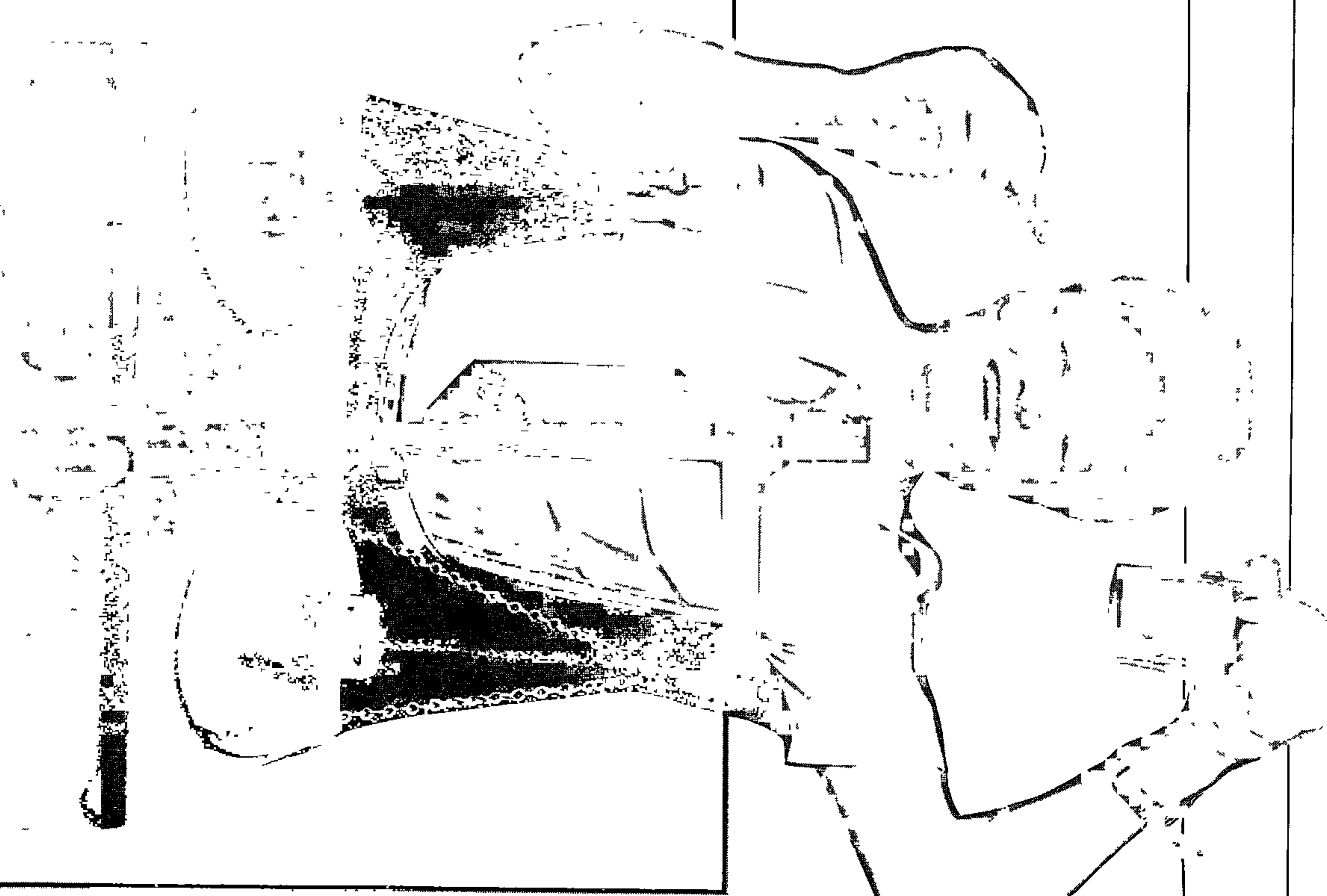
"It's disappointing how little contact we have with the public," Mr Venter said

"We do get queries from the Housewives' League do bring a lot of things to our attention, but I wish more attention was

"We do get queries from the Housewives' League do bring a lot of things to our attention but I wish there were more people who would tell us of those who have short-measured them or engaged in any illegal-seeming practices when it comes to business because the sooner we are made aware of those who attempt to rip the public off the sooner we can rectify the situation

"I hope we are not giving the wrong impression with these examples because we find that about 95 percent of traders are honest people," he said

"It's the official I've phoned with a demand a good looking offer"



Attending to a demand for a kilo-gramme for a kilo-gramme is also an officially-sanctioned kilogram. Paul is the official I've phoned with a demand a good looking offer. Picture: DION THOMP, Weekend Argus

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small business where the owner had two sets of weights — one to use when buying goods and one for selling so the practice still exists and the sooner the consumer becomes aware of it the better," he said

One task undertaken by the Directorate of Trade and Industries seems almost impossible.

Did you know that every measuring device in South Africa — from the tiny tot measure in your friendly local to the 3 000-litre/minute line meter at a petrol refinery, from the 0.5 gram mass meter in the chemist to the 400 ton weighbridge at Sishen, have all got to be inspected and approved before they can be used in public?

And if your local's tot measure does not have an official directorate approval stamp on

but highly illegal, set of scales would have earned him the awe of respect of an inventor like Leonardo da Vinci  
It worked like this

He stuck the finest nylon fishing line he could find to the measuring lever of the scales on his counter, drilled a hole through the counter top and attached the other end of the fishing line to a pedal (hidden from the customers' view underneath the counter, of course) The object was to carefully depress the pedal while placing cold meat on the scale. The more fancy the footwork below the counter, the more mass shown on the scale's dial The customers ended up paying partly for the mass of the café owners' foot and unwittingly came away with less cold meat for their money.

And how was the R500 000-

it, you may be being cheated out of your full measure of favourite tipple and should notify the directorate of the practice A bit extreme, but allowed under the law

But cheating at petrol pumps is another matter

There are many ways to cheat a person out of the petrol they pay for and this takes place mainly because the customer is too lazy to get out of the car and physically check what is happening

The owners of the petrol pumps are not always to blame

The attendant's work in teams and use the main electricity power switch (always located outside the building because of fire regulations) to bypass the interlock on the pump which normally would auto-

Corporation Street building in Cape Town which silently and without fanfare has been helping the consumer for years — most times without the public even being aware of the essential services they perform

Mr Venter and his team are the consumers' watchdog, protecting them from unscrupulous business practices — such as the examples recounted here

But it's time consumers became more aware of their rights as well as the business procedures and practices allowed under South African law because the more aware shoppers become, the less traders will be able to pull the wool over their eyes and "steal" money off them

The Directorate of Trade and Industries team make sure

matically revert the figures back to zero

What they do is pump say five rands of petrol into a can before you arrive, leave the five rands figure on the pump, switch off the power supply as you arrive and then quickly switch it back on You then pay for five rands-worth of petrol you never receive If you got out and checked you might have avoided this," Mr Venter said

These are facts"

Another duty performed by the directorate is to maintain a set of mass and measuring standards for the Cape region

In Mr Venter's office stands the Cape's official kilogram and metre, against which all other kilograms and metres in this region are measured And to make sure our official kilogram and metre are not cheat-

people who would tell us of those who have short-measured them or engaged in any illegal-seeming practices when it comes to business because the sooner we are made aware of those who attempt to rip the public off the sooner we can rectify the situation

"I hope we are not giving the wrong impression with these examples because we find that about 95 percent of traders are honest people," he said

"Its the other five percent, who need a good ticking off"

INCLUDED in the five percent was the trader who was prosecuted for giving short mass when weighing goods in his store

"He was clever and tried to catch us out under one of our own laws -In court he said that he had spelled the abbreviation

ing there is a national kilogram and metre standing in Pretoria against which ours are measured . and to make absolutely sure those are not short-massing and measuring us there are the international versions in Paris So the masses of humanity in the Peninsula can rest assured that when they ask for a kilogram, they are getting a kilogram — provided the person doing the weighing and measuring has not found some way to cheat

Any Peninsula consumer queries regarding matters governed by the five acts can be addressed to Mr Venter, Regional Director, Directorate of Trade and Industries, PO Box 466, Cape Town, or telephone 45-1517

The directorate is also willing to talk about consumer rights to any group interested in arranging a meeting

for kilogram with capital letters (KG)

"By law kilogram can only be abbreviated in lower case letters (kg) because KG actually means Kelvin Gamma He argued that he was therefore not stipulating a kilogram and the public could therefore not expect to receive a kilogram of goods for that price Fortunately the court dismissed his argument and he was fined," Mr Venter said

"In the last century, especially in the Orange Free State, which was the last province in South Africa to establish an assize office which controlled weights and measures, it was customary for a clerk in business to have to cheat his salary out of the farmers by setting the scales out of balance when he was measuring or weighing their purchases  
"I have personally seen a

First request for prosecution under new law

# Competition Board calls for cartel probe

*Cape Times 5/10/87* *245*

## Own Correspondent

JOHANNESBURG — The Competition Board has asked police to investigate several companies suspected of market collusion and operating illegal cartels

It is the first time the board has sought a prosecution under recent anti-cartel legislation. At least two of the companies under investigation are believed to be subsidiaries of major industrial groups

## Amendments

Chairman Stef Naude says the board has lost patience with companies continuing to resist the Maintenance and Promotion of Competition Act. "We have tried to be reasonable but now we are going to hit these people hard."

Act amendments gazetted in May last year outlawed five activities: setting of minimum or recommended re-sale prices, and collusive agreements among competitors on pricing, conditions of supply, market-sharing and tendering.

Since then, the Competition Board has granted dozens of temporary exemptions and a handful of permanent exemptions from certain of the regulations. But, says Naude, companies are still breaking the law. Economic Affairs and Technology Minister Danie Steyn warned recently that government patience was wearing thin.

"We know collusion and other illegal activities are going on surreptitiously," says Naude. "We have bent over backwards to help but it should not be taken as a sign of weakness. Now we've had enough."

Naude, who leaves the Competition Board early next year to succeed Sarel du Plessis as director-general of Trade and Industry, says police have been asked to look at several alleged contraventions.

"The commercial branch is involved in two investigations now and there are likely to be more," he says. A commercial branch spokesman said he could not confirm or deny Naude's comments.

Naude will not identify the

companies being investigated but sources say two are subsidiaries of major industrial groups.

If convicted, directors of companies breaking the law are liable to a R100 000 fine or five years' jail.

"They can't hide behind the company. Under this law, it is the directors who will be hit," says Naude. "They are personally drawn into the net."

## Professions

Meanwhile, the government has begun its campaign to end monopolies and cartels in the professions. It has just gazetted regulations affecting town and regional planners. According to Naude, they will be followed soon by architects, quantity surveyors, valuers and surveyors.

In line with last year's Competition Act amendments, the changes seek to end four main practices: restricted entry to a profession, work reservation, lack of price competition, and restrictive ethical codes.

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# Warning on milk price control

Political Correspondent

CAPE TOWN — The government yesterday threatened to reinstate price control over fresh milk following recent sharp hikes by distributors in various areas, including the Western Cape

A/D 5/3/88

The Minister of Agriculture, Mr Greyling Wentzel, expressed his "alarm" at recent increases, pointing out that fresh milk was a basic foodstuff and should therefore be "affordable to the general public".

Mr Wentzel said he had instructed the National Marketing Council and the Dairy Board "to advise me without delay" as to whether the the latest hikes were justified

He said he would then decide on the possible reinstatement of price control

Mr Wentzel pointed out that he had warned last year that he reserved the right to re-introduce controls over the maximum price of fresh milk in the larger urban areas "should it become evident that distributors are introducing exorbitant increases".

# VISIT

IN THE NEWS

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AD 5/3/86

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Price control: products subject to measures

758 Mr C J DERBY-LEWIS asked the Minister of Economic Affairs and Technology

Whether any products are subject to price control measures in South Africa, if so, what products?

The MINISTER OF ECONOMIC AFFAIRS AND TECHNOLOGY

Yes

Department of Trade and Industry  
Formal control

The industrial price of sugar, in terms of the Sugar Act, 1978 (Act 9 of 1978)

Deposits on returnable soft drink bottles, in terms of the Price Control Act, 1964 (Act 25 of 1964)

Department of Mineral and Energy Affairs  
Formal control

The retail price of petrol, in terms of the Petroleum Products Act, 1977 (Act 120 of 1977)

The retail margin on the sale of illuminating paraffin, in terms of the Price Control Act, 1964 (Act 25 of 1964)

The wholesale prices of diesel, illuminating paraffin and petrol are fixed by way of agreement between the Government and the oil companies

Liquor/paper supply/oil industry: measures to encourage competition

759 Mr C J DERBY-LEWIS asked the Minister of Economic Affairs and Technology

Whether any measures are being applied and/or envisaged to encourage competition in the (a) liquor, (b) paper supply and (c) oil industry at present, if so, what measures are being (i) applied and (ii) envisaged in this regard in each case?

The MINISTER OF ECONOMIC AFFAIRS AND TECHNOLOGY

(a) Yes

- (i) Liquor licenses are issued in terms of the provisions of the Liquor Act, 1977 (Act 87 of 1977) which in section 37(3) *inter alia* provides that due re-

guards to be paid to aspects relating to competition

(ii) A proposed new Liquor Act will facilitate the entry of entrepreneurs into the liquor industry

(b) Yes

(i) The prohibition on certain collusive practices as promulgated in Government Notice No 801 of 2 May 1986 is also applicable to the paper supply industry with the exception of newsprint in which case temporary exemption from the prohibition has been granted until 1 December 1988

(c) No The oil industry is being controlled from a strategic point of view and that control is applied in such a manner that ample scope exists for healthy competition among the various companies

(i) and (ii) Fall away

Sale of tugs *Willem Heckroodt/Danie du Plessis*: amount realized

805 Mr C J DERBY-LEWIS asked the Minister of Transport Affairs

- (1) (a) What amount was realized in each case from the sale of the South African tugs *Willem Heckroodt* and *Danie du Plessis* to the Government of Mozambique, (b) (i) why and (ii) when were they sold and (c) what was the replacement value of each tug at the time of sale,
- (2) whether any South African Transport Services personnel are involved in the operation and maintenance of these tugs, if so, (a) at what cost to the State and (b) on what basis are they so involved, if not,
- (3) whether it is the intention to provide Transport Services personnel for this purpose, if so, (a) when and (b) on what conditions?

The MINISTER OF TRANSPORT AFFAIRS

(1) (a) R50 000 in each case

- (b) (i) The craft were outdated and redundant and Transport Services' endeavours to sell the craft on the international market met with no success
- (ii) 3 April 1986

(c) The specific model craft is diesel-electric driven. Should they be replaced by newer type of craft presently available on the market, it would have to be at a cost of approximately R7 million each

(2) No

(a) and (b) Fall away

(3) (a) and (b) A request for assistance had been received but no decision has as yet been taken

Botshabelo: Incorporation into Qwaqwa

818 Mrs H SUZMAN asked the Minister of Constitutional Development and Planning

(1) Whether the township of Botshabelo is to be incorporated into Qwaqwa, if so, when,

(2) whether the residents of Botshabelo have been consulted in this regard, if not, why not, if so, (a) when, (b) where, (c) in what manner, (d) by whom and (e) what was their response to incorporation,

(3) whether he will make a statement on the matter?

The MINISTER OF CONSTITUTIONAL DEVELOPMENT AND PLANNING

(1) Yes Already incorporated on 2 December 1987

(2) A motion application regarding the incorporation of Botshabelo into Qwaqwa has been instituted in the Orange Free State Provincial Division of the Supreme Court of South Africa. Consultation of those concerned is part of the dispute. The matter is therefore *sub judice*

(a), (b), (c), (d) and (e) Fall away

(3) Falls away

Printing contracts awarded to two companies

828 Mr D J DALLING asked the Minister of Agriculture

(1) Whether his Department awarded any printing contracts in 1987 to two companies, the names of which have been furnished to the Commission for Administration for the purpose of the Minister's reply, or to their associated companies and printing operations, if so, (a) in re-

spect of what publications or printed matter, (b) how many copies of each publication or item were ordered from each company and (c) what are the names of the companies concerned,

(2) Whether these contracts were put out to tender, if not, (a) why not and (b) what was the total amount paid by his Department in respect of each of these contracts, if so, what was the (i) tender price originally accepted, and (ii) total amount paid out, in respect of each contract,

(3) whether his Department subsidizes any publications published by the above companies, if so, (a) which publications and (b) (i) why, and (ii) what is the amount of the subsidy, in each case,

(4) what total amount was spent by his Department in 1987 on printing and publishing involving (a) the above companies and (b) any other specified companies?

The MINISTER OF AGRICULTURE

(1) No

(2) Falls away

(3) No

(4) (a) and (b) Nil

Printing contracts awarded to two companies

847 Mr D J DALLING asked the Deputy Minister of Information

(1) Whether the Bureau for Information awarded any printing contracts in 1987 to two companies, the names of which have been furnished to the Commission for Administration for the purpose of the Deputy Minister's reply, or to their associated companies and printing operations, if so, (a) in respect of what publications or printed matter, (b) how many copies of each publication or item were ordered from each company and (c) what are the names of the companies concerned,

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# Those Rambo Surgeons, who too often strike at innocents

245  
Weekly Mail 8-14/4/88

SOUTH AFRICA'S Rambo Surgeons, who swept into Botswana last week — went to eliminate African National Congress guerrillas. All they hit were innocent civilians and an ordinary house, according to the Gaborone government.

The office of President Quett Masire this week said the March 28 raid was a "cold-blooded murder of innocent people in their sleep" and there was no evidence that the victims were linked to the ANC.

The victims they named were three Batswana women and one South African who has lived in Botswana since 1979. The South African was Charles Mokoena. The Batswana were a Lobatse teacher, Thanki Seokamo, a Gaborone bookstore employee, Masego Ikgopoleng, and an unemployed woman, Martha Bonolo Madisa.

This directly contradicts South African claims about the raid. The *Citizen*, quoting "a top intelligence source", said one victim was a Solomon Molefi, a regional commander of the ANC's military wing, Umkhonto we Sizwe, his operating name was Paul Naledi.

No evidence for this was produced. Shortly after the attack, Minister of Defence Magnus Malan said it could be stated without doubt that it had

prevented the killing of innocent people at a later stage.

"Terrorists originating from Zimbabwe and Zambia used Botswana as a transit zone. The action was like a surgeon's incision against the ANC with minimum force to achieve maximum advantage," he said.

In fact, if one believes the Botswana government, such a surgeon would probably have faced a malpractice suit.

There are two reasons for taking seriously the Botswana claims about the failures of the South African Defence Force raid. One is that SADF credibility on these issues is tenuous. Newspaper columns over the years have been littered with misleading claims, evasions and sometimes naked untruths about issues such as SADF support for Renamo and South Africa's presence in Angola.

The second is that the Botswana version fits the pattern of such raids. Although these are portrayed in most of the local media as evidence of the

Why do the SADF raids so often result in civilian casualties? Poor intelligence? Or is the real motive to hurt neighbouring countries enough to get them to throw the ANC out?

ANTON HARBUR on the Rambos of the south

SADF's gung-ho efficiency, many of the more than 150 victims of such attacks have been innocent civilians and the targets ordinary homes or factories. If the SADF is aiming for ANC operatives, as they claim, most of the evidence suggests they have seldom found their targets.

According to the journal *SA Bomber*, the Botswana raid was the seventh time the SADF has admitted a role in a cross-border raid.

Some of these were: On December 9, 1982, troops raided Maseru, Lesotho, killing 42 people, 30 of whom were alleged

the building housed offices from which the ANC was "planning a series of attacks in South Africa". The ANC said the flats did house some of their members, but the attack also hit a clinic and library used by refugees and had injured only civilians.

The SADF attacked 10 houses and offices in Gaborone on June 14, 1985, killing 12 people and wounding six. The SADF claimed four of the dead were ANC operatives. Gaborone reports said not one of those killed had ever been a member of the ANC military and only five had any dealings with the ANC — in some cases only extremely tentative links.

The SADF launched a triple-pronged raid on May 19, 1986 on Zambia, Botswana and Zimbabwe. The *Weekly Mail* reported at the time that there was "little evidence that more than minor military damage was done to the ANC".

The last example was one of the most clear-cut. In Zambia, the raiders managed to kill one Zambian and a Namibian refugee, to wound several Zambians and wipe out a bar, a shop and a UN High Commission for Refugees bed-sit facility.

In central Harare, the raiders managed to destroy a small ANC diplomatic office and a house in Ashdown Park.

In Gaborone, the raiders managed to attack the Botswana Defence Force. The ANC, it appeared, was left untouched.

What lies behind this pattern? Why do the SADF raiders seem unable to find many ANC guerrillas in neighbouring states?

One explanation, sometimes proffered by the ANC, is that this simply reflects military and intelligence incompetence.

A more common explanation is that the SADF's real motivation is not to hit the ANC, but to damage neighbouring countries, either to encourage them to put pressure on the ANC, or to ensure the perpetuation of their subordinate, dependent position in the sub-continent.

The cost for these countries is certainly high. The Southern African Development Coordination Conference (SADCC) has estimated that direct war damage cost their members \$1 610-million between 1980 and 1985. The total cost of South African destabilisation of their countries, they said, was \$10 120-million.

Another explanation is that the SADF has been carrying out these raids for entirely different motives, related more to its own internal political manoeuvring than to the ANC. As long as it knows most of the media will view the raiders as brave and adventurous heroes, it can make enormous propaganda capital from the attacks.

For example, there has often been a correlation between the timing of the raids and elections in which the far rightwing is challenging the government. Last week's raid came on the eve of the important Randfontein by-election.

What is clear is that there is seldom a correlation between "minimum force" and "maximum damage" in the SADF raids.

Although the raids displayed the vulnerability of South Africa's neighbours and the ability of the SADF to move around the sub-continent at will, there were few real military gains and certainly little direct damage to the ANC.

More damage has probably been done through the more covert actions in which the South African authorities have denied involvement. These include letter bombs, mysterious shootings in neighbouring states and assassinations such as that of ANC representative Dulcie September in Paris last week.

On the other hand, the South African government has suffered severe international condemnation for its cross-border raids.

In terms of internal reaction, however, the South African government acts in the knowledge that its version is seldom challenged in most of the local media. This allows it to make claims that are widely accepted here, even though they hold little currency elsewhere.

## Draft HBP Bill draws fire

# Designed to give consumers 'teeth'

*CAPE TOWN 20/4/88 (245)*

By ALAN FINE

JOHANNESBURG — A new draft Bill now in limited circulation gives the Minister of Economic Affairs and Technology the power to fix prices, dissolve businesses and declare various business practices unlawful.

The Control of Harmful Business Practices (HBP) Bill is designed to give substance to government's promise to give consumer organizations "teeth", and has drawn fire from large sections of organized business.

Businessmen contravening orders made in terms of the bill would be liable to a R200 000 fine and/or five years imprisonment.

The FCI said the bill appeared to go against government commitments on deregulation.

The bill aims to establish a business practices committee empowered to investigate any HBP and make recommendations to the minister on various courses of action.

The bill defines an HBP as any agreement, trading method, advertising, act or omission or situation arising out of the activities of any person or group which has or is likely to injure relations between businesses and consumers, unreasonably prejudices any consumer, or deceives any consumer.

It is proposed that the bill replace the Trade Practices Act.

In terms of the bill, the minister will be entitled, after a committee investigation and recommendation, to ask the Price Controller to fix a maximum price for a commodity, or he may decree the price an individual seller may charge for a product.

He may suspend any price increase or order the discontinuance of any alleged HBP while it is being investigated.

The minister would be empowered to declare an HBP unlawful and re-

quire any person responsible for an HBP to take whatever action he deems necessary, including taking steps to dissolve a company or business.

Persons contravening any order in terms of the legislation would be guilty of an offence and liable to a fine of up to R200 000 and/or five years imprisonment.

A special court may be established to hear appeals against the minister's decisions.

FCI director Steve Anderson said while the organization may accept the need for a "watch-dog" body to look after the interests of consumers it was not convinced the draft bill was desirable or necessary.

He said the FCI had said in submissions that, in the light of stated government policy to reduce expenditure and deregulate the economy, this bill would add to costs and its provisions were over-regulatory.

An Assocom spokesman said he was somewhat concerned at the intention of the proposed legislation.

One businessman said the definitions were so vague as to permit almost any normal commercial activity to be deemed an HBP.

In contrast, though, AHI's Hennie Klerk said his organization supported the general tenor of the Bill.

However, the quality of the committee would be crucial, and it should not comprise bureaucrats or big corporate names.

The committee would comprise four to six members with special knowledge of consumer affairs, economics, business, law or public affairs appointed by the minister, and one member nominated by the Minister of Finance.

The committee will be entitled to summons witnesses for interrogation and order them to produce documents.



# Bill targets harmful business deals

DID 20/4/88  
245

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Businessmen contravening orders made in terms of the bill would be liable to a R200 000 fine and/or five years imprisonment.

The bill also aims to establish a business practices committee empowered to investigate any harmful practice.

The bill defines a harmful business practice as any agreement, trading method, advertising, act or omission or situation arising out of the activities of any person or group which has or is likely to injure relations between businesses and consumers, unreasonably prejudices any consumer, or deceives any consumer.

It is proposed that the bill replace the Trade Practices Act.

In terms of the bill, the minister will be entitled, after a committee investigation and recommendation, to ask the Price Controller to fix a

maximum price for a commodity, or he may decree the price an individual seller may charge for a product. He may also suspend any price increase or order the discontinuance of any alleged harmful practice while it is being investigated.

The minister would be empowered to declare a harmful practice unlawful and to require any person responsible for such a practice to take whatever action the minister deems necessary, including taking steps to dissolve a company or business.

The Federated Chamber of Industries said the bill appeared to go against government commitments on deregulation.

The director of the FCI, Mr Steve Anderson, said that, while the organisation may accept the need for a "watch-dog" body to look after the interests of consumers, it was not convinced that the draft bill was desirable or necessary.

An Assocom spokesman said he was concerned at the intention of the proposed legislation.

One businessman said the definitions were so vague as to permit almost any normal commercial activity to be deemed harmful.

In contrast, AHI's Mr Hennie Klerk said his organisation supported the general tenor of the bill.

# Business practices Bill under fire

By Sven Limsche

Organised business has criticised the draft Control of Harmful Business Practices (HBP) Bill, which could empower the Department of Trade and Industry to fix prices, dissolve businesses and declare various practices unlawful.

The Bill, already in limited circulation, is in line with the Government's intention of giving more muscle to consumer bodies.

Assocom said last night that although it believed in the protection of the consumer, legislative steps to achieve this should not damage business confidence.

Assocom said the draft Bill was still in a formative stage, but that the proposed use of price control was contrary to recent price and wage control policies.

"We believe that legislative steps to protect the consumer should not be of such a nature as to damage business confidence.

"We regard the proposed power to summarily restrict or even close down a business as drastic. The association has emphasised the need for an appropriate appeal mechanism," it said.

"The Bill appears to contradict the Government's recently stated intentions on deregulation and could severely curtail the freedom of the economy," said Hennie Viljoen, president of the Witwatersrand Chamber of Commerce and Industry (WCCI).

He said the current Trade Practices Act, the Competition Board and various other mech-

sims afforded adequate protection.

"The new Bill will place every business under threat and could harm consumer interests in the long term.

"The WCCI has always held that a free market economy is the most effective means of protecting the long term interests of the consumer and not, as we interpret this bill, through empowering the Minister of Economic Affairs and Technology to fix and control prices," Mr Viljoen said.

The Transvaal branch of the Federated Chamber of Industries said it felt the provisions of the Bill were neither necessary nor desirable.

It said that in its submission to the Department of Trade and Industry on the proposed legislation, it had noted: "Although there is an accepted need for some sort of watchdog to protect consumer interests, another body apart from the existing Competition Board is unwarranted."

"In the light of Government policy to reduce expenditure and to deregulate the economy, this Bill could be considered contradictory to this policy, as it is both over-regulatory and costly.

"The FCI questions the necessity for such wide powers on intervention into business affairs, which the Bill grants the Minister, and whether the costs involved in implementing the Bill are warranted."

# Price-control Bill worries big business

by DICK USHER  
Weekend Argus Reporter

**BIG** business is deeply concerned about the possible introduction of price-control measures in proposed legislation.

Both the Federated Chamber of Industries (FCI) and the Association of Chambers of Commerce (Assocom) have reacted strongly to the proposed Control of Harmful Business Practices Bill and to remarks made by President Botha this week that the business sector had failed to co-operate in the fight against inflation.

Assocom said it had been "supportive of both the principle of consumer protection and the Economic Advisory Council's anti-inflation plan

There also appears to be uncertainty in the business community as to the precise pur-

pose of the proposed Bill," said the association in a statement

The president of FCI, Dr Hugo Snyckers, said the chamber had read Mr Botha's parliamentary statement with concern.

"The chamber has already expressed support for the initiatives taken to combat inflation and it agrees with the role that competition plays in this

"We have deep concern, however, over the extremely wide-ranging and arbitrary powers conferred on the Minister of Economic Affairs in the first draft of the Bill, on the vagueness of many definitions and certain other aspects," said Dr Snyckers

Beyond these official statements, it is understood that the proposed Bill is viewed with alarm in business circles as it could be an instrument for price control.

According to Mr Michael Boyes, president of the Cape Town Chamber of Commerce, it gives the Minister the power to fix prices, dissolve businesses and declare certain business practices unlawful

"In his recent Budget speech, the Minister of Finance again reiterated that price control was not an acceptable option

"We cannot understand how the Government can propose a new instrument for price control," he said.

Assocom and the FCI have been consulted on the Bill.

In an earlier statement, Assocom said although it believed in the protection of the consumer, legislative steps to achieve this should not damage business confidence.

The proposed use of price control ran counter to the philosophy of deregulation, it said.

W/ 98645 23/4/88 (245)

DID 25/4.88

# De Kock denies challenging PW

245

JOHANNESBURG — Public statements by the State President and by the Governor of the Reserve Bank indicate a fundamental difference of opinion between the men on mandatory wage and price controls

Dr Gerhard de Kock denied late last night that he had sought in any way to challenge the State President when he criticised wage and price controls in a speech to the Cape Town Afrikaanse Sakekamer on Friday

He said he was not aware of any change in government policy on wages and prices and had not addressed himself at all to the State President's comments

However, Dr De Kock's comments stood in sharp contrast to remarks made by President P W Botha only one day earlier

In a sweeping attack on business on Thursday, President Botha

said that as the private sector would evidently not give its "quid pro quo" in the fight against inflation, the government would have to submit legislation to compel its co-operation

Excessive price increases would be investigated by a business practices committee and "action would be possible"

On Friday, Dr De Kock repeated earlier statements that direct controls over wages and prices would create more problems than they would solve

Direct interference with prices and wages have also been rejected by the President's own Economic Advisory Council (EAC)

The rejection of direct controls was strongly supported by private sector economists and business leaders, while Assocom is seeking urgent meetings with cabinet members to clarify Mr Botha's remarks

However, Department of Finance sources said the government had no intention of imposing direct controls over wages and prices to combat inflation, despite Mr Botha's remarks last week. No official comment could be obtained yesterday

In his Friday speech, Dr De Kock said that present monetary and fiscal policies made a gradual reduction of South Africa's inflation rate well within reach

If money supply growth was kept to within the 12 per cent to 16 per cent target range and the government stuck to its Budget, the inflation rate would probably show a further gradual decline

"And if the announced monetary and fiscal policies are not effectively applied, more direct controls over prices and wages would not be the answer," Dr De Kock said. — DDC

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# CP MP to address meeting

DID 25/4/88

EAST LONDON — Conservative Party member of parliament and economic affairs speaker for the party, Mr Clive Derby-Lewis will be speaking at the Beaconhurst School Hall tomorrow evening

Mr Derby-Lewis, founder member of the CP and the party's press liaison officer, said he would show "the way which the government incorrectly spends its money" in his address.

Another major issue would be what the CP will do about mixed residential areas "when they come into power"

Mr Derby-Lewis, who has accused South African Airways of inefficiency and who said he "predicted an incident like the Helderberg" said he arrived here on a delayed SAA flight last night, and would also raise this issue. — DDR

210 25788

# Consumers to pay more for maize <sup>maize</sup> 245

JOHANNSEBURG — Consumers are to pay more for white maize following a Maize Board (MB) announcement at the weekend that the price of the commodity was to rise by 3,9 per cent

The chairman of the Maize Board, Mr Hennie de Jager said "The new selling prices are proof that the maize industry has heeded the State President's appeal to agriculture, trade and industry to exert the necessary financial discipline regarding price increases"

He said the board had continued with its consumer oriented approach in its price deliberations and had taken a realistic view of the current and expected changes in local and international market factors

It was understood that

the government's undertaking to cover part of the expected export costs enabled the MB to keep the increase in the selling price at a minimum and had also helped in reducing the gap between producer prices and selling prices

Since the season began, the average selling price for yellow maize has been lowered by six per cent from last season

"The board has expressed its confidence that this price benefit will be passed on to the end-consumer," the MB said in a statement

After taking into account the supplementary payment on their previous crop, producers will receive R4 a ton more for white maize and R11 a ton more for yellow maize for the new crop — DDC

## State against control of pay and prices 245

By David Braun,  
Political Correspondent

The Government remained opposed to a freeze on wages and prices to bring down inflation, the State President, Mr P W Botha, said last night.

Speaking during the President's Budget vote in the House of Delegates, Mr Botha said certain newspapers owed him and the Governor of the Reserve Bank, Dr Gerhard de Kock, an apology for "deducting" that there was a difference of opinion between them in this regard.

He had never spoken in terms of a total price control during his Budget vote debate in the House of Assembly last month.

"I referred to excessive price increases," Mr Botha said.

The Government did not intend applying price control. It was an expensive system and it did not work properly.

ARC 3/5/88

245

# PW rules out freeze on prices and wages

By DALE LAUTENBACH  
Parliamentary Staff

THE Government was opposed to price and wage control and had no intention of implementing such measures, President Botha told the House of Delegates

Speaking yesterday during debate on his budget vote, Mr Botha said his proposal to introduce legislation for the establishment of a business practice commission had been misinterpreted by some as a move towards total price control

"I never spoke in terms of a total price control, I referred to excessive price increases," said Mr Botha

The Government already had the legislative power to introduce price control but it did not intend using this expensive and ineffective measure, he said

The Government remained committed to private enterprise and competition in a system which acted to protect the consumer against excessive price increases as opposed to a system of wage and price controls

In certain instances it was necessary for the Government to make moves which furthered business competition and thereby strengthened the role of the consumer

## Competition

The role of a business practice commission would be to foster competition, said Mr Botha

He expressed again his disappointment in the private sector's lack of response to his appeal for discipline in salary and wage increases and price increases

He warned there was "strong public reaction to what is perceived to be unnecessary price increases"

● Certain "mischief-makers" in the Press had reported that Mr Botha and the head of the Reserve Bank, Dr Gerhard de Kock, were at loggerheads

This was nonsense, said Mr Botha, quoting from a letter Dr de Kock had sent him following the reports in which the Reserve Bank head said the importance of President Botha's economic address at the opening of Parliament this year "could not be over-emphasised"



DID 415185 (245) ~~270~~

# Bureaucratic Bill to bash business

There is general agreement among politicians and businessmen that legislation providing consumer protection should be beefed up. But the draft Bill now doing the rounds for comment is virtually a blank cheque to enable the bureaucrats to rule business with an iron rod.

Just for a start, the definition of what constitutes "harmful business practice" is so wide as to be downright dangerous. A harmful practice, says the Bill, is any agreement, arrangement or understanding between two or more people, whether legally enforceable or not, any scheme, business practice or method of trading, including any method of marketing or distribution, any advertising, act or omission, or any situation arising out of the activities of any person or group, which, directly or indirectly, has or is likely to have the effect of injuring the relations between businesses and consumers, of unreasonably prejudicing any consumer or of deceiving any consumer.

The possibilities for malicious abuse are manifold. Is it not, for example, "injurious to relations between businesses and consumers" for a customer to buy a product from Store A only to find it is cheaper at Store B? And yet that is exactly the basis of free competition.

If the definitions are flawed, the mechanism the State proposed to control what it calls harmful practices is Machiavellian.

Its solution, unsurprisingly, is to create another bureaucracy — the "business practices committee." This con-

## The Control of Harmful Practices Bill, now in limited circulation for comment, has been attacked as an unsubtle attempt to impose bureaucratic controls over business. Neil Jacobsohn examines the provisions of the draft legislation.

sists of between four and six members appointed by the Minister of Economic Affairs because of their "special knowledge or experience in economics, industry, commerce, law or the conduct of public affairs," plus one member nominated by the Minister of Finance. The Bill does not bother to specify what qualifications this member should have, if any.

Not only does the Minister appoint them, he is also free to remove or replace them at any stage. There's no chance of falling again into the SABC trap of limited political control!

The committee must investigate whatever it or the Minister thinks may be harmful business practices. In doing so, it is given sweeping powers.

It may summon any person to appear before the committee for, in the words of the Bill, "interrogation." It may further instruct any person to produce any book, document or object.

The "interrogation" is under oath, and the committee may choose, if it wishes, to retain any book, document or object, although the owner will be allowed "at his own expense and under

supervision of the investigating officer" to make copies or take extracts from such documentation. The committee may also instruct any person to provide in writing full details of any agreement, business activity or undertaking specified by the committee.

Failure to obey the committee, or to give false evidence, is an offence. And as to the question of privilege, the Bill proposes that the committee's hearings should have the same status as a provincial division of the Supreme Court.

But that's not all. The committee may also appoint any person it "considers suitable" as a paid "investigating officer." Armed with nothing more than a letter from the committee chairman, this individual would be empowered to enter premises at "any reasonable time" to "inspect or search such premises." Further, he may demand any information regarding his investigation from the owner or person in charge, may examine, copy or make extracts from any documents and, finally, may "demand from the owner or any person in charge" an explanation of any entry in such documentation.

And, of course, failure to comply is an offence.

The committee is free to investigate of its own volition any practice it considers may be harmful in terms of the Bill's definition. The Minister may also order an investigation — or prohibit one, if he deems it "not in the public interest."

Notice of any investigation must at least be Gazetted, which enables the intended subject to prepare written representations. But once the notice is published, the Minister is free to take action against the concern to "ensure the discontinuance or prevention of any alleged harmful business practice" for any period, but not exceeding the three months allowed for an investigation.

This effectively enables the Minister to take action against a concern before it has been investigated, purely on the basis of his or the committee's suspicions. In other words guilty until proven innocent. So much for the principles of common law.

Once the committee has decided a harmful practice is taking place,

it may attempt to negotiate a solution with the offender. If this fails, the Minister is free to act, and his options are plentiful.

He can instruct the Price Controller to fix prices or to prescribe the size of increases or discounts. He can declare practices he considers harmful unlawful, and can then take action — including steps for the dissolution of any body, corporate or unincorporate or the severance of any connection or of any form of association between two or more persons.

He may also impose a fine up to R200 000 a jail sentence of up to five years or both.

And there is no guarantee that the details of any investigation will be open to public or parliamentary scrutiny. The Bill specifies that reports must be tabled in Parliament only if they can "in the opinion of the Minister be made known without detriment to the public interest."

What of the right of appeal? Provision is made for a special court to be constituted "as the State President may consider necessary." It will consist of a Supreme Court judge and two members, one the holder of a degree in economics, the other a person who, in the State President's opinion, has wide experience of "industrial, commercial or financial matters."

This court may confirm or set aside findings and award costs. Its decision, except on strict matters of law, shall be that of the majority — and shall not be subject to appeal or review by any court of law.

Govt curbs <sup>Stev</sup>  
'imminent' as <sup>1/5/8</sup>  
credit spree <sup>(245)</sup>  
continues

By Michael Chester

Three million South Africans a year are seeking new credit facilities in a spending spree that has boosted retail sales to record levels, says Information Trust Corporation (ITC), which monitors the credit records of businesses and consumers.

But there is widespread speculation that new Government measures to curb credit buying may be imminent.

And it is accompanied by warnings that there has been a marked increase in the number of cheques that are bouncing.

Mr Paul Edwards, managing director of ITC, said yesterday that more than a million consumers now had black marks on their credit records — one in every four or five whose credit performance was tracked by computer.

He said that the rush to find new lines of credit that started before the Christmas shopping season was carrying on at speed and was 26 percent higher than a year ago.

Measures to curb the spending spree may have become necessary, Mr Edwards said, but he warned: "If the Government pulls the reins on spending too violently the whole economic recovery will be brought to a sudden standstill."

● See Page 8.

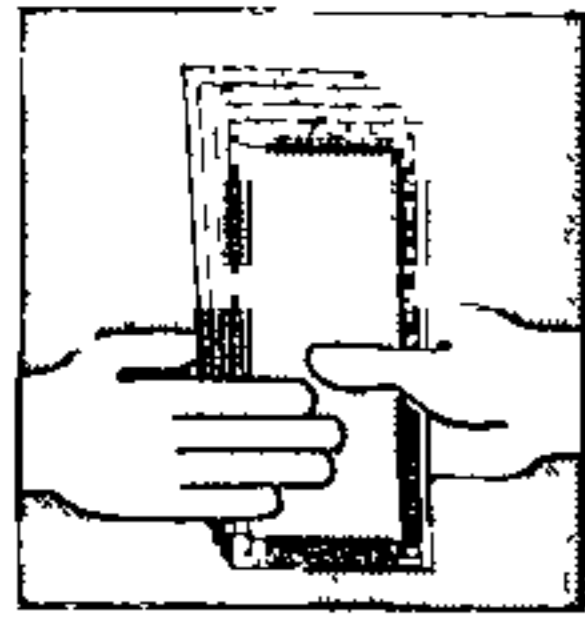
## Saan deal

By Shirley Wok  
Municipal Re

Businessman Mr Joe Berardo  
African Associated Newspape  
a day after the Johannesburg

(245) (A13)

# Information or deprivation



**Might versus right** — that is the popular perception in SA of business and the consumer. Purchasers across the education and income spectrums very clearly see a *Them and Us* situa-

tion in which it is big business which rides roughshod over the helpless consumer

That perception has had real effects. Together with hundreds of documented instances of bad business practices and a new militancy among consumers in this country — which is fair enough — it has prompted the recent drafting of the controversial Harmful Business Practices (HBP) Bill, touted by government as SA's answer to consumer protection.

But as always, real life is not quite that simple. It never is.

Consumerism is a complex and emotional issue in which debate usually generates more heat than light. It is also a growing issue worldwide. March 15 has even been declared World Consumers' Day.

The concept of consumer protection has been developing steadily since the end of World War 2, when inflationary pressures threatened economies around the globe and governments patronisingly started talking about looking after "the little man".

Japan was the first country to launch an actual movement — the Housewives' Association — in 1955. Since then the idea has spread to other Eastern and most Western countries, helped along by an understanding among politicians that it can't do them any harm to be seen as guardians of the nation's housewives and families.

US President John F Kennedy raised consumerism to new heights in 1962 when he issued a special message outlining four basic consumer rights: to seek safety, know reality, be able to select, and be allowed to present an opinion. The more than two decades since have seen a blossoming of consumer protection internationally, both legislated and organised — until there is scarcely a democratic country without some consumer statute or lobby. The results have been dubious.

In rapidly growing economies, where jobs

**Most people think that business is ripping them off with unjustified price hikes. Sometimes they are correct. But that doesn't mean that Pretoria has to step in with draconian laws to command and control. Buyers need more information about existing redress for consumers — and this is where the Consumer Council could find its proper role.**

are plentiful, there is little or no consumer regulation. And in some of those countries that have the longest history of this type of law, it is being seriously re-thought, if not scrapped.

Now, belatedly, SA has got into the act, but not without bluster, confusion and confrontation. Even before passing into law, the HBP Bill has set businessmen at the throats of both government and consumer bodies, government against the private sector; and consumer associations against free enterprise.

All three claim strong cases.

Consumers themselves, both black and white, are adamant that they are ripped off by business. A random survey by the FM of 200 shoppers in central Johannesburg produced unanimity on the subject.

A selection of quotes: "Every time I go to the supermarket, even if it's only two or three days in between, prices on the shelves have gone up. There's no excuse for that."

"The last time I was dissatisfied with a service, the man told me to sue him and then he laughed because he knew I couldn't afford it."

"I've complained about bad products or bad service before now, but it's only the minority of stores that take any notice. Most of them don't bother because they know they don't have to. They've got the consumer over a barrel."

"Businessmen talk on the TV and in the papers about rising costs. They don't bother to explain them — they just expect us to believe them. I don't."

And the litany of complaints goes on.

Consumer associations back up that feeling. There is a plethora of such associations, most of

them voluntary and most of them under the umbrella of the SA Co-ordinating Consumer Council.

The council receives a small amount of money annually from government, enough to maintain four offices and 30 fulltime staff (including a director) but not enough to check or test product claims or to fight test cases in court.

Says a council spokesman: "We are basically a complaints office, and we've got our hands full just coping with that. But we have no real teeth."

"When we encounter real horror stories — and there are plenty of them around, believe me — there's often little or nothing we can do about them."

"This Bill is 15 years overdue. Business in SA has been asking for it for a long time because of the shoddy way consumers have been treated."

In the council's financial year to end-March it dealt with more than 15 000 complaints at its head office in Pretoria and its regional offices in Bellville, Bloemfontein and Durban.

The four biggest areas of complaint during the 1987-1988 year, in descending order, were repairs of household electrical goods, used cars, home improvements, and houses built on unstable ground.

Says the spokesman: "People don't complain too much about prices. They generally complain

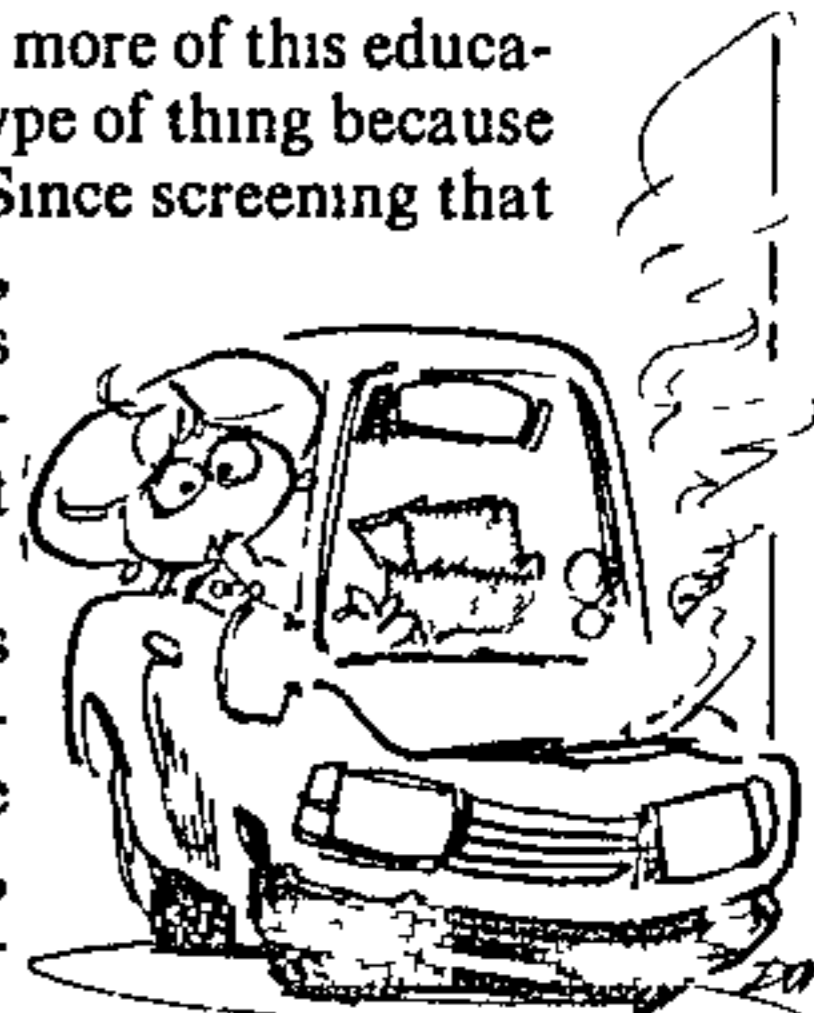
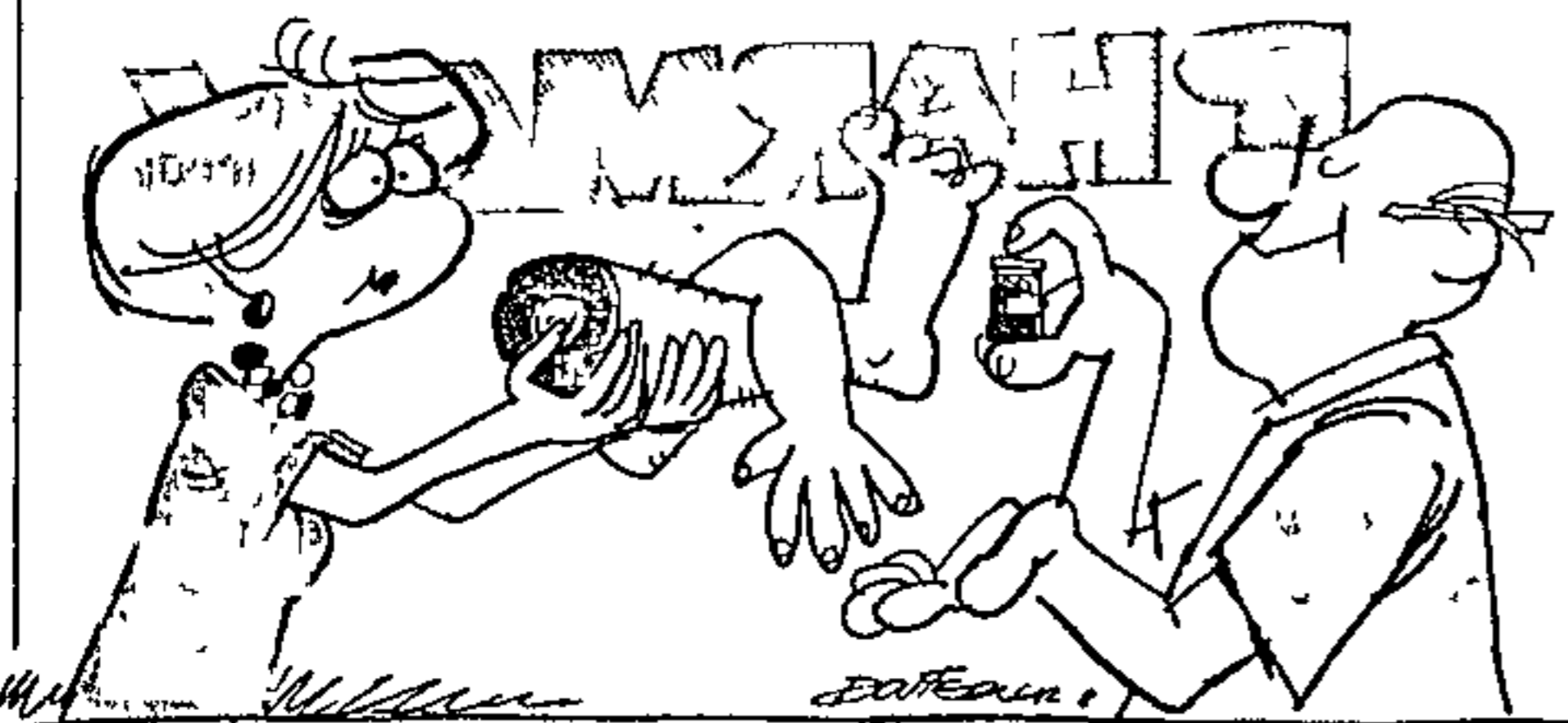
about services and workmanship and quality, and usually only when they are driven to it by frustration."

"But they're beginning to wake up to prices now."

"We would like to do much more than we do, but we simply don't have the money. We've been screening that little television series recently, but we had to go out and beg for sponsors because we couldn't do it on our own. Then we had to fight for a decent time slot on TV."

"We'd like to do more of this educational awareness type of thing because it pays dividends. Since screening that programme on TV, our complaints have almost doubled. But we can't afford it."

The council was consulted by government on the drafting of the Bill, and under the provisions of the legis-



lation will certainly play a major role in enforcing it

But it is not particularly highly regarded in the business community, and less so by the *FM*. Most businessmen regard it as "self-serving," "petty" and "bogged down by dogooders who know nothing about business but have enough spare time on their hands to interfere with it."

They see the involvement of such people in the watchdog committee mooted by the HBP Bill as one of its main drawbacks

Of 50 businessmen polled by the *FM*, only four gave qualified support to the Bill — and even they pointed out that "it needs extensive redrafting"

Said one: "The idea is good enough, but the execution is dismal. The thing is wide open to abuse by competitors who want to have a go at bigger businesses, it is wide open for the minister to have a bash at any businessman who displeases him, and I don't think it's going to do much good in a court of law because it is so vague. I also resent the fact that there is no provision for business representation on the committee"

He was one of the few even prepared to consider that the consumer might have a case for protection. The overwhelming majority said there was "more than enough" existing legislation

Nor did the businessmen approached — who covered all sectors from manufacturing to supply, distribution, retail and the provision of services — consider that there was a case to answer on prices

Said a manufacturer "I set my prices according to the materials supplied to me and my labour and production costs. I do not make exorbitant profits. In fact, I have very tight margins"

Said a supplier: "I make a fair profit, and that's it. I'm not unreasonable. My prices are set according to my overheads, most of which are labour and transportation, and I've got nothing to do with it when those rocket. That's the unions and the government."

Said a distributor "We're always getting the blame for pushing up prices and ripping off the consumer. That's nonsense. We operate on very tight margins and we're very competitive or we wouldn't survive."

A retailer. "People see the prices and blame us for arbitrarily setting them at high levels. We're not responsible for the costs all the way down the line. Because of the competition we've got, we actually operate on very small margins of profit."

Government has made its position very clear, both in parliament and through the Department of Trade and Industry (DTI). Nationalist MP Brian Edwards (Pietermaritzburg South) was voicing these feelings in the House of Assembly earlier this month

during the Budget debate "Some change in legislation had to be considered, for there are many who are fuelling inflation through excessive profit-taking and, behind the scenes, cartels are operating to the detriment of consumers"

That sort of statement betrays a profound ignorance of how a market economy functions

New DTI Director General Stef Naudé goes further "There is evidence of unacceptable exploitation of particularly those whose bargaining powers or practical access to legal remedies — if they exist — is almost non-existent"

"It is not the State's function to prevent people from making fools of themselves. The State cannot prevent all exploitation and shape a perfect world. But it has an obligation to provide an effective, but responsible and balanced, system for consumer protection."

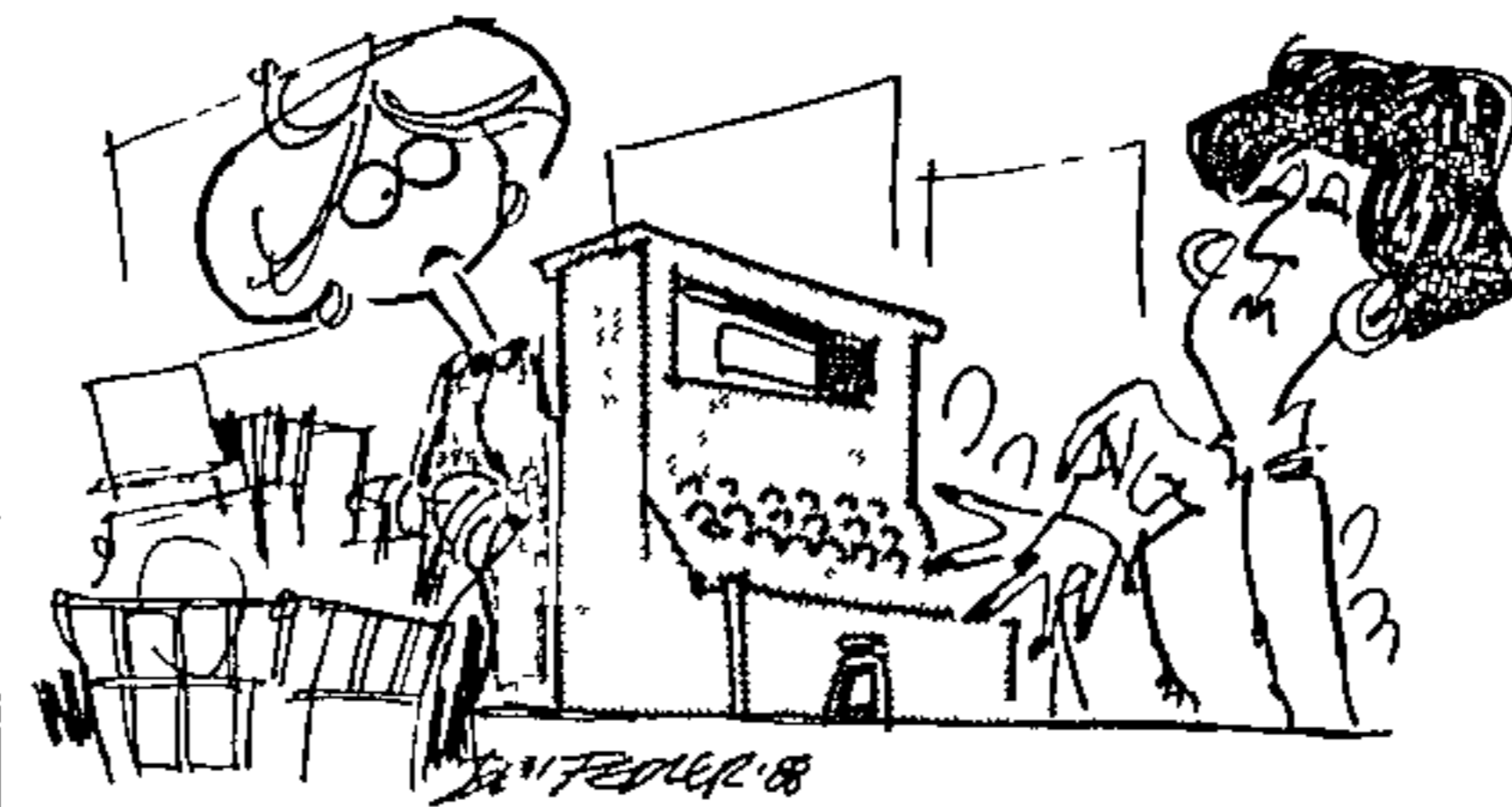
The result is the unbalanced HBP Bill — which, according to government sources, is destined to be pushed through parliament in its existing form

The truth about consumerism in SA is more pro-

saic than the picture painted by any of the protagonists. It is that for too long, this country has had a quiescent consumer society which, through ignorance or apathy, has allowed its *common law* rights to slide into disuse. This is something the enthusiastic advocates of the new Bill would do well to remember

What government *could* have done — since it was obviously intent on making political capital out of rising consumer dissatisfaction — was to have followed the lead of countries like Britain where those common law rights have been consolidated into a simple, usable statute. That has been followed up with easily understandable booklets for public information

Instead, SA has produced yet another blunderbuss which scatters its shots far and wide. The HBP Bill lumps investors together with consumers, it provides almost limitless powers to the minister, it complicates rather than simplifies (the Americans would call it "bureaucratising"), it regulates further at a time when the State President is espousing



deregulation, and it presents yet another disincentive to both small and large businessmen already hamstrung by rules and taxes

There is something else that could have been done for consumerism in SA without any legislation at all: the existing infrastructure of the Consumer Council could have been used to produce a worthwhile body with its own teeth in existing law

And so it must be asked why can't the council not reorganise itself into a properly functioning body, relying on *voluntary* fees from both individuals and other associations?

That would give it the money it so badly needs to provide expert support to the ill-educated consumer

With money behind it — and the backing virtually guaranteed by anyone prepared to pay a fee for membership — it could have hired professionals who know the consumer game, and started playing it the way it's done in places like the UK and the US — implementing quality checks, exposing dishonesty and organising effective lobbies and campaigns

All of this would have given the undoubtedly hard-pressed consumer a better deal than he currently has under common law or through the Small Claims courts (which are, anyway, still limited to the major centres).

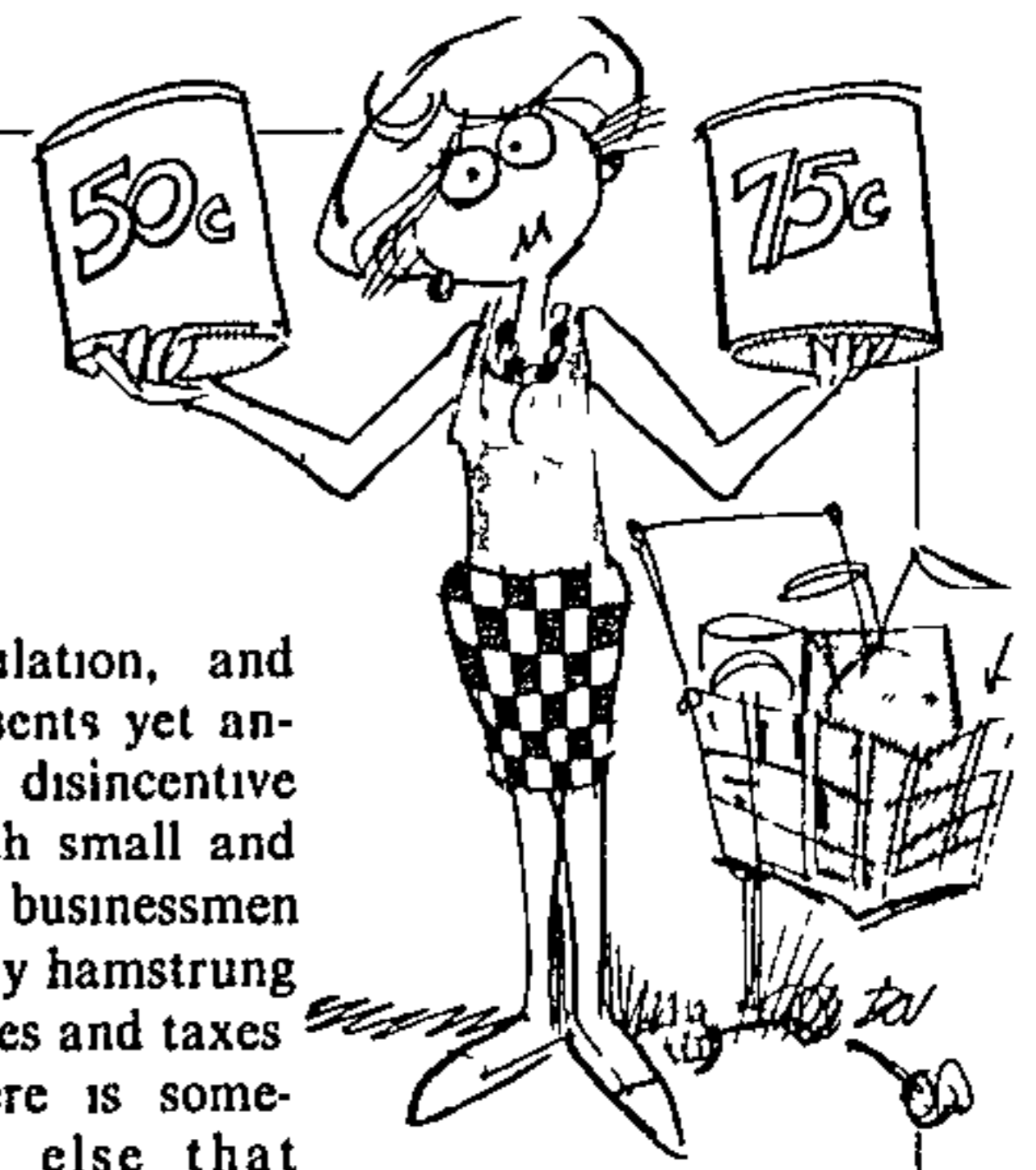
It would also have served notice to those businessmen who are indulging in sharp practice that they are likely to be exposed



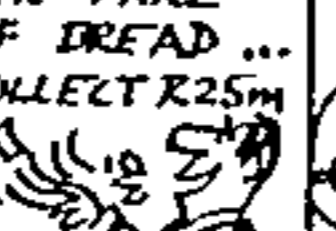







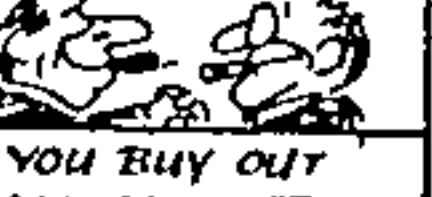
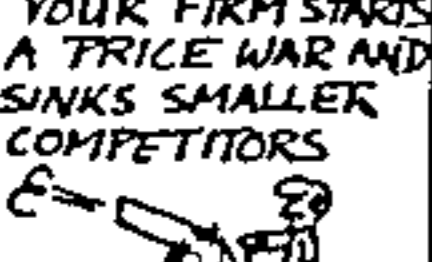




And it could all have been achieved without the hostility generated so far by the Harmful Business Practices Bill, the extent and vacuity of which could result in clandestine price controls

But the biggest mistake of all was government's deliberate attempts to link consumer protection to an anti-inflationary policy and thereby attempt erroneously to shift the blame for rising prices from itself to business

Inflation is caused by too much money chasing too few goods and services. And the quantity of money in circulation is entirely at the behest of government. It has nothing to do with business

Monopolies and cartels have a once-off impact on prices and make markets less efficient. They change consumption patterns as some commodities become more expensive — the de-



<p>WITH OTHER MAJOR COMPANIES YOU FORM A CARTEL TO CORNER THE BREAD MARKET</p> 	<p>YOU BECOME A MEMBER OF THE BREAD BOARD CONGRATULATION</p> 	<p>THE BREAD BOARD RECOMMENDS A HUGE INCREASE IN THE PRICE OF BREAD... COLLECT R25M</p> 	<p>YOUR PRICES ARE WELL AHEAD OF THE INFLATION RATE. ADVANCE TO GO</p> 	<p>YOU BUY THE BANANA BOARD ADVANCE ONE SPACE</p> 	<p>YOU BUY A BANANA FARM. COLLECT R6M</p> 	<p>GO TO YOUR STOCKBROKER</p> 
<p>EASY STREET</p> 	<p>DIKE-LOADED AGAINST THE CONSUMER.</p>  <h1>MONOPOLIES</h1> <p>A GAME FOR SURE FIRE PROFITS.</p>				<p>LUXURY LANE</p> 	
<p>THE PUBLIC ASKS QUESTIONS ABOUT EXORBITANT PRICES. YOU CONFOUND THEM WITH FIGURES ADVANCE 5TH SPACE</p>					<p>YOU FIX PRICES WITH A MAJOR COMPETITOR ADVANCE TO YOUR STOCKBROKER</p> 	
<p>YOU PUT THE PRICE OF YOUR PRODUCT UP THREE TIMES IN TWO WEEKS COLLECT R7,000,000</p>					<p>YOU BUY OUT ALL SMALLER COMPETITORS COLLECT R56M</p>	
<p>YOUR FIRM STARTS A PRICE WAR AND SINKS SMALLER COMPETITORS</p> 					<p>YOU MAKE A MAJOR SPEECH ABOUT THE BENEFITS OF FREE ENTERPRISE - ADVANCE TO EASY STREET</p>	
<p>AT YOUR STOCKBROKER COLLECT R2,000,000</p> 	<p>THE COMPETITION'S BOARD INVESTIGATES YOUR MONOPOLY BUT DECLINES TO PROSECUTE ADVANCE TO GO COLLECT R5M</p>	<p>YOU BECOME A MEMBER OF THE DAIRY BOARD</p> 	<p><b>SUPER PROFIT</b></p> <p>COLLECT R5,000,000</p>	<p>YOU PERSUADE A CONTROL BOARD TO SET IMPOSSIBLE TRADING CONDITIONS FOR SMALLER COMPETITORS COLLECT R11,000,000</p>	<p>YOU HAVE A HUGE SURPLUS PUT THE PRICE UP AND COLLECT R6,000,000 R</p> 	<p><b>GO</b></p> <p>COLLECT R6M AS YOU PASS</p> 

Courtesy of the Cape Times

At best it will bottle up price rises, as has happened wherever price controls have been tried

If it is used to curb "excess" profits or "profiteering" (whatever that might be) there will be further declines in investments and therefore in supply. The vast majority of profits generated by business undertakings do not go to shareholders — they get a competitive return on their capital — but are reinvested to provide more capacity for growth or, through technological advance, more productive means of growth

As this Bill fails to get to grips with consumerism — and woefully underestimates the sophistication and intelligence of all consumers — it won't eradicate sharp practice, either

It is not excessive regulation but the free flow of information, and the ability to have their interest heard, that is the consumer's best defence against what he believes to

cline in red meat consumption and increase in demand for chicken is a case in point. They do not and cannot cause a sustained increase in a wide spectrum of prices

If anything this Bill will encourage inflation. By enabling bureaucrats to misallocate resources it will further restrict the supply of goods and services.

be exploitation. Consumerism is not a choice between prosperity and honesty. It's between knowledge or deprivation.

# Milk price control coming? D/D 20/5/58

~~2. 1. 1958~~ (245)  
The Minister of Agriculture, Mr Greyling Wentzel, has announced that he is considering the re-introduction of price control on fresh milk

Why?

Because the retail price has gone up sharply in some outlets.

Why? Why has it gone up so sharply? And why, when price control was lifted in 1983, have some of the biggest rises only come in recent months?

Answer Because there is so little competition to produce and market it any cheaper and because competition is getting scarcer still

The Dairy Board and the Department of Health have systematically been stifling competition in both the production of milk (by means of daft minimal standards and penal levies which discriminate against producer distributors and small, independent dairies)

A whole series of court cases is pending following the refusal of several small dairies to pay dis-

crimatory levies imposed upon them by a board (loaded with people who are not devoid of vested interests) bent on driving them out of business

If the Minister does reintroduce price control it will be a shameful admission that his advisers don't understand simple economics or (worse still) that they do understand economics but have no concern for justice

Quote "Monopolists, by keeping the market constantly understocked, by never fully supplying the effectual demand, sell their commodities much above the natural price and raise their emoluments, whether they exist in wages or profit, greatly above their natural value"

"The price of monopoly is upon every occasion the highest which can be got The natural price, or the price of free competition, on the contrary, is the lowest which can be taken The one is upon every occasion the highest which can be squeezed out of the buyers the other the lowest which the sellers can commonly afford to take"—  
Adam Smith, The Wealth Of Nations, 1776

●With acknowledgments to Effective Farming

...had been chased from speak durin  
dures regarding foreign media," he said

# Fines for harmful business practices

**ENTREPRENEURS** who contravene government directives on harmful business practices will face fines of R200 000 or five years in jail, or both, according to the wide-ranging Harmful Business Practices Bill tabled in Parliament yesterday.

The Bill is intended to protect consumers against harmful business practices.

It provides for the appointment of a Business Practices Committee by the Minister of Economic Affairs and Technology and the Minister of Finance.

The committee will be empowered to summon and question any person believed to have information about an investigation. The Minister of Economic Affairs and Technology may, on the recommendation of the committee, prescribe any action to prevent any harmful business practice.

Legal Code Book

New army base

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CAF & Truks 2/15/88

245

1615

THURSDAY, 26 MAY 1988

1616

*Howard*

Five most junior posts salary scales  
705 Mr C J DERBY-LEWIS asked the Minister of Public Works and Land Affairs

- (a) What are the salary scales attached to each of the five most junior posts in his Department,
- (b) how many of these posts are filled by Whites, Coloureds, Indians and Blacks, respectively, and (c) in respect of what date is this information furnished?

The MINISTER OF PUBLIC WORKS AND LAND AFFAIRS

(See reply to Question No 688 on Thursday, 26 May 1988 in column 1601)

Five most junior posts: salary scales  
706 Mr C J DERBY-LEWIS asked the Minister of Justice

- (a) What are the salary scales attached to each of the five most junior posts in the Prisons Service, (b) how many of these posts are filled by Whites, Coloureds, Indians and Blacks, respectively, and (c) in respect of what date is this information furnished?

The MINISTER OF JUSTICE

(See reply to Question No 688 on Thursday, 26 May 1988 in column 1601)

Five most junior posts: salary scales

707 Mr C J DERBY-LEWIS asked the Minister of Economic Affairs and Technology

- (a) What are the salary scales attached to each of the five most junior posts in the Department of Mineral and Energy Affairs, (b) how many of these posts are filled by Whites, Coloureds, Indians and Blacks respectively, and (c) in respect of what date is this information furnished?

The MINISTER OF ECONOMIC AFFAIRS AND TECHNOLOGY

(See reply to Question No 688 on Thursday, 26 May 1988 in column 1601)

Five most junior posts salary scales

710 Mr C J DERBY-LEWIS asked the Minister of Water Affairs

- (a) What are the salary scales attached to each of the five most junior posts in his Department

HOUSE OF ASSEMBLY

- (b) how many of these posts are filled by Whites, Coloureds, Indians and Blacks, respectively, and (c) in respect of what date is this information furnished?

The MINISTER OF WATER AFFAIRS

(See reply to Question No 688 on Thursday, 26 May 1988 in column 1601)

Five most junior posts: salary scales

711 Mr C J DERBY-LEWIS asked the Minister of Law and Order

- (a) What are the salary scales attached to each of the five most junior posts in the South African Police, (b) how many of these posts are filled by Whites, Coloureds, Indians and Blacks, respectively, and (c) in respect of what date is this information furnished?

The MINISTER OF LAW AND ORDER

(See reply to Question No 688 on Thursday, 26 May 1988 in column 1601)

Five most junior posts: salary scales

712 Mr C J DERBY-LEWIS asked the Minister of Defence

- (a) What are the salary scales attached to each of the five most junior posts in the South African Defence Force, (b) how many of these posts are filled by Whites, Coloureds, Indians and Blacks, respectively, and (c) in respect of what date is this information furnished?

The MINISTER OF DEFENCE

(See reply to Question No 688 on Thursday, 26 May 1988 in column 1601)

Consumer Council: privatisation

995 Mr C J DERBY-LEWIS asked the Minister for Administration and Privatisation

- Whether it is the intention to privatise the South African Co-ordinating Consumer Council, if not why not?

The MINISTER FOR ADMINISTRATION AND PRIVATISATION

- No The South African Co-ordinating Consumer Council is an institution not for gain and the privatisation thereof is not at present being considered

1617

THURSDAY, 26 MAY 1988

1618

*Howard*

Competition Board: cartels

1006 Mr C J DERBY-LEWIS asked the Minister for Administration and Privatisation

- (1) Whether it is the policy of the Competition Board to (a) discourage and/or prohibit cartels,
- (2) whether an exemption was granted to the cement industry in this regard, if so, (a) why, (b) when and (c) in terms of what statutory provisions and/or regulations,
- (3) whether a further exemption of this nature has been granted to this industry, if so, (a) why, (b) when and (c) in terms of what statutory provisions and/or regulation?

The MINISTER FOR ADMINISTRATION AND PRIVATISATION

- (1) (a) Yes, see (b)
- (b) Yes, a prohibition on collusion on prices and conditions, market sharing and tender practices was published in Notice No 801 of 2 May 1986

(2) Yes, a temporary exemption was granted

- (a) To enable the Competition Board to conduct an in depth investigation into the application for exemption of the cement industry and to make a recommendation to me
- (b) Until 2 May 1988
- (c) In terms of section 14(5) of the Maintenance and Promotion of Competition Act, 1979 (Act 96 of 1979)

(3) Yes

- (a) To enable the Board to complete its investigation (see (2)(a) above) and to make a recommendation to me
- (b) Until 30 September 1988
- (c) In terms of section 14(5) of the Maintenance and Promotion of Competition Act, 1979 (Act 96 of 1979)

Pensionable service buying back

1096 Mr D J N MALCOMESS asked the Minister of National Health and Population Development

- (a) On what date did the buying back of

pensionable service come into effect, (b) how many public servants who bought back pensionable service have retired since that date, (c) what total amount, excluding any interest on the amounts outstanding, did these persons pay to buy back such service, (d) what total amount was received by these persons in increased gratuities in respect of such service, (e) what total additional amount in monthly pensions is paid to them as a result of their having bought back pensionable service and (f) in respect of what date is this information furnished?

The MINISTER OF NATIONAL HEALTH AND POPULATION DEVELOPMENT

- (a) 22 June 1955 — to the age of 25 years, 26 August 1966 — to the age of 18 years, 5 December 1980 to 20 September 1987 — to the age of 16 years
- (b) to (e) The information is not readily available
- (f) Falls away

SADF amounts spent on ammunition

1045 Mr C J DERBY-LEWIS asked the Minister of Defence

- Whether he will furnish information on the amounts spent on ammunition by the South African Defence Force in the latest specified three financial years for which information is available, if not why not, if so, what amount was spent in each of these financial years on ammunition (a) for training and demonstration purposes and (b) in actual combat?

The MINISTER OF DEFENCE

(a)	(b)
1985/86 RM163 289	RM72 548
1986/87 RM298 914	RM136 827
1987/88 RM228 389	RM328 742

SADF chaplains

1076 Mr W J D VAN WYK asked the Minister of Defence

- (a) Which denominations are represented by chaplains in the service of the South African Defence Force and (b) how many chaplains represent each denomination?

HOUSE OF ASSEMBLY



245

# Ackerman call to jail price-fixers

GE

Ad

or

Phx

Staff Reporter

**BUSINESSMEN** who fixed prices should be sent to jail says supermarket chief, Mr Raymond Ackerman

Speaking in an interview in the June issue of the news magazine *Inside South Africa*, Mr Ackerman said that though price fixing was illegal, he knew from daily experience that it occurred

The government should be "absolutely ruthless with business people who are unscrupulous — monopolies, cartels, everything that is stopping the consumer from getting a square deal," he said

"I'd hit them really hard I wouldn't just play around I'd send a few top guys to jail if they fixed prices"

Mr Ackerman also accused

some food suppliers — including the millers and the frozen food companies — of contributing to inflation by wanting too much profit

Some companies notched up profit increases of "70 or even 90%", he alleged.

"I'm a great one for reasonable profits, but I really blame them very seriously I think these enormous profits are largely responsible for the attacks on the whole of the business community"

Speaking to the Cape Times, Mr Ackerman said the Competitions Board was "not tough enough" and made reference to what he said was the State's involvement in petrol, television import, milling and liquor "cartels"

"The government should immediately deregulate

these areas and then get tough with sellers," he said

Describing Mr Ackerman's statements as "fair comment", Mrs Lyn Morris, national president of the Housewife's League, last night accused the government of double standards

She said while consumers had to adapt to the prevailing economic climate, they were powerless to fight inflation when the government exercised "poor financial discipline" by merely printing more money when it overstepped its budget

Referring to Mr Ackerman's allegations, a supply industry spokesman said. "We cannot be drawn into isolated statements such as these, which by themselves do not make any sense at all"

# The legacy of kubus

245

Government's already Draconian interventionist powers vis-à-vis business are about to take a giant leap forward. As the *FM* predicted, the Harmful Business Practices Bill has been tabled in parliament and should be processed into law within the next few months

The reaction to the final — and publicly exposed — draft of the Bill initiated more confused reaction, perhaps, than any other Bill in living memory. Certain press reports notwithstanding, the tabled Bill is little changed from that draft — though it is certainly an improvement on earlier versions which go back two or three years. But it still *excludes* what we see as the essential role of open courts in such matters, still uses definitions that are vague and embarrassing, and in effect gives too much discretion to government to decide exactly what is a "harmful business practice". So we remain committed to rejecting the package as wrong-headed, potentially damaging to the economy and contrary to the spirit of free enterprise.

The definitions leave no doubt that businessmen may yet be fined R20 000-R200 000 — or jailed for two to five years —

Those who wish to clamp down on business on the spurious grounds that the consumer needs "protection" have cause for joy: the Harmful Business Practices Bill has been tabled and it has changed little from the version leaked a few weeks ago. Extraordinarily enough, the major impulse appears to "protect" people against kubus-type schemes — already illegal and defunct.

for bureaucratically determined "contraventions". It is, of course, diametrically opposed to Pretoria's official policy of deregulation.

It has to be admitted that the *marketing* of the Bill, particularly by new Department of Trade and Industry DG Stef Naudé, was highly successful from government's viewpoint. The Bill — it was stressed throughout the campaign for its enactment — by ending harmful business practices, however defined, would "protect" consumers. And by ending "cartels" and other anti-free enterprise practices, including "profiteering", it would be anti-inflationary.

What balderdash! Harmful business practices and consumerism have nothing to do with inflation, which is caused exclusively by government. Secondly, the *FM*'s main criticism of the thinking behind the Bill — that it did not show why existing common and criminal law is insufficient to tackle abuses — has been ignored.

Indeed, it is painful to read in the memorandum to the Bill "With the emergence of the various milk culture related schemes during 1984, it became apparent that such schemes could not be controlled properly." That is the sole case history cited in the memorandum the fraudulent flogging of rotten milk powder to the gullible.

That phrase, "not controlled properly," is vital in understanding the thinking behind the Bill. For all milk culture related schemes have been defunct for years, existing law was used to "control" them.

Fundamental objections to the Bill remain. The definition of a "harmful business practice" is, once again, any activity which, directly or indirectly, has or is likely to have the effect of

□ Harming the "relations between busi-

(85)

# THE ECONOMY

(245)

## Bashing business? Not PW

THE government is not about to jail business leaders *en masse* under the new Harmful Business Practices Bill.

The Bill, which followed the state president's comments about the private sector not co-operating with his calls for wage and price restraint, has provoked considerable concern — in some instances near-hysteria — that government is bashing business.

The business fears appear largely unfounded. For good or bad the government is still, officially and evidently, committed to using market-oriented means.

No matter how much power the president has, he cannot change an economic system and strategy overnight.

In economic matters at least there is little evidence to suggest that PW Booth makes his own plans or has any strong ideas.

This leaves the influential bodies which advise him on economic matters — including the Reserve Bank, the Economic Advisory Council, the Central Economic Advisory Services and the National Priorities Committee

— with considerable say in economic matters and policy formulation. These bodies interlink and have common members so it can be argued that there are for intents and purposes a few influential individuals.

There is equally little evidence to suggest that these advisors, some of whom are businessmen such as Sarlam's Fred du Plessis, Barlow Rand's Warren Clewlow and SA Breweries' Meyer Kahn, are even contemplating changing the market-oriented approach.

In fact the approach is gaining ground, to the consternation of unions and other political groups which are uneasy about the consequences for the poor of deregulation and privatisation.

The government long ago accepted and in certain instances is implementing the market-oriented policies associated with the influential advisory

**Shrieks of rage greeted the Harmful Business Practices Bill, but the government is not about to abandon its market principles, says BRIAN GOLD**

That he has made their policies a major priority this year was evident in his speech at the opening of parliament in February.

"Market-oriented" has never meant leaving everything to the market to determine. It means working through the market. So when the government talks about indirect "controls" it is not necessarily in contradiction of official policy.

The government is not about to embark on a rigid price and wage policy — the president's warnings about wage restraint in the private sector are largely a response to public servant

pressure. The Economic Advisory Council, it is understood, has rejected suggestions of no longer offsetting wage costs against income beyond a certain level for tax calculations.

The intention behind the Bill which, as Trade and Industry Director General Stef Naude notes, has been in the pipeline for over a year, is not to introduce widespread control over the prices of goods and services.

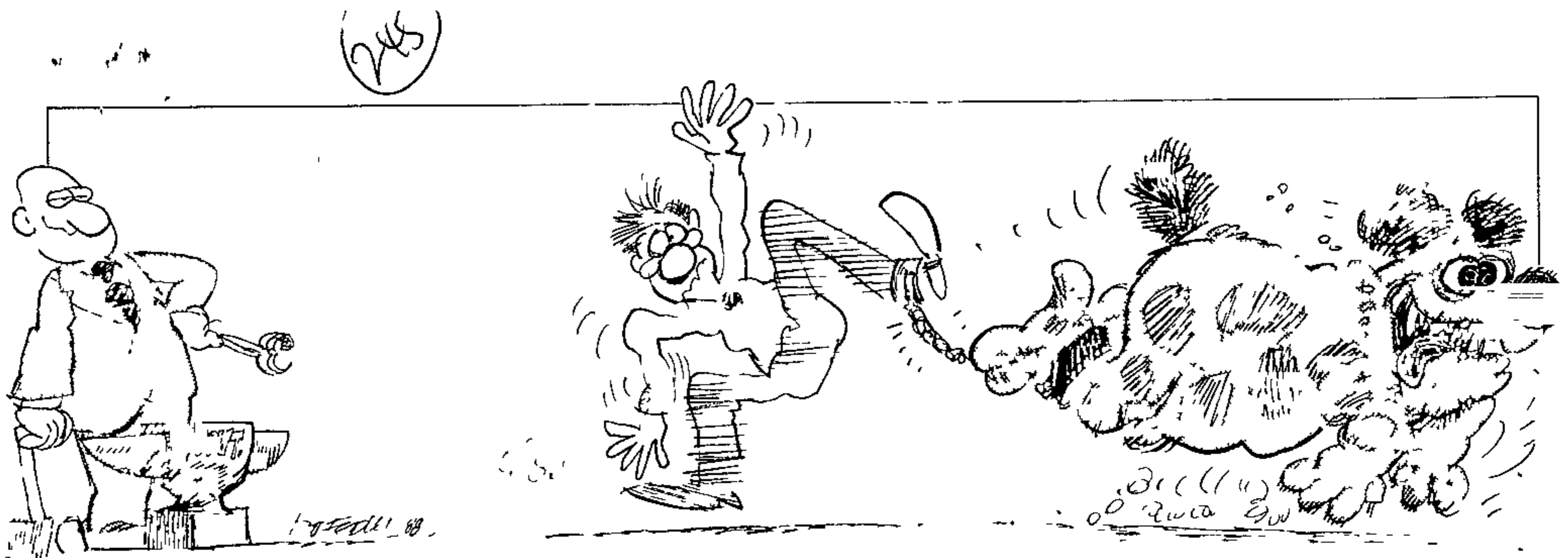
It is about consumer protection. Naude has said: "There is evidence of unacceptable exploitation of particularly those whose bargaining powers or practical access to legal remedies — if they exist — is almost non-existent" and has spoken of exploitation of powerless people "by an irresponsible element in the business community".

The Bill is being redrafted and is expected to be tabled in parliament

soon. It provides for a statutory, independent body, the Business Practices Committee, to advise the minister of economic affairs and technology. The committee will be able to conduct three kinds of investigations: into a specified harmful business practice (such as the Kubus affair); into any type of agreement, scheme or business practice which is harmful and does not comply with existing legislation; and into any price increase.

If the committee is not satisfied a price increase is justified, it can recommend to the minister that he request the price be fixed in terms of the Price Control Act of 1964. The minister can also require a specific person to give notice of increases.

Naude has explained often since the storm over the Bill broke that not only is there existing legislation that the government can resort to to control prices but that the Council referred to the Bill in its long-term economic strategy proposals which were firmly rooted in market-orientated rhetoric.



nesses and consumers,”

Unreasonably “prejudicing any consumer,” or

“Deceiving any consumer”

Meanwhile, unfortunately, the confusion between what is in any case illegal and what benefits consumerism continues. The Consumer Council (a government body), in a statement representing the South African Co-Ordinating Consumer Council, the South African National Consumer Union, the Housewives League and the Consumer Foundation, “unanimously agrees” that President P W Botha “should be congratulated for the planned legislation”

Further, “resistance against (the Bill) was unfair and unfounded. Consumer organisations believe that the planned legislation is an urgent necessity”

The milk culture schemes again rear their ugly head. “It has become most essential that consumers be protected against schemes such as the milk culture, television repairmen exercising suspect trade practices by which consumers are blatantly exploited and mail orders accepted for goods not in stock”

Not to belabour the point, all these schemes are fraudulent. We have a centuries-old, highly developed Roman Dutch common and criminal law system to deal with them. One might as well ask is “business” responsible for keeping 11 unburied corpses in a Cape Town basement?

The Consumer Council continued “The organisations see the draft legislation as a well balanced system with the necessary safety measures to restrict consumer exploitation at all levels. An honest, trustworthy dealer has nothing to fear from the planned legislation which will be to their advantage”

What then of government itself — the source of most restrictive, if not harmful, business practices? To quote no less an authority than the Competition Board “In almost every area of over-regulation, there are vested interests. Especially where the over-regulation protects undertakings in the private sector against competition, they react vehemently against deregulation proposals. This is predictable. If competition is introduced in an industry where it has been smothered, changes inevitably take place. The vested interests cannot be expected to welcome this”

Yes indeed. Ask the captains of industries constructed behind protectionist walls, or the farmers, or the agricultural control boards

To quote Hartford economist Dominick Armentano “Government regulation, entry control, subsidisation and (attempts to end harmful business practices) are all manifestations of a governmental interventionist power that has been employed by private firms, to private advantage, and to the detriment of society”

But now the Harmful Business Practices Bill will be trotted through parliament with the (at best) innocent support of consumerist lobbies. And Pretoria will have a new instrument of interventionism at a time when there is abundant evidence to support the supply-side argument — that deregulation, privatisation, cutting taxes and shrinking the bureaucracy are what we really need now

For example to date, government’s action in terms of the 1986 Temporary Removal of Restrictions on Economic Activities Act has been isolated to a minuscule 30 businesses in a building complex at Kew, Johannesburg

There is a further misconception about the Bill — that it contains adequate safety measures. The Consumer Council’s statement that the law has “the necessary safety measures to restrict consumer exploitation at all

levels” is inaccurate and naive. Nowhere does the Bill allow for the involvement of the common law or criminal courts. One possible exception is the extremely limited administrative review process in which *male fides* has to be proved

The *FM*, in rejecting the Harmful Business Practices Bill, can cite many judicially decided cases which show how day-to-day “harmful business practices” are “controlled” using existing law. Even in the hi-tech crime environment of the Eighties, it is swift police action — more than any cumbersome watchdog body or other, unaware of the details of what is occurring — which can best and most effectively nip malpractices in the bud. It is precisely in this area that sharp practice and outright fraud will have to be watched — by the appropriate authorities. And we have to accept that with today’s modernised, sophisticated, electronic markets and greatly improved modes of communication, new forms of fraud are inevitable. The Bill seeks to protect us not so much from these, as from crooked methods as old, if not older, than those of the touts who sell the Brooklyn Bridge to unwary newcomers

And the point about sound police action is that the malefactors can be brought to court, tried, the evidence aired and their methods exposed for future scrutiny of areas we may know little about today

Unfortunately, the proponents of the Bill appear to show disrespect for our judicial system and, along with that, ignorance of modern economics. They blur distinctions between

Private persuasion and government coercion, and  
 Efficiency as a barrier to entry and pernicious legal barriers

Given that over-regulation is at the root of SA’s harmful business practices, it is inexplicable why those supporting the Bill want bureaucracy to expand. How much better it would be to see the near-defunct policy of deregulation being employed to cut down on the 4 000-plus existing statutes that affect businessmen. Pressed through parliament with the same gusto as the Harmful Business Practices Bill, such action would be cause for serious celebration. But it would also mean less government interventionist power — which seems to be the last thing government wants. ■



## COMPETITION BOARD

### No nonsense

The Competition Board (CB) needs a firm hand at the helm. New chairman Pierre Brooks promises to remove fears that it is rudderless and drifting (*Business* April 29).

Unisa professor Brooks (54) has been appointed on a five-year secondment. He says "The CB will know a captain is on board ship again, although I will have to listen to the other board members very carefully as I have no experience of the practical implementation of CB policy."

The appointment ends weeks of speculation on the CB's future, since former chairman Stef Naude was elevated to Director General of Trade and Industry. His appointment was announced last year and he took up his new job several weeks ago. The silence since then — both on the naming of a successor and on what the CB has been doing this year — led to suggestions that all wasn't well with the board.

Brooks explains the announcement delay, saying he was on a three-month sabbatical in Britain and the US. Once he officially becomes chairman on June 1, he intends to make the board visible once more.

He says his appointment doesn't signal a dramatic change in the CB, even though he is an English-speaker, with no previous government experience.

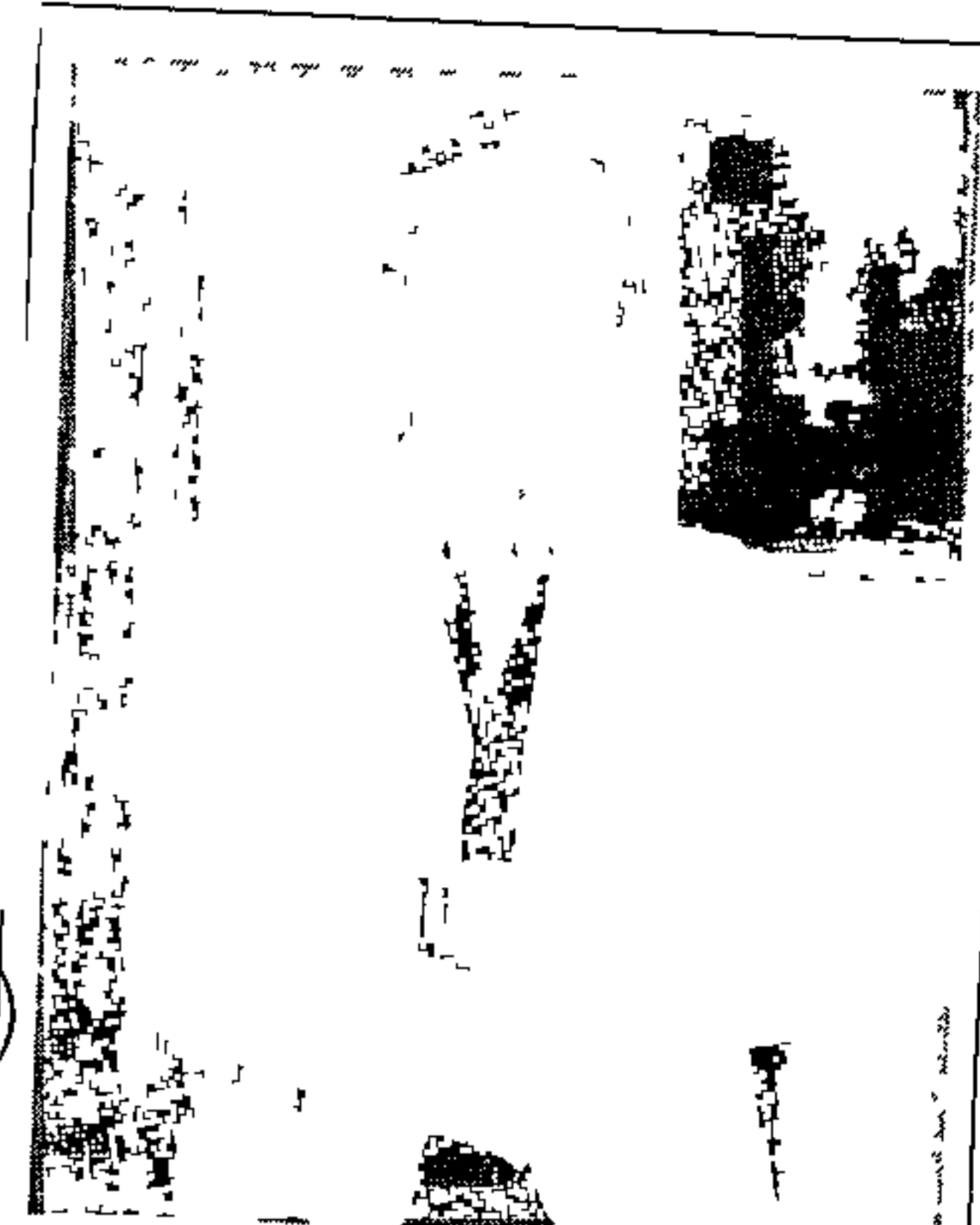
"If I weren't in sympathy with the legislation and the activities of the board, I wouldn't have taken the job. In time, I will be hoping to make my own contribution to the team, but for the moment there is no change in policy."

Nor does he envisage a diminishing role for the CB in the face of deregulation, privatisation and conflicting new legislation such as the Harmful Business Practices Bill. All Western countries have an equivalent body, he notes.

"I believe in a free market, but there are people who subvert the market mechanism for their own gain. It is particularly important if we are going to develop small business that big businessmen shouldn't erect barriers to entry."

He says monopoly isn't inherently bad, just the abuse of that monopoly.

In common with Naude, he believes there should be a punitive element in competition



Brooks ... captain on board

legislation, although he stresses there is provision for a long consultative process before such measures are carried out.

Brooks has a strong legal background for the job. He is head of the Department of Mercantile Law at Unisa and teaches competition law, transnational law and corporate law. He has been a frequent contributor to government's standing advisory committee on company law.

He says he was surprised to be approached for the post, but felt it would be a step up career-wise as well as a "great challenge."

"I hope that under my chairmanship, the CB continues to be an effective pro-competition vehicle in SA."

A perennial criticism of the CB has been that it has weapons in its arsenal which it rarely uses. Brooks ought to seek to change that. But, faced with firmly entrenched vested interests in the economy, that's easier said than done. ■

27/5/82

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Cheese, (—  
ster. 116/18.8  
milk rise  
~~milk~~ (245)  
unlikely

CAPE TOWN — Prices of milk and cheese are unlikely to increase before the end of the year.

Dairy Board general manager Mr Edu Roux said yesterday that the Western Cape's "cheese mountain" of accumulated stocks would probably allow producers to meet demand until early next year.

While the price of cheese was not controlled, that of milk was determined by the board. "Because farmers are paid considerably more than the determined floor price of milk, there is no increase in the milk price in the pipeline," said Mr Roux.

One of the general managers of Cape Dairy Co-operative, Mr Louis du Plessis, said cheese imports, coupled with a seasonal increase in production at the beginning of the year, meant producers could meet the demand for the next year.

— Sapa.

## 'No change in milk price'

PRICE controls on fresh milk — dropped five years ago — will not be re-introduced "at this stage" Agriculture Minister, Greyling Wentzel, said yesterday.

He said in a statement made available to Sapa yesterday morning the National Marketing Council, in collaboration with the Dairy Board, had completed its investigation into the

possible reinstatement of control over the consumer prices of fresh milk.

Findings of the investigation were that fresh milk price increases "as a whole were smaller than in the preceding five years" *scw 24/6/88*

"Healthy competition" had also developed in the fresh milk distribution trade, and the Dairy Board's decision to abolish control over the

selling prices of milk and to allow distributors unrestricted access "has consequently yielded good results."

(245) ~~244~~  
The investigation also revealed the consumer price of fresh milk had not risen out of proportion "to that of most other food items since the abolition of price control in 1983." Sapa

# SABS <sup>Star</sup> warning <sup>25/6/58</sup> on bricks, blocks <sup>245</sup>

False claims by some cement brick manufacturers about the quality of their products has led the South African Bureau of Standards to issue a warning

The bureau says that although some samples submitted by brick and block manufacturers have been approved by the SABS, it is only those samples which have been checked and this does not entitle producers to claim that the whole of their present and future production batches have the bureau's stamp of approval

According to the SABS, the best way to ensure that cement bricks and blocks are being manufactured to acceptable standards is to buy from a factory which has been awarded a permit to use the standardisation mark of the SABS on its products

This mark means that routine daily and weekly tests in accordance with SABS specifications are being conducted on the products by the factory and monitored by bureau inspectors

These factories may display the SABS mark of approval on their invoices, delivery notes and advertising material

Prospective buyers from factories not operating under the SABS mark scheme can make use of the consignment testing service offered by the bureau

On lots of a certain size, samples are taken at the factory or building site and tested by the SABS

However it is illegal for anyone to use an SABS test report to promote the sale of cement bricks or blocks. Test reports refer only to specific consignments of materials and not the general output of a manufacturer



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*Howard*

Besides this, I have also made a special arrangement with Judges President to grant judges special opportunity to evaluate the circumstances from time to time under which persons are detained in terms of the Emergency Regulations and to submit reports in this regard

It is practice that matters which fall within the jurisdiction of other departments be referred to the ministers or heads of departments concerned. In addition, judges may submit reports to the Commissioner of Police after visiting police cells and I am therefore not in a position to furnish details regarding such reports

As was mentioned in my reply to Question No 232 on 25 March 1988, heads of prisons submit a return regarding such visits to Prisons Headquarters every six months for central statistical purposes. This procedure also applies to visits by magistrates and it is therefore not possible to furnish the information on the basis as requested by the honourable member. For the period 1 July 1987 to 31 December 1987 judges and magistrates visited prisons on 100 occasions and 555 occasions respectively. This does not include visits to police cells

Besides the above-mentioned reports a judge may report to the Commissioner in respect of any matter which he considers should be brought to the Commissioner's notice. This principle also applies to magistrates and reports therefore cover a wide variety of aspects regarding prisons under the auspices of the SA Prisons Service. It is therefore not possible to deal with this matter within the scope of this reply. However, these reports are thoroughly attended to and judges and magistrates receive report back on issues raised by them

**Police reservists: leave facilities**

1163 Mr C J DERBY-LEWIS asked the Minister of Economic Affairs and Technology  
Whether specific leave facilities are available to police reservists in the employ of the statutory and/or parastatal bodies under his control if not, why not, if so, what are (a) these facilities and (b) the names of these bodies?

**The MINISTER OF ECONOMIC AFFAIRS AND TECHNOLOGY**

Yes, except in the case of the Estate Agents Board where the question of leave facilities for police reservists has not arisen thus far and a policy decision in this respect has not yet been taken by the Board

(b) Council for Scientific and Industrial Research

(a) Special leave with full pay is granted

South African Bureau of Standards

South African Coordinating consumer Council

Officials are not regarded as being absent from duty

Travel Agents Board

South African Tourism Board

Officials are not regarded as being absent from duty, except for periods exceeding one week for which special leave with full pay is granted

**Consumers: exploitation**

*245*

1166 Mr C J DERBY-LEWIS asked the Minister of Economic Affairs and Technology

(1) (a) What steps are taken by his Department to protect the South African consumer against exploitation and (b) in terms of what statutory provisions are such steps taken,

(2) (a) how many infringements of these statutory provisions were reported to his Department over the latest specified five-year period for which figures are available and (b) how many such infringements were in respect of (i) price collusion, (ii) quality control and (iii) any other specified irregularities,

(3) whether his Department conducted any investigations into these infringements, if so, with what results?

*Howard*

**The MINISTER OF ECONOMIC AFFAIRS AND TECHNOLOGY**

(1) (a) The functions of the Department of Trade and Industry with regard to the protection of consumers against exploitation include, amongst others, routine inspections at manufacturers, packers, wholesalers and retailers in order to determine whether effect is given to the provisions of certain consumer oriented legislation which is administered by the Department. Furthermore, investigations are conducted into specific complaints related to the relevant legislation and which are received directly from consumers or via the South African Coordinating Consumer Council

(b) The steps mentioned under (1)(a) are

- The Trade Metrology Act, 1973 (Act 77 of 1973)
  - The Price Control Act, 1964 (Act 25 of 1964)
  - The Credit Agreements Act 1980 (Act 75 of 1980)
  - The Trade Practices Act, 1976 (Act 76 of 1976)
  - The Measuring Units and National Measuring Standards Act, 1973 (Act 76 of 1973)
- (2) (a) Particulars for the period 1 January 1983 to 31 December 1987 are as follows

	Trade Me- Price Con- Agree- Credit	Trade Prac- Standards Act	Measuring Units and National	TOTAL
Complaints received and investigated	4 734	6 694	614	869
Routine inspections conducted	159 457	99 307	12 949	22 347
Contraventions found	19 271	23 037	6 023	1 581
				2 039
				303 502
				51 951

(2) (b) (i) Price collusion, particulars of which are not included under (2)(a), falls under the Competition Board which is an independent statutory body and functions in terms of the Maintenance and Promotion of Competition Act, 1979 (Act 96 of 1979). The application of this Act with regard to the assignment of powers, duties and activities was entrusted to the Minister of Administration and Privatisation with effect from 31 March 1988. During the five years to 30 March 1988, when the Competition Board still fell under the Minister of Economic Affairs and Technology, 21 cases of alleged price collusion were reported to the Board

*245*

*Howard*

to the specified requirements, and should he approach the SABS, the Bureau will take the matter up on his behalf with the manufacturer. It the Minister, under the Standards Act, 1982, proclaims a specification as a compulsory specification, nobody may sell a product which does not conform to that specification. The SABS controls that products sold in the RSA conform to the applicable compulsory specifications.

(iii) The contraventions mentioned under (2) (a) are of a divergent nature and specific particulars thereof are not readily available. Furthermore, complainants not related to the provisions of the

Acts administered by the Department of Trade and Industry are referred to the appropriate consumer organisations, such as the Advertising Standards Authority, as well as to other government departments, such as the South African Police and the Department of Finance.

The Competition Board has dealt with 9 cases other than price collusion. These cases related to market division, collusion on conditions of supply and tenders.

(3) Yes legal proceedings instituted and convictions obtained during the period 1 January 1983 to 31 December 1987 are as follows:

Trade Metrology Act	Price Control Act	Credit Agreements Act	Trade Practices Act	National Measuring Standards Act	TOTAL
4 834	6 098	427	375	634	12 368

The Competition Board has investigated the 30 alleged contraventions mentioned under (2)(b)(i) and (iii). In 5 cases the practices were ceased by the parties concerned and in 21 cases the evidence was not sufficient to institute legal proceedings or the Board was of the opinion that no contraventions were committed. The remaining 4 cases were still being dealt with on 30 March 1988.

**Note**

Apart from the Acts mentioned under (1) (b) the Department of Trade and Industry also administers a number of other Acts which offer protection to consumers, including four Acts relating to the purchase of fixed property and five Acts relating to tourism.

During the Parliamentary session in 1988 the Housing Development Schemes for Retired Persons Bill was adopted to pro-

tect the interest of retired persons participating in housing development schemes for retired persons. Furthermore, the Harmful Business Practices Bill was adopted to supersede the Trade Practices Act, 1976 with a view to strengthening the negotiating position and the protection of the consumer.

**Krugersdorp/Randfontein, grey areas**

1168 Mr C J DERBY-LEWIS asked the Minister of Constitutional Development and Planning whether he intends to establish so-called grey areas in the constituencies of Krugersdorp and Randfontein, if so, where in these constituencies will these areas be situated?

**THE MINISTER OF CONSTITUTIONAL DEVELOPMENT AND PLANNING**

Such a description or area does not exist. Therefore, no statutory provision is made in this respect.

*Howard*

**Black rent boycotts**

1171 Mr C J DERBY-LEWIS asked the Minister of Constitutional Development and Planning

(a) What total amount was outstanding as a result of rent boycotts in Black residential areas throughout the Republic as at the latest specified date for which information is available, (b) how is this outstanding debt being financed and (c) what was the accumulated cost of financing this debt as at the above date?

**THE MINISTER OF CONSTITUTIONAL DEVELOPMENT AND PLANNING**

Information regarding the total outstanding amount solely as a result of rent boycotts is not available.

Rest of question falls away.

**Director-General: approval of amount**

1182 Mr C J DERBY-LEWIS asked the Minister of Finance

In respect of each department and organizational component referred to in section 6 (1) of the Public Service Act, No 111 of 1984, what is the maximum amount which may be approved by a director general or an official of equivalent rank in respect of capital or other expenditure without calling for tenders?

**THE MINISTER OF FINANCE**

R100

Mr R E Pohl teaching qualifications/experience

1196 Mr K M ANDREW asked the Minister of Education and Development Aid

- (1) (a) What are the academic qualifications of a certain official employed at the Cape Town Circuit Office of his Department, whose name has been furnished to the Minister's Department for the purpose of his reply, (b) (i) where and (ii) when were these qualifications obtained (c) what (i) teaching and/or (ii) other educational experience does this person have, (d) (i) for how long and (ii) in what capacities has he worked for the Department of Education and Training and (e) what is his (i) name and (ii) rank,
- (2) whether this person has worked for any other Government Departments, if so (a)

for what Departments, (b) when and (c) in what capacities?

**THE MINISTER OF EDUCATION AND DEVELOPMENT AID**

(1) (a)	(b) (i)	(ii)
Std 10	Ben Viljoen High School,	December 1960
B Sc	Groblersdal University of Pretoria	December 1964
THED	Onderwyskollege Pretoria	December 1965
NTS 5	Department of National Education	May 1983
B Ed	University of Pretoria	December 1985
(c) (i)		

TED Assistant Teacher January 1966-December 1969

TED Senior Assistant January 1970-December 1977

TED 1) Head of Department January 1978-July 1981

E & T Head of Department August 1981-December 1983

E & T 2) Principal SI January 1984-July 1986

E & T Senior Deputy Chief August 1986 to date

(d) (i) 6 years 10 months to 31 May 1988

(ii) Head of Department, Principal S.I., Senior Deputy Chief Education Specialist

(e) (i) Mr R E Pohl

(ii) Senior Deputy Education Specialist

(2) Yes

- (a) Transvaal Education Department, January 1966 to July 1981
- (b) Assistant Teacher
- (c) Senior Assistant and Head of Department

# Business tops on new consumer council

THE Harmful Business Practices Act which came into force last Friday gives the minister of economic affairs and technology wide powers to act in consumers' interests against businesses engaging in unlawful or deceitful activities. Whether consumers will gain real protection will depend on whether he chooses to use them — and on the Business Practices Committee, appointed this week in terms of the Act.

The committee, chaired by Wits University law professor Louise Tager, has powers to carry out investigations, enquiries or inspections into possible harmful business practices on the basis of complaints from consumer bodies or individuals.

At this stage there are no details of businesses or practices the Business Practices Committee will target, since investigations are not public until the minister issues a notice. But, says Tager, there are already numerous cases and complaints.

There are few consumer representatives on the seven-member committee. Apart from Consumer Council director Jan Cronje, it consists mainly of businessmen.

The minister can act only on the basis of the committee's recommendations. He has powers similar to those of an interdict: he can order a business practice found harmful by the committee to cease immediately. He has the power to take all necessary steps to prevent a business engaging in such practices from continuing. He can also issue general regulations.

A "harmful business practice" is defined in the Act as one which "directly or indirectly has or is likely to have the effect of harming relations between business and consumers ... or of unreasonably prejudicing or deceiving any consumer".

**The committee appointed this week to monitor harmful business practices is dominated by business, reports HILARY JOFFE**



When it was first published in April, the Bill was seen by many as one aimed at "bashing business".

Tager says the committee envisages it will be defining as harmful those business practices which are criminal or unlawful — not regular business activities. Businesses investigated by the committee are also likely to have the right to reply and negotiate.

"This is not a business control mechanism: the thrust of the Act is to protect consumer interests," she says. It's up to the public to draw attention to harmful business practices, although the committee will not investigate every complaint.

South Africa has not previously had legislation protecting consumers, Tager says. The Consumer Council investigates complaints but has no power. Common law rights are inadequate and vague and depend on enforcement through the courts. Other

countries such as Britain, Canada and Sweden have agencies which protect consumer interests.

Among committee members are two with farming connections. David Broodryk is managing director of the Western Province Co-operative while Jacob de Villiers is chairman of the Institute of Agricultural Communication, director of a number of farming co-operatives and a former vice-president of the South African Agricultural Union.

VM Ridgeway, a former Assocom president, is in the furniture business while Marthinus Jonker, from a motor industry background, is the director of a number of companies. He is also a director of Armscor.

The final member of the committee is lawyer Evert van Eeden, a full-time member of the Competition Board.

According to Tager, it's not necessary to have consumer representatives because the work of the committee will be to respond to complaints from consumers and to judge which of them concern practices which would not normally be condoned in business circles.

W/Mails-14/7/88

# Consumer apathy powers car prices

Star 8/10/88

245

**CHRIS MOERDYK**

Many of South Africa's motor manufacturers have responded to the Consumer Council's announcement that it intends investigating the reason for rocketing car prices, by diving into a mountain of production cost statistics

The idea it seems, is to clobber the consumer with sufficient data on how much it costs to build a car that the motorist will end up thanking his lucky stars he's able to get mobile for so little

It won't work of course, because a lot of motorists are going to continue asking a lot of questions about why prices should be so high when so many manufacturers are making such colossal profits

Questions like these tend, however, to put motor manufacturers into uncomfortable positions Uncomfortable because of a natural reticence to become arrogant when answering questions from consumers

But what they would probably like to say is that South Africa is, after all, supposed to be a free enterprise society Which means that manufacturers and retailers can ask whatever price they like Like it or not, that's free enterprise for you

However, what the manufacturers would *really* like to tell consumers is that if they are so hell-bent on finding out why car prices are so high they should look in their own backyards And they have a point

What? The consumer responsible for pushing up car prices? Ridiculous!

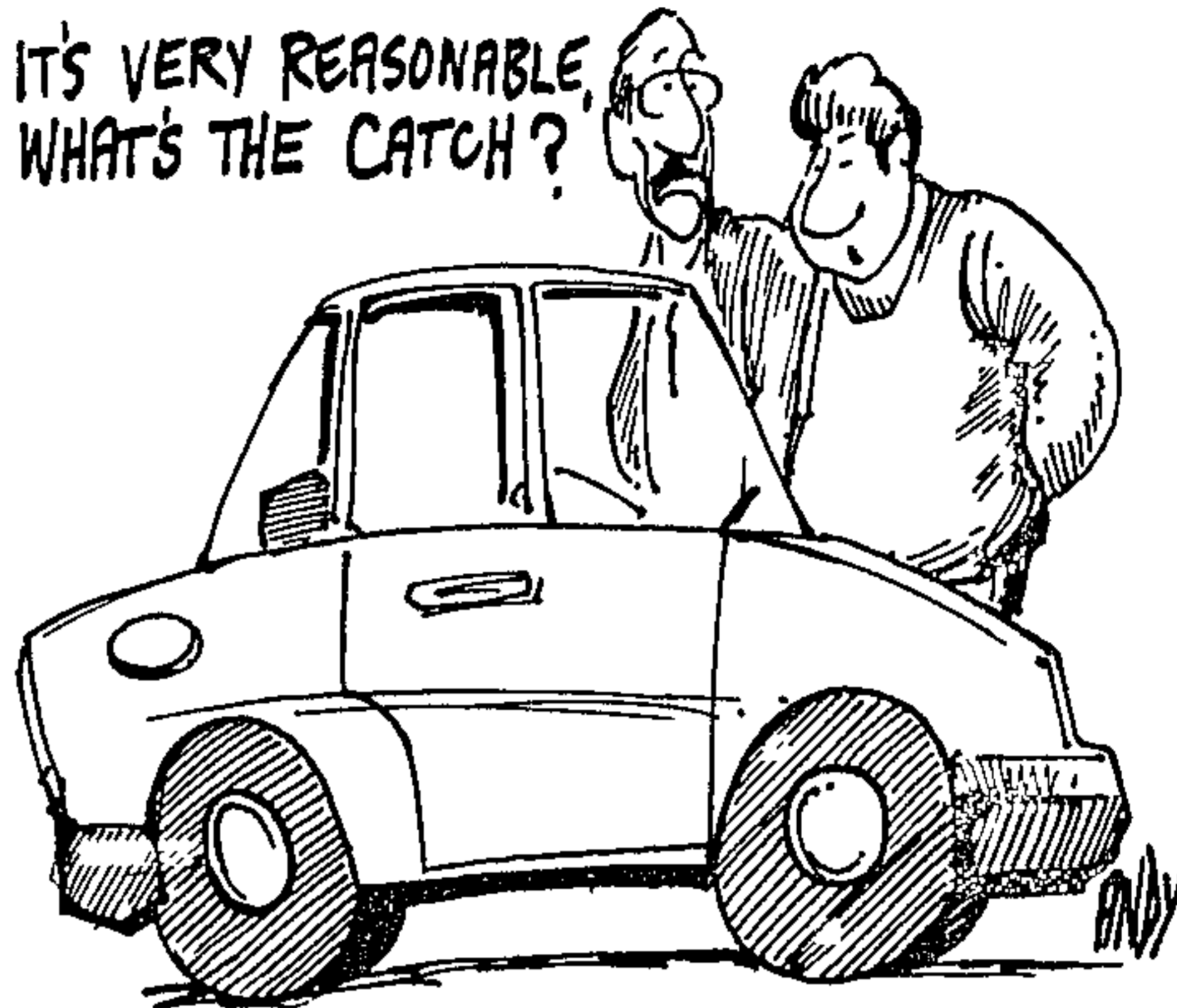
Not really History alone certainly makes this argument plausible Take Nissan for example About five or six years ago Nissan offered the consumer the cheapest cars in the country and came to within a hair's breadth of going bust No-one, it seemed, wanted the cheapest car

Now, Nissan is doing very nicely with vastly increased sales and a more than cosy chunk of the market. They don't sell the cheapest cars, anymore.

So, what if Toyota magnanimously decided, for example, to use some of that profit it has made to give the consumer a better deal? What would happen if it decided to lop R10 000 off the price of its top of the range Cressida?

Any number of marketers believe that for a while the cars would be snapped up, but once the discount euphoria had worn off — and it wouldn't take more than a few months or so — the consumer would

IT'S VERY REASONABLE,  
WHAT'S THE CATCH?



forget the original intention and start wondering why Cressida's were so cheap Must be something radically wrong with them, they'd think. Then happily go out and buy a more expensive Nissan

But surely, one might ask, consumers can't be that stupid? Well, perhaps not stupid, but South African consumers certainly have a reputation for apathy For simply accepting prices and price increases without complaint.

Somehow one gets the impression that consumers believe that digging their heels in is unpatriotic That boycotting a brand because of its price, labels one as some kind of communist

Strangely enough though, even in South Africa, consumers have the right not to buy a product for any reason they care to think of

Even corporate buyers who account for the bulk of top-of-the-

range sales, are apathetic to price hikes Possibly more so, because of tax advantages and sophisticated leasing schemes that tend to ease that pain in the pocket

But, in mitigation of the consumer, perhaps they have become so indoctrinated by government price controls and price fixing by myriad private sector cartels, that they genuinely believe they have no option but to pay up

This being the case, maybe the Consumer Council would do better to answer all those complaints it has been getting about car prices — not by sailing into the motor industry head on — but by telling consumers that the best method of getting car prices down would simply be to stop buying cars for a while

Just long enough, however, for the manufacturers to be able to meet the challenge but not long enough for half of them to go broke

# Warning for consumers

By Caroline Mehls (245)

Consumer disputes should be settled out of court whenever possible, according to Mr Jan Cronje, director of the Consumer Council

Writing in the latest *SA Consumer Magazine*, Mr Cronje says the courts are inundated with work, the litigation process is cumbersome and legal costs are high

"Methods such as negotiation, reconciliation and arbitration should be applied wherever possible in solving problems.

"There are some encouraging signs that this is happening. There has been a marked increase in the number of organisations which approached the Consumer Council for advice and information, and who advocate closer co-operation between the business sector and consumers

"Many businesses are now employing complaints officers to deal with consumer problems and provide assistance

"Many self-regulating bodies have been established amongst business enterprises with mutual interests"

The Consumer Council approved self-regulations, but these bodies still had to prove their credibility by gaining the consumer's trust, he said

Own Correspondent

JOHANNESBURG

The buying practices of the large grocery retailers could warrant an investigation by the Competition Board, chairman

Mr Pierre Brooks said yesterday.

The board would consider allegations made by Checkers' managing director Mr Clive Weil of corruption between suppliers and retailers within the next two weeks, he said.

"The conduct of retailers, not the industry structure, would attract the attention of the board"

Mr Brooks was uncertain whether the Competition Board, which concerns itself primarily with monopoly situations, had authority to police exorbitant purchasing power.

Spar chairman Mr D.M. Egleton yesterday denied any allegations of bribery or harmful business practices and denied using "strong-arm tactics with suppliers".

Harmful Business Practices Committee chairman Ms Louise Tager said the committee would investigate Mr Weil's claims only if consumers were likely to be harmed.

28/10/88  
245  
Probe on grocers' 'grossness'?

16/11/88  
**Concern about dealers' abuse of Credit Act**

The Consumer Council has expressed its concern about the manner in which certain dealers abuse the Credit Agreements Act by repossessing goods without a legal court order

Director Mr Jan Cronje advises consumers to contact the police immediately to deal with such situations. — Sapa.

Star 22/11/88 (245) (circled)

## SA's consumer laws are 'underdeveloped'

By Kaizer Nyatumba

The Harmful Business Practices Act which was passed on July 1 this year did not eliminate the need for further legislative changes in consumer law, the dean of the Law School at the University of Natal, Professor David McQuoid Mason, said yesterday.

Addressing the Checkers 1988 Consumer Journalism Awards Seminar in Johannesburg, Professor Mason said the four-month-old Act did not obviate the need for further legislative changes because the implementation of the Act was left to a committee, and the focus of the law was on business practices and not on "undesirable traders".

South Africa, said Professor Mason, abounded with "numerous examples" of harmful business practices, including door-to-door sales, referral sales, fake contests, "bait and switch" tactics, television repairs, home improvements, unfair contracts, the sale of skin lighteners, misleading advertising and promotional schemes and debt collection practices.

Legislation concerning the protection of consumers against harmful business practices in this country was "very underdeveloped" compared with that in the United Kingdom, the United States and Australia, Professor Mason said.

"It is clear, however, that unless the legislation has teeth such as the power to grant civil remedies, impose criminal sanctions and to obtain interdicts and court orders to prevent harmful business practices, such legislation is very often not worth the paper it is written on.

"Furthermore, it is not sufficient to rely upon traditional law enforcement agencies, such as the Commercial Branch of the police, because these agencies are usually understaffed," Professor Mason said.

The chairman of the Business Practices Committee, Professor Louise Tager, said she believed the Act had enough teeth to deal with most problems, although the scope of her committee's investigations might be limited by the legislation.



# Consumer

By SY MAKARINGE

# Corner



*Sowetan 25/11/88*  
**THE Harmful Business Practices Act, passed recently by Parliament, does not obviate the need for further legislative changes in consumer law, Professor D J McQuoid-Mason, Dean and Professor of Law at the University of Natal, said this week.**

Addressing a seminar at the 1988 Checkers Consumer Journalism Awards at a Johannesburg hotel, Prof McQuoid-Mason, an expert in consumer affairs, said the Harmful Business Practices Act did not regulate or control any business outright

He said unless there were specific provisions to deal with individual "rogue" traders, general provisions that merely deal with trade practices in a broad sense would never work in South Africa.

## Position

"Unless a person in a position of a Director General of Fair Trading has the authority to obtain individual assurance from unscrupulous traders that they will not continue in their actions, there is little likelihood of their actions being prevented

"Without provisions similar to those embodied in the English Fair Trading Act, it is unlikely that the Harmful Business Practices Act will be any more effective than the

Trade Practices Act. When dealing with harmful practices, it is not sufficient merely to deal with the practices in general, but it is imperative that individual unscrupulous traders themselves are dealt with," Prof McQuoid-Mason said

He said the Act was unlikely to make an impact unless the Harmful Business Practices Committee acted as a full-time body

## Power

"Even then, until such time that a full-time executive officer is given the power to deal with unscrupulous traders at a personal level, South Africa is likely to continue to be plagued by harmful business practices," he said

He said it was not true that consumers could sufficiently be protected by private consumer bodies, business self-regulation, or even consumer awareness

## Growth

"Experience in highly capitalist countries has been that, notwithstanding the rapid growth of such bodies and awareness among consumers, it has been necessary for legislature to intervene with statutory bodies that have teeth," Prof McQuoid-Mason said

He said it was essential that consumer abuses were eliminated from the market place if capitalism were to survive

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# Probe starts on troubled SA med-aids

Own Correspondent

JOHANNESBURG. — The Competition Board is to investigate the activities of South Africa's troubled medical aid system.

Competition Board chairman Mr Pierre Brookes said the inquiry would be made on the basis of previous investigations and continuing complaints about "anomalies" in an increasingly monopolistic pharmacy network.

The investigation also comes in the wake of controversy surrounding the decision of several private hospital groups, led by Clinic Holdings and Afrox, to contract out of medical aid schemes.

The National Association of Private Hospitals (NAPH) had accused the Representative Association of Medical Schemes (Rams) of consistently lagging behind real costs and being blind to the increasing cost of running private hospitals.

According to NAPH chairman Mr Dick Williamson, the "unsatisfactory" Rams increases of 12% had left private hospitals in a "worsening financial

situation".

Today's Government Gazette said the board was undertaking the investigation in terms of the provisions of Section 6(1)(a) of the Maintenance and Promotion of the Competition Act of 1979.

A statement by the board said the investigation would include negotiation between medical schemes and the renderers of health services, the role of the scale of benefits, restrictions on certain medical schemes to render health services and the role of medical schemes compared with those of state and semi-state institutions.

Reacting to the decision, managing director of Medicaid Administrators Mr Jeff Slome said: "The investigation would be welcome if it provided any relaxation in legislation governing aid schemes."

The Medical Association of SA (Masa) welcomed the move, saying they accepted that the investigation was intended to bring cost-effective private health care within the financial reach of as many people as possible.

# Liquor trade fighting restrictions

By MEG BRITS

FEDHASA, the hotel and liquor trade association, is so concerned about restrictive practices in the liquor industry that it has approached the government.

It has proposed a three-tier decision-making process for the industry which would involve the founding of an SA Liquor Institute and an SA Liquor Council

*Cape Times 11/2/89*  
Mr Ken Heneke, chairman of Fedhasa's national liquor affairs committee, said antiquated legislation had led to practices in the industry which were generally regarded as restrictive to fair competition and were not in the public interest

He said that traditionally, the liquor trade had been subject to strict regulation, which meant

*243*  
the industry was divorced from market forces

The proposed first tier of the decision-making process would probably comprise representatives of the Cape Wine and Spirit Institute (CWSI), the KWV, SAB, Fedhasa, the Wine and Spirit Importers Association and Ukhamba, the black bottle store owners' association, Mr Heneke said.

day April 18 1989

## Former Angolans to live in SA

# Elite battalion to be moved from Namibia

By Craig Kotze

One of the South African Defence Force's elite units, 32 Battalion, is leaving its base in Namibia's Okavango region and is moving to the northern Cape, where it will perform counter-insurgency and border protection functions.

The new home of the famed battalion will be Pomfret, a disused mining village about 200 km north of Vryburg

Members will start moving this month and the move is expected to take about three months, said a state-

ment issued by Army headquarters in Pretoria

The families of the battalion members, who are mainly Portuguese-speaking, will accompany them

The battalion was originally formed in the aftermath of the 1976 Angolan war from leaderless members of the old FNLA movement

Placed under South African officers, it was officially designated a unit of the South African Army and adopted its present name in October 1976

It soon became one of the army's best fighting units and took part in almost all the major incursions into An-

gola, including Operations Protea, Askari and the more recent operations 'Modular' and Hooper last year

During operations, it inflicted thousands of casualties on Swapo and MPLA forces

Its motto is "Forged in Battle".

Five members of the battalion have been awarded the Honoris Crux, South Africa's equivalent of the Victoria Cross. Another five members have received the Chief of the Defence Force Commendation, while 329 have received the Bronze Medal for outstanding services.

## 24-hour day for all but two industries

By Kaizer Nyatumba

Once the Business Bill becomes law all but two industries can operate on a 24-hour a day basis, a spokesman for the Office for Privatisation and De-regulation, Mr Frikkie Odendaal, said yesterday.

Mr Odendaal said in an interview that the Business Bill, which proposes to abolish all restrictions on trading hours except on Sundays and the four religious holidays, will enable businesses, including the motor car industry, to open and close whenever they please without restriction. The Bill does not apply to the liquor industry, however.

The Bill will effectively abolish business licensing, he said. The only categories of industries which will still need licences will be catering involving cooked food, and entertainment.

Mr Odendaal said garages would be able to open

B1 Day 20/5/89

(245)

# Sunday trading sections to be removed from Bill

CAPE TOWN — Government has decided to remove all references to Sunday trading from a draft deregulation Bill following heated protests from church groups.

Administration and Privatisation Minister Dawie de Villiers said yesterday all references to trading on Sundays and religious holidays would be removed from the draft Business Bill, as the controversy over the issue was threatening to undermine larger and more important objects of the Bill.

De Villiers said the main aim of the Bill was to remove restrictions on economic participation and simplify business licensing requirements.

Attention had also been given in the Bill to developing a more effective control mechanism in respect of Sunday trading.

"It was never the intention to permit an increase or decrease in the nature of the existing system of Sunday trading,

MIKE ROBERTSON

but merely to enable the Administrators to arrange Sunday trading in an orderly fashion and to create legal certainty," he said.

De Villiers said the working group dealing with the Bill had reported to him that there had been considerable misunderstanding over the references to Sunday trading.

"The misunderstanding and confusion is unfortunately assuming such proportions that the working group is of the opinion that it may endanger the larger and important objects of the draft Bill."

As it had never been the intention to

effect changes to Sunday trading, the minister had accepted a proposal from the working group to remove all those clauses referring to Sunday trading from the Bill.

"The possible simplification and rationalisation of obsolete stipulations of the Act, in respect of trading on Sundays and the bringing about of a more effective method to control it, can be discussed and treated separately at a later stage," he said.

□ Sapa reports Administration and Privatisation Department officials pointed out that the main thrust of the Bill was deregulation, not opening trade on Sundays.

However, piles of letters had been received objecting to the Sunday trading stipulations.

De Villiers said the measure was mainly intended to remove unnecessary restrictions on economic participation and entry by simplifying SA's business licensing dispensation.



● DE VILLIERS

Govt opts to <sup>(245)</sup>  
<sup>Nov 26/87</sup>  
keep curbs on  
Sunday trade

Political Correspondent  
CAPE TOWN — The Government has dropped draft legislation to ease restrictions on Sunday trading after strong objections from the public.

Dr Dawie de Villiers, Minister for Administration and Privatisation, announced in a statement yesterday all references to trading on Sundays and religious holidays had been dropped from the draft Business Bill.

The draft Bill if passed would dramatically slash restrictions on trading hours and licences.

In the original version of the draft Bill published last month for comment, a host of Sunday trading ordinances, many archaic, were scrapped and provincial administrators were given the power to determine Sunday trading regulations.

# Many firms hold monopoly ~~7/8/89~~ Dawie

CAT Times 23/6/89 Staff Reporter 245

A SUBSTANTIAL number of companies in South Africa are in a monopoly situation or have a dominant position in a given market — which is not conducive to competition on a grand scale

This is the opinion of the Minister of Privatisation and Administration, Dr Dawie de Villiers, expressed in a notice in the Government Gazette today

Dr De Villiers says that many sectors of the economy are characterised by high degrees of economic concentration and corporate conglomeration

As a result, he says, a substantial number are in a monopoly or market dominant situation, or horizontally or vertically integrated with other companies with one of the major conglomerate groups operating in the country

This is not conducive to competition on a grand scale, he says, though a dramatic dismantling of this structure would not serve the public interest

# Trading licences to go

Blom 14/9/89

245

SYLVIA DU PLESSIS

MOST businesses will no longer require trading licences and will be able to determine their own trading hours in terms of a draft proclamation which will appear in the Government Gazette tomorrow

These measures will come into effect on January 1, due to a special interim measure, and will become law a year later when the Draft Businesses Bill is enacted

The proclamation, expected to benefit small businesses and street traders most, is being gazetted to speed up government's deregulation process

The only exceptions to the move are those businesses involved in the preparation of food, which will still require trading licences. In addition, restrictions on Sunday trading will remain in place

Privatisation Minister Dawie de Villiers said in a statement yesterday that the Draft Businesses Bill, published in April, could "at the earliest" be put into operation only in 1991

He was thus recommending to the President that as an interim measure a proclamation based on it be promulgated in terms of the Temporary Removal of Re-

strictions on Economic Activities Act

De Villiers said that while the proposed proclamation suspended the requirement of a trading licence for most businesses, they would still have to comply with other applicable rules and licensing laws

Looser controls on trading hours would promote greater flexibility, but he did not anticipate excessive changes in practice

He said that while some protection afforded by controls would be forfeited, savings in time and costs justified this loss.

"Individuals will have to place less reliance on official control for their protection. A greater responsibility is, therefore, placed on all those involved to respect the interests of others," he said

Competition Board chairman Pierre Brooks said that once comment on the draft proclamation had been received, the necessary adjustments would be made and it would be submitted to the President for his signature

It would then be promulgated, and he

To Page 2

## Licences

Blom 14/9/89

anticipated that the procedure would be finalised by the end of October. The measures would then come into effect on January 1 1990

Brooks added that the draft proclamation was also intended as an indication to the licensing authorities to "get their house in order"

Businesses big and small have welcomed the move

Assocom economist Bill Lacey said small businesses would benefit the most from the implementation of the measures. However, they still faced other requirements, and the measures were "only one peel from the onion skin"

Nevertheless, Assocom welcomed the announcement as an important step in the deregulation process, although it still remained committed to the complete deregulation of shop hours

From Page 1

Pick'n Pay chairman Raymond Ackerman said he welcomed any freeing of licences, particularly for the small trader, who was a crucial part of SA's future and should be encouraged

"But I would like to see legislation changed to cut the price of petrol and allow us to bake our own bread," he said

African Council of Hawkers and Informal Businesses president Lawrence Mavundla described the move as a step in the right direction

"However, the ball is now in the local authorities' court. The government is doing one thing, but the local authorities are doing another in continuing with their harassment of hawkers"

He added that the proclamation came at a time when more jobs were needed to fight unemployment



Star 14/9/89

245

'Thousands will welcome lifting of trading curbs'

The Star Thursday

By Michael Chester

# Shopping hours restrictions to be lifted

Red-tape control of weekday and Saturday shopping hours are to be scrapped, as will many trading licence restrictions

Promises to cut through the tangle of bureaucratic controls on retail trade were made yesterday by Minister for Administration and Privatisation Dr Dawie de Villiers

A proclamation suspending the last controls over the retail trade on business hours on all days except Sundays is to be printed in draft form in the Government Gazette tomorrow

## Cut delays

It will accelerate action on the Draft Businesses Bill published in April

Dr de Villiers said the Bill, with certain adjustments, may be submitted to Parliament next year

To cut delays, he intends to recommend to the State President that an interim proclamation be promulgated

The draft Bill will stay on course, but the proclamation will appear in draft for general information and comment tomorrow

Dr de Villiers said it was only the trade licence rules that were being dispensed with. Where legislation required another type of licence apart from a trading licence — such as a liquor store — the position remained unchanged

On Saturday hours, Dr de Villiers said "Although this will promote greater flexibility, it is not anticipated it will introduce excessive changes in practice

"A drastic reduction of administrative work will be achieved, while costs and time will also be saved by both local authorities and businesses"

Enquiries can be directed to Dr P E J Brooks, chairman of the Competition Board, in Pretoria

Mr Theo Rudman, executive director of the Self-Employment Institute, said the scrapping of trade licences would be welcomed by thousands of hawkers and street vendors

"It should end years of harassment that has been at the root of friction between black street traders and the authorities," Mr Rudman said

## 'Encouraging'

"Scrapping the licences will also allow the thousands of small businesses set up in the black townships to come in from the cold. It lifts a cloud that has hung over black enterprise and acted as a brake on progress"

"It's most encouraging that the Government is beginning to show real recognition of the powerful role the informal sector can play in black economic advancement and in quickening the pace of the whole economy"

# 'Restrictions on Sunday trading must go next'

B 1 Day 15/9/89

245

SA'S shopkeepers are adamant that restrictions on Sunday trading should be scrapped, and at least one retailer has threatened to defy the laws which enforce these curbs.

All welcome the suspension of trading licences and the flexibility to determine their weekly trading hours in terms of a draft proclamation gazetted today, but are disappointed that Sunday trading restrictions remain in place

Dion MD Jannie Els said yesterday freer trading from Monday to Saturday would not affect his company much "at this point in time"

He said many of the discount chain's outlets — particularly those in shopping centres — closed at 6pm during the week and at 8pm on Fridays

However, he would like to see Sunday trading restrictions lifted totally, and his company had decided to open its stores on Sundays in December "regardless of the law"

"Aside from the fact that everyone does it, we normally lose three important trad-

**SYLVIA DU PLESSIS**

ing days in December, all of which fall on a Sunday," he said

Checkers MD Clive Weil said the effect of the new measures on the supermarket industry would be negligible since it already had permission to trade on an extended basis

However, the chain's customers had "voted with their feet" in favour of Sunday shopping

"Public opinion is on the side of Sunday trading, and the restrictions on this should be lifted totally for everyone," he said

"More flexible trading would completely change shopping patterns outside of the supermarket industry"



● WEIL

Edgars MD Vic Hammond said his group had been battling for two to three years to have Sunday trading curbs lifted, and had got nowhere

"I'm very disappointed that the government hasn't lifted these curbs in terms of the proclamation. It would have cleaned up the whole act, which is a farce now because authorities don't take action against those who do trade.

"However, we welcome the other measures. The less red tape the better."

Assocom remained committed to the view that there should be complete deregulation of Sunday trading, the association's economist Bill Lacey said

The main reasons for this were consumer convenience and the difficulty of enforcing the existing legislation

Government decided in May to remove all references to Sunday trading from the Draft Businesses Bill after an outcry from church groups

● COMMENT: Page 12

# Container monopoly terminated

20/9/89.

248  
Own Correspondent

JOHANNESBURG. — Government yesterday acted to dismantle Safren-controlled SA Container Depots' (SACD's) long-standing dominance of containerised cargo handling.

The decision follows five years of intense lobbying by competitors of Renfreight, which holds 65% of SACD, to persuade government to implement a recommendation by the Competition Board in 1984 that SACD's monopoly be terminated

Commissioner of Customs and Excise (C&E) Daan Colesky said an extra depot would be commissioned for each of the major entrepots handling containerised cargo in Cape Town, Port Elizabeth, East London, Walvis Bay and Johannesburg

Trade and Industry Minister Kent Durr has confirmed the Competition Board's recommendation and the commissioner's suggested licencees

They are Grindrod for Durban and Cape Town, Aquamarine Container Depots for East London, Wesbank Transport for Walvis Bay, and Presto Transport Holdings for Johannesburg and Port Elizabeth

Approval is subject to the condition that depots become operational within four months from today. Licensing is no longer on condition that SACD applies a uniform tariff to all facility users

An interdepartmental working group chaired by C & E deputy commissioner Izak Coetzee was formed to consider the board's recommendation. It comprised the Department of Transport and SA Transport Services, with members of the Competition Board present as observers

The committee drew up a set of conditions for applicants and left it to the commissioner to decide.

Coetzee said the inclusion of Grindrod — a 12,5% shareholder in SACD — was made provisional on the condition that it satisfied the Competition Board with the sale of its SACD holding

# Fleamarket gets holiday concession

Fleamarkets at the old market site in Newtown are now permitted to operate on public holidays except Christmas Day, Good Friday, Ascension Day and the Day of the Vow.

Johannesburg City Council has granted the concession for three years to the Market Theatre Association and Independent Visual Arts Council, which will be responsible for clearing Mary Fitzgerald Square after each market day and providing adequate toilet facilities.

All traders must be licensed hawkers and there may not be excessive noise, the council said.

REPUBLIEK  
VAN  
SUID-AFRIKA



REPUBLIC  
OF  
SOUTH AFRICA

# Staatskoerant Government Gazette

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Vol. 293

PRETORIA, 22 NOVEMBER 1989

No. 12197

## ALGEMENE KENNISGEWING

### KENNISGEWING 1440 VAN 1989

#### DEPARTEMENT VAN HANDEL EN NYWERHEID WET OP SKADELIKE SAKEPRAKTYKE, 1988

Ingevolge die bepalings van artikel 10 (4) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 71 van 1988), publiseer ek, Kent Diederich Skelton Durr, Minister van Handel en Nywerheid en Toerisme, hiermee die verslag van die Sakepraktykekomitee oor die uitslag van die ondersoek deur die Komitee gedoen kragtens Algemene Kennisgewing 1066 van 1989 soos gepubliseer in *Staatskoerant* No. 12061, gedateer 25 Augustus 1989, soos in die Bylae uiteengesit.

K. D. S. DURR,  
Minister van Handel en Nywerheid en Toerisme.

#### BYLAE

#### SAKEPRAKTYKEKOMITEE

VERSLAG KRAGTENS ARTIKEL 10 (1) VAN DIE  
WET OP SKADELIKE SAKEPRAKTYKE, WET  
No. 71 VAN 1988

#### VERSLAG No. 7

#### SET FOR LIFE INSURANCE AND MARKETING BK INHOUD

- I. Inleiding.
- II. Die partye
- III. Die Sakepraktyk.
- IV. Voorstellings deur SFL.
- V. Evaluasie van die sakepraktyk.
- VI. Gevolgtrekking en aanbevelings.

#### I. Inleiding

Die Sakepraktykekomitee het kragtens artikel 8 (1) (a) van die Wet op Skadelike Sakepraktyke, 1988 ("die Wet"), ondersoek ingestel na 'n bemarkingspraktyk wat beoefen word deur Set for Life Insurance and Marketing BK en John Francis Drinkwater. Kennis van die ondersoek is gegee kragtens artikel 8 (4) van die Wet by Algemene Kennisgewing 1066 van 1989 gepubliseer in *Staatskoerant* No. 12061 van 25 Augustus 1989

682—A

## GENERAL NOTICE

### NOTICE 1440 OF 1989

#### DEPARTMENT OF TRADE AND INDUSTRY

#### HARMFUL BUSINESS PRACTICES ACT, 1988

In terms of section 10 (4) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), I Kent Diederich Skelton Durr, Minister of Trade and Industry and Tourism, do hereby publish the report of the Business Practices Committee on the result of an investigation made by the Committee pursuant to General Notice 1066 as published in *Government Gazette* No. 12061 dated 25 August 1989 as set out in the Schedule.

K. D. S. DURR,  
Minister of Trade and Industry and Tourism.

#### SCHEDULE

#### BUSINESS PRACTICES COMMITTEE

REPORT IN TERMS OF SECTION 10 (1) OF THE  
BUSINESS PRACTICES ACT, 1988 (ACT No. 71 OF  
1988)

#### REPORT No. 7

#### SET FOR LIFE INSURANCE AND MARKETING CC CONTENTS

- I. Introduction.
- II. The parties.
- III. The business practice.
- IV. Representations by SFL.
- V. Evaluation of the business practice.
- VI. Conclusion and recommendations.

#### I. Introduction

The Business Practices Committee has in terms of section 8 (1) (a) of the Business Practices Act, 1988 ("the Act"), conducted an investigation into a marketing practice applied by Set for Life Insurance and Marketing CC and John Francis Drinkwater. Notice of the investigation was given in terms of section 8 (4) of the Act under General Notice 1066 of 1989 published in *Government Gazette* No. 12061 of 25 August 1989.

12197—1

REPUBLIEK  
VAN  
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Vol. 293

PRETORIA, 23 NOVEMBER 1989

No. 12198

## GOEWERMENSKENNISGEWING

### DEPARTEMENT VAN HANDEL EN NYWERHEID

No. 2570

23 November 1989

#### WET OP SKADELIKE SAKEPRAKTYKE, 1988

Ek, Kent Diederich Skelton Durr, Minister van Handel en Nywerheid en Toerisme, na oorweging van 'n verslag deur die Sakepraktykekomitee wat in die *Staatskoerant* bekendgemaak is, met betrekking tot 'n ondersoek waarvan in Algemene Kennisgewing 1066 in *Staatskoerant* No. 12061 van 25 Augustus 1989 kennis gegee is, en aangesien ek van oordeel is dat 'n skadelike sakepraktyk bestaan, en nie oortuig is dat die skadelike sakepraktyk in die openbare belang geregverdig is nie, oefen hiermee my bevoegdhede uit kragtens artikel 12 (1) (b) en (c) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 71 van 1988), soos in die Bylae uiteengesit.

K. D. S. DURR,  
Minister van Handel en Nywerheid en Toerisme.

#### BYLAE

In hierdie kennisgewing, tensy uit die samehang anders blyk, beteken—

“die verslag” die verslag van die Sakepraktykekomitee soos bekendgemaak in die *Staatskoerant*,

“skadelike sakepraktyk” enige sakepraktyk waarby versekeringsooreenkomste aangegaan word op die grondslag dat applikante vir versekeringsdekking kommissie sal ontvang ten opsigte van enige soort-

gevalle ooreenkomste wat aangegaan word deur enige ander persoon as die applikant, welke sakepraktyk bedryf word deur mnr. J. F. Drinkwater en Set for Life Insurance and Marketing BK, soos in die verslag beskryf:

1. Die skadelike sakepraktyk word hiermee onwettig verklaar.

683—A

## GOVERNMENT NOTICE

### DEPARTMENT OF TRADE AND INDUSTRY

No. 2570

23 November 1989

#### HARMFUL BUSINESS PRACTICES ACT, 1988

I, Kent Diederich Skelton Durr, Minister of Trade and Industry and Tourism, having considered a report by the Business Practices Committee in relation to an investigation of which notice was given in General Notice 1066 published in *Government Gazette* No. 12061 of 25 August 1989 and being of the opinion that a harmful business practice exists and being not satisfied that the harmful business practice is justified in the public interest, and having made known the report of the Business Practices Committee in the *Government Gazette*, do hereby exercise my powers in terms of section 12 (1) (b) and (c) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), as set out in the Schedule.

K. D. S. DURR,  
Minister of Trade and Industry and Tourism.

#### SCHEDULE

In this notice, unless the context indicates otherwise—

“harmful business practice” means any business practice whereby insurance agreements are concluded on the basis that applicants for insurance cover will receive commission in respect of any similar agreements concluded by any other person than the applicant, the said business practice being applied by Mr. John Francis Drinkwater and Set for Life Insurance and Marketing CC as described in the report;

“the report” means the report of the Business Practices Committee as made known in the *Government Gazette*:

1. The harmful business practice is hereby declared unlawful.

12198—1

# Govt plans to scrap licences for trading

245

GOVERNMENT yesterday stepped up its deregulatory efforts when Administration and Privatisation Minister Wim de Villiers recommended the introduction of a proclamation which largely removes the need to apply for trading licences.

The proclamation will also do away with all restrictions on business hours during the week and on Saturdays.

De Villiers recommended to President F W de Klerk that changes contained in the draft Businesses Bill published earlier this year be brought into effect by proclamation.

Although the final decision on issuing a proclamation rests with De Klerk, this should be a mere formality.

De Villiers said that in terms of his recommendation to De Klerk it would no longer be necessary for most businesses in the Transvaal, Free State and Cape to renew trading licences for next year.

The only businesses unaffected by the new rules would be those such as escort agencies and night clubs which were subject to licensing on the grounds of public morals.

Because there was no provision for regional services council levies in Natal, currently valid licences in the province would still have to be renewed.

De Villiers said all licences would, as in the past, be subject to review and suspension, but on more limited grounds than previously.

Applications for new licences during 1990 would also be subject to more limited grounds of refusal and review. In Natal, grounds for cancellation and refusal of licences would also be more limited.

De Villiers said he had taken note of

MIKE ROBERTSON

objections by certain trade unions to extending business hours.

He invited those concerned with the protection of workers' rights to inform him of their experience under the new regime.

"I trust this proclamation will not be to the detriment of workers, since the protection of workers' rights is primarily a matter for our labour legislation. Should there be a further need I will also consult with my colleague the Minister of Manpower, and with the National Manpower Commission," he said.

The proclamation will apply until the Businesses Bill has been approved by Parliament and comes into effect at the beginning of 1991.

De Klerk is expected to issue the proclamation within the next few weeks.

TANIA LEVY reports that Assocom legal manager Ken Warren last night welcomed the recommendations as a significant step in the deregulation process, and as recognition of changing shopping patterns among South African consumers.

However, he said, Assocom felt the sensitive issue of Sunday trading should be addressed as a matter of urgency to take into account the shopping needs of all in SA, particularly blacks who spent hours travelling to and from their places of work.

Trading hours should be relaxed further to accommodate them, Warren said.

He hoped the proclamation would be issued without delay, as most businesses had already received license renewal notices. The proclamation would remove uncertainty as to whether they were liable to pay these or not. Large chain stores, in particular, had expressed dismay at the delay.

# Business Day

DAY, DECEMBER 22 1989

(71c + 9c tax)

A TIMES MEDIA PUBLICATION

## Consumers can shop around the clock tonight

CONSUMERS will be able to shop around the clock with effect from today following a government's decision to allow 24 hour shopping from Mondays to Saturdays.

A special edition of the Government Gazette published this morning removes restrictions on shopping hours.

This would only apply from Mondays to Saturdays — Sunday trading would remain restricted, Administration and Privatisation Ministry spokesman Frikkie Odendaal said in Cape Town yesterday.

Although it was against the law to trade on Sundays, stores which had been given permission from the provincial adminis-

ADELE BALETA

trations to open their doors to customers on Sundays could continue to do so.

He said the gazette would also contain details of the easing of licensing systems. Odendaal did not elaborate, but it was expected licensing provisions would be in line with recommendations made by Administration and Privatisation Minister Wilm De Villiers to President F W De Klerk on November 23 that the need to apply for trading licenses be removed.

De Villiers had said it would no longer be necessary for most businesses in the

Transvaal, Cape and Free State to renew trading licences for next year.

Because there was no provision for RSC levies in Natal, currently valid licences in the province would still have to be renewed. New applications would be "subject to more limited grounds of refusal and review", he said.

The proclamation would not apply to liquor outlets, which would continue to be governed by the Liquor Act. Escort agencies and night clubs would still be controlled by laws relating to public morals.

He said he had noted certain trade union objections to extended shopping hours and said if necessary he would discuss the issue of protection of workers' rights with Manpower Minister Eli Louw and the National Manpower Commission.

Sapa reports the private sector welcomed the move, expected to have been implemented only on January 1, as a significant part of the deregulation process. Assocom's legal manager Ken Warren said the issue of Sunday trading should be addressed as a matter of urgency.

Comment Page 4



# PRICES - CONTROL & CONTRAVENTIONS

1990

## Consumers will dictate hours

SYLVIA DU PLESSIS and CHARLOTTE MATHEWS

RETAILERS considering an extension of their trading hours would allow themselves to be persuaded by consumer demand, spokesmen from some of the larger chains said yesterday

While many took advantage in December of government's decision to allow extended trading hours during the week and on Saturdays, those contacted said they had no immediate plans to maintain those hours

Checkers MD Sergio Martinengo said "Our trading hours are already pretty long, but if we find the need to extend them in certain areas, such as Hillbrow, we'll certainly do it. It depends on what consumers want," he said.

"Extended hours would entail a big increase in overheads, including overtime pay and slightly higher shrinkage due to less control"

Pick 'n Pay food merchandise director Sean Summers said the group had no fixed policy regarding shopping hours. It varied from region to region

Chicks operations director Ben le Roux said 85% of stores had extended trading hours on Saturdays and Sundays. Some stores had rejected the idea

Le Roux said stores were manned during extra hours by casual staff with a minimum of supervision from permanent management

D'al-a-Movie chairman Brian Cunningham said the change in regulation was not likely to have any affect on video outlets, most of which had rental rights for Sundays and traded late seven days a week

However, the group's Top Tec electronics chain had a "superb" December, showing a 47% increase in sales, half of which could probably be attributed to later trading hours, he said

# SABS remove their stamp from Domestic products

THE South African Bureau of Standards has warned that Domestic Geyser Manufacturers, manufacturers and suppliers of electric geysers with the trade mark "Domestic", are no longer allowed to have the SABS stamp on their geysers.

"It has come to our attention that geysers displaying the SABS mark and manufactured after the lapse of the permit, have been distributed for sale.

"In the public interest, prospective buyers are accordingly urged to ex-

ercise caution before buying one of the units still bearing the mark, to ensure that the unit was not manufactured after the date of suspension on June 2 1989."

*Sowetan 12/1/90*

Affected units are those with serial numbers greater than 893162."

## Stiffer penalties for abuse of trade controls

LESLEY LAMBERT (245)

CAPE TOWN — The Trade, Industry and Tourism Department has proposed a significant increase in the penalties for contravening import and export controls in an attempt to limit abuse of these controls.

In an amendment Bill to appear before Parliament in the next session, the department has proposed that fines for contravening the controls be increased from R2 000 to R40 000 and that the term of imprisonment be extended from two years to 10 *Blom 15/11 - 90*

Areas of contravention include failure to comply with the conditions of a trade permit, trading without a permit, over- or under-invoicing trade goods, listing controlled goods in a different category and impersonating customs officials.

The Import and Export Control Amendment Bill is one of about 25 which are expected to be heard early in the legislative programme of the parliamentary session which begins in February.

Other amendment Bills in the first batch include the Companies Amendment Bill and the Close Corporations Amendment Bill, both of which emanated from recommendations made by the standing advisory committee on company law.

Trade, Industry and Tourism Minister Kent Durr said the amendments were intended as a deterrent and to reduce the administrative load of customs officials by reducing time spent policing importers and exporters.

A spokesman for Johannesburg-based trade consultants Antax Customs said circumvention and abuse of the controls had probably increased as a result of the high cost of imports and the limitations applied to them in an attempt by the authorities to improve the balance of payments.

One of the more significant amendment proposals in the Companies Amendment Bill requires a company to issue a prospectus every time it issues new shares to the public.

The drafters of the Bill say some companies have been circumventing the issue of a prospectus by issuing large numbers of shares at a nominal value to a director or friend of the company, who then offers the shares to the public at a high premium.

# Paper industry to be investigated

Cape Times 16/2/80  
Own Correspondent

JOHANNESBURG. — The Competition Board is to investigate whether restrictive practices which exist in the paper and paper products industry.

Administration and Privatisation Minister Wim de Villiers requested the investigation, notice of which appears in today's Government Gazette.

The investigation will determine whether any restrictive practises exist in firms which make paper or paper products, including packaging materials, the gazette states.

A board circular says the directive will probably require an investigation into the extent, pattern and implications of price increases, as well as international prices and the relationship, if any, between the two.

Competition Board chairman Pierre Brooks this week said the entire chain from timber processing to the end product market would be examined to determine if any restrictive practices exist.

The investigation would begin immediately after the notice was gazetted as the Minister was anxious that the board moved fast, said Brooks.

When initially contacted, none of the major players in the paper and packaging industries had been informed about the investigation.

However, Sappi CE Eugene van As said: "We compete with all the large companies around the world and have no concern about an investigation."

Mondi CE Tony Trahar said his company would make a submission to the Competition Board in due course.

However, Nampak MD Don McCartan said the move was not unexpected but had come late in the day as there had been a change in the trends for paper pricing.

He said excessive demand worldwide for paper had pushed prices up and there had been a tendency for local producers to price at parity.

He said over the last few years, local paper prices had been just below import prices. On average, paper as a raw material accounted for over 60% of the final price of paper packaging to the end user.

Interpak group MD Tony Rudston said in the last few years the local board and paper suppliers had taken advantage of the weak rand and there had been a greater increase in the price of board than in the CPI or inflation rate.

THE CLAIM

## Usury Amendment Bill published 245

CAPE TOWN — A Bill amending the Usury Act in order to define certain expressions and prescribe conditions surrounding the levying and payment of finance charges, was published yesterday. *PI 10/12/90*

According to a memorandum on the objects of the Usury Amendment Bill, several aspects of the Act are to be addressed

Among these are:

Finance charges may not be levied for shorter or more periods than the

instalment periods agreed upon;

To repeal a provision that could be construed as meaning that finance charges may be calculated and levied in advance;

To abolish certain exemptions applying in the case of certain money loans and debentures in regard to the particulars to be contained in instruments of debt;

To further determine the finance charges that may be recovered. — Sapa.

## HARMFUL BUSINESS PRACTICES

### First appeal <sup>F/M 2/3/90</sup> (245)

The first appeal to a special court against a finding of the Business Practices Committee has been lodged in terms of the Harmful Business Practices Act. It arises out of an order in the November 23 *Government Gazette* preventing Set for Life Insurance & Marketing CC and its MD, John Drinkwater, from marketing its existing scheme under that or any other name.

This was the third finding of the committee which resulted in the closure of certain business operations.

The special court will consist of a Supreme Court judge and two others — one with "a thorough knowledge of economics" and one with "wide experience of industrial, commercial or financial matters." The Act says

37

F/M 2/3/90

(245)

F/M 2/3/90

(245)

sittings "shall be held in public" but the president of the court may exclude anyone "whose attendance is not considered necessary." The definition of "necessary" and the reason for this limitation are not clear.

Drinkwater's only alternative to the special court is to go to the Supreme Court on the grounds that proper procedures were not followed when his business methods were declared harmful. For instance, the Act may not have been properly applied or members of the committee or the minister may have acted "unreasonably" or in "bad faith".

A special court ruling is not "subject to review by or appeal to any other court." A ruling which upholds the minister's decision will result in the harmful practice remaining unlawful. If the court rules in favour of the appellant, the business may be re-opened.

However, no compensation will be forthcoming "in respect of anything done in good faith under this Act."

To get compensation, the appellant could go to the Supreme Court, but again only if he could show that the committee or the minister had acted in bad faith. ■

F/M 2/3/90

USURY ACT

245

### **Proposed changing**

Twelve proposed amendments to the Usury Act "are largely technical and intended to eliminate anomalies and misunderstandings," says Deputy Registrar Financial Institutions Chris Mostert. The most important empowers the Registrar to levy penalties — in certain circumstances — when there is a delay in furnishing information relating to consumer complaints.

The Bill was published by the minister of finance last week.

Another amendment expected soon should encourage the provision of low-cost housing. It follows an announcement in October that the Urban Foundation and some foreign governments would introduce a scheme to help this sector. ■



TARIFF POLICY

F/M 9/3/90

245

# High noon for Board of Trade

Trade & Industry Minister Kent Durr's announcement last week of "two urgent investigations" into tariff policy is a shot across the bow of the Board of Trade & Industry (BTI).

It could ultimately mean the end of the road for the BTI. The twin investigations will look at the current tariff policy, administered by the board and the board's "mission and functions."

A number of commentators, including the *FM*, have questioned the efficacy of the board and have called for it to be abandoned. More recently, the board has been involved in a public row on trade policy with Durr's Department of Trade & Industry (*Business* March 2).

In view of the policy differences between the two bodies, the announcement could be interpreted as a ministerial slapdown for board chairman Lawrence McCrystal's independent policy stance.

This week McCrystal was not available for comment. However, Stef Naude, the department's director-general, was adamant McCrystal's policy difference is not with him, but with "the Cabinet."

McCrystal believes that industrial growth, exports, job creation and beneficiation of SA's raw minerals can best be achieved by a series of structural adjustment programmes for selected industries. But Naude insists government must move away from interfering with industry, adding that the adjustment programmes would require "hundreds" of bureaucrats to administer.

By launching the twin investigations, Durr is freezing McCrystal's adjustment programmes. This follows the announcement

last September of the General Export Incentive Scheme, which took away the export incentive component of the programmes. The tariff investigation will put the programmes' tariff proposals on ice, thus undermining its implementation.

Does this mean the end of McCrystal's tariff policy, and, by extension, the BTI?

Superficially, this may seem so, but the debate has many hidden elements. Durr's statement has a footnote. "Other initiatives that are equally aimed at the restructuring of basic aspects of economic policy can be expected."

Barlow Rand director John Hall says, historically, SA's tariff policy has been aimed at promoting import substitution. This has led to severe distortions.

"The system of protective tariffs forced taxpayers to subsidise certain non-competitive industries on an ongoing basis," he says. "And, when these industries became even less efficient, the protection was merely increased."

The question is: should the focus of tariff policy change?

"What one should now look at," Hall says, "is a combination of 'limited period' establishment tariffs (allowing industry to establish itself and become globally competitive) and anti-dumping formula tariffs, which should be capable of rapid introduction."

He proposes that the SA Chamber of Business should play a larger role in tariff policy. "The board now adds its own interpretation to policy changes suggested by the private sector. This could lead to distortions and delays. The chamber could help determine tariff policy by allowing its industry members to launch and finance their own investigations into proposed structural changes in their areas of operation."

There is a precedent. Last year, the stainless steel industry funded a R240 000 "pipeline" investigation, requested by the board.

"The chamber's credibility will ensure

that special pleadings by vested interest groups will not distort national policy, while the board and the department could retain their supervisory roles," Hall says.

Ron Haywood, the chamber's deputy executive director, says tariff policy should be reviewed continually. "The Uruguay round of Gatt talks, Europe 1992 and the changes in eastern Europe are a few of the issues that necessitate a relook at SA's tariff policy. The chamber is prepared to assist with the investigations." *Arnold van Huyssteen*

SAA F/M 9/3/90

## The longest night

When 250 passengers boarded SA Airway's late night flight on February 28 in Johannesburg, they thought they were headed for Cape Town. Instead, they entered the twilight zone.

Thirteen hours and thousands of air miles later, they finally landed in Cape Town, after side trips to Port Elizabeth and back to Johannesburg.

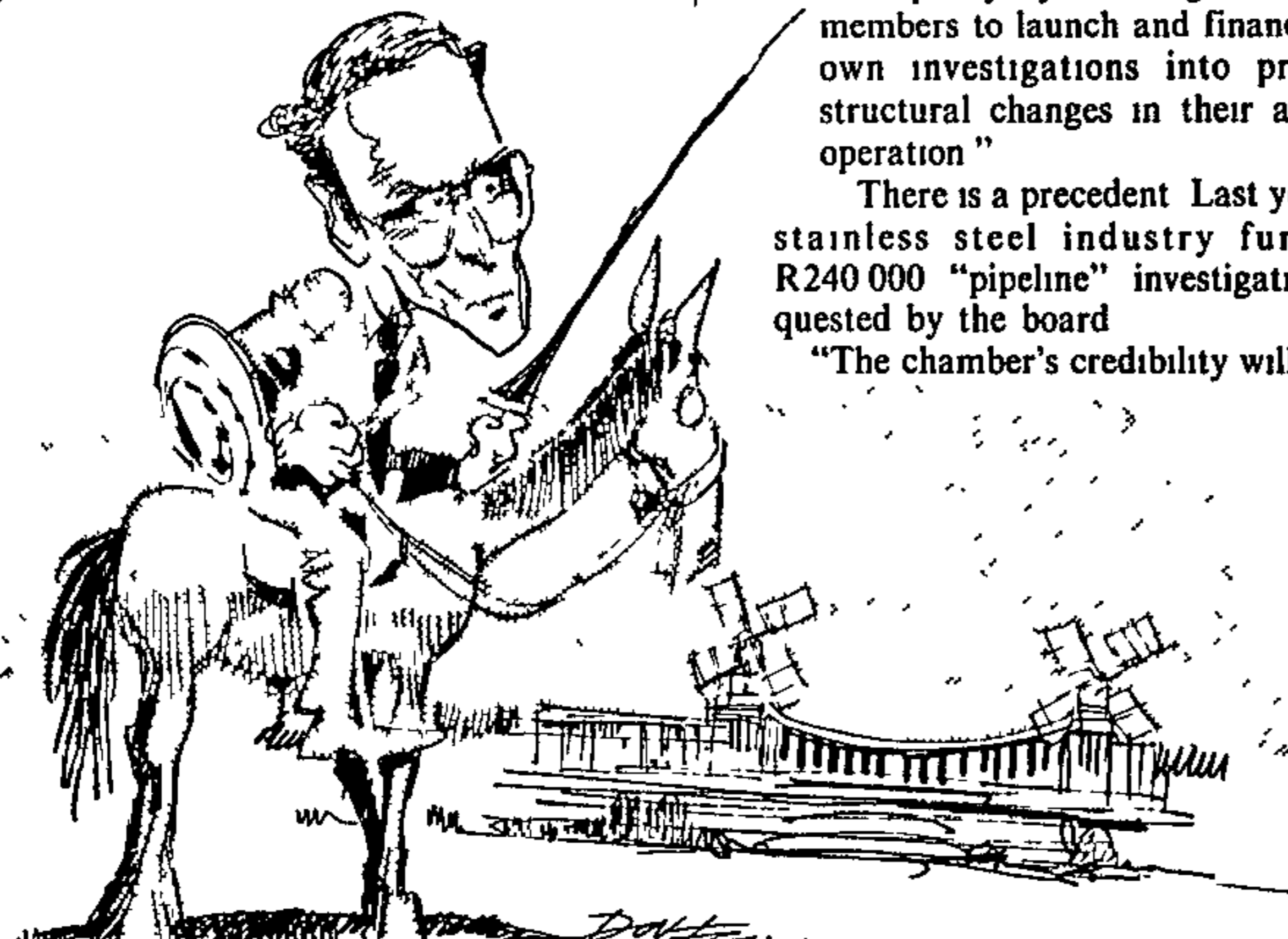
The flight, plagued by bad weather and inadequate landing facilities, was enough of a nightmare all round to prompt SAA into cancelling its late night flights in and out of D F Malan Airport until further notice. People with late night bookings will be accommodated on other flights.

The bizarre ordeal highlights the take-it-or-leave-it attitude so common to monopolies — government has not allowed other airlines to compete with SAA on the Cape Town-Johannesburg service.

According to accounts from two passengers aboard the flight, there was no cabin service because it was a cut-rate flight, so passengers went for hours without refreshments. There were a number of young children on board and one mother ran out of nappies for her baby. When a passenger with the flu asked for a blanket, she was told there were none left and was offered a tablet instead. The blankets were only for mothers with children, a flight attendant said. Desperate smokers, cooped up for six hours in one stretch, resorted to smoking in the toilets. The cabin crew reprimanded them.

The airline says the "problem" was aggravated by the closure of D F Malan's main runway for repairs. A second runway, not equipped with an instrument landing system, couldn't be used because of the bad weather.

"As the weather is too unpredictable at this time of year, it has been decided to cancel all late night flights to avoid a repetition of the problem," SAA says.



MIKE ROBERTSON

CAPE TOWN — Import surcharges on luxury goods are to be dropped by a third, Finance Minister Barend du Plessis announced yesterday.

Du Plessis said in his Budget that the surcharge on luxury imports like televisions and hi-fi sets would be dropped from 60% to 40%.

The surcharge on imported consumer goods would drop from 20% to 15% while the surcharge on consumer goods that could also be used as raw materials would drop from 10% to 7,5%.

The import surcharge on capital goods would drop from 15% to 10%.

Du Plessis said the lowering of the surcharges would result in a loss of revenue to the State of R835m.

He said it was expected that the surcharge would yield about R2,6bn in 1989/90 as opposed to R1,9bn in the previous financial year. Capital goods were the largest contributor to the lat-

## Surcharges on imports lowered <sup>(245)</sup>

est figure. 8/Jan/15/3/90 <sup>(3)</sup>  
He said the surcharge had failed in its main purpose of drastically cutting imports.

"What is more, it has had a cost-raising effect on the economy, and has also given unintended additional protection to certain local industries, incurring the danger that dependence on such protection will become entrenched," he said.

Du Plessis said it had also been decided to abolish the ad-valorem customs and excise duty on certain precious-and-semi-precious stones and jewellery to help expand the jewellery manufacturing industry.

The estimated loss of revenue to the State was expected to be R37m.

*Handwritten:* 1573190  
 89 Mr S S VAN DER MERWE asked the Minister of Home Affairs

How many mixed marriages between (a) Whites and Blacks, (b) Whites and Coloureds and (c) Whites and Indians (i) had been entered into in the Republic since the repeal of the Prohibition of Mixed Marriages Act, No 55 of 1949, as at 31 December 1989 and (ii) were entered into in the Republic in 1989?

The MINISTER OF HOME AFFAIRS B204E

(a)	(i)	(ii)
(b)	77	24
(c)	1 690	513
	595	202

Transport studies: funds

95 Dr Z J DE BEER asked the Minister of Transport *Handwritten:* 1573190

(1) Whether the Department of Transport contributed any funds to the (a) Greater Johannesburg Area Transportation Study, 1970, (b) London Transport Executive Study, 1971, (c) Jomet Studies, Study, 1983-1985 and/or (d) Massstran Feasibility Study, 1989-1991. If so, what was the extent of these contributions (i) in each case, and (ii) in total, as at the latest specified date for which information is available.

(2) what transit systems were recommended by each of the above studies,  
 (3) whether any of these recommendations were accepted, if so, (a) which recommendations and (b) why, if not, why not?

The MINISTER OF TRANSPORT  
 (1) (a) No

- (i) Falls away,
- (b) No
- (1) Falls away,
- (c) No
- (1) Falls away,
- (d) Yes
- (1) R1 046 184 as at 28 February 1990,

(e) Yes *Handwritten:* 1573190

(1) R1 090 450 as at 28 February 1990,

- (d) (ii) and (e) (ii) R2 136 634,
- (a) (ii) (b) (ii) and (c) (ii) Fall away
- (2) (a) Road and rail transit,
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- (c) Light rail transit,
- (d) Rapid rail transit, and
- (e) The relevant study is not yet completed

(3) No None of these recommendations were accepted unconditionally because it was stated in the studies that a full feasibility study into a mass transit system should first be undertaken before such a decision could be made

(a) and (b) Fall away

Competition Board: prosecutions

102 Dr P J GOUS asked the Minister for Administration and Economic Co-ordination

(1) (a) How many prosecutions have been instituted by the Competition Board up to now, (b) with what result have these prosecutions been instituted and (c) in respect of what date is this information furnished, *Handwritten:* 245

(2) what procedure (a) does the Competition Board follow in relation to investigations into alleged collusion and similar irregularities and (b) do members of the public have to follow in order to have such irregularities investigated by the Board?

*Handwritten:* 1573190  
 The MINISTER FOR ADMINISTRATION AND ECONOMIC CO-ORDINATION B255E

(1) (a) None The activities of the Competition Board are governed by the Maintenance and Promotion of Competition Act, 1979 (Act No 96 of 1979) in terms of which they are not empowered to institute prosecutions Prosecutions in respect of contraventions of arrangements or prohibitions are handled by the Department of Justice and the South African Police Eight cases have

been referred to the relevant authorities for possible prosecution,

- (b) falls away, *Handwritten:* 1573190
- (c) 1 January 1989 to 21 February 1990,
- (2) (a) horizontal collusion by suppliers on prices, conditions of sale, market sharing and tenders, as well as vertical price collusion are prohibited in terms of Government Notice 801 of 2 May 1990 Alleged contraventions are referred to the Department of Justice or the South African Police with the view to possible prosecutions Allegations of horizontal collusion by buyers are investigated by the Competition Board on an *ad hoc* basis in terms of Act 96 of 1979 Investigations may give rise to prohibitions which, when contravened, are handled in the same manner as mentioned in (1) (a).

(b) members of the public may refer complaints regarding restrictive practices to the Competition Board, while alleged contraventions of prohibitions may be referred to the Competition Board or the South African Police

Nurses: lowering of retirement age  
 116 Mr M J ELLIS asked the Minister for Administration and Economic Co-ordination

Whether his Department is considering lowering the retirement age of nurses, if so, what is the new retirement age to be, if not, why not? *Handwritten:* 1573190 B278E

The MINISTER FOR ADMINISTRATION AND ECONOMIC CO-ORDINATION

No The approach is not to look into the lowering of the retirement age of single groups in the Public Service in isolation but to take the position of all public servants in such case into consideration

Case of *The State v W H Rabe* previous offences

145 Mr L FUCHS asked the Minister of Justice Whether Mr W H Rabe was at any time convicted of any offences prior to his conviction for common assault in the case of *The State v W H Rabe* *Handwritten:* 1573190

*State v W H Rabe* in the Piet Renef Regional Court on 12 February 1990, if so, (a) when, (b) of what offences, and (c) what sentence was handed down, in each case? *Handwritten:* 1573190 B358E

The MINISTER OF JUSTICE  
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Case of *The State v W H Rabe*: evidence

146 Mr L FUCHS asked the Minister of Justice

- (1) Whether, in the case of *The State v W H Rabe*, concluded in the Piet Renef Regional Court on 12 February 1990, any medical evidence concerning the cause of the death of Mr Ekati Xaba was led, if so, (a) what evidence and (b) by whom was such evidence presented, if not, why not,
- (2) whether any evidence was led suggesting a connection between the alleged assault and the death, if so, (a) what was the gravamen of such evidence and (b) by whom was it presented,
- (3) whether any mitigating factors were taken into account in the judgment and conviction of Mr W H Rabe, if so, what factors?

*Handwritten:* 1573190  
 The MINISTER OF JUSTICE B359E

(1) Yes

- (a) That the cause of death was subdural bleeding and gall peritonitis
- (b) Dr F J van der Sande
- (2) Dr F J van der Sande testified in this regard His evidence did not suggest a connection between the alleged assault and the death Dr van der Sande testified that the alleged assault could not have caused the death of the deceased
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HOUSE OF ASSEMBLY

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HOUSE OF ASSEMBLY

4th 23/3/90

245

# De Beers' price rise confuses dealers

By Neil Behrmann

LONDON — Dealers are confused about De Beers' decision to raise the average price of rough diamonds by 5.5 percent.

De Beers, however, is confident after surging sales in the first two months of the year.

Retail demand for diamonds, which had risen by 15 percent in 1988, rose by a further four percent in 1989 to around \$40.5 billion, said Andrew Lamont a spokesman of the company.

He said the public was still increasing purchases of cheaper diamonds, while producer members of the cartel also demanded higher prices to cover rising mining costs.

Producer sales contracts with De Beers are up for negotiation in the

coming 12 months. Botswana, for instance meets with De Beers' London-based Central Selling Organisation in April.

"The price rise is a sop for producers," said a dealer.

The price increase has confounded diamond dealers who expected a downturn in demand in 1990.

De Beers sold about \$1 billion worth of diamonds in its first two sales this year and the next offering at the end of March should be high too, say Antwerp and London dealers. They expect price resistance in subsequent months.

A depreciating yen has boosted prices for Japanese customers, the second largest diamond market in the world. Moreover, high interest rates, which

are already lowering demand for diamonds in the US, will eventually affect consumption in Europe.

So far, however, De Beers has not found confirmation of these worries.

Even though Far Eastern demand for gold dipped when prices rose above \$400, Japanese diamond imports jumped 56 percent in dollar terms in January.

That remarkable increase in purchases occurred, however, before the marked slump in the yen and the Japanese bond and stock market.

So far this year exports of diamonds from Antwerp, Tel Aviv and Bombay have been buoyant, says De Beers, even though dealers have expressed concern about tough trading conditions in India.

Nevertheless, the price rise is confusing considering that De Beers itself expressed concern about the market at the end of last year.

Its sales of diamonds in the second half of 1989 dipped 24 percent to \$1.8 billion, mainly because the cartel sold fewer diamonds to support prices. After a price rise of 15.5 percent last March there was already price resistance, dealers say.

Yet sales soared in the first two months, partly because De Beers had withheld gems and created a shortage of diamonds priced between \$400 to \$3 500 a carat.

Several dealers boosted price premiums on the market and built up stocks because they correctly speculated on a rise in De Beers' quotes.

# Food prices soar 15.7 pc

By Sven Lunsche *SL* 2/3/90

Food prices continued to escalate in February, soaring to their highest annual increase since August 1988

The annual percentage change in the CPI for food in February was 15.7 percent compared with January's 14.9 percent.

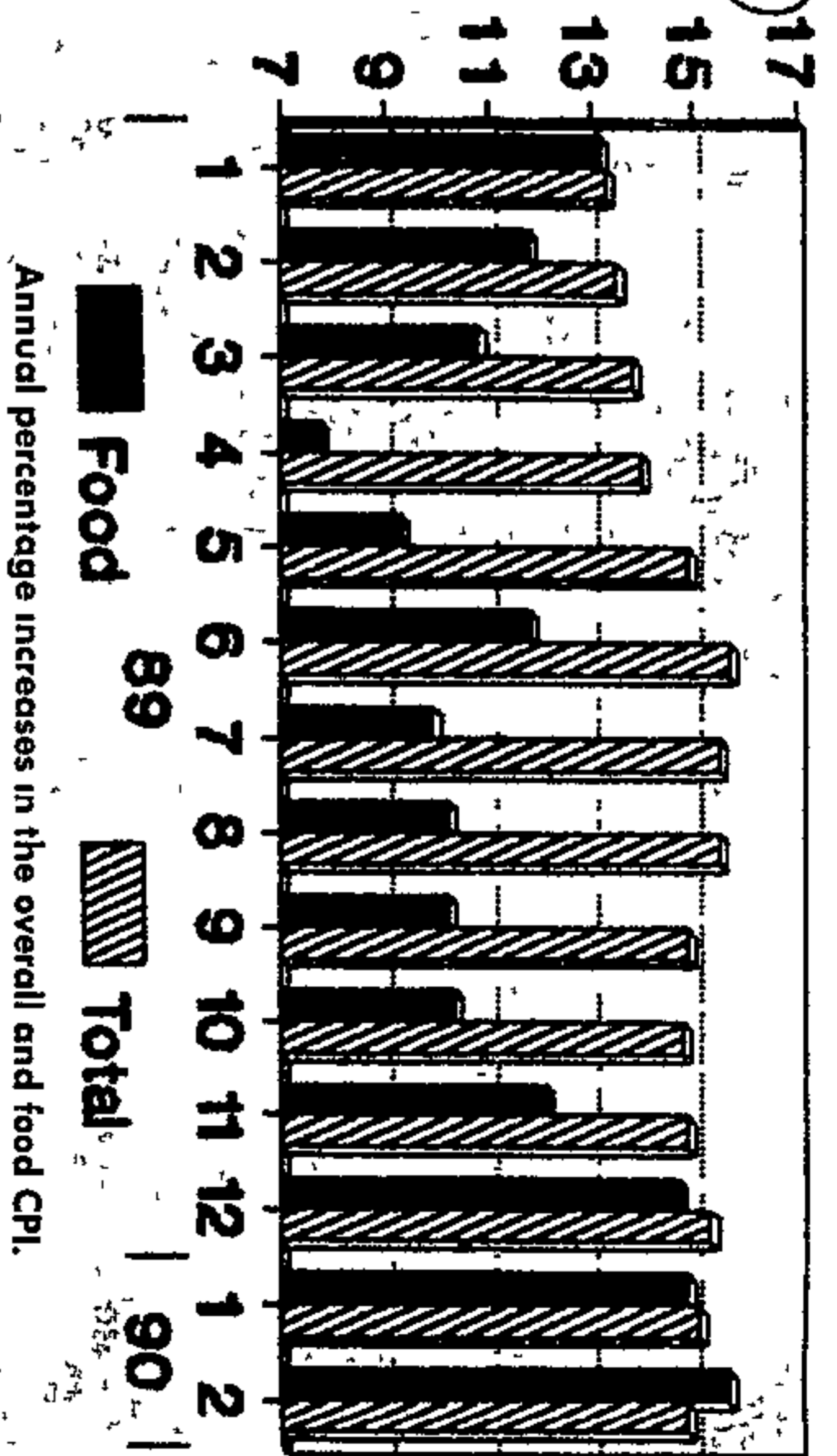
It was also the first time since 1988 that food price increases have exceeded the overall inflation rate

Inflation in February, as measured by the annual rise in the total CPI, was 14.9 percent, compared with 15.1 percent in January and 15.3 percent in December

On a monthly basis food prices were up by 0.8 percent in February with large contributions coming from dairy products (1.7 percent), coffee and tea (2.2 percent) and other food products (1.5 percent).

However, decreases during the month occurred in the prices of fruit (0.2 percent) and vegetables (3.3 percent), the two categories which in the previous months had been largely responsible for the rising food costs.

Ironically food prices for the whole of 1989 rose by only 11.1 percent, but increases were escalating in the second half of the year



Annual percentage increases in the overall and food CPI.

# Role of Competition Board to be broadened

Blom 29/3/90

245

CAPE TOWN — The role of the Competition Board in investigating restrictive practices, acquisitions and monopoly situations is to be clarified and broadened by amended legislation tabled in Parliament yesterday.

Although the Maintenance and Promotion of Competition Amendment Bill does not introduce any dramatic changes to the board's authority in dealing with these matters, it does allow publication of policy guidelines on restrictive practices and monopolies, rather than just ac-

LESLEY LAMBERT

quisitions as in existing legislation. More significantly, though, the board's authority to investigate restrictive practices and monopolies will be extended to acquisitions.

According to Competition Board chairman Pierre Brooks, the aim of the amendment is not to restrict healthy competition but to introduce more symmetry to existing legislation.

Since acquisitions have, or are

likely to have, the effect of restricting competition directly or indirectly, the board's point of departure in assessing them should be that they are not justified in the public interest, he says.

Investigations into acquisitions, restrictive practices and monopolies must be completed within three months, according to the amended legislation, and the finance minister is empowered to stay or prevent a restrictive practice for an interim period.

Get any information to RUTP

You participating course

could we have access to data if we helped out

PP

## A wider brief <sup>(245)</sup>

To the dismay of free marketeers, the Competition Board may soon be getting more power to meddle in business

Under the proposed amendments to the Maintenance and Promotion of Competition Act, the board will be getting the power to issue guidelines on both monopolies and restrictive practices rather than on just acquisitions, as is now the case. Also under the amendments, it will be assumed that an acquisition restricts competition and is against the public interest, unless the parties can prove otherwise. The changes are expected to be passed in this session of parliament.

With this wider brief, chairman Pierre Brooks is keen to provide business with a comprehensive picture of competition policy through guidelines that can be used as precedents in board decisions.

"We don't want to pass judgment just on a gut reaction. We'll build up competition principles on the basis of comparative law, taking special note of the laws in the US and EC."

One criticism of the board has been that the views of lawyers take precedence over the views of economists. This has been especially true since UCT economist Brian Kantor and economist and businessman Jan Graaff left the board last year.

Leon Louw, executive director of the Free Market Foundation, disagrees with the board's whole thrust. He says companies merge so they can become more competitive and this shouldn't be restricted. "If companies are placed under investigation because they've been successful enough to absorb a competitor, then this constitutes interference in the market."

He adds that there's no reason for SA to harmonise its competition laws with those of the US and EC, which have a strong anti-trust bias. "I don't see why we should follow the lemmings."

Though on the face of it the new Act appears to be against company growth and, therefore, anti-big business, Brooks insists "We aren't against bigness as such. We don't want to penalise entrepreneurship but would like to encourage competition. Often the

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remedy is more painful than the illness. When the Americans broke up American Telephone & Telegraphy, it created other problems. We are on the lookout for companies that abuse their power to restrict competition."

One example of this was the board decision late last year that forced Gypsum Industries to supply gypsum board to Insulations Unlimited on the same terms as to Insulations' competitor, Donn, because Gypsum is the sole supplier of the product in SA.

On the other hand, in a preliminary report in November, the board found that Christian Dior was entitled to stop supplying the menswear chain Romens. Romens had complained that Dior had stopped supplying because it disapproved of Romens' marketing methods, which included an offer to buy one Dior suit and get a second one for a cent.

Romens argued that Dior had stopped supplying it as a means of keeping Dior suits in more expensive stores, but the board found that, in common with EC law, a franchisor is entitled to choose traders that seem most suitable to the marketing aims of the product. Because Dior has only a fractional share of the menswear market, it isn't preventing Romens from continuing to trade by withholding its products.

A pivotal case on supplier-trader relations will be the investigation into the video sector. Smaller video traders complain they are obliged to buy videos from distributors in packages so that to get two hit videos they have to buy a package that includes half a dozen mediocre movies. CNA, on the other hand, can buy the videos it chooses.

This investigation has been going on for more than five months and others have been going on for even longer. The investigation of medical schemes has taken more than a year. Brooks says "There is often no precedent for the matters we deal with and we want to be sure we've explored every angle. Our decisions have serious implications for the financial future of companies."

Many decisions wait until the quarterly meetings of the 13-member board, which includes part-timers from government departments and the private sector, such as JSE president Tony Norton. The medical schemes report, which Brooks says will have a deregulatory thrust, should get the final stamp of approval at the next meeting on May 7.

Nobody is immune from the board. Outside SA's borders, it investigated the possible takeover of a British company, Consgold, by a Luxembourg company, Minorco, because of its SA implications. It concluded that the takeover of Goldfields of SA by the Anglo interests, in whatever guise, was against the public interest because of the near-monopoly power it would give Anglo.

Louw says, however, "If we're going to compete with the rest of the world our companies must be allowed to grow."

The US is slowly learning this lesson. Its tough anti-trust laws have prevented many of the country's top banks and corporations

(245)



**Brooks: helping or hurting competition?**

from growing large enough to compete effectively with Japan, where lax anti-trust laws have fostered the growth of huge companies that are well-equipped to compete internationally.

Louw says the board should concentrate on dismantling legal barriers to entry in trades and professions. Brooks notes the board is planning to publish guidelines for the professions that will include the encouragement of advertising, particularly for pharmacists. "Competition has been introduced by dispensing doctors and the Medisecor discounting organisation," Brooks says. "Why shouldn't pharmacies be allowed to say what they charge to help them compete?"

He notes that professions often form artificial work barriers, such as those between attorneys and advocates, and the barrier that prevents doctors, pharmacists and nurses working together in a group practice.

*Stephen Cranston*



# Insurance scheme deemed to be a harmful practice

13/10/89 20/4/90 LESLEY LAMBERT

CAPE TOWN — Findings by the Business Practices Committee that the Set for Life Insurance and Marketing cc was a harmful business practice which should be declared unlawful, were tabled in Parliament yesterday.

A report, which included the findings of an investigation into the close corporation, was submitted after an order in the Government Gazette prevented it and its MD John Drinkwater from marketing the scheme.

Set for Life was marketed as an insurance scheme which offered indefinite security, supplementary income and substantial financial rewards for participants and sales agents. It alleged that participants could earn monthly commissions of up to R29 112.

The committee, chaired by Louise Tager, found consumers were deceived or likely to be deceived as to the likelihood of getting the potentially huge sums advertised.

It found that for one agent to earn the potential R29 112 monthly income, a total of 5 460 transactions worth R546 000 would have to be concluded a month between June 17 and August 6 1989, after which it was suspended, 1 972 transactions (R147 900) were concluded.

By mathematically linking the potential income to the number of additional participants, the scheme was similar to a lottery and to other schemes which were offences in terms of the Gambling Act, the report stated.

The committee found the scheme constituted an unlawful practice and could not be justified in the public interest and recommended it be declared unlawful.

The Business Practices Committee was established in 1988 to investigate "get-rich-quick" and other investment schemes which were assumed to be harmful and not in the public interest.

## NATAL UNREST DEATHS

September 1987 — January 1989.....	668
February 1989 — April 18 1990.....	923
Past 24 hours' official toll.....	5
TOTAL.....	1 596

## KENNISGEWING 352 VAN 1990

## DEPARTEMENT VAN MANNEKRAG

## LOONWET, 1957

## LOONRAADONDERSOEK.—HERSIENING VAN LOONVASTSTELLING 441—KLERASIE- EN BREI-NYWERHEID, REPUBLIEK VAN SUID-AFRIKA

Belanghebbende persone word versoek om daarop te let dat die sitting van die Loonraad wat om 14:00 op 15 Junie 1990 te Ladysmith gehou sou word, nou om 14:00 op 13 Junie 1990 aldaar plaasvind.

M. J. DELPORT,  
Sekretaris: Loonraad.

(4 Mei 1990)

## KENNISGEWING 353 VAN 1990

DOEANE- EN AKSYNSTARIEFAANSOEKE.—  
LYS 3/90

A. Die volgende aansoeke wat deur die Raad van Handel en Nywerheid gedurende die tydperk 1 Maart 1990 tot 31 Maart 1990 oorweeg is, is nie gesteun nie:

(a) *Verhoging van die reg op:*

1. (a) Sintetiese stapelwesels van polipropileen, nie gekaard, gekam of andersins vir spin voorberei nie; en

(b) wysiging van tariefspos 5505.10 deur die volgende na tariefspos 5505.10.10 in Bylae I in te voeg:

Tariefspos	Beskrywing	Skaal van Reg
5505 10.20	Van polipropileenwesels	20% of 450c per kg min 80%

(Lys 15/89, T.A.K. 890001) (Verslag 2841).

2. Glukoonsuur, natriumglukonaat en kalsiumglukonaat. (Lys 19/89, T.A.K. 890249) (Verslag 2848).

(b) *Korting van die reg (in Bylae 3) op:*

Maniokstysel (kassawestysel) vir die papiernywerheid. (Lys 21/89, T.A.K. 890268) (Verslag 2838).

B. Die volgende aansoeke om korting van die reg kragtens item 470.03, wat deur die Raad van Handel en Nywerheid gedurende die tydperk 1 Maart 1990 tot 31 Maart 1990 oorweeg is, is gesteun:

1. Materiaal vir die vervaardiging van rokke en bloese vir uitvoer.
2. Breistowwe, krae en mansjette vir die vervaardiging van rokke en bloese vir uitvoer.
3. Natriumhidroksied vir die vervaardiging van houtpulp vir uitvoer.
4. Ingevoerde onderdele van luidsprekers vir die vervaardiging van luidsprekers vir uitvoer.
5. Ingevoerde leer vir die vervaardiging van leerbedekte motorpaneel en paneelborde vir uitvoer.
6. Materiaal en voering vir gebruik in die vervaardiging van broeke vir uitvoer.
7. Skaafstrookstof van natuurlike rubber en nylon vir die vervaardiging van binne- en buitebande vir uitvoer.
8. Polivinielbutiraalkunstplastiek-bladmateriaal in rolle vir die vervaardiging van gelamelleerde veiligheidsglas, motorwindskerms en bouprodukte vir uitvoer.

## NOTICE 352 OF 1990

## DEPARTMENT OF MANPOWER

## WAGE ACT, 1957

## WAGE BOARD INVESTIGATION.—REVISION OF WAGE DETERMINATION 441—CLOTHING AND KNITWEAR INDUSTRY, REPUBLIC OF SOUTH AFRICA

Interested persons are requested to note that the sitting of the Wage Board which was to have been held in Ladysmith at 14:00 on 15 June 1990, will now be held there at 14:00 on 13 June 1990.

M. J. DELPORT,  
Secretary: Wage Board.

(4 May 1990)

## NOTICE 353 OF 1990

## CUSTOMS AND EXCISE TARIFF APPLICATIONS.—LIST 3/90

A. The following applications considered by the Board of Trade and Industry during the period 1 March 1990 to 31 March 1990 have not been supported:

(a) *Increase in the duty on:*

1. (a) Synthetic staple fibres of polypropylene, not carded, combed or otherwise processed for spinning; and

(b) amendment of tariff subheading 5505.10 by inserting the following after tariff subheading 5505.10.10 in Schedule I:

Tariff Subheading	Description	Rate of Duty
5505.10 20	Of polypropylene fibre	20% or 450c per kg less 80%

(List 15/89, T.A.C. 890001) (Report 2841).

2. Gluconic acid, sodium gluconate and calcium gluconate. (List 19/89, T.A.C. —90249) (Report 2848).

(b) *Rebate of the duty (in Schedule 3) on:*

Manioc (cassava) starch for the paper industry. (List 21/89, T.A.C. 890268) (Report 2838).

B. The following applications for rebate of the duty in terms of item 470.03 considered by the Board of Trade and Industry during the period 1 March 1990 to 31 March 1990 have been supported:

1. Fabric to be used in the manufacture of dresses and blouses for export.
2. Knitted fabric, collars and cuffs to be used in the manufacture of dresses and blouses for export.
3. Sodium hydroxide in the manufacture of wood-pulp for export.
4. Imported parts of loudspeakers for the manufacture of loudspeakers for export.
5. Imported leather for use in the manufacture of leather-covered motor vehicle panels and dashboards for export.
6. Fabric and lining to be used in the manufacture of trousers for export.
7. Natural rubber and nylon chafer fabric for the manufacture of pneumatic tyres and tubes for export.
8. Polyvinyl butyral artificial plastic sheeting in rolls for the manufacture of laminated safety glass, automotive windscreens and building products for export.

9. Braakwynsteen vir sitrus vir uitvoer.
10. Nie-ioniese magnesiumoksiedbromiede van natrium en oppervlak-aktiewe middels vir gebruik in die vervaardiging van loofhoutpulp vir uitvoer.
11. Snyblomme vir rangskikkings vir uitvoer.
12. Weefstowwe vir die vervaardiging van rokke vir uitvoer.
13. Ingevoerde onderdele vir gebruik in die vervaardiging van leerbedekte motorvoertuigkomponente vir uitvoer.
14. Koolelektrodes vir die vervaardiging van silikon vir uitvoer.
15. Diamante en ander stene vir gebruik in die vervaardiging van juweliersware vir uitvoer.
16. Komponente vir die vervaardiging van magnetiese videoband vir uitvoer op spoel.
17. Verlenging van 'n permit ingevole item 470.03/39.01 uitgereik (laedigheidpolietileen-hars).
18. Soldeersmeermiddels en goud-/silwerbedekte aluminiumskakelkettings vir gebruik in die vervaardiging van goue en silwerkettings vir uitvoer.
19. Lewendige kreef vir gebruik in die vervaardiging van verpakte gaar of bevrore of lewendige kreef vir uitvoer.
20. Aluminiumblikkies gebruik in die vervaardiging van geblikte sardientjies vir uitvoer.
21. Gebreide katoenstowwe, ongekleur, wat gebruik word in die vervaardiging van gekleurde gebreide katoenstowwe vir uitvoer.
22. Weefstowwe vir die vervaardiging van damesklere vir uitvoer.

Lys 2/90 is by Algemene Kennisgewing 228 van 30 Maart 1990 gepubliseer.  
(4 Mei 1990)

#### KENNISGEWING 354 VAN 1990

#### DOEANE- EN AKSYNSTARIEFAANSOEKE.— LYS 16/90

Onderstaande aansoeke betreffende die Doeane- en Aksynstarief is deur die Raad van Handel en Nywerheid ontvang. Enige beswaar teen of kommentaar op hierdie vertoë moet binne ses weke na die datum van hierdie kennisgewing aan die Raad van Handel en Nywerheid, Privaatsak X753, Pretoria, 0001, gerig word. Die aandag word daarop gevestig dat die skale van reg wat in die aansoeke genoem word, dié is wat deur die applikante aangevra is en dat die Raad, afhange van sy bevindinge, hoër of laer skale mag aanbeveel.

#### Verhoging van die reg op:

1. Vylmasjiene, skuurmasjiene, draadborselmasjiene en ander soortgelyke masjiene, met 'n kraglewering van meer as 1,25 kW asook onderdele van hierdie produkte, deur die huidige voorsienings by tariefsubposte 8467.11.10, 8467.19.70 en 8467.92.40 deur die volgende te vervang:

9. Tartar emitic for citrus for export.
10. Non-ionic magnesium oxide bromides of sodium and surface active agents to be used in the manufacture of hardwood pulp for export.
11. Cut flowers for bouquets for export.
12. Woven fabrics for the manufacture of dresses for export.
13. Imported consumable parts for use in the manufacture of leather-covered motor vehicle components for export.
14. Carbon electrodes for the manufacture of silicon for export.
15. Diamonds and other stones for use in the manufacture of jewellery for export.
16. Components for use in the manufacture of magnetic tape for export.
17. Extension of permit issued in terms of item 470.03/39.01 (Low density polyethylene resin).
18. Soldered pastes and gold/silver-clad aluminium links to be used in the manufacture of gold and silver chains for export.
19. Live rock lobster to be used in the manufacture of packed cooked or frozen or live lobster for export.
20. Aluminium cans used in the manufacture of canned sardines for export.
21. Knitted cotton fabrics, undyed, used in the manufacture of dyed knitted cotton fabrics for export.
22. Woven fabrics for the manufacture of ladies' clothing for export.

List 2/90 was published under General Notice 228 of 30 March 1990.

(4 May 1990)

#### NOTICE 354 OF 1990

#### CUSTOMS AND EXCISE TARIFF APPLICATIONS.—LIST 16/90

The following applications concerning the Customs and Excise Tariff have been received by the Board of Trade and Industry. Any objections to or comments on these representations must be submitted to the Board of Trade and Industry, Private Bag X753, Pretoria, 0001, within six weeks of the date of this notice. Attention is drawn to the fact that the rates of duty mentioned in applications are those requested by the applicants and that the Board, depending on its findings, may recommend lower or higher rates.

#### Increase in the duty on:

1. Filing machines, sanders, wire brush machines and the like, with a power output exceeding 1,25 kW, and parts of these products, by the substitution for the existing provisions under tariff sub-heading 8467.11.10, 8467.19.70 and 8467.92.40 of the following:

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FIM 11/5/90 (245)



people running home businesses

Two Johannesburg traffic officers have been trained to issue spot fines to transgressors of the town planning scheme, all they're waiting for is their pink tickets to be printed

Instead of patrolling the city streets in search of parking offenders, these law enforcement officers will seek out homes that are being used illegally for business. They have the authority to issue spot fines of between R300 and R1 000

Johannesburg planning director Rudi Erasmus explains the use of traffic officers is part of a campaign to understand better and control the problem of businesses operating from dwellings

#### Public participation

"We plan a clampdown on illegal home businesses but also seek public participation and guidance on home businesses and, if so, to make the legalisation of operating from home easier."

Planning committee chairman Eddy Magid says the objective is to discipline the town planning scheme. "The council is being taken for granted. People are causing intrusions into residential areas and complaints from neighbours tend effectively to stave off council action while the complaint is being dealt with

"The result is that until April 2, those operating illegal businesses from their homes had between a year and 18 months' grace before being brought to book. Now spot fines can be issued followed by further fines for persistent offenders."

Erasmus says the council wants to clamp down on unauthorised use of dwellings for business while streamlining procedures for gaining permission for activities which are acceptable home businesses

He says traffic officers are being used because they have the authority, under the Criminal Procedures Act, to issue spot fines, whereas town planning inspectors (for the time being) do not

TOWN PLANNING FIM 11/5/90 (245)

### Just the ticket

"Please sir, can I see your authority to park your business in this house?" That could well be the tenor of questions soon to be asked of

W/M/and 1/6-2/6/90

# Competition Board hamstrung by laws

In the 10 years since the Maintenance and Promotion of Competition Act was passed, South Africa's Competition Board has launched 29 formal investigations

In only a handful of cases has the minister responsible for trade and industry actually acted on those investigations

Does this mean that the board, whose job it is to ensure effective competition in South Africa, is ineffectual?

Board chairman Dr Pierre Brooks admits that enforcing the Act is not without its problems. But, he points out, the figures belie the fact that the very launching of an investigation is a deterrent. And the 29 formal investigations must be distinguished from the many informal investigations the board undertakes, and internal memoranda requested by the government.

Brooks says the board tries to dissuade those investigated from any "restrictive practices" it is involved in. "Even after an investigation is completed an agreement can be reached between the parties concerned."

The apparent inability of the board to do anything about the concentration of economic power in South Africa is partly caused by the framework of the law within which it operates.

The board, for instance, cannot merely act against a company which has a monopoly in a certain market. The company must engage in restrictive practices.

South Africa's competition law addresses the issues of restrictive prac-

**The ANC has adopted as policy the need for anti-trust legislation. REG RUMNEY asked Competition Board chairman Pierre Brooks how the present law panned out**

tices, acquisitions and monopolies. But none of these is prohibited by the Competition Act. The minister is empowered to act against people involved in these, and prohibit specific practices, after investigation and a recommendation by the board.

If a monopoly is defined as it is in the Act, there are big and small monopolies, Brooks points out. A monopoly occurs where a person or company controls the class of business in which it operates.

"We are not worried about big business per se," said Brooks.

The Act does not prohibit the existence of big companies, but actions which are not in the public interest. Thus, he said, is accepted in all Western legal systems.

Even in the United States, Brooks says, the existence of a monopoly is not an offence in terms of the US's classic anti-trust legislation, the Sherman Act. The monopoly must abuse its power to be illegal.

However, Brooks concedes that it is often not necessary for a monopoly to abuse its power. "Size as such can act as a deterrent to competition. This is a matter of concern for South Africa."

Moreover, economic concentration can mean big companies could raise prices without even colluding. There is often "price leadership" in an industry dominated by two or three companies. One puts up prices, and the others follow suit — to exactly the same level or just below it.

These and other problems of monopolies and economic concentration Brooks admits are taxing.

He notes that while price leadership is not regarded as a restrictive practice, it could in theory constitute one, if it eliminates competition.

Economic concentration has also been identified as contributing to inflation. Can price increases ever be regarded as excessive, in the free-market economist's vision of the world?

Brooks argues that while South African businessmen contend that in a free market system they could "charge what the market will bear" this only applies where there is competition. They have no right to do so when there isn't competition, for whatever reason.

As a last recourse the minister has the power to impose price control.

On acquisitions, Brooks reckons his hand may be strong. An amendment, now before parliament, to the Act, makes it a presumption that an acquisition is against the public interest.

This is not so now, and the board has to prove an acquisition is against the public interest.

Conglomerates, of which South Africa has its fair share, pose a problem on acquisitions policy. Of the three types of acquisition, horizontal (companies in the same industry), vertical (by suppliers of retailers, for example) and by conglomerates, in conglomerate acquisition it is most difficult to find restrictive practices. As a minimum, though, the board does try to ensure competition between the conglomerates.

Brooks points out that in overseas debate the possibility of nationalisation as another last-resort measure against major monopolies has been raised. "They don't advocate this, but it is mentioned as a possible solution."

It is not only the law which limited action on economic concentration now.

In terms of Government Notice 801 of March 2 1986 certain forms of restrictive practices are prohibited. It is up to the police and the attorney general to find such practices and bring them to justice. But not one successful prosecution has arisen from this so far.

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No. 99, 1990

**AANSTELLING VAN LEDE VAN 'N SPESIALE HOF KRAGTENS DIE WET OP SKADELIKE SAKEPRAKTYKE, 1988 (WET No. 71 VAN 1988)**

Kragtens die bevoegdheid my verleen by artikel 13 (3) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No 71 van 1988), stel ek hiermee dr. David Johannes Mouton en mnr. John Melville Pels aan as lede van die spesiale hof wat ek by Proklamasie No. 72 van 1990 op 12 April 1990 in *Staatskoerant* No 12417 ingestel het.

Gegee onder my Hand en die Seel van die Republiek van Suid-Afrika te Kaapstad, op hede die Eerste dag van Junie Eenduisend Negehonderd-en-negentig

F. W. DE KLERK,

Staatspresident

Op las van die Staatspresident-in-Kabinet:

K. D. S. DURR,

Minister van die Kabinet.

**GOEWERMENSKENNISGEWINGS****ADMINISTRASIE:  
VOLKSRAAD****DEPARTEMENT VAN PLAASLIKE BESTUUR,  
BEHUISING EN WERKE**

No. 1310

15 Junie 1990

**INSTELLING VAN DIE VAALOEWER  
PLAASLIKE GEBIEDSKOMITEE**

Ek, Abraham Adriaan Venter, Minister van Begroting en Plaaslike Bestuur, Administrasie: Volksraad, handelende kragtens artikel 21 (1) van die Ordonnansie op die Transvaalse Raad vir die Ontwikkeling van Buitestedelike Gebiede, 1943, gelees met regulasies 4 en 7 van die Regulasies vir Plaaslike Gebiedskomitees afgekondig by Administrateurskennisgewing No. 8 van 1945—

(a) stel hierby met ingang van 15 Junie 1990 'n plaaslike gebiedskomitee in wat bekend staan as die Vaaloewer Plaaslike Gebiedskomitee vir die gebied soos omskryf in Bylae 1 hiervan;

(b) bepaal hierby dat bedoelde plaaslike gebiedskomitee uit sewe lede bestaan,

(c) benoem hierby die lede van bedoelde plaaslike gebiedskomitee soos vermeld in Bylae 2 hiervan vir 'n tydperk van hoogstens vyf jaar.

A. A. VENTER,

Minister van Begroting en Plaaslike Bestuur

**BYLAE 1****Beskrywing van die gebied van die Plaaslike  
Gebiedskomitee van Vaaloewer**

Vaaloewerdorp in sy geheel, volgens Algemene Plan A 1856/72.

**BYLAE 2****Lede van die Plaaslike Gebiedskomitee van  
Vaaloewer**

Mnr. D. A. Smit.

Mnr. M. G. Tulip.

Mnr. J. E. S. van Zyl.

Mnr. P. M. van Noorden.

Mnr. J. W. Vosloo.

Mnr. H. J. van der Walt.

Mnr. S. J. Strydom.

No. 99, 1990

**APPOINTMENT OF MEMBERS OF A SPECIAL COURT IN TERMS OF THE HARMFUL BUSINESS PRACTICES ACT, 1988 (ACT No. 71 OF 1988)**

By virtue of the powers vested in me by section 13 (3) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), I hereby appoint Dr David Johannes Mouton and Mr John Melville Pels as members of the special court which I established by Proclamation No. 72 of 1990 on 12 April 1990 in *Gazette* No. 12417.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town this First day of June, One thousand Nine hundred and Ninety.

F. W. DE KLERK,

State President

By Order of the State President-in-Cabinet:

K. D. S. DURR,

Minister of the Cabinet.

**GOVERNMENT NOTICES****ADMINISTRATION: HOUSE OF  
ASSEMBLY****DEPARTMENT OF LOCAL GOVERNMENT,  
HOUSING AND WORKS**

No. 1310

15 June 1990

**ESTABLISHMENT OF THE VAALOEWER  
LOCAL AREA COMMITTEE**

I, Abraham Adriaan Venter, Minister of the Budget and Local Government, Administration: House of Assembly, acting under section 21 (1) of the Transvaal Board for the Development of Peri-Urban Areas Ordinance, 1943, read with regulations 4 and 7 of the Regulations for Local Area Committees promulgated by Administrator's Notice No 8 of 1945—

(a) establish with effect from 15 June 1990 a local area committee to be known as the Vaaloewer Local Area Committee for the area as defined in Schedule 1 hereof;

(b) determine that the said local area committee shall consist of seven members;

(c) appoint the members of the said local area committee as mentioned in Schedule 2 hereof for a maximum period of five years

A. A. VENTER,

Minister of the Budget and Local Government.

**SCHEDULE 1****Description of the area of the Vaaloewer  
Local Area Committee**

Vaaloewer Township in its entirety, vide General Plan A 1856/72.

**SCHEDULE 2****Members of the Vaaloewer Local Area  
Committee**

Mr D. A. Smit.

Mr M. G. Tulip.

Mr J. E. S. van Zyl.

Mr P. M. van Noorden.

Mr J. W. Vosloo.

Mr H. J. van der Walt.

Mr S. J. Strydom.

**Delegation debate**

Anyone who arranges transfer of credit agreements or leases from cash-strapped individuals to third parties — a procedure known as delegation — may lay himself open to criminal prosecution. Last week a company operating under the name of Untrade, which has been allowing third parties to use or take possession of vehicles without written permission from banks, was found guilty on 29 of 40 counts of theft.

The vehicles were financed by Stanmic (five), Santambank (9) and Wesbank (26) and technically belong to these institutions until the last payment is made.

Untrade, registered as GM Sheppard Properties CC, was fined R1 000 on each count, while sole representative Gavin Sheppard was fined R2 000 on each — a total of R87 000. FIM 22/6/90

The decision could influence the Harmful Business Practices Committee which is investigating delegation (*Economy* April 6).

FINANCIAL MAIL JUNE 22 1990

FIM 22/6/90 (245)

At least one operator, Execu-Lease, as well as the Association of General Banks and representatives of several banks put their views to the committee last week.

Execu-Lease attorney Kevin van Huyssteen admits there are problems in the sector but argues his client offers consumers a valuable service, and suggests banks should compromise on the issue and work with certain legitimate operators.

Stanmic MD Gutch Vickers rejects this idea. "We see no need for the service. Vehicle buyers wanting to rid themselves of payment obligations can find third parties the same way operators do — in the classifieds — and save the substantial fee charged by the middleman." However, this drastic step may not be necessary. He says banks are willing to make concessions, if circumstances warrant, to allow borrowers to meet their obligations.

Wesbank's Robin Shales agrees there is no need for independent operators because banks will organise a delegation if the vehicle buyer brings in a third party. "There is also the question of sales tax, which must be paid by the registered vendor (the bank)."

Santambank's Piet van der Grijp says there could be room for a middleman if correct procedures are followed — notification of the bank is essential so creditworthiness of the third party can be checked. "The problem arising from this is that many third parties do not have good credit ratings, so

about three-quarters of people are rejected."

Middlemen could be asked to guarantee payments for clients who do not meet bank specifications, but that would mean closely monitoring creditworthiness of the operators, and putting a limit on the amount of business they can do. Since they work with a number of financial institutions, this would be difficult.

Though banks admit there are some legitimate operators, they insist a more extensive legal framework is needed. Van der Grijp says "We've tried informing the consumer through advertising and information campaigns, emphasising the illegality of unsanctioned transfers, but the situation is not getting better. If the committee rules against this kind of business, it will be easier to bring charges."

Banks see the Untrade decision as a step in the right direction.

But will legislation stop this kind of business? It could be argued that as long as there is a demand for the service, someone will find a way to supply it. The attraction of middlemen to third parties is that their credit standards are lower which makes it easier to conclude a deal.

And buyers are often unaware that banks are prepared to be flexible and fear that if their cars are repossessed they will be left paying the difference between amount outstanding and the sum received in auction.

*Detmar Schwichtenberg*

# Sharper bite for board

Business Times Reporter

SIT was 29/7/90

CHANGES in the Maintenance of Competition Act have given the Competition Board sharper teeth. Competition Board chief Pierre Brooks says that until July 4 the onus was on the board to prove that a proposed merger or takeover was not in the public interest.

The latest change puts the onus of proof on the parties wishing to merge or take over.

Dr Brooks says: "We have been fighting with one hand behind our back. Now things are far more equal."

Dr Brooks says changing the legislation does not amount to closing the stable door after the horse has bolted.

"We are empowered to look at past transactions and if we find them against the public interest, we can require the parties to undo them."

"We don't want to start a lot of uncertainty, but where there are cases of abuse we won't hesitate to act."

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**KENNISGEWING 737 VAN 1990****DEPARTEMENT VAN POS- EN  
TELEKOMMUNIKASIEWESE****WYSIGING VAN DIE TARIEFLYS VIR  
TELEKOMMUNIKASIEDIENSTE**

Hiermee word ingevolge artikel 2B (3A) van die Poswet, 1958 (Wet No 44 van 1958), bekendgemaak dat die Posmeester-generaal, handelende kragtens artikel 2B (1) (e) van genoemde Wet, bepaal het dat die gelde, tariewe of koste uiteengesit in die onderstaande Bylae ten opsigte van die betrokke dienste geëis of ontvang moet word.

**NOTICE 737 OF 1990****DEPARTMENT OF POSTS AND  
TELECOMMUNICATIONS****AMENDMENT OF THE TARIFF FOR  
TELECOMMUNICATION SERVICES**

It is hereby made known, in terms of section 2B (3A) of the Post Office Act, 1958 (Act No 44 of 1958), that the Postmaster General, acting under section 2B (1) (e) of the said Act, has determined that the fees, rates or charges set out in the Schedule below are to be demanded or received in respect of the services concerned.

**BYLAE**

1.0 In hierdie Bylae beteken die uitdrukking, "die Tarieflys" die Tarieflys vir Telekommunikasiedienste afgekondig by Goewermentskennisgewing No 1192 van 1 Julie 1977, soos gewysig

2.0 Die Tarieflys word hierby soos volg verder gewysig:

Vervang die bestaande item 34.3 deur die volgende:

No	Diens	Koste
"34 3	<b>DATTEL- EN FAKSIMILEEOPROEPE DEUR 'N OPERATEUR TOT STAND GE- BRING</b>	
34 3.1	Oproepe wat deur 'n operateur verbind word omdat direkte skakelgeriewe nie vir die oproeper beskikbaar is nie	Die oproepkoste voorgeskryf by item 34 1 plus 'n heffing gelykstaande aan die koste vir 'n oproepduur van een minuut
34 3 2	Oproepe wat deur 'n operateur verbind word in gevalle waar direkte skakelgeriewe tot die oproeper se beskikking is	Die oproepkoste voorgeskryf by item 34 1 plus 'n heffing gelykstaande aan die koste vir 'n oproepduur van drie minute".

**SCHEDULE**

1.0 In this Schedule the expression "the Tariff" means the Tariff for Telecommunication Services promulgated under Government Notice 1192 of 1 July 1977, as amended.

2.0 The Tariff is hereby further amended as follows:

Substitute the following for the existing item 34.3:

No	Service	Charge
"34 3	<b>DATTEL AND FACSIMILE CALLS ESTABLISHED THROUGH AN OPERATOR</b>	
34 3 1	Calls that are connected by an operator because direct dialling facilities are not available to the caller	The call charge prescribed at item 34 1 plus a surcharge equal to the charge for a call duration of one minute
34 3 2	Calls that are connected by an operator in instances where direct dialling facilities are available to the caller	The call charge prescribed at item 34 1 plus a surcharge equal to the charge for a call duration of three minutes"

(7 September 1990)

**KENNISGEWING 738 VAN 1990****DEPARTEMENT VAN HANDEL EN NYWERHEID****WET OP SKADELIKE SAKEPRAKTYKE, 1988**

Ingevolge die bepalings van artikel 10 (3) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 71 van 1988), publiseer ek, Kent Diederich Skelton Durr, Minister van Handel en Nywerheid en Toerisme, hiermee die verslag van die Sakepraktykekomitee oor die uitslag van die ondersoek deur die Komitee gedoen kragtens Algemene Kennisgewing 87 van 1990 soos gepubliseer in *Staatskoerant* No. 12280, gedateer 9 Februarie 1990, soos in die Bylae uiteengesit

**K. D. S. DURR,**  
Minister van Handel en Nywerheid en Toerisme.

**NOTICE 738 OF 1990****DEPARTEMENT OF TRADE AND INDUSTRY****HARMFUL BUSINESS PRACTICES ACT, 1988**

In terms of section 10 (3) of the Harmful Business Practices Act, 1988 (Act No 71 of 1988), I, Kent Diederich Skelton Durr, Minister of Trade and Industry and Tourism, do hereby publish the report of the Business Practices Committee on the result of an investigation made by the Committee pursuant to General Notice 87 as published in *Government Gazette* No. 12280 dated 9 February 1990, as set out in the Schedule.

**K. D. S. DURR,**  
Minister of Trade and Industry and Tourism

**BYLAE****SAKEPRAKTYKEKOMITEE**

VERSLAG KRAGTENS ARTIKEL 10 (1) VAN DIE WET OP SKADELIKE SAKEPRAKTYKE 1988, (WET No. 71 VAN 1988)

VERSLAG No. 10

EAGLE FINANCE ASSOCIATION

**INHOUD**

1. Inleiding.
2. Die partye
3. Die sakepraktyk.
4. Voorstellings deur die partye.
5. Evaluasie van die sakepraktyk.
6. Gevolgtrekking en aanbevelings.

**1. Inleiding**

Die Sakepraktykekomitee het gedurende 1989 'n klagte ontvang van prokureurs wat opgetree het namens mnr. J. J. Cilliers van Keetmanshoop. Die klagte het betrekking gehad op beweerde sakepraktyke bedryf deur die finansiële makelaarsfirma Eagle Finance Association. Die Departement van Handel en Nywerheid het etlike verdere klagtes met 'n soortgelyke strekking as die van mnr. Cilliers onder die komitee se aandag gebring. Die Suid-Afrikaanse Polisie het ook 'n klag aan die komitee voorgelê en ondersoek tans 'n reeks aanklagte van beweerde bedrog teen die partye.

Die Sakepraktykekomitee het na aanleiding van hierdie klagtes ondersoek ingestel ingevolge artikel 8 (1) (a) van die Wet op Skadelike Sakepraktyke, 1988 ("die Wet"). Kennis van die ondersoek is gegee kragtens artikel 8 (4) van die Wet by Algemene Kennisgewing 87 van 1990 gepubliseer in *Staatskoerant* No 12280 van 9 Februarie 1990. Die Suid-Afrikaanse Polisie asook mnr. J. N. W. de Kock van die firma Theron Du Toit het die komitee in sy ondersoek bygestaan.

Die kennisgewing het belanghebbende persone uitgenooi om skriftelike vertoe aangaande die ondersoek binne 'n tydperk van 14 dae te rig. Mondelinge vertoe is vervolgens gemaak deur mnr. L. J. J. van Wyk, mev. N. van Wyk en mnr. C. P. Hattingh. Skriftelike vertoe is ontvang van mnr. J. S. van der Walt.

Die Minister van Handel en Nywerheid en Toerisme, het by Algemene Kennisgewing 106 van 1990, gepubliseer in die *Staatskoerant* van 16 Februarie 1990, kragtens artikel 8 (5) van die Wet 'n tydelike bevel uitgereik wat die partye verhinder het om enige sakepraktyk toe te pas waarby die beskikbaarstelling van finansiering of van betrekking vir werksoekers deel is.

Die komitee doen hiermee ingevolge artikel 10 (1) van die Wet verslag.

**2. Die partye**

Die partye is mnr. L. J. J. van Wyk, mev. N. van Wyk, en mnr. D. P. Ferreira, C. P. Hattingh, J. N. Senekal, D. A. van Schalkwyk en C. P. van der Post. Die partye het onder 'n verskeidenheid name handel gedryf (sien Kennisgewing 87 van 1990 gepubliseer in *Staatskoerant* No. 12280 van 9 Februarie 1990). Die besighedsname waaronder handel gedryf is, is nie die name van regspersone nie.

Die partye is nie almal in dieselfde mate of op dieselfde wyse by die verskillende aspekte van die praktyke betrokke nie en beklee uiteenlopende administratiewe en organisatoriese rolle. Die partye het egter as 'n span onder die leiding van mnr. L. J. J. van Wyk opgetree. Daar sal gevolglik verder hierin verwys word na "die organisasie" ten einde duidelik te stel dat nie elkeen van die partye noodwendig individueel by alle optrede betrokke was nie. Waar gepas word na die betrokke individu verwys.

**SCHEDULE**

245

**BUSINESS PRACTICES COMMITTEE**

REPORT IN TERMS OF SECTION 10 (1) OF THE HARMFUL BUSINESS PRACTICES ACT, 1988 (ACT No 71 of 1988)

REPORT No. 10

EAGLE FINANCE ASSOCIATION

**CONTENTS**

1. Introduction.
2. The parties
3. The business practice
4. Representations by the parties
5. Evaluation of the practice
6. Conclusion and recommendations

**1. Introduction**

During 1989 the Business Practices Committee received a complaint from attorneys representing Mr J. J. Cilliers of Keetmanshoop. The complaint related to an alleged business practice carried on by Eagle Finance Association as financial brokers. Several complaints similar to that of Mr Cilliers have been brought to the attention of the committee by the Department of Trade and Industry. The South African Police also submitted a complaint to the committee and is at present investigating several charges of alleged fraud against the parties.

With reference to these complaints the Business Practices Committee launched an investigation in terms of section 8 (1) (a) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), "the Act". Notice of the investigation was given in terms of section 8 (4) of the Act by way of General Notice 87 of 1990 published in the *Government Gazette* No. 12280 of 9 February 1990. The South African Police as well as Mr J. N. W. de Kock of the firm Theron Du Toit assisted the committee in their investigation.

The notice invited interested parties to make representations concerning the investigation to the committee within 14 days of publication. Verbal representations were then made by Mr L. J. J. van Wyk, Mrs N. van Wyk and Mr C. P. Hattingh. Written representations were received from Mr J. S. van der Walt.

The Minister of Trade and Industry and Tourism has by way of General Notice 106 of 1990, published in the *Government Gazette* of 16 February 1990, in terms of section 8 (5) of the Act, issued a temporary order restraining the parties from practising any business whereby the making available of financing or the finding of situations for workseekers forms part.

The committee hereby reports in terms of section 10 (1) of the Act.

**2. The parties**

The parties are Mr L. J. J. van Wyk, Mrs N. van Wyk, Messrs D. P. Ferreira, C. P. Hattingh, J. N. Senekal, D. A. van Schalkwyk and C. P. van der Post. The parties traded under various names (See Notice 87 of 1990 published in *Government Gazette* No. 12280 of 9 February 1990). The business names that were used are not names of legal *persona*.

The parties are not all to the same degree or in the same manner concerned with the different aspects of the practices and have diverse administrative and organisational rolls. However the parties acted as a team under the leadership of Mr L. J. J. van Wyk. Reference herein will consequently be made to "the organization" to make it clear that not every individual was necessarily involved in all conduct. Where appropriate reference is made to the particular individual concerned.

**3. Die sakepraktyk**

Die beweerde praktyke wat die onderwerp van die ondersoek gevorm het behels enersyds die beskikbaarstelling van finansiering en waarborge en andersyds die beskikbaarstelling van betrekings. Die onderskeie praktyke sal afsonderlik behandel word.

**3.1 Omvang van bedrywighede**

Die organisasie het oor die tydperk vanaf Maart 1982 tot 6 September 1989 onder verskeie name handel gedryf. Gedurende hierdie tydperk was die hoofbankrekening by verskeie banke naamlik Nedbank, Volkskas, Trust Bank, Distriksbank, Die Bank van Lissabon en vir die jongste tydperk vanaf 28 Junie 1988 tot September 1989 onder die naam Eagle Finance by Swabank, Parow.

Oor die tydperk 28 Junie 1988 tot 6 September 1989 is R930 000 in die Swabank gedeponeer.

Aangesien kwitansies blykbaar slegs op versoek uitgereik word en aangesien geen kasboeke vir die jongste tydperke beskikbaar was nie, kan die presiese aard van die deposito's nie bepaal word nie. Op 23 Augustus 1988 is 'n bedrag van R142 000 in die rekening gedeponeer wat skynbaar 'n lening is. Die grootste gedeelte van die res van die deposito's verteenwoordig waarskynlik ledegelde en waarborgfoote wat vanaf kliente ontvang is.

Die opgesomde posisie van die bankrekening by Swabank oor die periode 28 Junie 1988 tot 6 September 1989 is soos volg.

Rekening geopen met balans van....	R 20 238
Plus Deposito's .....	R929 734
	<u>R949 972</u>
Min: Berekende uitbelatings... ..	841 281
Saldo 6 September 1989.....	<u>R108 691</u>

Dit was ook die gebruik van die organisasie om lidmaatskapsgeelde te laat oorplaas na Volkskas Parow of Eerste Nasionale Bank Parow "vir hangende poste" mnr. L. J. J. van Wyk. Volgens bevestiging wat vanaf die twee banktakke verkry is, is R419 300 oor die tydperk vanaf ongeveer November 1987 tot Oktober 1989 op hierdie wyse deur mnr. Van Wyk ontvang. Dit is nie moontlik om vas te stel of hierdie kontantfondse in die bankrekening van die organisasie inbetaal is nie en indien nie, wat van die fondse geword het nie. Uit die beskikbare rekords wil dit voorkom asof dit nie in die betrokke rekening gedeponeer is nie.

**3.2 Finansiering**

Die finansieringspraktyk kom in kort daarop neer dat die organisasie beide in die dagpers en in tydskrifte soos die *Landbouweekblad* en *Keur* 'n finansiële diens adverteer wat die beskikbaarheid van finansiering en van waarborge te kenne gee. Gelde word van aansoekers gevorder maar geen of geen wesenlike teenprestasie word gelewer nie. Verskillende tipes finansieringskemas is aangebied.

Wat betref die finansieringspraktyk is die klag van mnr. J. J. Cilliers van Keetmanshoop kenmerkend van ander klagtes oor die organisasie. Die klaer het Eagle Finance Association geskakel in reaksie op 'n advertensie wat in die *Landbouweekblad* verskyn het. Hy het mnr. Van Wyk meegedeel dat hy R400 000 wou leen

**3. The business practice** (245)

The alleged business practices forming the subject of the investigation embrace on the one hand the making available of financing and guarantees and on the other hand the making available of employment situations. The respective practices will be dealt with separately.

**3.1 Extent of the business**

The organization has for the period from March 1982 until 6 September 1989 traded under various names. During this period the main bank account was kept with a number of banks namely Nedbank, Volkskas, Trust Bank, District Bank, The Bank of Lisbon and for the latest period from 28 June 1988 up to September 1989 under the name Eagle Finance with Swabank in Parow.

During the period 28 June up to 6 September 1989 R930 000 was deposited into the Swabank account

Due to the fact that receipts are apparently only issued on request and no cash books for the latest period were available, the exact nature of the deposits can not be determined. On 23 August 1988 an amount of R142 000, apparently a loan, was deposited into this account. The larger portion of the balance of the deposits probably represents membership fees and guarantee fees received from clients.

The summarized status of the account with Swabank for the period 28 June 1988 until 6 September 1989 is as follows:

Account opened with balance of.....	R 20 238
Plus Deposits.....	R929 734
	<u>R949 972</u>
Min. Calculated payments .....	841 281
Saldo 6 September 1989.....	<u>R108 691</u>

It was the custom of the organization to transfer membership fees to Volkskas or First National Bank in Parow "vir hangende poste" Mr L. J. J. van Wyk. According to confirmation received from both banks R419 300 was thus received by Mr Van Wyk from November 1987 up to October 1989. It is impossible to determine whether these cash funds were paid into the organization's bank account and, if not, what became thereof. According to available records it seems that it has not been deposited into the account concerned.

**3.2 Financing**

The financing practice in brief involves advertising by the organization, in both papers and magazines such as *Landbouweekblad* and *Keur* of a financial service which makes known the availability of financing and guarantees. Moneys are collected from applicants, but no or substantially no counter performance is rendered. Various types of financing schemes are offered.

As far as the financing practice is concerned the complaint of Mr J. J. Cilliers from Keetmanshoop is characteristic of other complaints concerning the organization. The complainant phoned Eagle Finance Association in reaction to an advertisement that appeared in the *Landbouweekblad*. On communicating to Mr Van Wyk

- Die lid erken dat die organisasie nie die sukses van die aansoek kan waarborg nie maar dat hulle hul beste sal lewer in die uitvoering van die aansoek

Nadat die ledegelde ontvang is stel die "ekonoom" van die organisasie 'n verslag op oor die finansiële posisie van die lid en/of die uitvoerbaarheid van die projek waarvoor die fondse benodig word, op grond van die inligting wat vanaf die lid verkry word

'n Afskrif van bogenoemde verslag word onder 'n standaard dekkende brief aan die lid gestuur vir kommentaar.

Afskrifte van die verslag en standaard aansoekvorms vir lenings word dan onder 'n standaard dekkende brief aan nagenoeg vyf finansiële instellings gestuur, byvoorbeeld aan verskillende takke van banke. In reaksie op hierdie briewe reageer die banke deurgaans negatief. Die lid word dan in kennis gestel dat die aansoeke nie suksesvol was nie.

### 3.2.2 Die Individuele Huisskema Konsep

Die voornemende lid voltooi en onderteken 'n aansoekvorm om lidmaatskap.

Nadat die voornemende lid die lidmaatskapfooi van R500 betaal het word 'n genommerde lidmaatskapkaart uitgereik. Die lid is dan geregtig op die omskrewe voordele van lidmaatskap.

Die prosedures wat deur die organisasie gevolg word vir verkryging van 'n lening is dieselfde as onder die Boere en Sakemanne Skema behalwe dat daar gewoonlik nie 'n uitvoerbaarheidstudie/verslag opgestel word nie. Op enkele uitsonderings na word hierdie aansoeke ook deur die finansiële instellings afgekeur.

### 3.3 Waarborge

Die verskaffing van waarborge vorm 'n belangrike deel van die organisasie se bedrywighede. Die organisasie is deur talle lede van die publiek genader om die uitreiking van 'n waarborg om die nakoming deur die aansoeker van 'n bepaalde verpligting deur die aansoeker jeens 'n derde party te verseker, byvoorbeeld vir die betaling van 'n skuld, die aankoop van vaste eiendom of kapitaaltoerusting of die verrigting van werksos onder 'n bou- of ander tipe vervaardigingskontrak. Waarborge is dan uitgereik in die naam van Guarantee Exchange International. Waarborge ten bedrae van soveel as R1 000 000 elk is uitgereik. Die organisasie hef risikofoeie wat oenskynlik as 'n persentasie van 10% van die gewaarborgde bedrag bereken is. Bedrae tot soveel as R15 000 en R18 500 is ten opsigte van verskillende waarborgtransaksies ontvang.

Indien die waarborge bindend was sou dit die organisasie op risiko stel van etlike miljoene rand. Aangesien Guarantee Exchange International geen regs persoon is nie sou enige belanghebbende wat die waarborg wou oproep ernstige probleme ondervind om sy belange af te dwing. Die waarborge was beide regtens en finansiële nutteloos aangesien dit nóg regtens afgedwing sou kon word nóg deur enige finansiële basis gerugsteun is. Die waarborge is dan ook in talle gevalle bevrage teken of verwerp.

### 3.4 Werkverskaffing

Advertensies wat in die pers verskyn het het die aandag gevestig op die adverteerder se vermoë om werksoekers in diens te plaas. Alhoewel gelde gevorder is van werksoekers blyk dit dat min werksoekers, indien enige, suksesvol in diens geplaas is. Die Departement van Mannekrag het op 5 April 1990 kennis gegee aan

- The member acknowledges that while the organization is not able to guarantee the success of the application, it will do its utmost to ensure the success of the application

After receipt of membership fees the "economist" of the organization prepares a report concerning the financial status of the member and/or the feasibility of the project for which the funds are needed, based on the information received from the member

A copy of the above-mentioned report, under a standard covering letter is sent to the member for comment.

Copies of the report as well as standard application for loan forms are then sent to various banks, for example different branches of the same bank, under a standard covering letter. The reaction of the banks to these letters is uniformly negative. The member is then informed that his application was unsuccessful

### 3.2.2 The Individual House Owner Concept

The prospective member completes and signs an application for membership.

After the prospective member has paid a membership fee of R500, a numbered membership card is issued to him. The member is then entitled to the stipulated benefits of the membership.

The organization follows the same procedure for obtaining a loan as in the Farmers and Businessmen Scheme, except that usually no feasibility report is composed. With solitary exceptions these applications are also refused by the financial institutions

### 3.3 Guarantees

The providing of guarantees form an important part of the organization's business. The organization has been approached by numerous members of the public for the issuing of a guarantee to serve as security for the fulfilment of an obligation of the applicant towards a third party, for example the payment of a debt, the purchase of fixed property or capital assets or the execution of work, such as in terms of a building—or other manufacturing contract. Guarantees were then issued in the name of Guarantee Exchange International. Guarantees in amounts up to R1 000 000 each were issued. The organization imposes risk fees which is calculated at 10% of the guaranteed amount. Amounts up to R15 000 and R18 500 have been received in connection with these transactions.

If these guarantees were binding the organization would be at risk for several million rand. As Guarantee Exchange International is no juristic person (*legal person*), anyone who would want to call up the guarantee would experience serious problems in enforcing his interest. The guarantees were both legally and financially useless, as it could neither be legally enforced nor could it be supported by any financial basis. These guarantees where on numerous occasions questioned or rejected

### 3.4 Employment service

Advertisements in the media focussed the attention on the advertiser's ability to place workseekers in a certain service. Although fees were gathered from workseekers it seems that very few, if any, successfully received employment. On 5 April 1990 the Department

mr. J. S. van der Walt, onder wie se beheer die besigheid Top Hands as 'n privaatwerkverskaffingskantoor bedryf is, dat voortsetting van die besigheid aanleiding sou gee tot strafregtelike vervolging kragtens die Wet op Voorligting en Indiensplasing, 1981 (Wet No 62 van 1981). Aangesien bedrywighede in hierdie verband gestaak is laat die komitee hom nie verder oor hierdie aspek uit nie.

#### 4. Voorstellings deur die partye

Die organisasie gee voor dat dit onder andere die volgende dienste lewer, naamlik:

1. Die reel van afslag op die aankoop van motors, trokke, trekkers, ander plaasimplemente en meubels.
2. Die opstel van begrotings deur deskundiges sodat kliente (lede) op 'n wetenskaplike basis kan boer.
3. Die opstel van inkomstebelastings opgawes en balansstate.
4. Die bepaling van die lewensvatbaarheid van projekte deur finansiële deskundiges.
5. Die reel van uitvoerbemaking deur deskundiges, insluitende die aankoop en bemaking van onbeheerde oeste
6. Die reel van verbande.
7. Die verskaffing van waarborge.
8. Die belegging van fondse teen die hoogste moontlike koers en die beste termyn.
9. Die koop of bemaking van minerale plaaslik of oorsee.
10. Die verskaffing van kantoorakkommodasie en administratiewe dienste.
11. Kostelose tegniese en regsverteenvoording deur aangestelde prokureurs ten opsigte van verkeersoortredings met die uitsondering van parkeerkaartjies
12. Onderhandelings namens lede met die aankoop van motors, karavane, implemente, ens. teen verlaagde pryse
13. Gratis verwerking van aansoeke om finansiering onder R100 000. (Heffingsfooie slegs betaalbaar op aansoeke vanaf R100 000 teen 5% op die eerste R100 000 en 2,5% op elke R100 000 daarna.) Daar word te kenne gegee dat heffingsfooie betaalbaar is na registrasie.
14. Die reel van huurkope, bruikhuur en terugverhuring teen die laagste moontlike koerse.
15. Die invordering van uitstaande skulde.
16. Professionele advies deur die besigheidsadviesafdeling ten opsigte van lede se sakeprobleme.
17. Verlaagde likwidateurstariëwe ingeval van insolvensie en bywoning van krediteursvergaderings
18. Algemene versekering en boedelbeplanning.
19. Die reel van padvervoerpermitte.
20. Die opstelling van ekonomiese ontledings.
21. Die hou van veilings.
22. Die bemaking van lewende hawe
23. Die verkoop van kunswerke plaaslik en oorsee en die hou van uitstallings.
24. Die verskaffing van insleepdienste.

of Manpower informed Mr J. S. van der Walt, who managed the business "Top Hands" as a private employment office, that to continue the business would result in a prosecution in terms of the Guidance and Placement Act, 1981 (Act No 62 of 1981) As this business has ceased the committee will not comment on it any further

#### 4. Representations by the parties

The organization purports to provide *inter alia* the following services.

1. The arranging of discounts on the purchase of motorcars, trucks, tractors, other farming appliances and furniture
2. The compilation of budgets by experts so that clients (members) are able to farm on a scientific basis.
3. The compilation of income tax statements and balance sheets.
4. Feasibility tests for projects by financial experts.
5. The arranging of export marketing by experts, as well as the purchase and marketing of uncontrolled crops.
6. Arranging of mortgages.
7. The providing of guarantees.
8. The investing of funds at the highest rates and the best terms.
9. the purchase or marketing of minerals locally or overseas.
10. The providing of office accommodation and administrative services.
- 11 Free technical and legal assistance by appointed attorneys in traffic offences, with the exception of parking tickets.
12. Negotiations on behalf of members in connection with the purchase of motorcars, caravans, implements etc at lower prices.
13. Free processing of applications for financing below R100 000. (Levies are only payable on applications for amounts in excess of R100 000 at a rate of 5% on the first R100 000 and 2,5% on each subsequent R100 000.) Levies are indicated to be payable after registration
- 14 The arranging of hire-purchase agreements, lease agreements and lease-back agreements at the lowest possible rates.
- 15 The recovery of debts.
16. Professional advice by the business-advice department in connection with business problems of members.
17. Reduced liquidation fees in case of insolvency and attendance of meetings of creditors.
18. General insurance and estate planning.
19. The arranging of transportation permits.
- 20 The compilation of economic analyses
21. Auctioning.
- 22 The marketing of livestock.
23. The selling of works of art locally and overseas and the arranging of exhibitions.
24. The providing of tow-in services.

(245)

25. Die lewering van motorhersteldienste teen gunstige tariewe ingevolge ooreenkomste met deelnemende motorhawens.
26. Die reel van plaaslike en oorsese toere teen 'n verminderde tarief
27. Die beskikbaarstelling van vakansielenings vir motorherstelwerk by wyse van kredietkoepons tot 'n bedrag van R200.
28. Die betaling van die vervangingskoste van beskadigde motorruite.
29. Die konsolidering van skulde.

Dit is duidelik dat die organisasie daarna gestreef het om voornemende kliente te laat glo dat die organisasie bona fide handel dryf en die vermoë het om werklike lenings of waarborge te verskaf. Aansoekers is gereeld ingelig dat die betrokke lening reeds goedgekeur of gereserveer is en dat uitbetaling daarvan bloot deur die formaliteit van die papierwerk verdrag word. Die regsverhouding wat hierna tot stand gebring is, is dan aangewend om die organisasie te vrywaar van die naking van enige wesenlike verpligtinge en om eise vir terugbetaling van gelde te kan weerstaan. Die inhoud van hierdie regsverhouding het die verstandhouding waarop kliente met die organisasie sake gedoen het ondubbelsinnig weerspreek.

#### 5. Evaluasie van die sakepraktyk

Alhoewel die kontraktuele verhouding met elke individuele klient die organisasie oenskynlik geregtig maak om die handelswyse te volg wat hierin beskryf word is dit duidelik dat indien kliente vooraf kennis sou dra van die feit dat aansoeke om finansiering deurgaans onsuksesvol is niemand sake met die organisasie sou doen nie.

Die voltooiing van dokumentasie wat die regsverhouding tussen die klient en die organisasie sou beliggaam was niks meer as 'n georkestreerde poppekastery nie. Die pseudo-ekonomiese analises en -lewensvatbaarheidstudies was blote vertoon en die kwansuisse briefwisseling met bankbestuurders 'n oeverblindery wat daarop gerig was om 'n skyn van egtheid aan die organisasie se bedrywighede te verleen. Hierdie briefwisseling het voortgeduur ten spyte daarvan dat finansiële instellings herhaaldelik te kenne gegee het dat hulle die organisasie nie erken nie en direk met die publiek skakel. Die komitee aanvaar dat die organisasie daarvan bewus moes gewees het dat haas al sulke aansoeke wat na finansiële instellings verwys is geweier sou word. Dit is slegs die organisasie wat voordeel getrek het uit transaksies met kliente.

#### 5.1 Skadelike sakepraktyk

Artikel 1 (x) (b) van die Wet verwys na "enige skema, praktyk of handelsmetode, met inbegrip van enige metode van bemarking of distribusie;" Die komitee is tevrede dat die sakepraktyk beskryf in afdeling 4 van hierdie verslag 'n sakepraktyk daarstel vir die doeleindes van artikel 1 (x) (b).

Artikel 1 (xi) van die Wet bepaal dat 'n skadelike sakepraktyk daar gestel word deur enige sakepraktyk wat, regstreeks of onregstreeks, die uitwerking het of waarskynlik sal hê om—

- (a) die verhoudinge tussen besighede en verbruikers te skaad;
- (b) enige verbruiker onredelik te benadeel; of
- (c) enige verbruiker te mislei

25. The providing of motor repair services at favourable rates in terms of agreements with participating garages.
26. Arrangements for local and overseas travel at a reduced rate.
27. The making available of holiday-loans for motor repair work by way of credit-coupons to the amount of R200.
28. The payment of replacement costs for damaged windscreens
29. The consolidation of debts.

It is clear that the organization endeavoured to lead prospective clients to believe that they are doing business bona fide and that they have the ability to actually provide loans and guarantees. Applicants were regularly informed that the loan in question has been approved or has been reserved and that delay of payment is due only to formalities in connection with the paperwork. The legal relationship that came into being was then applied to indemnify the organization from performing any substantial obligation and to enable the organization to oppose claims for the repayment of fees. The contents of this legal relationship unequivocally contradict the understanding on which the clients did business with the organization.

#### 5. Evaluation of the business practice

Although the contractual relationship with every individual client *prima facie* entitles the organization to follow the procedure as set out above, it is clear that if the clients had knowledge of the fact that applications for financing uniformly fail, none would have done business with the organization.

The completion of documentation which embodies the legal relationship between the client and the organization was nothing more than an orchestrated farce. The pseudo-economic analyses and pseudo-feasibility tests were mere display, and the ostensible correspondence with managers of banks pure make-believe designed to import to the business of the organization an appearance of authenticity. This correspondence continued in spite of the fact that the financial institutions frequently indicated that they did not recognize the organization and negotiate directly with the public. The committee accepts that the organization must have been aware that all such applications that were referred to financial institutions would be refused. It is only the organization which benefited from transactions with clients.

#### 5.1 Harmful business practice

Section 1 (iii) (b) of the Act refers to "any scheme, practice or method of trading, including any method of marketing or distribution". The committee is satisfied that the business practice as set out in section 4 of this report establishes a business practice in terms of section 1 (iii) (b) of the Act.

Section 1 (xi) of the Act provides that a harmful business practice is constituted by any business which, directly or indirectly, has or is likely to have the effect of—

- (a) harming the relations between businesses and consumers;
- (b) unreasonable prejudicing any consumer; or
- (c) deceiving any consumer.

Die organisasie se bedrywighede het nie alleen oor die onbetwiste potensiaal beskik om die publiek op aansienlike skaal te mislei nie maar tientalle lede van die publiek is inderdaad mislei om tot hulle nadeel sake met die organisasie te doen. Die komitee is tevrede dat die organisasie se bedrywighede 'n skadelike sakepraktyk daarstel.

### 5.2 Die openbare belang

In die lig van die bevinding dat die partye se optrede 'n skadelike sakepraktyk daarstel moet die komitee oorweeg of hierdie skadelike sakepraktyk in die openbare belang geregverdig is.

Die komitee is oortuig daarvan dat hierdie wyse van sake doen nie in die openbare belang geregverdig kan word nie. 'n Verbod op die sakepraktyk soos deur die organisasie bedryf kan nie gesien word as 'n onnodige inmenging met die vryheid van ondernemers om op verbeeldingryke wyses aan die ekonomie deel te neem nie. Verbruikers het aansienlike verliese geleë as gevolg van die organisasie se berekende optrede.

### 6. Gevolgtrekking en aanbevelings

Dit word gevolglik aanbeveel dat die Minister die praktyk onwettig verklaar kragtens artikel 12 (1) (b) van die Wet en dat die partye gelas word kragtens artikel 12 (1) (c) om van die toepassing of voortsetting van enige praktyk af te sien waarvan die beskikbaarstelling van finansiering (hetsy by wyse van die verskaffing, of die verkryging van 'n lening of waarborg, aan of vir enige persoon) deel is, en om op te hou om enige belang by 'n besigheid of 'n tipe besigheid wat 'n soortgelyke sakepraktyk bedryf te hê of om enige inkomste daaruit te verkry of om te generêr tyd enige belang in 'n besigheid of tipe besigheid wat 'n soortgelyke sakepraktyk bedryf te bekom of om enige inkomste daaruit te verkry nie.

(7 September 1990)

#### KENNISGEWING 744 VAN 1990

##### SUID-AFRIKAANSE RESERWEBANK

##### ARTIKEL 12 (1) VAN DIE BANKWET, 1965

##### FINALE REGISTRASIE — CAPE INVESTMENT BANK BEPERK

Hierby word vir algemene inligting bekendgemaak dat Cape Investment Bank Beperk op 1990-08-24 as 'n bank, finaal geregistreer is.

(7 September 1990)

#### KENNISGEWING 745 VAN 1990

##### SUID-AFRIKAANSE RESERWEBANK

##### ARTIKEL 12 (1) VAN DIE BANKWET, 1965

##### NAAMSVERANDERING — VOLKSKAS INDUSTRIELE BANK BEPERK

Hierby word vir algemene inligting bekendgemaak dat Volkskas Industriële Bank Beperk, 'n geregistreerde bank, sy naam op 1990-08-30 na Volkskas Motorbank Beperk verander het.

(7 September 1990)

The organization's business not only had the undisputed potential to deceive the public on a considerable scale, but many members of the public were in fact deceived to do business with the organization to their detriment. The committee is satisfied that the organization's business constitutes a harmful business practice.

### 5.2 The public interest

In view of the finding that the conduct of the parties constitute a harmful business practice, the committee must consider if this harmful business practice is justified in the public interest

The committee is convinced that this method of business can not be justified in the public interest. A prohibition on the business practice as carried on by the organization can not be seen as an unnecessary impingement on the freedom of entrepreneurs to imaginatively participate in the economy. Consumers suffered considerable damage due to the calculated conduct of the organization.

### 6. Conclusion and recommendations

It is therefor recommended that the business practice be declared unlawful by the Minister in terms of section 12 (1) (b) of the Act and that the parties be directed in terms of section 12 (1) (c) to refrain from the application or continuation of any business practice of which the making available of financing (whether by way of the provision, or procurement of a loan or guarantee to or for any person) forms part, and to cease to have any interest in a business or type of business which applies a similar harmful business practice or to derive any income therefrom and to refrain from at any time obtaining any interest in or deriving any income from a business or type of business applying a similar harmful business practice

(7 September 1990)

#### NOTICE 744 OF 1990

##### SOUTH AFRICAN RESERVE BANK

##### SECTION 12 (1) OF THE BANKS ACT, 1965

##### FINAL REGISTRATION. — CAPE INVESTMENT BANK LIMITED

It is hereby notified for general information that Cape Investment Bank Limited was finally registered as a bank on 1990-08-24.

(7 September 1990)

#### NOTICE 745 OF 1990

##### SOUTH AFRICAN RESERVE BANK

##### SECTION 12 (1) OF THE BANKS ACT, 1965

##### CHANGE OF NAME — VOLKSKAS INDUSTRIAL BANK LIMITED

It is hereby notified for general information that Volkskas Industrial Bank Limited, a registered bank, has changed its name to Volkskas Motorbank Limited on 1990-08-30

(7 September 1990)

(A) Republic Helicopters (Edms.) Bpk., Posbus 18115, Randlughawe, 1419 (B) Republic Helicopters (Edms.) Bpk. (C) Handelslugdienslisensie W848. Onder "Lugvaartuie wat gebruik gaan word" voeg by: "Bell 206-reeks, op voorwaarde dat lugvaartuig ZS-geregistreer en C-gekategoriseer is."

(A) Republic Helicopters (Edms.) Bpk., Posbus 18115, Randlughawe, 1419 (B) Republic Helicopters (Edms.) Bpk. (C) Handelslugdienslisensie W848. Onder "Lugvaartuie wat gebruik gaan word" voeg by: "Robinson-reeks, op voorwaarde dat lugvaartuig ZS-geregistreer en C-gekategoriseer is."

(A) Stellair (Edms.) Bpk., Posbus 2546, Kaapstad, 8000. (B) Stellair (Edms.) Bpk. (C) Handelslugdienslisensie W344. Onder "Lugvaartuie wat gebruik gaan word" voeg by: "Bell 206-reeks, op voorwaarde dat lugvaartuig ZS-geregistreer en C-gekategoriseer is."

(A) Stellair (Edms.) Bpk., Posbus 2546, Kaapstad, 8000. (B) Stellair (Edms.) Bpk. (C) Handelslugdienslisensie W344. Onder "Lugvaartuie wat gebruik gaan word" voeg by: Robinson-reeks, op voorwaarde dat lugvaartuig ZS-geregistreer en C-gekategoriseer is."

(A) Stellair (Edms.) Bpk., Posbus 2546, Kaapstad, 8000. (B) Stellair (Edms.) Bpk. (C) Nie-vasgestelde-lugvervoerdienslisensie N345. Onder "Lugvaartuie wat gebruik gaan word" voeg by: "Bell 206-reeks, op voorwaarde dat lugvaartuig ZS-geregistreer en A-gekategoriseer is."

(A) Stellair (Edms.) Bpk., Posbus 2546, Kaapstad, 8000 (B) Stellair (Edms.) Bpk. (C) Nie-vasgestelde-lugvervoerdienslisensie N345. Onder "Lugvaartuie wat gebruik gaan word" voeg by: "Robinson-reeks, op voorwaarde dat lugvaartuig ZS-geregistreer en A-gekategoriseer is."

(14 September 1990)

#### KENNISGEWING 776 VAN 1990

#### DEPARTEMENT VAN HANDEL EN NYWERHEID

#### WET OP SKADELIKE SAKEPRAKTYKE, 1988

Ek, Kent Diederich Skelton Durr, Minister van Handel en Nywerheid en Toerisme, na oorweging van 'n verslag deur die Sakepraktykekomitee met betrekking tot 'n ondersoek waarvan in Kennisgewing 87 van 1990 in *Staatskoerant* No. 12280 van 9 Februarie 1990 kennis gegee is, welke verslag gepubliseer is in Kennisgewing 738 in *Staatskoerant* No. 12724 van 7 September 1990, is van oordeel dat 'n skadelike sakepraktyk bestaan wat nie in die openbare belang geregverdig is nie, en oefen hiermee my bevoegdhede uit kragtens artikel 12 (1) (b) en (c) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 71 van 1988), soos in die Bylae uiteengesit.

K. D. S. DURR,  
Minister van Handel en Nywerheid en Toerisme

#### BYLAE

In hierdie kennisgewing, tensy uit die samehang anders blyk, beteken—

"die partye" mnr. Louis Johannes Jacobus van Wyk, mev. Nellie van Wyk, mnr. Daniel Brink Ferreira, mnr. Cornelius Petrus Hattingh, mnr. Jeremias Nortje Senekal, mnr. David Adriaan van Schalkwyk en mnr. Cornelius Francois van der Post, hetsy hulle onafhanklik of tesame met enigiemand anders optree

(A) Republic Helicopters (Pty) Ltd, P O Box 18115, Rand Airport, 1419 (B) Republic Helicopters (Pty) Ltd (C) Aerial Work Air Service Licence W848. Under "Aircraft to be used" add "Bell 206 Series, provided such aircraft is ZS-registered and categorised C."

(A) Republic Helicopters (Pty) Ltd, P O Box 18115, Rand Airport, 1419 (B) Republic Helicopters (Pty) Ltd (C) Aerial Work Air Service Licence W848. Under "Aircraft to be used" add "Robinson Series, provided such aircraft is ZS-registered and categorised C."

(A) Stellair (Pty) Ltd, P O Box 2546, Cape Town, 8000 (B) Stellair (Pty) Ltd (C) Aerial Work Air Service Licence W344. Under "Aircraft to be used" add "Bell 206 Series, provided such aircraft is ZS-registered and categorised C."

(A) Stellair (Pty) Ltd, P.O. Box 2546, Cape Town, 8000 (B) Stellair (Pty) Ltd (C) Aerial Work Air Service Licence W344. Under "Aircraft to be used" add Robinson Series, provided such aircraft is ZS-registered and categorised C."

(A) Stellair (Pty) Ltd, P O Box 2546, Cape Town, 8000 (B) Stellair (Pty) Ltd (C) Non-scheduled Air Transport Service Licence N345. Under "Aircraft to be used" add "Bell 206 Series, provided such aircraft is ZS-registered and categorised A."

(A) Stellair (Pty) Ltd, P O Box 2546, Cape Town, 8000. (B) Stellair (Pty) Ltd (C) Non-scheduled Air Transport Service Licence N345. Under "Aircraft to be used" add "Robinson Series, provided such aircraft is ZS-registered and categorised A."

(14 September 1990)

#### NOTICE 776 OF 1990

#### DEPARTMENT OF TRADE AND INDUSTRY

#### HARMFUL BUSINESS PRACTICES ACT, 1988

I, Kent Diederich Skelton Durr, Minister of Trade and Industry and Tourism, after having considered a report by the Business Practices Committee in relation to an investigation of which notice was given in Notice 87 published in *Government Gazette* No. 12280 of 9 February 1990, which report was published in Notice 738 in *Government Gazette* No. 12724 of 7 September 1990, and being of the opinion that a harmful business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12 (1) (b) and (c) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), as set out in the Schedule.

K. D. S. DURR,  
Minister of Trade and Industry and Tourism

#### SCHEDULE

In this notice, unless the context indicates otherwise—

"harmful business practice" means any business practice of which the making available of financing to any consumer (including the provision, or procurement of a loan or guarantee to or for any person) forms part, excluding the granting of an extension of time to a debtor for the payment of any debt, to the extent which the parties are involved therewith



“skadelike sakepraktyk” enige sakepraktyk waarby die beskikbaarstelling van finansiering (met inbegrip van die verskaffing, of die verkryging van ’n lening of waarborg aan of vir enige persoon) deel is, met uitsluiting van die verlening van uitstel aan ’n skuldenaar vir die betaling van enige skuld, vir soverre die partye daarby betrokke is

1. Die skadelike sakepraktyk word hiermee onwettig verklaar

2. Die partye word hiermee gelas—

(a) om af te sien van die toepassing van die skadelike sakepraktyk;

(b) om op te hou om enige belang in ’n besigheid of tipe besigheid te hê wat die skadelik sakepraktyk bedryf, of om enige inkomste daaruit te verkry;

(c) om te gener tyd die skadelike sakepraktyk te bedryf nie;

(d) om te gener tyd enige belang in ’n besigheid of tipe besigheid wat die skadelike sakepraktyk bedryf te bekom nie, of om enige inkomste daaruit te verkry nie

3. Hierdie kennisgewing tree in werking op die datum van publikasie hiervan.

(14 September 1990)

## RAADSKENNISGEWING

### RAADSKENNISGEWING 64 VAN 1990

WYSIGING VAN INDELING VAN PLAASLIKE OWERHEDE VOLGENS GRADE INGEVOLGE DIE WET OP DIE BESOLDIGING VAN STADSKLERKE, 1984

Ek, Hermanus Hendrik Steyn Venter, Sekretaris van die Raad op die Besoldiging en Diensvoordele van Stadsklerke handelende kragtens magtiging deur die gemelde Raad aan my verleen ingevolge artikel 8 (2) van die Wet op die Besoldiging van Stadsklerke, 1984 (Wet No 115 van 1984), wysig hierby Bylae A by Goewer-mentskennisgewing No. R 1153 van 29 Mei 1987 soos volg:

(i) *Met ingang van 1 Julie 1990*

1. Deur—

(a) die woord “Franschhoek” waar dit in die kolom vir die Kaapprovinsie onder Graad 3 voorkom, te skrap; en

(b) die woord “Franschhoek” na die woord “Darling” in die kolom vir die Kaapprovinsie onder Graad 4 in te voeg.

(ii) *Met ingang van 1 September 1990:*

2. Deur die woord “Waterfall” voor die woord “Weenen” in die kolom vir Natal onder Graad 3 in te voeg

H. H. S. VENTER,  
Sekretaris

(14 September 1990)

“parties” means Mr Louis Johannes Jacobus van Wyk, Mrs Nellie van Wyk, Mr Daniel Bink Ferreira, Mr Cornelius Petrus Hattingh, Mr Jeremias Nortje Senekal, Mr David Adriaan van Schalkwyk and Mr Cornelius Francois van der Post, whether acting independently or in concert with any other person.

1. The harmful business practice is hereby declared unlawful. (245)

2. The parties are hereby directed to—

(a) refrain from applying the harmful business practice;

(b) cease to have any interest in a business or type of business which applies the harmful business practice or to derive any income therefrom,

(c) refrain from at any time applying the harmful business practice,

(d) refrain from any time obtaining any interest in or deriving any income from a business or type of business applying the harmful business practice

3. This notice shall come into operation upon the date of publication hereof

(14 September 1990)

## BOARD NOTICE

### BOARD NOTICE 64 OF 1990

AMENDMENT OF CLASSIFICATION OF LOCAL AUTHORITIES ACCORDING TO GRADES IN TERMS OF THE REMUNERATION OF TOWN CLERKS ACT, 1984

I, Hermanus Hendrik Steyn Venter, Secretary to the Board on Remuneration and Service Benefits of Town Clerks acting herein by virtue of authority granted to me by the said Board in terms of section 8 (2) of the Remuneration of Town Clerks Act, 1984 (Act No 115 of 1984), hereby amend Annexure A to Government Notice No R 1153 of 29 May 1987 as follows

(i) *Effective from 1 July 1990.*

1. By—

(a) the deletion of the word “Franschhoek” where it appears in the column for the Cape Province under Grade 3; and

(b) the insertion of the word “Franschhoek” in the column for the Cape Province under Grade 4 after the word “Darling”

(ii) *Effective from 1 September 1990.*

2. By the insertion of the word “Waterfall” in the column for Natal under Grade 3 before the word “Weenen”.

H. H. S. VENTER,  
Secretary.

(14 September 1990)



Hou Suid-Afrika skoon!  
Keep South Africa clean!

# Bid to outlaw firm's business activities

NEIL YORKE SMITH

THE Business Practices Committee — established in terms of the Harmful Business Practices Act — has recommended the business activities of Eagle Finance Association be declared unlawful, according to a recent report gazetted by Trade and Industry Minister Kent Durr.

The SA Police were also investigating charges of alleged fraud against the parties involved in the operation, the report said.

An investigation found that at least R949 972, and a few hundred clients, had been involved in the "financial services" schemes operated by the association, the report said.

Eagle offered various services including the provision of finance and guarantees. Prospective clients

would be told loans could be granted on condition that they became members of Eagle Finance Association and paid membership fees of, for instance, R5 000.

Eagle would promise loans would be made available after payment of the deposit. Clients were usually later told their loan application had been denied, but membership fees were rarely refunded, the report said.

For a 10% fee Eagle would also offer to provide clients with financial guarantees. Several million rands worth of such guarantees, which were legally and financially useless, were provided, the report said.

Eagle would advertise in newspapers and magazines. Finance and guarantee services were conducted under the names Equity Finance International, Cosmopolitan and Guarantee Exchange International.

The activities were conducted between March 1982 and September 1989, the report said.

Investigations began after the committee received complaints from the public regarding the activities of Eagle Financial Brokers.

"A prohibition on the business practice as carried on by the organisation cannot be seen as an unnecessary impingement on the freedom of entrepreneurs to imaginatively participate in the economy," the report said.

BIDENY 18/9/90

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# Probe into retail outlets' practices

15/10/90  
15/10/90  
THE Competition Board is investigating the supply and distribution of foodstuffs by retail outlets after complaints by small producers about the dictatorial practices of retailing conglomerates

The announcement was made in Friday's Government Gazette and the deadline for submissions is December 7

The investigation, which excludes fruit and vegetable outlets, was undertaken to enable the board to judge complaints about monopolies, restrictive practices and acquisitions

Competition Board chairman Prof Pierre Brooks said yesterday the investigation aimed at "formalising" the board's

GILLIAN HAYNE

knowledge of the structure of the retail industry, the major players and the problems

Brooks said there had, for example, been a steady stream of complaints from small producers about retail chains dictating the terms of supply of goods and putting one group of products they favoured to the disadvantage of the smaller competitor

Pick 'n Pay MD Hugh Herman was unaware of the investigation and had no comment to make. Spokesman for the other major retailers, Checkers and OK Bazaars, were not available for comment.

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# Probe into consumer safeguards

MARCIA KLEIN

TRADE, Industry and Tourism Minister Kent Durr has announced an investigation into the possibility of establishing codes for transactions in the motor, furniture and advertising industries to ensure consumer protection.

The move has encountered opposition from furniture trade representatives

The investigation will be conducted in terms of the Harmful Business Practices Act

Durr said the motor and furniture industries were selected as priority areas because of the volume and value of consumer transactions, and "advertising is an integral element of all kinds of consumer transactions".

The investigation will be conducted in co-operation with the Advertising Standards Authority, the Motor Industries Federation, the National Association of Motor Vehicle Manufacturers and the Furniture Traders'

Association (FTA).

Durr said these bodies had all "already done valuable work on behalf of consumers in terms of self-regulation".

In June, he said a system of codes would "strengthen and clarify consumer law" and ensure customers derived the benefits of private enterprise.

In his budget vote speech in May, Durr said the market could not determine the rights and interests of consumers and there was often disturbing evidence that consumers had legitimate grounds for complaint.

FTA executive chairman Frans Jordaan said the investigation into the law relating to consumer transactions was at variance with government's stated intention to deregulate the economy as far as possible.

Jordaan said while the FTA was for consumer rights, there were al-

ready several Acts which applied to the furniture retail trade, and the overregulated industry "certainly doesn't need any more"

FTA members — more than 90% of furniture stores — subscribed to a stringent code of conduct with a great deal of consumer protection, he said.

Unethical traders would not disappear but would merely attempt to circumvent any new code of conduct

Major furniture retailers were "perplexed" and wanted to know what aspects of the industry would be investigated

Rusfurn chairman Geoff Austin said he endorsed the views of the FTA and added that competition in the industry ensured fair play

A spokesman for another major furniture retailer said competition and guarantees ensured fair play, and customers would shop where they got the best deals.

# State plan to give more clout to consumers

245

Sowetan 26/10/90

**AN inquiry under the Harmful Business Practices Act focusing on the laws relating to advertising and consumer transactions concerning motor cars and furniture was announced in Pretoria yesterday.**

Trade, Industry and Tourism Minister Mr Kent Durr said the investigation was the first of its kind.

The Harmful Business Practices Act makes provision for direct action in respect of specific traders guilty of harmful business practices as well as for action of a broad and general nature.

The investigation is the first formal step following the Government's decision earlier this year to strengthen and clarify consumer law by introducing a system of codes of consumer law.

"The role of consumer

organisations is important for the success of the investigation and their participation is welcomed," Durr said.

The investigation is also being undertaken in co-operation with the Advertising Standards Authority, the Motor Industries Federation, the National Association of Motor Vehicle Manufacturers and the Furniture Traders Association.

Further investigations will also be done later, the Minister said.

He asked interested people for comment.

"A free and fair system of private enterprise is the only bulwark against poverty and the only locomotive of progress for not only South Africa but for the whole of our continent."

"A sound body of balanced consumer law is an indispensable ingredient of such a system," he said. - *Sappa.*

FIM 26/10/90

## BUSINESS PRACTICE CODES **PICKING THE TARGETS**

**Government**, in its zest for more regulation, now wants to establish mandatory consumer codes for different industries (*Business* October 5). This week Minister of Trade & Industry Kent Durr chose the first three candidates for codes — advertising agencies, motor car dealers and furniture outlets.

While these sectors cursed their bad luck at catching Durr's eye, other industries that have a history of consumer complaints, such as the home improvement and swimming pool industries, have been let off for now.

Durr says a general investigation of the three sectors will be conducted before codes are drawn up. It will be the first general investigation under the two-year-old Harmful Business Practices Act and will be conducted by the Business Practices Committee.

Durr says motor cars and furniture were chosen first "by virtue of their volume and value of consumer transactions." Advertising was selected because advertising is an integral element of all kinds of consumer transactions, he says. (245) (245)

The Motor Industries Federation, the Furniture Traders Association and the Advertising Standards Authority now operate consumer codes in those industries. Durr says he is keen to work with these bodies, but they will be quick to defend self-regulation against the encroachment of mandatory regulation — and its accompanying army of lawyers. The Advertising Standards Authority is already defending itself against another investigation, a Competition Board probe of charges that the authority restricts competition (*Business* September 28).

"We are totally pro all aspects of consumer rights, but in an industry that is already over-regulated, we don't believe more regulation is necessary," says Frans Jordaan of the Furniture Traders Association. "We also believe the new proposals are at variance with the government's stated intention to deregulate the economy as far as possible."

"The average consumer is far more sophisticated than he is generally given credit for. The proposed code would simply be telling him that he is unable to make rational decisions for himself."

Trade probe is aimed at 'bad eggs'

MARCIA KLEIN

THE proposed investigation into the law relating to customer transactions in the motor, furniture and advertising industries would not undermine work done by self-regulating bodies, investigation committee member E.R. van Eerden said last week.

of laws, he said, but a reasonable balance setting down what was fair and reasonable and what average rights and obligations were in transactions between businesses and customers.

The investigation — announced last Wednesday by Trade, Industry and Tourism Minister Kent Durr to ensure consumer protection — encountered opposition from members of some of the industries involved

A major benefit would be to strengthen the consumer position and to maintain a balance between the formulation of guidelines and strictly enforceable regulations.

Van Eerden said while self-regulatory bodies did a "good job", their codes had loopholes and shortcomings that the committee would look at supplementing.

He said the content of the codes in existence were already enforceable with penalties issued by the regulatory bodies or by the Minister, and many aspects of the relationship between business and the consumer did not need to be linked to a criminal sanction

One of the loopholes was that the codes could not be applied to non-members who were often the "bad eggs", and it was unfair for the self-regulatory bodies to carry the burden of wayward dealers on their shoulders, he said

He said the investigation would cover a wide range of areas as the complexities of the legal relationship that flowed from legal transactions started at advertising and ended with delivery

There would not be a whole new library

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# Minister starts probe on motor trade dealings

THE Minister of Trade, Industry and Tourism, Mr Kent Durr, has commissioned an investigation into sectors of the motor industry in terms of the Harmful Business Practices Act.

Opening the 79th Motor Industries Federation annual conference in Cape Town yesterday, Durr said the probe was due to the "thoughtless, dishonest or incompetent actions of a small number of people" who could endanger the interests of the many who had reason to be proud of their work.

The investigation would also concentrate on the law relating to consumer transactions concerning motor cars.

He added that the

motor industry was one of the country's largest employers and encouraged it to work towards export markets.

Quoting from a Council for Scientific and Industrial Research report in which it was shown that there were 106 vehicles for every 1 000 people in the country, Durr said this figure was well below those of Western countries such as the United States with 588 and Britain with 370.

However, South Africa was the best in Africa where Kenya, for instance, had only six vehicles per 1 000 of the population. - Sapa.

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# Competition Board starts investigation

Own Correspondent

JOHANNESBURG — The Competition Board has begun an investigation into interlocking directorships which could radically affect the face of South African business.

Interlocking directorships are common throughout business, particularly where companies are closely linked partners.

The investigation, an informed source said, formed part of a Competition Board probe initiated in August after the Anglo/De Beers group had increased its shareholding in Gold Fields of South Africa (GFS) to 25% from 20%.

The probe is to determine whether the acquisition of additional shares constituted a "restrictive practice" which could place Anglo in a "monopoly situation".

It is understood that the Competition Board intends using the present investigation as a test case of interlocking or cross-directorships to establish a defined policy on the issue.

Competition Board chairman Mr Pierre Brooks declined to comment yesterday.

# Directorships probe may spark changes

13/12/90 15/11/90 245

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In terms of the gazetted mandate for the inquiry, the Competition Board is empowered to investigate the effect the share acquisition could have on the right of Anglo or De Beers to appoint one or more of GFSA's directors. Anglo and GFSA have only one director in common, Peter Gush, formerly head of Anglo's gold division

It is understood the Competition Board intends using the present investigation as a test case of interlocking or cross directorships to establish a defined policy on the issue

KEVIN DAVIE

Competition Board chairman Pierre Brooks declined to comment yesterday Business Day has learnt, however, that the board believes conglomerates must not only compete but be seen to compete. Should the board take the view that interlocking directorships facilitate behaviour inimical to competition, it could use the Maintenance and Prevention of Competition Act to redress the situation.

The Anglo group's 25% stake in GFSA allows it to block special resolutions where a 75% vote is required. The 75% rule applies to all companies and is designed to protect shareholders. In this case Anglo could, for example, block attempts by GFSA's board to restructure the group's capital

Robin McGregor, author of Who Owns Whom yesterday welcomed the Competition Board inquiry but said he was disappointed it was "only having a go at cross directorships"

"Interlocking directorships do not matter a lot. Most important is who controls the company. Concentration is the problem. Derek Keys's unbundling proposals are a good start which could cut down the bureaucracies"

HERE is not much in SA now which is not being re-examined. The conventional wisdom on just about every subject and issue is being looked at afresh.

Just as the economic order is being debated by business and political groups such as the ANC, so it is under consideration by government. In Pretoria, the issue of conglomerates is under re-evaluation by the Competition Board.

Board chairman Pierre Brooks believes that enforced dismemberment of conglomerates, as proposed by some ANC spokesmen, will not work. This is possible only in a theoretical, not a practical sense.

"The problem in SA is the shortage of capital. If you disinvest, who takes it up? You don't want government taking it over."

"Who do we sell the relevant companies to? You can't expect the shares to be handed out — that's not going to do anybody any good at the end of the day."

Brooks says the Competition Board's position is that conglomerates are not bad per se from a competition point of view, but that "they must compete and be seen to compete with one another."

He appreciates there must be some form of conglomerate. Very often it makes good sense to have diverse interests within a particular group. "But the question is whether this is not carried to extremes in SA."

The former professor of mercantile law at Unisa says the SA economy simply does not have space for, say, 20 or more companies in every sector. In many sectors there may realistically be space for three or four.

"If they compete, that very often is quite substantial competition, but if there's no competition between the conglomerates that would be a matter of concern for us."

He says the issue of economic concentration is not currently under consideration. He doubts whether the

# The tricky issue of conglomerates and competition

KEVIN DAVIE

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present controlling legislation, the Maintenance and Promotion of Competition Act, provides sufficient power to redress excessive economic concentration. This Act enables the Competition Board to ensure acquisitions are not anti-competitive, that restrictive practices do not take place, and that uncompetitive monopoly situations do not occur.

"When you come to look at breaking up a conglomerate which was formed over many years, you would have to have additional provisions. We may need enabling legislation, say against economic concentration, but we do not envisage this at this stage."

The board has only one formal investigation at present into possible monopoly-type behaviour. This began in August after it became public knowledge that companies in the Anglo group had increased their shareholding in Gold Fields of SA (GFSA) to 25%. The investigation will attempt to establish whether this amounts to a restrictive practice or an acquisition, and also examine Anglo's right to appoint one or more directors to the board of a company which is a competitor

Brooks will not comment, but it is also understood the board intends formulating a policy which it could use to apply to other cross or interlocking directorships.

He says the board adopts the policy principle of "commensurate re-

sponse" in the complaints it investigates. The remedy must match the transgression. If the problem persists, then the remedy may become more drastic.

The Competition Board is "happy" with Gencor chairman Derek Keys' unbundling proposals, says Brooks. As a general rule, from a competition point of view, the more players in the market at the same time, the better. He throws in the qualification that, in circumstances such as international competition, big organisations may have a relative competitive advantage.

Given the choice, the board would prefer an unbundled Gencor to the present corporate structure.

"We would prefer free-standing entities. Companies which are not performing efficiently are by virtue of their group connections sometimes kept artificially afloat" (Brooks did not respond when I suggested Bankorp might be a case in point.)

Unbundling would also change the JSE. "Only a small proportion of shares on the JSE are tradeable. The rest are companies holding shares in other companies. In the final analysis this means companies can be-

come relatively immune to takeovers, because of pyramid control. A company is not going to be efficient if it may be ready for a takeover, especially when we become more acceptably internationally."

The Competition Board has been involved in discussions with UBS, Allied, Sage and Volkskas in their moves to create a new, merged superbank. Brooks says the view of the board is that SA is probably overbanked, and that some sort of rationalisation may be beneficial. He says his inquiries lead the board to believe that this proposed merger would not be against the public interest.

A current development which may affect competition policy is the creation of a securities regulation panel following an amendment to the Companies Act of 1973.

Brooks, as chairman of the Competition Board, is a member of the new Takeover Panel, of which Minister Cecil Margo is chairman. The draft rules published by the panel would establish a 30% rule, whereby at a shareholding of 30% the shareholder will have to make a bid for outright control. If unsuccessful, the shareholder has to get his shareholding below 30%.

The Takeover Panel is considering submissions on the rules, which are expected to come into force early next year. The rules will not be applied retroactively. As in Britain, existing situations will not be affected, but new applications will have to go via the panel.

"The British experience is to leave in place what is in place. We think this is the way to go. You need a sense of certainty."

The panel will protect the interests of shareholders, but because it regulates the behaviour of large shareholders, it is also likely to have substantial spin-off benefits for competition policy.

The debate about a new economic order has only just got going. Government in the form of the Competition Board, business and the ANC are clearly providing one another with food for thought.



□ BROOKS

# Video suppliers 'restrict competition'

EDYTH BULBRING

THE Competition Board has recommended that certain actions of SA's eight video distributors — especially Ster Kinekor Video Pty Ltd — have restricted competition and should be declared unlawful.

The board's findings, published by Administration and Economic Co-ordination Minister Wim de Villiers in Friday's Government Gazette, are the outcome of a year-long investigation.

The bulk of submissions, orchestrated by the SA Video Retailers' Association, were against Ster Kinekor and four areas of restrictive practice were identified, the report said. *B 10am 27/11/90*

The contractual provision obliging video store owners to buy videos they did not

want was identified by complainants as most irksome and exploitative.

Ster Kinekor's marketing policy presented the most problems in this respect. It entailed selling tapes in "packages" of seven, which dealers said contained films they would not usually buy. Individual films were available separately without discount only a month after their launch.

By obliging video dealers to buy films they did not want in order to acquire the one or two films they required on the launch date, Ster Kinekor was channeling funds to itself, which, if dealers had had a

To Page 2

## Video *B 10am 27/11/90*

free choice in the matter, would most likely have been spent on films from other distributors, the report said

The board found Ster Kinekor's contractual obligation restricted competition between the company and other distributors.

Many video dealers complained of Ster Kinekor's preferential treatment of CNA. They said CNA was allowed to purchase a minimum of 250 copies of a video.

This enabled CNA to stock only the more popular titles. Video dealers contended that this gave CNA an unfair competitive advantage and restricted competition.

The board found that video distributors'

application of dissimilar prices, terms and conditions in their contractual relationships with video store owners restricted competition between store owners.

Prohibitions or restrictions on the sale of videos to other retailers, which were stipulated by distributors in their contracts with dealers, also restricted competition, despite submissions from Ster Kinekor that this prevented piracy.

The unconditional prohibition by a distributor of the movement of videos between branches of a business owned by the same person should also be declared unlawful, the board recommended.

From Page 1

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**DP open shops call**

Star 13/12/90  
Own Correspondent

DURBAN — The Democratic Party has called on the Administrator of Natal, Con Botha, to reconsider his rigid stand on keeping Natal's shops closed on Sunday

Mike Ellis, the DP's Natal coastal region leader, said he could find "no real reason in the Administrator's firm stand taken against opening shops on December 16".

"It is a date that has always been controversial. All the other provinces have let shops open on this day, so Natal's stand does not make

sense," Mr Ellis said

"It also does not make sense that Natal appears to continue to foster memories which should have been allowed to die a long time ago. Most South Africans should not place too much emphasis on December 16 being a religious holiday. It is a pity that Natal continues to do so," Mr Ellis said

"We would call upon Mr Botha to reconsider this decision as a matter of urgency. He is doing himself and the province no favour whatsoever by sticking rigidly to a decision that makes no sense"

## MediKredit gets board all-clear

The Competition Board has given the Pharmaceutical Society of South Africa a clean bill of health after four years of investigation into the society's MediKredit scheme.

The board found the scheme had not practised "horizontal price collusion" with affiliated medical schemes.

The board started the investigation after complaints that a monopoly of medicine prices had been created by MediKredit.

The board's favourable decision comes shortly before the exemption granted by it for the scheme to continue during the investigation was due to lapse at the end of December. — Medical Reporter.

# Clean bill of health for chemists' body

W/Mail 20/12/90 - 10/1/91  
By PORTIA MAURICE

AFTER four years of investigation, the Competition Board has given the Pharmaceutical Society of South Africa and its contracting subsidiary, Medikredit, a clean bill of health.

Medikredit is an accounting service used by many pharmacists to process the prescriptions of medical aid clients, send them to medical scheme administrators and arrange payments. In this way, patients are given credit for their pharmaceutical requirements, and avoid having to pay cash up front.

Medical aids contract in to Medikredit and in return receive discounts on pharmaceutical goods.

Allegations had been made to the Competitions Board that the Medikredit accounting system constituted "horizontal price collusion" because it set "notional prices" for medicines to facilitate computerisation. Complainants said Medikredit was price fixing and dominating the market in this way.

On announcing the Board's decision this week Boet van der Merwe, executive director of the PSSA, explained that the Medikredit system "did not preclude pharmacists from granting patients whatever discounts on medicines their business could bear".

He said millions of rand had been invested in mainframe computer installations and programming, for the benefit of pharmacies and medical scheme members they served.

"It would have been catastrophic if the machinery for settling medical scheme claims were not allowed to continue by a negative Competition Board ruling," he said.

"Millions of medical scheme members would have found that they could no longer obtain medical scheme credit for prescribed medicines at pharmacies throughout the Republic," he said.

PRICES — CONTROLS & CONTRAVENTIONS  
1991



Own Correspondent

JOHANNESBURG — UBS, Volkskas, Allied and Sage Financial Services have agreed in principle to merge their interests to create the largest financial institution in South Africa

The mechanics of the agreement will be announced shortly, the companies promised yesterday

Recent figures suggest that the new financial services giant will have combined assets of about R50bn, and after-tax earnings of about R400m

By contrast, the present banking leader Standard Bank Investment Corporation has assets of about R32bn, and its last year's attrib-

# Merger to create banking colossus

utable earnings were R333m

Ed Hern Rudolf director Mr Alan McConnochie emphasised that Allied would probably retain its own identity and its branch network for a "couple of years", but over time, with the formation of one computer system and one treasury, rationalisation would take place.

Allied chairman Mr Norman Alborough is on record as saying Allied's

separate identity was "not negotiable" —

Analysts saw the rationalisation opportunities as the main benefit of the deal.

They said that the country was "over-banked", and would benefit from the economies of scale which would lower technological costs

The merger would strengthen the equity base, and help defer the need to raise further capital.

Reserve Bank Governor Dr Chris Stals gave tacit approval to the creation of a super bank last September saying: "We have no objection, this is in line with our thinking on rationalisation in the sector"

# Competition Board will not probe chicken deal

By Des Parker

The Competition Board has decided not to investigate Rainbow Chicken's outright acquisition of Bonny Bird, a move which it is believed will give the Natal-based farm business more than 50 percent of the broiler market.

A spokesman for the board said Rainbow and Premier Group, which controls Bonny Bird, had approached it for a ruling.

"With the information at its disposal, the board decided not to probe the transaction in terms of the Maintenance and Promotion of Competition Act," he said.

Stock market watchdog Robin McGregor, chairman of McGregor's On Line Information, said recently he was "incensed" that the Rainbow deal had not raised any objection.

"In no other industrialised country can a producer hold

more than 25 percent of a market unless that share is achieved by organic growth," he said.

Rainbow managing director John Geoghegan could not be reached to amplify on the terms of the deal announced this month, in which his company obtained 100 percent of Bonny Bird, as well as 50 percent of the shareholders' interests in the Epol animal feed division of Premier Food.

Referring to suggestions that the new grouping could mean higher chicken prices, Stephne Alberts of the Consumer Council in Durban said the more competitive pricing of red meat in the past year should help to keep a check on protein prices.

"Consumers have seen with the milk price war the benefits of withholding their custom when prices move out of their reach and I believe they exercise the same discretion with meat prices."

# Competition Board looks at fertiliser operation

CMA 7.2.8 28/1/91

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Own Correspondent

JOHANNESBURG — The manner in which Agriland Fertiliser's collapse last year benefited AECI's Kynoch is to be investigated by the Competition Board.

An announcement in Friday's Government Gazette said the board was investigating whether an agreement entered into by AECI, Indian Ocean Fertilisers (IOF) and two AECI subsidiaries, Kynoch Fertilisers and AECI Opencast Services constituted a restrictive practice.

The investigation follows complaints by the National Maize Producers' Organisation (Nampo) that the takeover by Kynoch of IOF's granulation installation at Richards Bay strengthened its position in the fertiliser industry.

The board is investigating whether this agreement gave rise to an acquisition and, if so, whether it was in the public interest.

Competition Board chairman Pierre Brooks said yesterday AECI had entered into an agreement with IOF in terms of which Kynoch would use the production facilities at IOF's Richards Bay plant to produce fertiliser for SA.

Kynoch took over the lease of the granulation installation from Agriland Fertiliser, which had to close last year.

Brooks said the original terms for IOF's participation in the SA fertiliser industry was that it restrict itself to exports.

AECI chairman Mike Sander said that in terms of the agreement with IOF, AECI ceased supplying Natal from its Phalaborwa plant, and instead supplied Natal with the phosphate production purchased from IOF. The agreement meant AECI saved on freight costs.

IOF was owned jointly by Foskor and an international consortium, he said.



# Bank merger drama expected as curbs Act deadline nears

## Business Staff

LAST minute counter offers to Allied and Saambou are expected to be made in the next day ahead of stricter regulations governing mergers and takeovers coming into effect on Friday.

First National Bank is expected to make a counter offer today to acquire 100 percent of Allied. This follows the announcement Monday that Allied intended merging with UBS Holdings and Volkskas to form South Africa's largest bank with assets of R50 billion to be called the Amalgamated Banks of South Africa (ABSA).

Mr Viv Bartlett, a senior general manager at First National Bank, said this week that FNB was still keen to acquire Allied. On Friday FNB said it had made a proposal to acquire Allied, but it was rejected.

He said FNB was considering its position and hoped to make a statement today. He said the proposed merger of Allied with UBS and Volkskas still had to be approved by Allied shareholders.

Analysts said if FNB was to

have any hope of securing sufficient Allied shares to block the merger, it would need to offer substantially more than the 240c for each Allied share that ABSA was offering.

And with just one full trading day left before the close of Trafalgar's offer to acquire 30 percent of Saambou, there is widespread speculation that another party will make a last minute counter offer to get control of the independent building society.

Market speculation is that another bid could come from Nedcor, Fedsure or Prestasi and that one of these parties recently acquired about 5 million Saambou shares.

Nedcor's Mr Chris Liebenberg and Fedsure's Mr Arnold Basserabie were not available for comment yesterday. Earlier this month Prestasi denied it was involved in an offer for Saambou shares.

The close of trading tomorrow is important for several reasons, and many Saambou shareholders will not commit themselves until tomorrow afternoon. They will want to see if there is any other offer and

how the market price compares with the Trafalgar offer before deciding whether to take up that offer.

Starting on Friday morning, takeover and merger activity will be regulated by the Securities Regulation Panel (SRP).

As the new regulations impose tougher requirements on takeover and merger bids, it seems likely any counter bid in the offing would be made under the existing legislation.

Also the new Deposit Taking Institutions Act comes into force on Friday, which means that any potential bid for control of a financial institution from that date would have to meet with the banking industry's new requirements.

Because of the SRP and the new Act, Trafalgar will not be extending its present offer beyond tomorrow afternoon.

In spite of the strengthening in the share price since Trafalgar published its offer on January 17, Mr Pieter Hougaard, an executive director of Trafalgar, is optimistic about a good response to his 140c offer.

He says it will not be pos-

sible to identify the extent of the response until late tomorrow, but points out that the fact that the current share price is around 150c does not automatically mean that the 140c will be rejected.

He says many of the 18 500 Saambou shareholders might not be familiar with the workings of the stock exchange and might prefer to respond to the offer letters received from Trafalgar. Also the 150c JSE price might not be sustained if there were a lot of sellers.

## Trading charges

What must also be taken into consideration is that trading charges on the JSE reduce the apparent gap between the offer and market prices.

Against all of that is the fact that Trafalgar's offer is only for 30 percent of the Saambou shares, while a counter offer could be for 100 percent.

In spite of speculation about his objectives and his backers, Mr Hougaard remains adamant. He has identified Saambou as an undervalued investment and is using the funds in his care to try and get a strategic stake in the company.

# Spotlight on SA monopolies

By DAVID SHRAND, a leading tax expert

IN view of the ANC's recent comments on the redistribution of wealth and nationalisation in a future new South Africa, it is the object of this article to examine the present economic landscape in South Africa with special reference to the question of monopolies.

Capitalism has been described as 'the law of the jungle' principally because it involves economic warfare on a 'tooth and claw' basis. Although the free-enterprise system results in various irregularities and bottle-necks, it is a self-adjusting mechanism which ultimately operates in the interests of the consumer.

Under the capitalist system the profit motive dictates the economic trend. It is the incentive which influences entrepreneurs to take risks in the investment of their capital.

This principle has recently been acknowledged in Russia and other Eastern European countries where the profit motive has been integrated into the economic system as a stimulus to increased production. Economists agree that competition which is promoted by the profit motive is the greatest incentive to production and that any check to competition lessens the aggregate product.

The economic law of demand and supply, if allowed free play, will ultimately iron out any irregularities that may result in the process of adjustment. One of the greatest threats to the smooth operation of the competitive system is the emergence of monopolists whose aim is to control the market by regulating supply and in devious other ways holding the consumer up to ransom.

South Africa is criss-crossed with monopolies which assume various forms and operate under different disguises. In most countries legislation has been introduced to prevent monopolists dislocating the economic system. In this connection South Africa has followed suit.

In the US in its efforts to create a favourable climate for the operation of competition has declared mergers as being in conflict with the American anti-trust laws.

United States courts have also frowned on the creation of joint ventures by corporation giants which has the effect of stultifying the workings of the free competitive system.

In 1955, the government placed on the statute book the Regulation of Monopolistic Conditions Act. In terms of the Act, the Board of Trade and Industries was entrusted with its administration and since 1955 has undertaken various investigations, among them: the biscuit industry, tyre manufacturers, motion pictures, electrical equipment, the liquor trade, tobacco manufacturers, and the building industry.

The principle entrenched in the Act is that monopolies are not in the interest of the public and that

appropriate measures must be taken to exercise any monopolistic growth from the economic system.

The government has replaced the Regulation of Monopolistic Conditions Act with the Maintenance and Promotion of Competition Act, 1978, which enlarges the scope of its operations.

This measure, apart from the prevention or control of restrictive practices, also provides for the prohibition or regulation of the acquisition by the holder of a controlling interest in a business or undertaking of such an interest in another business or undertaking, such as a merger scheme.

## Merger tribunal

To that end, the Act provides for the establishment of a merger tribunal whose function it is to investigate mergers and takeover schemes.

Monopolistic practices may take various forms such as arrangements to restrict output or to maintain fixed selling prices or to prevent new entrants into the market.

Although the government has with one hand sought to destroy monopolies, it has with the other hand created them in violation of the principle enunciated in the new measure.

The government has supported monopolistic conditions in the wine industry, which is rigorously controlled. Similarly, various primary agricultural products which fall under the control of the marketing boards established under the Marketing Act 1937, are in effect a monopolistic device to protect the farmers — which it is submitted, is not in the interest of the public.

The marketing boards established under the Marketing Act, 1937, are specifically excluded from the provisions of the Maintenance and Promotion of Competition act.

Most of the important agricultural products have been placed under control and the farmer has thus been relieved of the pressure exerted by the competitive system to the prejudice of the consuming public, which is forced under this arrangement to subsidise the inefficient producer.

The prices of these various agricultural commodities are maintained at an artificial level to enable the producers to derive a greater measure of profit than would otherwise accrue to them in normal circumstances.

The government has argued that this principle of control is essential in order to maintain orderly marketing. There is some force in this contention, but on the other hand, there is the counter-argument that by the same token similar control measures should be applied to other spheres of the economy and that in fact competition should be eliminated and monopolies substituted.

Throughout the world governments have arrogated to themselves, monopoly rights and South Africa is no exception to this rule. This trend is manifest in

various fields of the economy. The government has created monopolies in various fields, namely, Saskar, the railways, the post office and similar organisations.

Apart from governmental interference in the competitive system in South Africa, there are various organisations in the private sector which have achieved monopolistic status.

It is estimated that about 80 percent of the companies quoted on the Johannesburg Stock Exchange are controlled by about five conglomerates in South Africa.

In the diamond industry De Beers has achieved complete monopolistic control by virtue of the creation of a central selling organisation. The supply of diamonds is regulated by this institution so as to ensure that maximum prices are extracted from the public.

Tell-tale signs that a monopolistic trend exists in South Africa are shown by the various mergers and takeover bids that have become an everyday feature in its economic life.

Mergers constitute a stepping stone to the creation of monopolies.

The United States government has taken a serious view of the proliferation of mergers and has introduced legislation to circumvent their occurrence.

US courts' present day attitude is derived from the 1950 Amendment to the Clayton Act which prohibited corporation giants from acquiring stock or assets from another corporation which would have the effect of substantially lessening the competition or tending to create a monopoly. The courts have applied the principles enumerated by this amendment regularly and several cases that have come before them have prevented mergers and joint ventures being implemented.

Mergers of similar businesses have not been scrutinised by the United States government as they are not considered detrimental to the free working of the competitive system but mergers between giant corporations have been challenged successfully on several occasions in the United States Courts.

A similar approach is now being adopted by the South African government in terms of the present legislation. This aspect is administered by the merger tribunal, which is established under the existing legislation.

The Maintenance and Promotion of Competition Act, should not become a dead letter but its principles should be energetically upheld. The more frequently investigations are undertaken, the more persuasively will it serve as a deterrent to those who contemplate creating a monopolistic setup in South Africa.

In a new South Africa, the breaking up of monopolies should be a first consideration. To free the economy from the clutches of monopolists will liberate the forces of competition to the benefit of society as a whole.

## Board seeks tighter competition policy

B/pan  
4/2/91 ZILLA EFRAT (245)  
THE Competition Board is to submit a proposal to government within the next month on how a more effective competition policy can be brought about through improved enforcement mechanisms

Competition Board chairman Pierre Brooks says the lack of adequate enforcement measures has lessened the deterrent value of competition policy

He says there have been no convictions for certain collusive activities since they were outlawed in 1986. This may have encouraged those who are prepared to run the risk of ignoring these prohibitions.

The board has also found that the threat of criminal prosecution has hampered getting evidence. Unlawful conduct is also difficult to prove and is often outside the expertise of police and public prosecutors.

Brooks says one possible solution is decriminalisation and a switch to administrative fines. Another is the introduction of a penalty for prior anti-competitive behaviour later declared by government to be unlawful.

The number of formal and informal investigations conducted by the Competition Board has increased sharply over the past 18 months and Brooks expects these to increase further in the future.

The board is about to launch a new investigation into a specific industry, but he will not elaborate at this stage

Brooks says there is an urgent need to reappraise the situation of SA's corporate conglomeration

# SA signs standards deal

By Norman Chandler  
Pretoria Bureau

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Star 5/2/91.  
said at a ceremony at the CSIR convention centre that it was a significant agreement.

A formal agreement for the mutual recognition of national measuring standards was signed in Pretoria yesterday between South Africa and the Republic of China.

Deputy Minister of Trade and Industry Dr Theo Alant

The agreement could be seen as being a form of quality assurance — "governments of all industrialised countries are very conscious of the need to provide the right inducements and the right support for manufacturing industries".

# New bank would control home loan market

By ARI JACOBSON

A UNIFIED banking group in the Rembrandt stable — with Allied on board — would provide the Amalgamated Bank of SA (Absa) with effective control of the home loan market according to BA9 returns for the period to September

These returns, which display each market player's share, have UBS as the major force, with 22% of total home loans.

The importance of the tug-of-war between First National Bank (FNB) and the UBS-led coalition is highlighted by Allied's 13,6% portion of the home loans market. FNB languish on roughly 9% (a book of a mere R3,6bn)

A successful UBS-Allied merger would provide Absa with close on 40% of the home loan market (which includes Volkskas's 3% contribution) Furthermore, UBS' backward linkages, with strategic stakes in estate agency businesses, will cement its overall control.

A UBS spokesman said the prime consideration in the prospective merger had been the benefits arising from rationalisation of support services (such as computer facilities)

He said while Allied and UBS were strongly represented in the home loan market neither had a strong presence in banking-related activities such as personal loans, instalment sales,

cheque account and overdraft facilities

FNB senior GM Viv Bartlett said a tie-up with Allied would assure the banking group a well-diversified presence in the industry FNB has a 27% claim in the instalment credit market coupled with a strong banking portfolio The Permanent Building Society of SA (the Perm), with its well-documented endeavours in the black housing market, has a sizeable 18,2% of the home loan market.

Theoretically this core area of banking business could be well-spread if linkages were distributed in an equitable fashion

Take FNB-Allied on 22,8%, UBS-Volkskas alliance on 24,8%, and the Perm-Nedbank tie at 21,2% — neatly sharing the spoils in the mortgage market.

In addition intimations of a Standard Bank and Natal Building Society linkage (NBS) would enhance equality with 22,2% of the total home loan profile.

Bankorp — the only major financial institution missing — intends using the current financial year to June as a consolidation period after undergoing tough rationalisation measures

CE Piet Liebenberg said the group's 9% stake through Trust Bank home loans was satisfactory, considering the enlarged focus in commercial, industrial and mining loans

CALL-7688  
7/2/91

UBS  
24%



PHARMACEUTICALS

**DRAGGING THEIR FEET**

245

Time is running out for the Pharmaceutical Society to avoid prosecution for breach of competition law. The society was ordered by the Competition Board to submit new Medikredit contracts to medical schemes by January 1 or risk having the matter turned over to the police (*Business* January 18).

Medikredit, a subsidiary of the society, supplies pharmacies with medicines and the pharmacies are then able to claim the cost from medical aids rather than in cash from the patients. The new Medikredit contracts are supposed to allow pharmacies greater flexibility in pricing the medicines.

David Boyce, who administers Medikredit in the Transvaal, says an addendum to the contracts that explains the new pricing formula is being sent to 3 000 contract holders from pharmacies and medical schemes. The contracts themselves are also being changed. *FIM 8/2/91*

But major medical scheme administrators have not yet received the new contracts and some have informed the Competition Board of this in writing. The Representative Association of Medical Schemes says it won't comment until after its pharmaceutical subcommittee meets next week.

Competition Board chairman Pierre Brooks says that judging by the correspondence he has received, he is not satisfied that the society has made a concerted effort to circulate the new contracts. The old contracts violate the prohibition of horizontal price collusion and collusion on conditions of supply.

The board is adopting a new get-tough

*continue FT*

**BUSINESS & TECHNOLOGY**

approach. Last week Brooks said the lack of adequate enforcement measures has lessened the deterrent value of competition law. There have been no convictions for collusion since most types were outlawed in 1986.

There is no doubt that the attorney general would be reluctant to get involved in a drawn-out court case against a professional body and file criminal charges against its officers. Brooks proposes that the law should be decriminalised and administrative fines introduced. This, he says, would give the board much-needed teeth. *FIM 8/2/91*

The Pharmaceutical Society stresses that it is not seeking a confrontation with the Competition Board. But it could be the first target of the board's new determination to enforce its rulings. ■

person may within a period of twenty-one (21) days from the date of this notice, make written representations regarding this report to:

The Secretary  
Business Practices Committee  
Private Bag X84  
PRETORIA  
0001.

**K. D. S. DURR,**  
Minister of Trade and Industry and Tourism.

30 Maart 1990, soos in die Bylae uiteengesit. Enigemand kan binne een-en-twintig (21) dae vanaf die datum van hierdie kennisgewing skriftelike vertoe rig aan:

Die Sekretaris  
Sakepraktykekomitee  
Privaatsak X84  
PRETORIA  
0001.

**K. D. S. DURR,**  
Minister van Handel en Nywerheid en Toensme.

## SCHEDULE

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### BUSINESS PRACTICES COMMITTEE

REPORT IN TERMS OF SECTION 10 (1) OF THE BUSINESS PRACTICES ACT, 1988  
(ACT No. 71 of 1988)

REPORT No. 13

### DEBT BROKING

#### CONTENTS

- I. Introduction.
- II. The business practice.
- III. Submissions received.
- IV. Evaluation of the business practice.
- V. Conclusion and recommendations.

#### I. INTRODUCTION

1. The Business Practices Committee conducted an investigation in terms of section 8 (1) (b) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988) ("the Act"), into a business practice whereby a credit receiver is invited and assisted to transfer to a third party his rights and obligations in terms of a credit agreement. Information received by the Committee indicates that the business practice is of widespread occurrence.
2. Notice of the investigation was given in terms of section 8 (4) of the Act by General Notice 232 of 1990 published in *Government Gazette* No. 12375 of 30 March 1990.
3. According to the Notice the investigation concerned a business practice—
  - (i) whereby any person—
    - (a) helps any credit receiver to breach a credit agreement; or
    - (b) excepting the credit grantor, or with the permission of the credit grantor, purports to arrange the transfer to another person of the rights and obligations of a credit receiver under a credit agreement;
  - (ii) any advertising relating to the business practice.
4. Written and oral submissions were received pursuant to the notice in terms of section 8 (4) of the Act.

## II. DESCRIPTION OF THE BUSINESS PRACTICE

5. The business practice investigated involves credit grantors<sup>1</sup>, credit receivers<sup>2</sup>, third parties and brokers (or agents). The relationships between the parties to credit agreements are primarily governed by the Credit Agreements Act, No. 75 of 1980 ("the Credit Agreements Act"). Credit receivers who owe debts to credit grantors in respect of motor vehicles are invited by the broker to enter into an arrangement facilitated by the broker. In terms of this arrangement the credit receiver's obligations are purportedly transferred to and assumed by a third party. The credit receiver rewards the broker for his services in locating the third party. With the assistance of the broker the credit receiver enters into a contract with the third party, which contract embodies their relationship and obligations. The credit receiver parts with the vehicle which is handed to the third party. The object of the arrangement is to effect the release of the credit receiver from his obligations to the credit grantor, the third party stepping into his shoes and assuming his responsibilities in respect of the credit grantor.
6. Brokers assert that the arrangement benefits all the parties. The benefit to the often over extended credit receiver is that, although he forfeits earlier payments, he is released from the continuing burden (but not the obligation) of having to pay regular instalments. The benefit to the third party is that he has the opportunity of obtaining a vehicle at an attractive price since a portion of the debt has already been paid by the credit receiver. The credit grantor benefits because he is spared the prejudice and loss flowing from default by the credit receiver since the latter's obligations are assumed by the third party.
7. The credit grantors concerned are banks duly registered as banks who do business by extending credit to credit receivers who enter into credit agreements. The role of the bank is to provide the finance required by the credit receiver and the dealer. Finance is granted to credit receivers (consumers) and dealers (businesses) in respect of a relationship between the bank and a dealer (whether a business or an individual) from whom the credit receiver obtains a product or by whom a service is rendered to the credit receiver. The credit granted settles the credit receiver's debt as against the dealer and in turn becomes a creditor of the credit receiver. The practical effect of these arrangements is that the credit grantor not only becomes a creditor of the credit receiver but that he also steps into the dealer's shoes and in fact becomes the seller or lessor. Depending on the specific arrangements the credit grantor and the credit receiver come to stand to each other in the same relationship of seller and purchaser as did the credit receiver and the dealer with whom the transaction was originally negotiated. The credit receiver now owes payment to the credit grantor, but the credit grantor also has certain common law and statutory obligations as seller towards the credit receiver, e.g. concerning latent defects.
8. The broker's role is typically as follows:<sup>3</sup>
  - (i) He advertises his ability and willingness to find third parties prepared to enter into agreements (also referred to as "use agreements") with credit receivers.
  - (ii) He prepares the use agreement and provides the necessary documentation.
  - (iii) He acts as an agent between the credit receiver and the third party.
  - (iv) He is instrumental to the process of the signature of the use agreement by the parties.
  - (v) He delivers or causes the vehicle to be delivered to the third party.
  - (vi) He processes the administration arising from the use agreements.
  - (vii) He does not inform the credit grantor of the existence of the use agreement nor does he obtain the latter's consent thereto.
  - (viii) Some brokers represent to the credit receiver and the third party that the broker will inform the credit grantor of the existence of the use agreement, alternatively that the arrangement is approved by the credit grantor.

<sup>1</sup> A credit grantor is defined by the Credit Agreements Act, No. 75 of 1980 as—

- (a) a seller, or a person who renders a service, in terms of a credit transaction, and includes a person to whom the rights or the rights and obligations of any such seller or any such person so rendering a service have passed by assignment, cession, delegation or otherwise,
- (b) a lessor in terms of a leasing transaction, and includes a person to whom the rights or the rights and the obligations of any such lessor have passed by assignment, cession, delegation or otherwise

<sup>2</sup> As defined by the Credit Agreement Act, No. 75 of 1980, a credit receiver—

- (a) is a purchaser, or a person to whom a service is rendered, in terms of a credit transaction, and includes a person to whom the rights or the rights and obligations of any such person to whom a service is rendered, have passed by assignment, cession, delegation or otherwise;
- (b) a lessee in terms of a leasing transaction, and includes a person to whom the rights or the rights and obligations of any such lessee have passed by assignment, cession, delegation or otherwise

<sup>3</sup> See *S v G M Sheppard Properties CC and Gavin Michael Shepherd*, Case No. 41/2282/89, Regional Court, Johannesburg.

- (ix) As a rule brokers do not inform credit receivers of their statutory obligation to provide relevant information to the credit grantor, nor do they point out that the credit receiver's participation in the arrangement may constitute a breach of the contract between the credit receiver and the credit grantor. Brokers also fail to point out that the use agreement is in fact void.
- (x) Some brokers may explicitly inform the credit receiver and third party that the use agreement is lawful.

#### IV. SUBMISSIONS RECEIVED

9. The Committee received 14 letters from consumers who had dealt with a debt broker. Although the accounts differ in detail the complaints related are basically similar. After having noticed a press advertisement which offered assistance with regard to the taking over of hire purchase or lease payments on motor vehicles the complainant contacted a debt broker who offered to find a purchaser who would "take over" the complainant's payments on his vehicle. The broker presented the complainant with a document which was likely to be represented as being a proper and legal document in terms of which the complainant entered into an agreement with a third party who would assume the complainant's obligations and, most importantly, pay his instalments to the financing institution. The complainant then parted with his vehicle. From his point of view the whole purpose of the transaction was that the third party (or purchaser) would regularly meet the payments to the financing institution thereby relieving the complainant of his own obligation. Complainants saw the third party as a substitute debtor whose indebtedness would replace their own indebtedness. Complainants believed or were led to believe that the arrangement had the approval of the bank in question.
10. It subsequently transpired that the purchaser had failed to meet the commitments to the bank. In many cases this was only revealed when the bank instituted action against the complainant for payment of arrear instalments and/or return of the vehicle. It was not unusual for the vehicle to have been exchanged more than once on the same basis so that its eventual whereabouts could not be traced or the vehicle could only be recovered with difficulty. In some cases the vehicle had disappeared or been damaged. The complainants suffered extensive losses. Insurance claims were compromised and in several cases complainants were burdened with unpaid traffic fines. It is clear from the various complaints that the reliability and credit worthiness of the purchasers were not strictly controlled. The abuse of and damage to vehicles evidence a general lack of responsibility on the part of purchasers towards what was in fact not their property and in the preservation and care whereof they had only a tenuous interest. In most cases there was a marked deterioration in the condition of the vehicle and often a substantial reduction in its value.
11. A submission received from a broker describes the essence of his business as acting as an agent who brings two parties together, the one wishing to part with a motor vehicle on terms most favourable and one wishing to acquire a motor vehicle at the least reasonable expense. On the basis of an advertisement the broker receives enquiries both from people who wish to part with their vehicles and those looking for a vehicle. Once a "buyer" is matched with a particular "seller" the broker acts as an intermediary between the parties. The vehicle is delivered to the third party provided that the broker's commission has been paid, the third party has entered into an agreement with the credit receiver and any arrear instalments have been paid to the bank. The broker collects from the third party any amount of arrear instalments as well as one monthly instalment in advance, which monies are paid over to the bank. The form of agreement between the credit receiver and the third party is provided by the broker. In terms of this contract the parties acknowledge that the relevant bank is the owner of the vehicle. The form of agreement also stipulates that the credit receiver consents to the third party taking ownership of the vehicle once the total amount has been paid to the bank. The third party is obliged to insure the vehicle, to maintain it in good condition and to sign a voluntary surrender form. While the broker carries out some form of credit assessment this is not done in conjunction with the bank nor is this assessment approved by the bank. It is highly improbable that the broker and the bank would apply the same standards of credit worthiness. It is claimed that in this broker's experience it is unusual for a third party to renege on his obligations.
12. According to the broker in question the result is that the bank becomes fully paid up to the extent that the debt is then outstanding, that the credit receiver is relieved from an unwanted burden, and that the third party has the benefit of a vehicle at an affordable price. It is this broker's practice to maintain contact with the credit receiver and the third party on a monthly basis, to verify that payments are regularly made and to take action against a defaulting third party by collecting the vehicle from him and by making the arrear payments to the bank itself, recouping that payment when the vehicle is subsequently placed with another third party. The basis of the broker's action against a third party is not clear. It is also claimed that this firm has even had repairs effected to vehicles and that it has had dealings with banks. The banks do not deny that they sometimes receive payments made on behalf of credit receivers but they firmly maintain that it is their policy not to have any dealings with debt broker.

13. The Association of General Banks as well as individual banks also complained about the business practice and indicated that they strongly disapprove thereof

#### V. EVALUATION OF THE BUSINESS PRACTICE

14. A credit receiver under a credit agreement who, before he has acquired dominium in the goods, sells or otherwise alienates them without the owner's consent commits theft<sup>1</sup>
15. In terms of section 8 of the Credit Agreements Act the credit receiver must, if the goods are removed from the place where the goods are ordinarily kept, or if he loses or parts with possession of the goods, within 14 days notify the credit grantor by registered post of the changed circumstances and indicate the name and address of the person in whose possession the goods are or to whom they were handed over, and of the place they are kept. Failure to comply with section 8 is an offence punishable by a fine or imprisonment.
16. By disposing of his vehicle to a third party through the offices of a broker the credit receiver is also likely to be in breach of his contract with the credit grantor since credit agreements as a rule contain provisions—
- (i) reserving ownership to the credit grantor until the credit receiver's obligations have been discharged; and
  - (ii) restricting the credit receiver's rights to sell, let, or otherwise alienate or encumber the goods without the credit grantor's permission. Unless the credit grantor's permission to the arrangement has been obtained the agreement between the credit receiver and the third party will, moreover, be invalid and unenforceable. The third party acquires no enforceable rights and cannot rely on the use agreement to protect his interests
17. In a recent prosecution of a broker on charges of theft and fraud the court held that in the circumstances of the particular case the conduct of a broker who had failed to obtain the consent of the credit grantor constituted theft. The Committee accepts that the terms of all credit agreements are not identical and that the conduct of brokers are not uniformly similar. The business practices of various brokers will consequently not necessarily involve either theft or fraud. The point is that in the absence of the consent of the credit grantor being obtained the broker as well as the credit receiver run a considerable risk of committing either theft or fraud or both
18. In view of his function and business a broker presumably cannot assist in the (purported) transference of the credit receiver's rights and obligations to a third party without apprising himself of the content of the credit receiver's obligations to the credit grantor and of the relevant provisions of the Credit Agreement Act. As it must be assumed that a broker is or should be aware of the provisions of the Credit Agreements Act as well as of the relevant provisions of his client's contractual obligations towards the credit grantor the broker must be assumed to be aware of the credit receiver's statutory obligations and to the distinct possibility of breach of contract by the credit receiver and the commission of various offences by the credit receiver as well as by the broker himself. In view of the nature of his business the broker further has a duty towards his client to determine whether the client is aware of these legal duties and obligations, and where he is aware that the credit grantor disapproves of the arrangement, to point this out to the credit receiver. The broker can not be heard to say that he is unaware of his own and the credit receiver's duties and obligations.
19. Section 1 (iii) (b) of the Act refers to "any scheme, practice or method of trading, including any method of marketing or distribution". The Committee is satisfied that the business practice described in section II of this report constitutes a business practice for the purpose of section 1 (iii) (b).
20. Section 1 (vii) of the Act provides that a harmful business practice is constituted by any business practice which, directly or indirectly, has or is likely to have the effect of—
- (a) harming the relations between businesses and consumers;
  - (b) unreasonably prejudicing any consumer, or
  - (c) deceiving any consumer
21. Once it has been determined that specific conduct or any situation constitutes a business practice the next step is to establish whether one or more of the three requirements above are satisfied. Only if this is the case can it be said that the conduct or situation in question constitutes a harmful business practice. The Committee is of the opinion that the business practice in question satisfies all three the above criteria.

<sup>1</sup> See Diemont and Aronstam *The Law of Credit Agreements and Hire-Purchase in South Africa* 5ed 1982 Juta p 245; and *S v Van Heerden* 1984 1 666 AA

**VII. CONCLUSION AND RECOMMENDATIONS**

30. The Committee has found that the business practice investigated constitutes a harmful business practice for the purposes of the Act. No grounds justifying the practice in the public interest have been found.
31. The Committee has also considered that desirability of a prohibition on advertising relating to the business practice. It is clear that if brokers are not allowed to advertise their business this should effectively contribute to bringing the practice to a halt. Should the Minister prohibit only the practice itself any advertisement relating to the business will still come to the notice of the authorities so that necessary action can be taken. In view of certain practical consequences flowing from a prohibition on advertising the Committee will, whenever possible, avoid taking steps that may result in such a prohibition. In the circumstances the Committee has found it unnecessary to make this recommendation to the Minister, although the matter can obviously be reviewed should the need arise.
32. It is accordingly recommended that in terms of section 12 (6) of the Act the Minister declares unlawful the business practice whereby any person—
- (a) helps any credit receiver to breach a credit agreement, or
  - (b) excepting the credit grantor, or with the permission of the credit grantor, purports to arrange the transfer to another person of the rights and obligations of a credit receiver under a credit agreement.

**PROF. L. A. TAGER,**

Chairman · Business Practices Committee

**BYLAE****SAKEPRAKTYKEKOMITEE**

**VERSLAG INGEVOLGE ARTIKEL 10 (1) VAN DIE WET OP SKADELIKE  
SAKEPRAKTYKE, 1988 (WET No. 71 VAN 1988)**

**VERSLAG No. 13****SKULDMAKELARY****INHOUD**

- I. Inleiding.
- II. Die Sakepraktyk.
- III. Voorleggings ontvang.
- IV. Evaluasie van die sakepraktyk
- V. Gevolgtrekking en aanbevelings.

**I. INLEIDING**

1. Die Sakepraktykekomitee het ingevolge artikel 8 (1) (b) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 71 van 1988) ("die Wet"), ondersoek ingestel na 'n sakepraktyk waarby 'n kredietopnemer uitgenooi en bygestaan word om sy regte en verpligtinge ingevolge 'n kredietooreenkoms aan 'n derde party oor te dra. Inligting deur die Sakepraktykekomitee bekom toon dat dit 'n sakepraktyk is wat wydverspreid voorkom.
2. Kennis van die ondersoek is gegee ingevolge artikel 8 (4) van die Wet in Algemene Kennisgewing 232 van 1990 gepubliseer in *Staatskoerant* No 12375 van 30 Maart 1990.
3. Volgens die kennisgewing het die ondersoek betrekking op 'n sakepraktyk—
  - (i) waarby enige persoon—
    - (a) enige kredietopnemer help om 'n kredietooreenkoms te verbreek; of
    - (b) uitgesonderd die kredietgewer, of met die toestemming van die kredietgewer, voorgee om die oordrag na 'n ander persoon van die regte of verpligtinge van 'n kredietopnemer kragtens 'n kredietooreenkoms, te reel
  - (ii) enige reklame met betrekking tot die sakepraktyk.
4. Skriftelike en mondelinge vertoë is ontvang na aanleiding van die kennisgewing ingevolge artikel 8 (4) van die Wet

Any person may within thirty (30) days from the date of this notice submit written representations regarding this investigation to the **Director: Investigations of the Competition Board, Private Bag X720, Pretoria, 0001**, or Telefax (012) 322-5428 (Reference R4/2/1/2/49).

(22 February 1991)

Enigiemand kan binne 'n tydperk van dertig (30) dae vanaf die publikasie van hierdie kennisgewing skriftelike vertoe aangaande hierdie ondersoek rig aan die **Direkteur: Ondersoeke van die Raad op Mededinging, Privaatsak X720, Pretoria, 0001**, of Telefax (012) 322-5428 (Verwysing R4/2/1/2/49).

(22 Februarie 1991)

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**NOTICE 171 OF 1991**

**OFFICE OF THE COMMISSION FOR ADMINISTRATION**

INVESTIGATION IN TERMS OF SECTIONS 10 (1) (a) AND (d) OF THE MAINTENANCE AND PROMOTION OF COMPETITION ACT, 1979 (ACT No. 96 OF 1979), INTO RESTRICTIVE PRACTICES AND MONOPOLY SITUATIONS IN THE SUPPLY AND DISTRIBUTION OF COAT-HANGERS, DRY-CLEANING CHEMICALS AND RELATED ACCESSORIES IN THE DRY-CLEANING INDUSTRY

The Competition Board hereby make known for general information in terms of section 10 (4) of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), that they are undertaking an investigation in terms of sections 10 (1) (a) and (d) of the Act to determine whether any restrictive practices and monopoly situations exist or may come into existence in the supply and distribution of coat-hangers, dry-cleaning chemicals and related accessories in the dry-cleaning industry.

A "restrictive practice is defined in section 1 of the Act as":

- "(a) any agreement, arrangement or understanding, whether legally enforceable or not, between two or more persons; or
- (b) any business practice or method of trading, including any method of fixing prices, whether by the supplier of any commodity or otherwise; or
- (c) any act or omission on the part of any person, whether acting independently or in concert with any other person; or
- (d) any situation arising out of the activities of any person or class or group of persons,

which restricts competition directly or indirectly by having or being likely to have the effect of—

- (i) restricting the production or distribution of any commodity; or
- (ii) limiting the facilities available for the production or distribution of any commodity; or
- (iii) enhancing or maintaining the price of or any other consideration for any commodity, or
- (iv) preventing the production or distribution of any commodity by the most efficient and economical means, or

**KENNISGEWING 171 VAN 1991**

**KANTOOR VAN DIE KOMMISSIE VIR ADMINISTRASIE**

ONDERSOEK INGEVOLGE ARTIKELS 10 (1) (a) EN (d) VAN DIE WET OP DIE HANDHAWING EN BEVORDERING VAN MEDEDINGING, 1979 (WET No. 96 VAN 1979), NA BEPERKENDE PRAKTYKE EN MONOPOLIESITUASIES BY DIE VERSKAFFING EN DISTRIBUSIE VAN KLEREHANGERS, DROOGSKOONMAAK CHEMIKALIE EN VERWANTE TOEBEHORE IN DIE DROOGSKOONMAAKBEDRYF

Die Raad op Mededinging maak kragtens artikel 10 (4) van die Wet op die Handhawing en Bevordering van Mededinging, 1979 (Wet No. 96 van 1979) hierby vir algemene inligting bekend dat hy kragtens artikels 10 (1) (a) en (d) van die Wet, ondersoek instel om te bepaal, ondersoek instel om te bepaal of enige beperkende praktyke en monopoliesituasies bestaan of mag ontstaan by die verskaffing en distribusie van klerehangers, droogskoonmaak chemikalieë en verwante toebehore in die droogskoonmaakbedryf.

'n "Beperkende praktyk" word in artikel 1 van die Wet omskryf as:

- "(a) enige ooreenkoms, reëling of verstandhouding, hetsy regtens afdwingbaar of nie, tussen twee of meer persone, of
- (b) enige besigheidspraktyk of handelsmetode, met inbegrip van enige metode om pryse vas te stel, hetsy deur die verskaffer van enige handelsartikel of andersins, of
- (c) enige handeling of versuim deur enigiemand, hetsy hy onafhanklik of tesame met iemand anders optree; of
- (d) enige toestand wat uit die bedrywighede van enige persoon of klas of groep persone ontstaan,

wat regstreeks of onregstreeks mededinging beperk deurdat dit die uitwerking het of waarskynlik sal hê om—

- (i) die produksie of distribusie van enige handelsartikel te beperk, of
- (ii) die fasiliteite beskikbaar vir produksie of distribusie van enige handelsartikel in te kort; of
- (iii) die prys van of enige ander teenprestasie vir enige handelsartikel te verhoog of te handhaaf, of
- (iv) die produksie of distribusie van enige handelsartikel op die mees doeltreffende en ekonomiese manier te verhoed; of

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- (v) preventing or retarding the development or introduction of technical improvements or the expansion of existing markets or the opening up of new markets; or
  - (vi) preventing or restricting the entry of new producers or distributors into any branch of trade and industry; or
  - (vii) preventing or retarding the adjustment of any profession or branch of trade or industry to changing circumstances."

A "monopoly situation" means a situation where any person, or two or more persons with a substantial economic connection, control in the Republic or any part thereof, wholly or to a large extent, the class of business in which he or they are engaged in respect of any commodity.

Any person may within thirty (30) days from the date of this notice submit written representations regarding this investigation to the Director Investigations of the Competition Board, Private Bag X720, Pretoria, 0001, or Telefax (012) 322-5428 (Reference R4/2/1/2/39 over R5/2/1/1/39).

(22 February 1991)

#### NOTICE 172 OF 1991

##### DEPARTMENT OF MANPOWER

##### LABOUR RELATIONS ACT, 1956

##### REGISTRATION AS AN EMPLOYERS' ORGANISATION

It is hereby notified for general information that the Garment Manufacturers' Association of the Western Cape has with effect from 5 February 1991 in terms of section 4 (7) of the Labour Relations Act, 1956, been registered as employers' organisation in respect of the Cut, Make and Trim Undertaking, as defined below, in the Magisterial Districts of Bellville, The Cape and Wynberg.

"Cut, Make and Trim Undertaking" means an undertaking concerned with the manufacture of clothing and merchandise by providing a service to fabricate and convert the components of assembled garments or other fabric items or merchandise, or any of the above processes.

(22 February 1991)

#### NOTICE 173 OF 1991

##### DEPARTMENT OF TRANSPORT

##### AIR SERVICES ACT, 1949 (ACT No. 51 OF 1949), AS AMENDED

Pursuant to the provisions of section 5 (a) and (b) of Act No. 51 of 1949 and regulation 5 of the Civil Air Services Regulations, 1964, it is hereby notified for general information that the applications, details of which appear in the Schedules hereto, will be heard by the National Transport Commission

- (v) die ontwikkeling of invoering van tegniese verbeterings of die uitbreiding van bestaande of die skepping van nuwe markte te verhoed of te vertraag; of
- (vi) die toetrede van nuwe produsente of distreerders tot enige tak van die handel of nywerheid te verhoed of te beperk; of
- (vii) die aanpassing van enige beroep of tak van die handel of nywerheid by veranderde toestande te verhoed of te vertraag."

'n "Monopoliesituasie" word omskryf as " 'n situasie waar enige persoon, of twee of meer persone met 'n wesentliche ekonomiese verbintenis, geheel en al of grootliks die tipe besigheid waarin hy of hulle met betrekking tot enige handelsartikel betrokke is, in die Republiek of enige deel daarvan beheer."

Enigiemand kan binne 'n tydperk van dertig (30) dae vanaf die publikasie van hierdie kennisgewing skriftelike vertoë aangaande hierdie ondersoek rig aan die Direkteur: Ondersoeke van die Raad op Mededinging, Privaatsak X720, Pretoria, 0001, of Telefax (012) 322-5428 (Verwysing R4/2/1/2/39 oor R5/2/1/1/39).

(22 Februarie 1991)

#### KENNISGEWING 172 VAN 1991

##### DEPARTEMENT VAN MANNEKRAG

##### WET OP ARBEIDSVERHOUDINGE, 1956

##### REGISTRASIE AS 'N WERKGEWERS-ORGANISASIE

Hierby word vir algemene inligting bekendgemaak dat die Garment Manufacturers' Association of the Western Cape met ingang van 5 Februarie 1991 ingevolge artikel 4 (7) van die Wet op Arbeidsverhoudinge, 1956, as 'n werkgewersorganisasie geregistreer is ten opsigte van die Sny-, Maak- en Tooi-onderneming soos hieronder omskryf, in die landdrostdistrikte Bellville, Die Kaap en Wynberg.

"Sny-, Maak- en Tooi-onderneming" beteken die onderneming wat te doen het met die vervaardiging van klerasie en handelsware deur 'n diens te verskaf om die komponente van saamgestelde kledingstukke of ander materiaalartikels of handelsware te fabriseer en te omskep, of enige van bogemelde prosesse.

(22 Februarie 1991)

#### KENNISGEWING 173 VAN 1991

##### DEPARTEMENT VAN VERVOER

##### WET OP LUGDIENSTE, 1949 (WET No 51 VAN 1949), SOOS GEWYSIG

Hierby word ingevolge die bepalings van artikel 5 (a) en (b) van Wet No. 51 van 1949 en regulasie 5 van die Regulasies vir Burgerlugdienste, 1964, vir algemene inligting bekendgemaak dat die Nasionale Vervoer-kommissie die aansoeke waarvan besonderhede in die Bylaes hieronder verskyn, sal aanhoor



22. There are abundant indications that consumers have been deceived and unreasonably prejudiced. The terms of their relationships with credit grantors and their obligations under both the common law and the Credit Agreements Act have been misrepresented. Consumers have been enticed into committing offences. This type of business practice leads to justified disappointment with the business community on the part of consumers. As a result of the business practice consumers have suffered substantial hardship and financial losses, and they have been burdened with additional interest and legal costs. Consumers have had to face legal proceedings instituted by credit grantors and they have been exposed to criminal prosecution. Vehicles have been damaged or lost. A business practice by means of which consumers are induced to enter into invalid or worthless contracts, resulting in widespread disappointment of their expectations, not only has the capacity to harm relations between businesses and consumers in general, but also brings the whole business community into disrepute.
23. Having found that the business practice as described in the notice made known under section 8 (4) of the Harmful Business Practices Act by General Notice 232 of 1990<sup>1</sup> constitutes a harmful business practice, it must be considered whether this harmful business practice is justified in the public interest.
24. In this respect account is taken of considerations such as the undesirability of regulatory intervention on behalf of consumers. Consideration is also given to matters such as the likelihood and magnitude of financial harm to consumers if a harmful business practice is allowed unchecked, and the fact of whether or not a harmful business practice conflicts with policies expressed in either legislation or the common law.
25. The system of debt broking described is clearly in conflict with the policy of the Credit Agreements Act requiring that the credit receiver should keep the credit grantor informed of relevant information pertaining to the credit receiver as well as pertaining to the goods forming the subject matter of their relationship. The business practice simultaneously consists of the giving of assistance to consumers to commit, whether wittingly or unwittingly, breach of their contracts with credit grantors and to enter into invalid agreements with third parties.
26. The Credit Agreements Act provides a framework for the responsible extension and use of consumer credit. The fact that consumers become unable to meet their credit obligations may be due to a number of causes, including the general rise in the cost of living and unemployment resulting from inflation and weak economic growth. Consumers sometimes assume credit obligations which they cannot shoulder, while credit grantors are not always as strict as they should be in taking on credit risks that might be better avoided. A general improvement in economic conditions might prevent some consumer defaults, but there is a clear need for better consumer education regarding the responsible use and implications of consumer credit. On the other hand a more fastidious approach to the extension of credit to consumers may also be called for on the part of some credit grantors.
27. The regulation of consumer credit by means of laws such as the Credit Agreements Act constitutes an important part of consumer law and provides significant protection to consumers. The regulation of credit is a feature of virtually all legal systems both modern and ancient. The availability of credit appears to be both potentially advantageous and harmful. The sensible utilisation of credit makes possible expansion and growth and the maintenance and creation of employment. The excessive use of credit has plunged both individuals and societies in penury. The Credit Agreements Act seeks to achieve a reasonable balance between the interests of credit receivers and credit grantors. In so far as the business practice of debts broking conflicts with the policies of the Credit Agreements Act the Committee is of the view that the practice cannot be justified in the public interest.
28. Various ostensible advantages of the business practice for the credit receiver, the credit grantor and the third party have been pointed out, such as the facts that the credit receiver is released from his debt obligations, that the third party can acquire a vehicle at an attractive price, and that the credit grantor recovers arrear payments outstanding as on the date of the debt broking transaction. These advantages are only advantages if the rights and obligations of the credit grantor and the credit receiver are entirely disregarded and if the fact that the credit grantor still has a property and contractual interest in the vehicle is ignored. These ostensible advantages can consequently not be taken into account in determining whether the business practice is justified in the public interest.
29. The essence of the practice of debt broking consists of the actions of the broker in assisting a credit receiver to transfer, without the knowledge of the credit grantor, the credit receiver's obligations to a third party. As was pointed out such a purported transfer is not only void but also prohibited by law, exposing both the credit receiver and the broker to prosecution and civil legal action. This conduct is normatively objectionable in terms of existing law.

<sup>1</sup> Published in *Government Gazette* No 12375 of 30 March 1990

# Board to probe textbook industry

THE Competition Board is to investigate whether any restrictive or monopolistic practices exist in the textbook industry

An announcement about the investigation will be published in today's Government Gazette.

The investigation was initiated on the basis of complaints made by certain booksellers in Natal that monopolies relating to some large publishers existed, a Competition Board spokesman said yesterday

He said the investigation would examine the full spectrum of the supply and distribution network of textbooks to primary, secondary and tertiary

levels of education in SA.

The publishing of textbooks in SA is a multimillion-rand business. The Department of Education and Training (DET) alone spent R51m on textbooks this financial year.

However, according to Juta MD James Duncan, the DET is not one of the largest buyers at present. Homelands were huge buyers of textbooks.

Duncan said there were a host of education departments in SA and the homelands and each had its own systems and purchasing policies.

Book Trade Association of SA

president Eckhard Oellerman said certain education departments approved four to six textbooks for a course for a particular standard and each school chose the one it would use.

The contract price was agreed between the publisher and the education department. The publisher chosen had to be a member of the SA Publishers Association, but this was to eliminate fly-by-night suppliers, Oellerman said.

Interested parties may make written representations on the matter within 30 days to the Competition Board.

Day 22/2/91

ZILLA EFRAT

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DEREGULATION (245)  
**BUREAUCRATS RESIST**

**Local authorities** in Natal continue to resist the scrapping of most business-licence requirements and trading-hour laws, but this is unlikely to stop parliament from pushing ahead FM 22/2/91

The Business Bill, now being debated by the parliamentary Joint Committee on Trade & Industry, would replace the interim measure that took effect on January 1 1990 that eliminated licence requirements except for escort services and businesses that process or handle food. They also allowed unrestricted trading hours every day except Sunday and religious public holidays

But Natal was temporarily exempted from the deregulation because the provincial government depends on licence fees for income (*Business* December 15 1989). Municipal bureaucrats, fearful of losing their licensing department jobs and power to restrict businesses, also opposed the measures, especially in Cape Town

Jimmy Sadie, director of the Pretoria-based United Municipal Executive, which represents local authorities throughout the country, says there is now a difference of opinion between members in Natal and the other three provinces. This makes it a "sensitive issue" and the executive doesn't want to comment, particularly because it may be called to give evidence to the committee.

As a smokescreen for their real complaints, local authorities objecting to the Bill argue that it will lead to chaos and a drop in standards. But Brian Goodall, the DP spokesman for Trade & Industry and one of the staunchest supporters of the measure, says the deregulation has been in place for more than a year "and the sky hasn't fallen on our heads."

He says the Bill is particularly beneficial to small business and the informal sector because it removes many restrictions on their

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(245)  
activities. "Government has talked about deregulation for years. This is the opportunity to put its money where its mouth is. If parliament doesn't pass this Bill, then all the talk of deregulation will have been meaningless. If we are serious about free markets and free competition, then this measure must go through." FM 22/2/91

Goodall says deregulation is an even more important issue than privatisation. "We have a simple choice, we either adjust wealth discrepancies through the tax structure — and this will play a role — or through economic structures by allowing the marketplace to eliminate the discrepancies." ■

# Board gets hooks into coat hanger industry

THE wire coat hanger industry is to come under the scrutiny of the Competition Board

ROBERT LAING

Board chairman Pierre Brookes says he has received a complaint that the makers of plastic-coated hangers are in collusion and an investigation has been launched

The owner of a dry-cleaning firm in Mamelodi has claimed that a collusive relationship exists between the only two manufacturers of the hangers used by the industry. Single-channel marketing was causing exorbitant prices, he said.

One manufacturer had apparently be-

come the sole distributor of the hangers, leaving the production to the other

"This case is special because it is the first complaint we have received from a black businessman. The Competition Board does not only exist for mega-corporations, but also to assist small businessmen," Brookes said.

Both manufacturers of coat hangers listed in the telephone directory pleaded ignorance and said they had no idea who the guilty party could be.

AECI has also become entangled in the case through being the sole local supplier of white spirits. The businessman asked the board to examine the monopoly in dry-cleaning chemicals.

Dry-cleaners told Business Day they were limited to buying coat hangers from Protea and chemicals from AECI.

All dry-cleaners approached said they welcomed the board's investigation.

An AECI spokesman said the small scale of the SA market made it impractical to have several suppliers of dry-cleaning chemicals.

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# Committee to probe cash lender's schemes

By June Bearzi  
Star Line

The Harmful Business Practices Committee has called on anyone who has a complaint about money lender and debt distributor Lucifer Spokie van Zyl or his agents and companies, Novio Finance and Reficul Industries, to write to the body within 14 days

The notice in today's Government Gazette announcing an investigation in terms of section 8(4) of the Harmful Business Practices Act, 1988, follows hot on the heels of a Star Line probe into Mr van Zyl's finance companies

Over the last few weeks Star Line has highlighted complaints from people burdened with debts and loan-seekers who made down-

Star 15/3/91  
payments amounting to as much as R8 000 to enter debt-distribution or cash loan schemes offered by Mr van Zyl

However, angry clients complained that loans were not forthcoming or that most of their creditors were not paid, and when they demanded their money back they were told to sign cancellation forms

## Desperate

Shocked clients said that when they eventually received "refunds", most of their cash had been deducted for "brokerage fees, commissions and services"

A financially strapped Johannesburg businessman, Mannie da Rocha, accused Mr van Zyl's Novio Finance operation of "kicking me when I was down" after he applied for a R40 000 loan to keep his business afloat

"I was desperate

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When I approached Novio I was told that if I made a R8 000 up-front payment, the loan would be confirmed within three to seven days

"After two weeks nothing was done so they said that if I was unhappy I should sign a cancellation document. Some time after that I got a R3 600 cheque — R4 400 was deducted for their 'expenses'," Mr da Rocha complained

The investigation by the Business Practices Committee will include Mr van Zyl's associates, employees and agents, among them Donovan Pretorius, Henry Strydom, Jan Human, Gert Fingerling, Chris Saai-man, Ferdie Beeslaar and Dewald Ahlers

All representations relating to Mr van Zyl and his associates' activities must be addressed to The Secretary, Business Practices Committee, Private Bag X84, Pretoria 0001

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# Alant expounds on Businesses Bill

B/D am 25/3/91

CAPE TOWN — Government was committed to a policy of deregulation aimed at ensuring ease of entry into the economy for all South Africans, Deputy Trade and Industry Minister Theo Alant said yesterday.

Introducing the second reading debate of the Businesses Bill in Parliament, Alant said the Bill was a product of this policy and represented a fundamental departure from the existing system of provincial control of business activities.

The Bill eliminates the licence requirements of all businesses other than those providing food or entertainment services, and allows unrestricted trading hours every day except Sundays and religious public holidays.

It had received widespread and enthusiastic support from all parties.

Alant said concessions had been made along the way, but the end product was a balanced proposal.

He said the Bill standardised the licensing procedures of the four provinces and drastically reduced the number of business categories requiring licences from 60 to a limited number in the food and entertainment industries. It abolished licensing boards and, contrary to earlier fears, did not institute a system of registration.

The Bill also cut down on regulation which stifled the business activities of hawkers, Alant said.

But it maintained appropriate controls over their activities, restricting them, for example, from doing business on frontages

LESLEY LAMBERT

of shops trading similar goods or from areas where they could obstruct traffic.

Licensing authorities would be able to refuse or revoke the licences of businesses in the licenceable categories if they did not comply with health and safety regulations.

The Bill affirmed the removal of restrictions on business hours during the week and on Saturdays. But, it did not affect restrictions on Sundays and religious public holidays except in Natal where the 1986 abolition of restrictions on Sunday trading hours would be maintained.

## Inequality

Alant said government was considering representations from the business and religious communities about Sunday trading.

DP MP Brian Goodall, a staunch supporter of the Bill, said the removal of unnecessary restrictions would help to reduce inequality in the economy without destroying growth potential.

Sapa reports Goodall said during the debate he hoped political apartheid would not be replaced by economic apartheid. Until blacks felt they also could enjoy the benefits of the market system, they would have no reason to support it.

NP MP Fanus Schoeman, who chaired a Parliamentary Joint Committee which considered the Bill, said it would make it easier for people to move into the business sector and help to create new jobs.

Probe into price differences  
of pharmaceutical goods

BEVERLY HUCKLESBY

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THE Competition Board is to investigate claims that the prices of pharmaceutical products distributed to drug wholesalers, retail pharmacists, dispensing doctors, private hospitals and clinics are inconsistent.

The investigation is to be gazetted today

The board said the probe had been launched in response to allegations that the pharmaceutical manufacturing industry discriminated against purchasers who sold drugs on prescription

SA Druggists MD Tony Karis said he favoured the investigation as the drug wholesale industry received the worst possible price on pharmaceutical products.

"The drug wholesale industry is the largest supplier to the private sector of which private hospitals and retail pharmacies are a major part.

"Dispensing doctors have been known to receive better deals than wholesalers who are paying a relatively high price per 10 000 units compared with the lower prices paid by dispensing doctors for 100 units.

National Drug Wholesalers' Association president Maurice Goldstein said yesterday the association believed "restrictive practices" were prevalent.

"This has been going on for a long time and the contention is that different prices apply to different buyers."

The Pharmaceutical Manufacturing Association was unavailable for comment.

B10am 22/3/91

# Quality controls will be good for trade SABS

By Paula Fray

The South African Bureau of Standards (SABS) greatest assistance to industry was the creation of internationally recognised quality systems, SABS director-general Dr Jean du Plessis said last week

Commenting on the Bureau's annual review Dr du Plessis said local industry was clearly beginning to realise that the introduction of quality systems could make a large contribution to profitability

Dr du Plessis said the Bureau's assistance in many areas enabled industry to exploit "export opportunities created by the changing political climate"

Thus their greatest help to industry was the creation of internationally recognised quality systems

"The removal of internal trade boundaries in Europe in 1992 will present South African exporters with strong challenges to compete on the European market

Successful competition would be possible only if quality was guaranteed," Dr du Plessis said

Industry's acceptance of the role of quality systems as a guarantee of quality was reflected by the growth of the SABS code of practice for quality management

"A total of 200 com-

panies were listed over the first eight years and 318 over the past two years, 161 during 1990 alone," Dr du Plessis said

Reviewing SABS activities for 1990, Dr du Plessis said the SABS had concluded a reciprocal recognition agreement with the German Association for the Certification of Quality Systems, a first step towards recognition of its listing scheme in Europe

Dr du Plessis said industry's improved acceptance of quality systems, as well as the Bureau's greater market orientation and the expansion of its services, were reflected by the improved SABS financial statements for the year ended 31 March 1990

The SABS's total income increased by 18,4 percent from R76,8 million to R91 million

Self-generated income increased by 21 percent from R47 million to R59 million, while the parliamentary grant was only 8,7 percent more at R31,9 million (R29,4 million)

Investigations, tests and services, the listing scheme, assessment services, consignment inspections, levies on compulsory specifications and permit fees paid on a production basis were the SABS's main sources of self-generated income



# SABS boasts increased income

GERALD REILLY

PRETORIA — The SA Bureau of Standards increased income last year by 18,4% — from R76,8m to R91m, according to the latest annual report.

Self-generated income increased 21% to R59m while the bureau's state grant was only 8,7% up to R31,9m.

Investigations, tests and services, its listing scheme, assessment services, con- signment inspections, levies on compul- sory specifications and permit fees paid were the main sources of self-generated income.

SABS director Jean du Plessis said the bureau had assisted industry to better exploit export opportunities created by the changing political climate.

Its greatest assistance to industry was

the creation of internationally recognised quality systems.

And industry's acceptance of the systems was reflected in the growth of the SABS code of practice for quality management.

More than 200 companies were on the bureau's listing scheme in the first eight years while 318 had joined over the past two years, Du Plessis said.

Du Plessis said the removal of international trade barriers in Europe next year would present SA exporters with a strong challenge to compete in European markets.

Successful competition however would be possible only if quality was guaranteed.

26/3/71

(245)

# Plenty to whine about as Barend ups dumpy duty

Star 2/4/91  
THE increase in excise duty on beer was disgraceful discrimination against the drink of the black man and the working man as a whole, the managing director of South African Breweries' beer division, Graham Mackay, said after Mr du Plessis had presented his Budget speech to Parliament

Mr du Plessis announced a 3c increase in the excise duty on a beer dumpy, but no duty was levied on unfortified wine

"I have no problem with the wine industry," Mr Mackay said "Our criticisms are aimed at the Minister of Finance"

He said South Africa's biggest beer producer was a victim and that the Government, in imposing such a heavy levy, was simply taxing what the traffic could bear

Precisely, is the view of Daan Colesky, Commissioner of Customs and Excise at the Department of Finance

He said he could understand that the beer industry wanted to achieve maximum sales, but the Government was faced with the problem that it had to generate revenue, for various social needs, by increasing taxes

"People won't stop drinking beer, though. Any decrease in sales will be temporary"

He said the increase should not have come as a surprise to the beer industry, all that was unexpected was that the in-

(245)  
In his Budget speech, Finance Minister Barend du Plessis proposed an increased excise duty of 3c on beer dummies, but wine was not taxed at all. Why this apparent discrimination?

JACQUELINE MYBURGH reports.

crease was substantially higher than last year's increase of 1c

The Government was deliberately targeting a successful product for extra taxes, Mr Colesky said

The beer industry had a large consumption and should be expected to make a contribution to the State coffers

The decision to increase the excise duty on beer by 20 percent — about 5 percent higher than consumer inflation — was made for a number of reasons

- It offered the Government much revenue because it was a buoyant industry with a large volume of sales

- The International Monetary Fund had commented on the fact that excise duties were relatively low compared with other countries in the world and recommended that the Government should at least increase duty to keep pace with the producer prices of the articles

Mr Mackay insists that his industry is a victim of discrimination and that the Government was taxing productivity

"We have an impeccable pro-

duction record and attract the tax because the common view is that we can afford it"

He said beer had about 55 percent of the market share and contributed between 75 and 80 percent of the excise

What he describes as the drink of the working man was being ignored in the interests of expediency, and excise-tax equality was not being served at all, by not taxing wine

There was no animosity between the beer and wine industries Mr Mackay said, because their markets varied

"Excise-tax equality is not being served at all — any way you look at it"

Mr Colesky insisted that South Africa was in step with other wine-producing countries who did not levy excise duties on unfortified wine, targeting beer and spirits instead

There had been a duty of 3 percent on wine until 1982, when it was abolished

Mr Colesky said natural wine was regarded as a natural agricultural product, and therefore not taxable, and that tax on the industry would not have done it any good □

Star 5/4/91

# SABS moots stricter labelling of textiles

(245)

Consumer Reporter

Consumers could soon have improved protection when buying textiles if a South African Bureau of Standards (SABS) draft code of practice for the labelling of textiles is approved

The proposed code provides for the labelling of textile products with the actual fibre content, for example "65 percent polyester/35 percent cotton",

rather than generic labelling such as "polyester/cotton"

A draft of the proposed code has been circulated for comment

The intention is to provide the buyer with more information

Since consumers are becoming increasingly aware of the performance to be expected from certain fibre types or blends of fibres, correct fibre content labelling would help them to

buy more wisely

Consumers would have information on how to care for the garment and an important benefit would be that people suffering from allergies would be able to avoid irritating fibres

Compulsory labelling would also assist in the control of imports and exports

The proposals were provided by a committee set up by the SABS

The committee agreed

that compliance with the proposed code of practice should be made compulsory in terms of the Merchandise Marks Act.

Such legislation would bring South Africa more in line with the United States, certain Far Eastern countries and all member-countries of the European Community, where regulations governing such labelling have been in effect for many years

# The big fish in the food chain

Spex 18/4/91

245

**N**EW STUDIES have revealed that no more than a handful of five supermarket chains control well over 50 percent of the multibillion-rand retail trade in food items that go into shopping baskets every year.

The combined total of 800 hyperstores and supermarkets run by the quintet of giants — Checkers, OK Bazaars, Pick 'n Pay, Spar and Shoprite — accounted for almost R13 billion of the R24 billion spent on groceries last year.

## Slice

The balance — less than a third of the overall total — was divided between the 20 000 smaller-fray grocery shops scattered around both urban and rural areas.

The huge slice of food sales taken by the five giant chains was as much as 65 percent in and around Johannesburg and Pretoria at a recent count.

The pattern of whales and minnows inside the massive food retail business is under constant study by the Market-Information Services, whose computer databank is widely considered as crucial to the grocery trade.

This joint managing director Gordon Pasley explains that hawkers miss the count because the small range of food-stuffs they offer does not usually put them in the bracket of full-scale grocers.

The spaza shops that operate in many black townships come into the count — but recent studies conclude that their combined impact on total food sales may be nowhere near as big as often assumed.

Popular guestimates about the collective clout of spazas in retail sales may be hopelessly exaggerated, says Ibis. Recent news reports had put the number of spaza shops now in business as high as 35 000, sharing a combined turnover of a phenomenal R7 billion.

"Our own surveys, drawn from 125 field workers, put the real total of spazas at closer to 3 000," says Mr Pasley. "In foodstuffs, their combined sales could be only around R500 000 a year — R1 billion at most, nothing like as significant as suggested lately."

All of a sudden, the figures on the spazas and the breakdown of sales patterns in the grocery retail business have become far more than of mere academic interest.

They have come under an intense new spotlight as a result of the launch of a special investigation by the Competition Board, the State watchdog on monopolies and fair business practices.

The investigation is looking into all aspects of the supply and distribution of foodstuffs by retail outlets.

It was triggered by allegations by small producers that some retail conglomerates were guilty of dictatorial practices, twisting their arms to keep prices low — or run the risk of losing huge orders.

It is the sort of complex business affair that has drawn little attention from newspaper headline writers so far. It sounds dull — whines never to be settled. Yet there is a lot at stake for consumers in view of the mammoth size of food bills in household budgets — and the fact that everybody's pocket could be affected by the outcome.

The SA Chamber of Business (Sacob) has underlined one very important aspect in its own submission to the Competition Board investigators: the best performers among the large multiple groups end the day with pre-tax profits as low as only 3 percent.

The implications sound clear. SA consumers have little to complain about if they weigh the cost of shopping against such slender profit-margins, particularly when they reflect on the fact that net profits of the best of British supermarket

chains come out twice as high at about 6 percent.

Nor does Sacob back away from the spotlight on the concentration of so much food retail business in so few hands — 50 percent of food sales may be dominated by five chains in South Africa, a couple of international comparisons

makes that look nothing extraordinary at all.

Sacob points out that in Holland, as an example, 42 percent of sales go to only four chains — Ahold, Vender, Superunie and Ziko.

And in Britain, as much as 60 percent of a much larger food retail trade is controlled

by only five chains — Sainsbury, Tesco, Gateway, Sainsbury and Asda.

Moreover, Sacob senior economist Bill Lacey argues, there is still plenty of elbow-room for small traders and newcomers, especially if they use a bit of initiative and lure customers with the special advantages of

personal service, location, phone-in orders and home deliveries, credit accounts and other merits which the giants cannot match.

Equally important in the debate stirred by the Competition Board probe, according to Sacob, is the chance to tackle the whole issue of market shares in the mammoth food retail trade from a black/white business angle now that old apartheid barriers are crumbling.

In its submission to the board, the chamber makes particular note of the unique divisions that apartheid caused to the food retail business.

Apartheid legislation prevented black businessmen from owning and operating shops in white areas, and white businessmen were excluded from black areas. What now?

"Sacob is not insensitive to the fears of small black retailers whose businesses might be threatened as a result of the removal of the Group Areas Act," says the submission.

"It might be argued that the abolition of all racial legislation should be accompanied by intervention measures which would provide for a transition period in the black areas which would effectively exclude any intrusion of the multiples and white retail operations in the black townships.

"This might ensure the survival of black retailing interests, but could only be to the cost of black consumers. Sacob could hardly be insensitive to black consumer interests, even if clothed under well-intentioned 'affirmative action' programmes.

"The resolution of this dilemma might require an accommodation in the form of some partnership arrangement which could satisfy in some respect the interests of the black community and black businessmen.

"To that end, Sacob believes that white and black business must examine new partnership techniques which would facilitate the adjustment process and evolve appropriate business strategies for the post-apartheid era.

"Furthermore, Sacob would be supportive of transitional measures — such as special financial assistance — to small black businessmen which would not interfere with the development of a single economy.

"If it is proposed that a racially divided environment be retained for whatever reason, then Sacob would express its unreserved opposition."

Sacob director-general Raymond Parsons confirms that talks are now likely with the National African Federated Chamber of Commerce and the Foundation for African Business and Consumer Services on the issue.

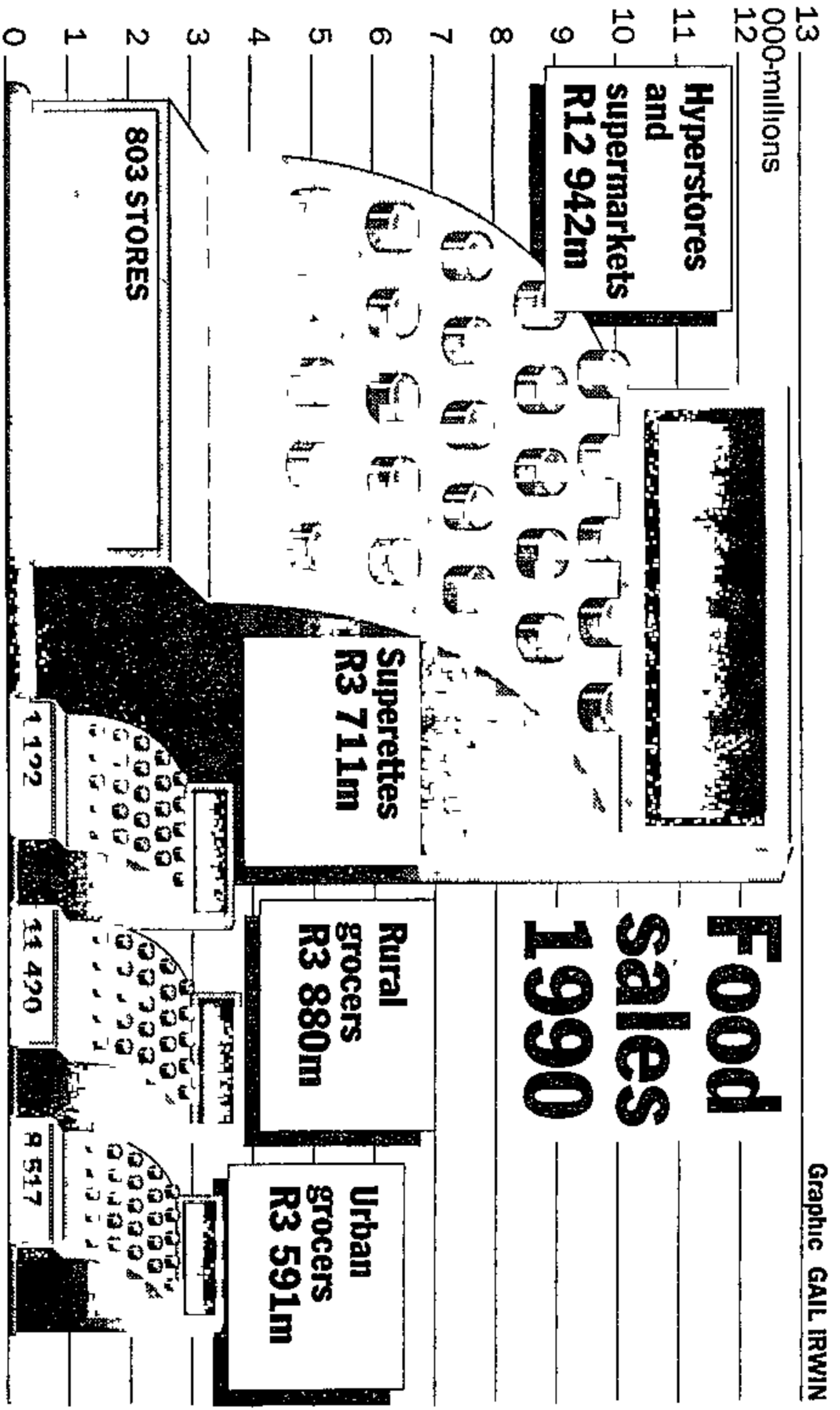
**Bargains**

The outcome of the partnership feelers could be important not only to black and white retailers but also to consumers.

This researchers estimate that black township consumers spend as much as 80 percent of their food budget at white-owned stores in the big metropolitan centres.

"The reason is quite simple," says one researcher. "They need to find better price bargains than the ones on offer near to home. It is well known that shop prices in the black townships are normally quite a lot higher — often because of the damage caused in spasms of unrest and complex distribution problems."

The investigation launched by the Competition Board, whether intended or not, looks likely to open a brand new dialogue on black/white business relations. Considering the scale of food buying in all household budgets, there's much at stake for the retail trade — and consumers. □



Graphic GAIL IRWIN

# After-hours booze trade on the cards

Star 25/5/91.

## POLITICAL STAFF

245 ~~248~~  
CAPE TOWN — Shopping hours for off-consumption liquor sales could be relaxed soon, the Government has hinted

The Department of Trade and Industry's annual report for 1990 says the law is to be reviewed to keep pace with "modern-day requirements"

Various aspects of deregulation are to be dealt with in a draft Bill to be prepared for comment.

By Shirley Woodgate

The South African Bureau of Standards has found in a recent countrywide survey that more than 30 percent of bread offered for sale in South Africa was considerably under- or overweight

In the two-week survey, about 2 000 loaves at 76 bakeries were weighed in the PWV area, Cape Town, Durban, Bloemfontein and Port Elizabeth

# SA bread weighed and found wanting

28/1/91  
were so off-standard that the bakers were prohibited from further baking until they complied with regulations, said a chief director of the SABS, Martin Kellerman, at a press conference in Pretoria today

In terms of the regulations drawn up after discussions between the Wheat Board, the South African Chamber of Baking and the Department of Trade and Industry, a standard loaf must weigh 400 g, 800 g or 1 200 g

A variation of minus 5 percent and plus 10 percent is allowed. A loaf of 800 g must therefore weigh between 760 g and 880 g and the average weight of 10 loaves must be more than 800 g

Non-standard bread such as rye loaves must be packed individually with the weight indicated on the packaging

"The greatest variation was in Port Elizabeth, where loaves with an average weight of 635 gm were found," he added

"The region where the best results were found was the PWV area, where variations were the smallest"

Mr Kellerman said about 95 percent of all bakers in South Africa were members of the SA Chamber of Baking and generally co-operated well with the SABS

In most cases of underweight, the variation was caused by lack of knowledge, lack of worker training, and even unsuitable equipment, and nobody was prosecuted

"But warnings were issued and in future we shall act more strictly," he said

He called on the public to co-operate with the SABS by reporting instances of under- and overweight bread, since the SABS could not conduct regular checks with its limited number of inspectors

Housewives League president Lyn Morris reacted by calling for severe punishment to be meted out to defaulting bakers

"Some bakers were unsure whether to charge GST after March 1 and one baker who went so far as submitting his tax was told he did not have to collect it

"It is not only time the Receiver got off his backside and told people the correct procedure, but it is time for total clarity on the whole bread situation"

"The whole bread situation has been badly bungled since the Government deregulated the bread price and removed the subsidy

Bakers warned to clean up act

# Bread weighed, found wanting

Star 29/5/91  
245  
By Shirley Woodgate  
and Jacqueline Myburgh

More than 30 percent of bread on sale in South Africa has been found by the SA Bureau of Standards to be under the weight required by law

The SABS recently conducted a countrywide survey involving about 2 000 loaves at 76 bakeries in the PWV area, Cape Town, Durban, Bloemfontein and Port Elizabeth

At two bakeries — one in Bloemfontein and the other in Port Elizabeth — loaves were so off standard that the bakers were prohibited from further baking until they complied with the regulations, a chief director of the bureau, Martin Kellerman said in Pretoria yesterday

A spot check by The Star yesterday revealed that Johannesburg bakers were also not complying with regulations

## Variation

Two out of four loaves of standard bread were below the required weight of 800 g, taking into account the permitted variation. One loaf weighed 725 g and another 755 g

In his statement the SABS referred to underweight and overweight loaves. A spokesman later explained that a loaf was deemed overweight until it was 10 percent over. Thereafter it was underweight for the next category. This prevented a baker claiming that a 600 g loaf was, in fact, an overweight 400 g loaf and not an underweight 800 g loaf

Bakers who were found by the SABS to be producing bread far under the required weight had been warned to correct the situation, Mr Kellerman said. This was a general warning to all bakers to clean up their act as prosecutions would definitely be instituted in future

In terms of regulations, a standard loaf must weigh 400 g, 800 g or 1 200 g

A variation of minus 5 percent and plus 10 percent is



allowed. A loaf of 800 g must therefore weigh between 760 and 880 g and the average weight of 10 loaves must be more than 800 g

Non-standard bread such as rye loaves must be packed individually with the weight on the packaging

"The greatest variation had been found in Port Elizabeth, where loaves had an average weight of 635 g," Mr Kellerman said

He added that the bakers producing about 95 percent of South Africa's bread were members of the South African Chamber of Baking and generally co-operated well with the SABS

The remaining 5 percent

of bread was produced by 3 000 smaller bakers not controlled by the chamber

James Dippenaar, executive director of chamber, said the chamber was pleased with the initiative taken by the SABS. It would benefit both the consumer and the bakers. The chamber would now take to task those found by the SABS investigation to be contravening the regulations

## Severe

Consumers who are not happy about the weight of the bread they are buying should report the matter to the chamber at (012) 341-7814

Mr Kellerman called on the public to report instances of underweight bread to the SABS

Housewives League president Lyn Morris reacted by calling for severe punishment to be meted out to defaulting bakers

"The whole bread situation has been badly bungled since the Government deregulated the bread price and removed the subsidy"

She was, however, pleased that the probe had taken place and that "someone is looking after the consumer"

"So much legislation in this country is not policed and is consequently not worth the paper it is written on," Mrs Morris said

**Just checking** Helené Dannheisser of The Star's Promotions eyes an under-weight loaf of bread which The Star bought at a Johannesburg delicatessen. It weighed 75 g below the required 800 g

Picture: Karen Fletcher

## Non-regulation bakers ordered out of kitchens

245 GERALD REILLY 182

PRETORIA — More than 30% of bread loaves failed to conform with weight requirements, according to an SA Bureau of Standards (SABS) survey *Bloom*

During a two-week period about 2 000 loaves from 76 bakeries nationwide were weighed *29/5/91*

At bakeries in Port Elizabeth and Bloemfontein loaves were so much off standard that the bakers were prohibited from further baking until they complied with regulations

Regulation bread weights set out by the Trade Metrology Act are 400g, 800g or 1 200g. Variations of 5% less or 10% more are allowed.

The region with the smallest weight variations was the PWV



# Bakers query survey

Star 30/5/91

Pretoria Correspondent

Major bakers have questioned claims by the South African Bureau of Standards that more than one-third of all South African bread is underweight.

South African Chamber of Baking, executive director James Dippenaar, yesterday said the SABS findings were based on a sample of only 2 000 loaves, whereas more than 1 700 million loaves were produced in South Africa each year.

"It was an inadequate sample as far as we are concerned," Mr Dippenaar said.

"While it may be true that 30 percent of loaves tested by the SABS were underweight, it is far-fetched to say 30 percent of all bread in South

Africa does not comply with weight requirements

"The bulk of bread baked is of the correct weight and the majority of bakers are playing the game"

However, the chamber, which represents about 450 bakers across the country, welcomed the SABS survey

Consumers who were unhappy about the size of their loaves could complain to the chamber, he added.

Reacting to Mr Dippenaar's statement that the SABS sample in five metropolitan centres — the PWV area, Cape Town, Durban, Bloemfontein and Port Elizabeth — was inadequate, an SABS spokesman said the organisation regarded its sample as representative

**SABS warning over false claims**

610 am  
30/5/91

MARC HASENFUSS

245 192

THE South African Bureau of Standards (SABS) has warned the construction industry to be wary of suppliers and manufacturers who make unfounded claims that their products comply with SABS specifications

SABS cited laminated wooden beams, doors, wood, concrete building blocks and paving blocks as products particularly affected by misrepresentations

SABS chief director Jan Meyer said legal action could be taken against people guilty of misrepresentation

Stur 16/7/91

## SABS opens grumbles line

Consumer Reporter

245

standards, would also be handled by the customer service

Customers with complaints about items bearing the South African Bureau of Standards mark can now call the organisation's new customer service.

The bureau said in a statement yesterday that consumers could call Pretoria (012) 428-6666 during office hours if they failed to get satisfaction from retailers when goods which had the SABS quality mark were faulty.

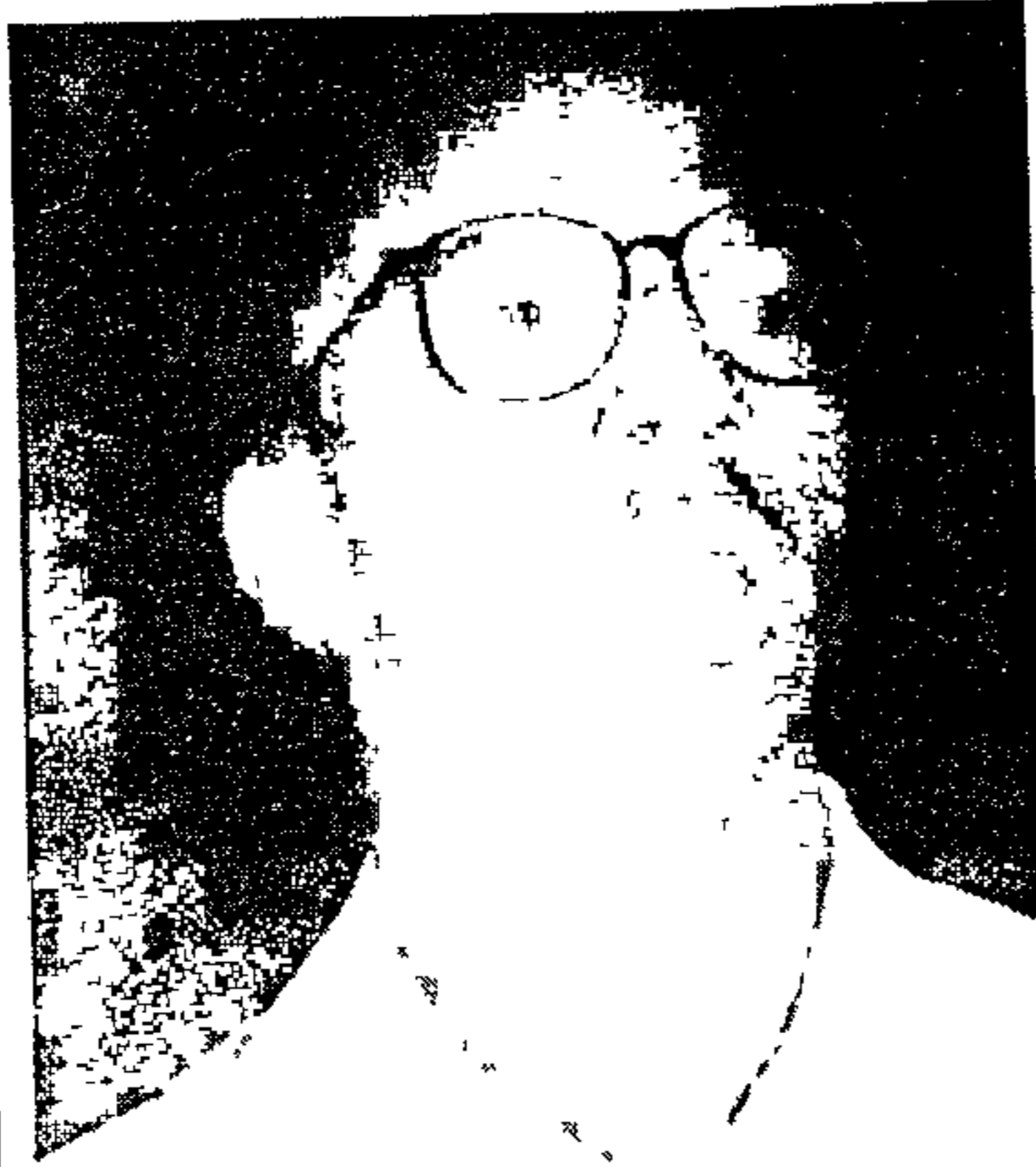
Complaints about goods not bearing the mark, but subject to legally compulsory safety, packaging or quality

standards, would also be handled by the customer service. Complaints about goods or services not falling in any of these categories should be addressed to the Consumer Council or other consumer organisations.

The SABS said goods subject to compulsory safety standards included all domestic electrical equipment.

These were tested regularly by the SABS on a random-sample basis.

In addition, any manufacturer or importer of such goods could submit samples to the SABS for safety testing before offering them for sale.



Azasco publicity secretary Siphon Maseko will speak on youth politics today.

## Youth politics to be discussed by youth bosses

AZAPO and ANC youth leaders will discuss "youth politics in the anti-apartheid struggle" at the Downtown Inn in Plein Street, Johannesburg, today.

They are national chairman of the ANC Youth League Peter Mokaba and Siphon Maseko, who is the publicity secretary of the Azanian Students Convention, and a BA student at Wits University. Khotso Seathlolo,

who was one of the central figures in the June 1976 uprising, will chair the session which starts at 5pm.

Seathlolo was released from Robben Island prison last year after spending eight years for charges relating to terrorism and recruiting people for armed revolt.

The meeting is being held under the auspices of *Tribute* magazine

## New SABS service to help customers

CUSTOMERS with complaints about items bearing the South African Bureau of Standards mark can now call the newly installed SABS customer service.

The bureau said in a statement issued on Monday that consumers could call Pretoria (012)428-6666 during office hours if they failed to get satisfaction from retailers when goods which had the SABS quality mark were faulty.

Complaints about goods not bearing the mark but subject to legally compulsory safety, packaging or quality standards would also be handled, the bureau said

Complaints about goods or services not failing in any of these categories should be addressed to the Consumer Council or other consumer organisations.

The SABS said goods subject to compulsory safety standards included all domestic electrical equipment. These items were tested regularly by the SABS on a random sample principle

In addition, any manufacturer or importer of such goods could submit samples to the SABS for safety testing before offering it for sale. - *Sowetan Correspondent*

(245)  
Sowetan  
17/7/91

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17/7/91

# Competition Board plans big campaign

245  
Bloday 18/7/91  
THE Competition Board is to push for speedy prosecution of cases involving alleged contraventions of competition law

In an interview yesterday board chairman Pierre Brooks said he was concerned about the board's credibility and he vowed to go to great lengths to bring to court a Maintenance and Promotion of Competition Act case.

No cases have gone to court in five years. The SAP's commercial branch is currently investigating 12 cases.

"If at all possible, we would like to see prosecutions. Even if a verdict of not guilty is returned, it would show that the system is working. A prosecution would also serve as a deterrent," Brooks said.

Brooks said he would meet attorneys-general to discuss prosecution problems. He had already held talks with the Justice Department on the low priority the courts and the police apparently accorded cases involving competition legislation. The commercial branch's difficulties in investigating these alleged contraventions would also be addressed.

Conviction could result in a fine of R100,000 or five years' imprisonment.

Failure to prosecute over the past five years had prompted the board to propose that the process be "decriminalised", allowing the board itself to administer jus-

GRETA STEYN

tice in the form of fines. But a change had been rejected in favour of improving current enforcement mechanisms.

Cases handed over to the police in the past 18 months involved "some major firms", industry associations and small groups of individuals. Brooks declined to name companies under investigation.

On the debate about economic concentration, Brooks said he would make a definitive policy statement next month in the report on Anglo American's holding in Gold Fields of SA (GFSA). It would be handed to the plenary session of the board for endorsement next month and would be made public after Cabinet approval.

He said the board's views on interlocking directorships would be included in the report. He declined to indicate what the findings would be, but said he liked to draw heavily on international practice. He did not exclude the possibility of legislative changes after the release of the report.

The board's investigation into the supply and distribution of retail foodstuffs would not be released until the Board of Trade and Industry's (BTI) investigation into food inflation was completed. Brooks would provide the BTI with input on the effect of retail market structures on food prices.

# Low Equity poll votes to maintain SA ban

LONDON — British actors' union Equity yesterday voted against lifting its ban on the sale to SA of television and radio material involving its members

Veteran actor Marius Goring, who forced the referendum to be held, said he would pursue the matter through the courts and hoped to get the ban declared unconstitutional within three months

In a low poll, 6 675 (14,5%) of the total of 46 000 Equity members voted on lifting the ban, which was imposed following a similar referendum in 1976

Of the 6 650 valid papers in the postal

ballot, 3 763 (56,6%) voted against ending the ban, while 2 887 (43,3%) were in favour

A second question — whether Equity should discontinue its policy of excluding SA from a list of countries where theatre actors may tour with the backing of the union — was defeated by a similar margin

Goring, 79, said he had already instructed lawyers to resume a case against Equity which was adjourned earlier this year in order that the issue might be settled at less cost through the referendum

Some Equity council members have already successfully brought one action against Equity

In 1986 the High Court declared that Equity's policy of instructing members not to work in SA was sectarian and unconstitutional

Goring's application on the policies in yesterday's referendum is based on a claim that they are unconstitutional for the same reason — namely that they are sectarian, which is forbidden in the Equity constitution

To Page 2

## Equity

Goring said estimates indicated the ban on sales to SA was costing British actors income of around R35m a year

Yesterday's result was a triumph for the radical Afro-Asian Group in Equity, which argued that employment prospects of black members would be damaged by lifting the ban. It said producers would not cast them in shows likely to be sold to SA

Last night another Equity member, Fred Keeling, said he would head a campaign for another referendum, this time

calling for a partial lifting of the ban on sales

Keeling said he believed the "no" vote was more a vote against the SABC than against SA, and members would favour the sale of programmes to M-Net and Bop TV

He added that a more aggressive effort to counter misinformation spread by some Equity members during the referendum might have led to a vote in favour of programme sales

From Page 1

# Heat is on red meat industry

By Helen Grange  
Pretoria Bureau

Star 245  
19/7/91

An all-embracing investigation is to be conducted into the red meat industry by the Competition Board, the Government announced yesterday.

The industry has recently been under criticism over its marketing policies, which result in the consumer paying a high price — but the farmer gets less than half of it.

The Ministry for Economic Co-ordination and Public Enterprises, and the Ministry of Agriculture and Agricultural Development, said yesterday that the investigation would review all arrangements and structures involving meat production and marketing.

It would also investigate and make recommendations on the most appropriate manner in which red meat production and marketing ought to be regulated on a competitive basis.

Specific attention would be devoted to the prevailing marketing arrangements and the desirability of privatising the South African Abattoir Corporation.

Jan van der Walt, manager of the Red Meat Producers Organisation at the South African Agricultural Union, said he was disappointed at not being consulted before the decision was made public. He added that the meat industry was already being deregulated.

A Farmers' Weekly magazine source recently reported that both farmers and consumers were victims of a "middleman syndrome" — agents and organisations who are controlling prices by hoarding rather than marketing meat surpluses in order not to disturb the high profit margins.

There is also a row over the importation of meat, with Dr Pieter Coetzee, senior general manager of the Meat Board, saying there is no need for importation of certain meats when these are already available.

# Competition Board to probe red meat sector

CAPE TOWN — Government yesterday instructed the Competition Board to conduct an "all-embracing" investigation into the red meat industry in SA

The probe could result in a major revamp of the entire industry, placing it on a more competitive and market-orientated footing with cheaper meat for the consumer as the ultimate goal.

The investigation, which will take place in terms of the Maintenance and Promotion of Competition Act, was announced jointly yesterday by Economic Co-ordination and Public Enterprises Minister Dawie de Villiers, and Agriculture Minister Kraai van Niekerk

The ministers said the board would be charged with the task of "authoritatively and impartially" determining the influence of existing legislation, regulations and marketing arrangements and structures on the red meat industry

The investigation will consist of two phases

□ A review of all arrangements and structures involving production and marketing; and

□ An investigation into the most appropriate manner in which red meat

## Political Staff

production and marketing ought to be regulated "on a competitive basis within a market force context", and recommendations on how this could be achieved.

Specific attention will be devoted to the prevailing market arrangements and the desirability of privatising the SA Abattoir Corporation "in a deregulated market environment"

## Deregulation

The role and functions of the existing marketing structure "within a market economy" will also come under the spotlight

The ministers said the investigation should put the government "in a position to take future decisions on the red meat industry with due regard for the policy of privatisation and deregulation and especially the necessity of competition"

The ministers said the probe would take place "with the knowledge of all the important role-players" in the industry. But they gave no indication when the investigation might be completed



# Cement cartel under spotlight

285 193  
CF 22/7/91 245

Own Correspondent

JOHANNESBURG. — The Competition Board has launched an investigation into the three-member cement cartel.

Competition Board chairman Pierre Brooks confirmed that the board was to review the cartel's exemption, granted in 1988, from the Maintenance and Promotion of Competition Act.

Brooks said the board hoped the investigation would be complete by year-end.

He said while there was no certainty the status quo would change, the board had decided that the circumstances surrounding the exemption had changed.

The cement cartel — consisting of PPC, Anglo-Alpha and Blue Circle, represented by the SA Cement Producers' Association (Sacpa) — has been a controversial issue in the building and construction industry.

Sacpa has come under fire for fuelling the rate of inflation in the construction industry and being arrogant and insensitive towards its customers.

Anglo-Alpha MD Johan Pretorius said as far as the producers understood the board had not officially stated its intention to embark on a full inquiry, "although the cartel would co-operate fully with any investigation".

The producers claim they require market stability which reduces the risk on the high capital expenditure required and allows the industry to accept a lower rate of return on investment.

Sacpa argues that this results in lower prices, which is in the public

interest.

But Concor Technicrete MD Peter Michau said the cartel should not consider itself unique as far as capital intensity was concerned. He said there was a risk involved in putting up a steel or aluminium factory or a fertiliser plant.

"It is just a question of managing one's capital adequately rather than seeking protection," he said.

A Sacpa positioning paper released on Friday claimed the cartel was in the best interests of the public.

The paper pointed out that market forces kept selling prices down and that prices had been in line with the PPI and the building materials cost index despite a significant increase in plant replacement costs.

## Capital intensive

"The high capital intensity of the industry was shown in the fact that an economically sized kiln cost about R500m at today's prices."

The document said that while comments were frequently made about the impact the price of cement had on the cost of a home, its research indicated that it was "surprisingly low" at 4% to 8%.

It added that low-income housing had a higher cement content but was subject to vigorous competition from alternative building systems.

The cartel said that in the US, anti-trust legislation has resulted in a number of adverse consequences for its cement industry.

The US industry is characterised by little new investment and maintenance programmes have fallen behind

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bc  
245  
**Red meat organisation 'not consulted' about inquiry**

GERALD REILLY

PRETORIA — The Red Meat Producers' Organisation (RPO) said at the weekend it had not been consulted on the need for a Competition Board investigation into competitive aspects in the industry.

RPO chairman Gerhard Brön said the announcement of the investigation had given the impression that all was not well with the industry's competitive aspects.

He stressed competition in the industry had been investigated by the recent Eloff Commission and nothing significant was discovered.

The industry had made great progress in the last few years in deregulating marketing arrangements, especially in the free movement of meat and the abolition of registration in the trade. *Friday 22/7/91*

The report of a Meat Board committee which included representatives of the RPO, the Agricultural Department, the marketing board and the Board of Trade and Industry, on further deregulation would be discussed at a September meeting of the RPO executive.

Farmers' attitudes to aspects such as the floor price, price formation and market access will be submitted to the Competition Board.

# Probe into red meat industry welcomed

By Paula Fray  
Consumer Reporter

Star 23/7/91

245

The surprise announcement of an all-embracing investigation into the red meat industry by the Competition Board has been welcomed by the independent Organisation of Livestock Producers (OLP)

"The investigation is a surprise but it is something we believe is very necessary, especially as it is an independent commission of inquiry," said OLP chairman Nils Dittmer

OLP executive member Sandy Speedy said the organisation was sceptical about the deregulation process

"Very little has happened. We see the meat scheme as being re-regulation rather than deregulation. Hopefully, this investigation will put the deregulation process into top gear," Mr Speedy said

The Red Meat Producers Organisation (RPO) has expressed surprise that it was not formally notified of the proposed investigation and that no consultation had taken place concerning the actual need, the terms of the consignment or the body that should conduct such an investigation

RPO chairman Gerhard Bronn said the organisation would avail itself of the opportunity to state its views on aspects in the meat industry to be investigated by the board

However, he felt that the Competition Board's decision to conduct the investigation created the impression that all was not well with regard to competition in the industry. He said this aspect had already been investigated before by the Eloff Commission and nothing significant had been discovered.

The Ministry for Economic Co-ordination and Public Enterprises and the Ministry of Agriculture and Agricultural Development last week said the investigation, in terms of the Maintenance and Promotion of Competition Act, would review all arrangements and structures involving meat production and marketing

It would also make recommendations concerning the most appropriate manner by which red meat production and marketing ought to be regulated on a competitive basis within a market-force context.

Attention would be given to the desirability of privatising the SA Abattoir Corporation

# Bullion now cheaper to hold as competition

By Neil Behrman

24/7/91

LONDON — Intensive competition in the bullion dealing community has driven gold's investment transaction costs sharply downwards.

So much so that the combined dealing and storage costs are extremely low when compared with overheads from securities, property and art transactions.

Of course, there are special deals in the international broking community for large size and regular orders.

So, depending on the client, commissions can be scaled down substantially.

However, the same applies to gold and on a comparative basis the metal still handsomely beats other special deal investments on a transaction cost basis.

The charges relate to large investments of institutions or wealthy individuals. Differential charges for the smaller in-

vestor who, for example, buys 10 coins or shares worth less than R100 000 are excluded.

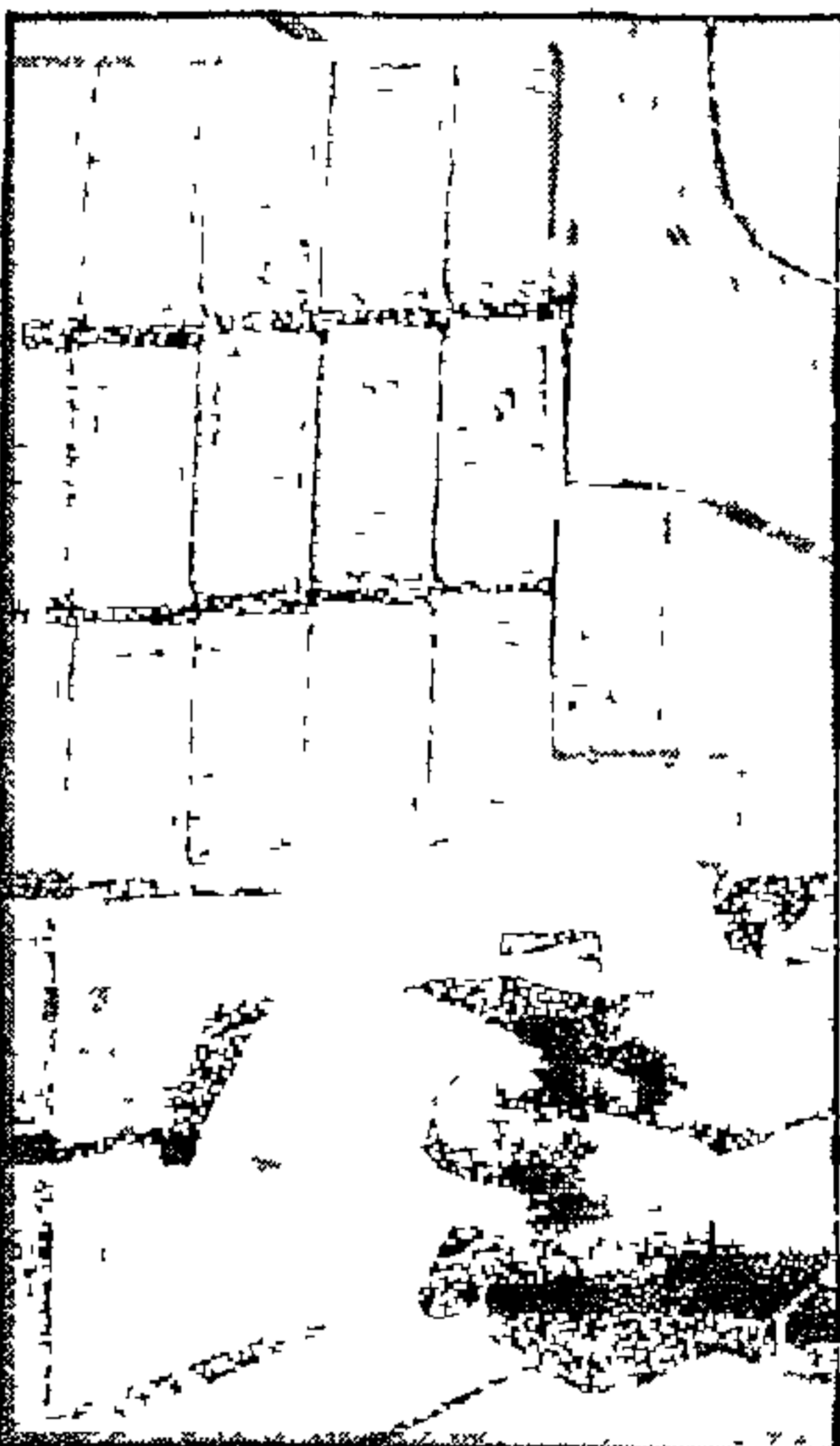
Private banking charges and interest rate spreads on short-term money market accounts are also not examined because it is assumed that the investor is looking at alternative investments to cash.

## Far lower

For comparative purposes, amounts relate to minimum investments of \$1 million, although it is also evident that transaction and storage costs of small amounts of gold are still far lower than investments in the securities markets.

Since competition is so fierce, charges of bullion houses in London, Zurich and Frankfurt are similar.

An investor buying \$1 million or 2 700 ounces of gold at current prices, pays a "spread" between buying and selling prices of around 50 US cents for each



Investment costs falling... each of these 25 kg gold bars stacked in a bank vault is worth about \$249 000 (R712 500) at present prices. Bullion now incurs storage and insurance costs of between \$1,50 and \$2,50 a year for every \$1 000 in value.

ounce of gold — or \$1 350 for the total.

For purchases of small amounts of gold, 100 to 500 ounces, the spread between bid

and offer prices is generally \$3, or only 0,8 percent of current prices.

Since the gold is bought "on account" and is not delivered to

the customer, it does not incur sales taxes. Instead it remains in the vaults of the bank.

As a result there are also annual storage and insurance charges that range between \$1,50 to \$2,50 for every \$1 000 of gold, depending on whether the customer stores his gold in "unallocated" or "allocated" metals accounts.

## Storage costs

In an allocated account, the bank issues the investor with details of the weight, number and assay of each bar of 400 ounces or 12,5 kg.

The client can then inspect and handle the gold from time to time.

For this service, annual storage and insurance costs amount to \$2 500. Storage costs for unallocated gold are lower.

The total costs for the physical gold investment will thus vary between \$2 850 and \$3 850, or 0,29 percent to 0,39 percent.

The client does not incur brokerage charges. The spread between buying and selling prices is met upfront and storage and insurance charges are paid at the end of each year. The spread widens to around \$1 in volatile markets.

However, dealing costs are far lower than levels in the early to mid-1980s. Then the gap between buying and selling prices was sometimes as high as several dollars.

## Sliding scale

It is far more difficult to assess transaction costs of international securities. They depend on the customer's activity and relationship with the house. Commissions are calculated on a sliding scale and all sorts of special arrangements.

But with the exception of long-term government bonds, which have miniscule dealing spreads that keep dealing costs below 0,1 percent, bond and

stock dealing charges exceed those of gold.

Total charges depend on the quality of the issue and marketability of the security and the exchange.

In the Eurobond and international corporate bond market, triple A issues can trade on a half-point spread, so that costs in the example are around 0,5 percent. Private clients can also incur commissions of around 0,5 percent to 1,5 percent.

"Scales on equity transactions are horrendously complicated and are a moving target," says a stockbroker.

But for sizeable transactions, total costs inclusive of commissions, range between one to three percent.

Commissions are higher in Japan and Europe, although London tends to be a less expensive market than its Continental counterparts.

Over and above these securi-

ties expenses, private clients will pay banks custodian charges which can add at least another 0,5 percent on to expenses.

Some markets also encounter stamp duties, for example 1,5 percent in the UK.

Sizeable buyers of UK unit trusts can negotiate spreads of around two percent, but must pay an annual management fee which ranges between one to 1,5 percent.

Property and art are not strictly comparable with liquid markets such as gold or securities. But a commercial property investment in the UK incurs purchase charges of six percent and in Germany eight percent, while France's costs can be as high as 20 percent in some instances.

A buyer of a \$1 million painting will pay the auctioneer 10 percent. Annual insurance costs are \$2 000 for every \$1 million.

drives costs down

**T**HE Competition Board's renewed interest in the cement industry follows years of disgruntlement and ill-feelings towards the cartel by large parts of the building and construction industry.

Those years have put sustained pressure on the board to review the exemption which it granted in August 1988. The board decision exempted Anglo-Alpha, Blue Circle and Pretoria Portland Cement (PPC) from prohibitions on industry price collusion, collusion on conditions of sale and market sharing.

From May 1986 — when government notice number 801 finally gave teeth to the Maintenance and Promotion of Competition Act of 1979 — the industry was exempted on a provisional basis, allowing collusion in both marketing and distribution of cement.

The three producers have an equal interest in Natal Portland Cement, which services most of the Natal market while in the northern market cement is distributed by Cement Distributors SA. The Western Cape is serviced by PPC alone. A cartel situation also exists between PPC and Anglo-Alpha in the supply and distribution of lime. Blue Circle, the smallest lime producer, is not party to the lime agreement.

**O**ver the past five years the board has been stonily silent to appeals that these cartel arrangements be dismantled. Now government sources believe the board may finally apply the brakes to the cartel, largely to appease the World Bank.

The bank's Urban Sector Reconnaissance Mission earlier this year — the first of its kind by the World Bank to SA — expressed a worry that the country's building materials industry was too highly concentrated. In its report on urban housing, the bank suggested that there should be more competition in building materials production and residential construction.

"Indications are that ownership in the building materials industry is highly concentrated with the result that competition is minimal and increases in housing demand are dissipated to a considerable degree by increases in building costs rather than translated into increases in housing output," the report said. Competition Board chairman Pierre Brooks says he is aware of the

# Competition Board finally sets sights on the cement cartel

BRENT VON MELVILLE

report and admits that it did provide another factor in the decision to re-assess the cartel, but not the only one. He says the World Bank only confirmed what the board already knew.

"Even if an exemption is given on a permanent basis, it is given on a particular set of existing circumstances and thus is open to revision. In this case, the lifting of sanctions has altered the circumstances," he says.

Brooks says the board informed the SA Cement Producer's Association (Sacpa) of its decision to investigate the cartel. However, Anglo-Alpha MD Johan Pretorius says Sacpa's understanding is that Brooks merely wanted to re-acquaint himself with the issues facing the industry. "We took his intention to be that he wished to inform himself and not re-investigate. The industry will have to contact him on this," says Pretorius.

In any case the Sacpa is not unduly worried by the reassessment. Pretorius says it has no skeletons in the closet and that the conditions which prompted government to grant the industry exemption from the Competition Act had not changed.

The industry's latest offering on the issue comes in the form of a comprehensive position paper which sets out to offer some sound arguments and solid logic for the maintenance of the cartel. Similar arguments in 1988 and visits abroad prompted the board to rule in the cartel's favour.

The paper claims that, far from

arbitrarily setting prices, the cartel is subject to what it terms "powerful external forces which ensure that prices are restrained".

"Textbook competition does not necessarily apply to all industries. Neither are cartels immune from free market forces. Opac is an example of a cartel which abused its position and was redressed by free market forces."

The paper adds that there are no real barriers to entry, and substitute

building products provide competition. Sacpa's research also indicates that the impact of the cement price on the cost of a home is a "low" 4% to 8%.

With regard to low income housing — which normally has a higher cement content — the report points out that it is subject to "vigorous" competition from alternative building systems.

The local market is also open to competition from international producers, and although the industry would hope for protection against cement being "dumped" in SA at prices below those ruling in the countries of origin, it has no objection to fair competition from foreign producers.

In the meantime, however, the strength of the cartel enabled it to squash attempts to import Spanish cement through Natal several years ago.

The cartel's main argument, however, is the capital-intensive nature of its product. It points out that the cost of a new economically sized kiln is about R500m. "Coupled with the fact that the investment is made over a period of three to five years from initial design to final commissioning, it makes the industry an extremely high risk business." Thus high risk is exacerbated by the volatility of the building and construction industry.

Critics believe the argument is a moot one. "To plead the need for protection because of the capital intensive nature of the industry is crazy. Any business involves risk and if one is not prepared to take that

risk then one should not enter the market," says Concor Technicrete MD Peter Michau.

The cartel's counter-argument is that if the structured stability of the cartel were removed, investors would look for higher returns to compensate for the increased risk and prices would inevitably have to increase.

Michau said that may be true initially, but over the long term competition would enable cement users to negotiate special prices for special contracts. "Across-the-board increases, such as those experienced at present would no longer be the norm."

But the cartel warns that, because its factories are located mainly on limestone reserves, not all producers service every market area. There are therefore a number of points of high concentration, but with long distances between them, there is the potential for the creation of spatial monopolies.

"In this situation producers operating in these areas would, but for the discipline of the existing pricing formulae, be able to set prices without restraint."

One civil engineer with a large SA contracting company says the existing framework of cement supply largely overshadowed any worries about the possibility of "spatial monopolies." "The fact is that civil engineering contractors, which are already in a high risk business and have very low profit margins, are paying indirectly through the price of cement to protect the industry."

**T**hat cost carries over to the higher administrative requirements of a cartel. Cement users have frequently pointed out that there are high extraneous costs incorporated into the price of cement, with the user carrying the cost of maintaining the Sacpa, the Cement Distributors Association, and the Cement Merchants Association.

The argument that the industry is of a highly technical nature and requires substantial capital commitment is not at issue. But critics question why this should be used to justify collusion.

In general, the feeling is that the cartel's argument cannot be sustained against the benefits of competition which bring down the costs of production and focus the individual players on the markets they are supplying.



□ BROOKS

# Video dealers to appeal to Pretoria over restrictions

8/15/91

MARCIA KLEIN

(245)

THE video rental industry is to make urgent representation to government to plug a loophole which allows distributors to force store owners into buying mixed packages of video tapes

Sources said objections already made to the Competition Board had resulted in government action on the issue but some distributors had found a way around this.

They said that further complaints had now been lodged with the board and with Administration and Economic Co-ordination Minister Dawie de Villiers.

Industry spokesmen said yesterday that despite action taken last year to stop distributors from pressing them to buy videos in "mixed bag" packages of good and bad movies, certain distributors, particularly Ster-Kinekor Video, were still forcing them to take the packages.

The alternative was to pay a large premium on the titles that were in demand, they said

Competition Board chairman Pierre Brooks said yesterday that recommendations resulted in government gazetting a notice making it unlawful for any initial distributor to determine that the purchase of any video was subject to the purchase of another.

The notice also meant distributors could not prohibit the resale of films six months after they were bought

Dealers took Ster-Kinekor to court over the issue and won but it had still not been resolved, they said.

Industry sources said that instead of selling the tapes, Ster-Kinekor was leasing tapes to the stores.

These were priced in such a way that rental stores had to pay up to R400 a tape if only one was leased, and there was a 15% to 17% discount if up to seven titles were taken. The average price of a tape from CIC was R250.

A dealer said each of the three major distributors — CIC, Nu Metro and Ster-Kinekor — had a monopoly on the distribution of certain titles. Without tapes of the major titles, stores would go out of business.

Ster-Kinekor made up about 45% to 50% of the dealer's business, he said

Industry players said CIC allowed for the trade of videos with no restrictions, while Nu Metro had some restrictions, but these were negotiable

A video rental dealer said that tapes leased by Ster-Kinekor could not be exchanged between stores, so that each store owner had to buy his own titles

He said that stores "had to sit on all the titles in the Ster-Kinekor package for six months of the lease" before they had an option to take the videos and sell them

Ster-Kinekor declined to comment.

# McCrystal to leave BTI next year

By Sven Lunsche *SKL 9/8/91*

Dr Lawrence McCrystal, the controversial chairman of the Board of Trade and Industries (BTI), will leave the BTI in March next year.

The Minister of Trade and Industries and Tourism, Dr Oré Marais, said in a statement yesterday that Dr McCrystal had requested that his term of office be terminated. He said no deci-

sion had yet been made on Dr McCrystal's successor.

Dr McCrystal said he would be joining the short-term insurance broking arm of Pro Regno, a wholly owned subsidiary of the Christian Foundation.

His announcement comes amid long-standing and fundamental differences between the BTI and the Department of Trade and Industries (DTI).

The previous Minister of Trade and Industries, Kent Durr, and

the chief of the DTI, Dr Stef Naude, openly propagated more laissez-faire trade and industrial policies.

In contrast Dr McCrystal is well known for his interventionist views on both industrial strategy and trade policy.

Since being appointed chairman of the BTI in 1987 he has launched a number of tariff and rebate programmes which have often been sharply criticised by the industries concerned, most

notable among them Phase 6 for the motor industry.

The BTI also implemented a structural adjustment programme which provides financial support and protection for 16 industrial sectors.

An investigation by Mr Durr into tariff policy and the functions and missions of the BTI late last year, led to an extensive expansion of the DTI at the expense of the Board.



Dr McCrystal . . . controversial

## Sugar regulations to remain in place

GOVERNMENT legislation controlling the marketing and production of sugar is to be retained, says the Department of Trade and Industry.

DTI spokesman Charl Nel said the Sugar Industry Agreement — legislation enabling the SA Sugar Association (Sasa) to regulate prices and supply — was being amended, but Sasa's "A- and B-pool" production and pricing system would not be affected. *By Day 12/8/91*

With sugar production and marketing being regulated worldwide, he said, SA could not act in isolation by dismantling controls overnight without "serious harm" being done to the industry.

Sasa sets the "A-pool" to meet domestic and export demand and then shares the quota between cane growers and gives

ROBERT LAING

them a fixed price each month. Excess ("B-pool") sugar is sold at international spot prices. *(245)*

Nel said: "Production in the A-pool consists of 1,3-million tons for the domestic market while the balance of 500 000 tons is exported at ruling world market prices, which are extremely volatile."

He said the deregulation measures taken by government in 1989 entailed lifting import control on sugar and molasses, allowing the industry (represented by Sasa) to set its own prices, relaxed administration and created "free production areas".

The last measure allows smaller growers living within 30km of a sugar refinery to sell their produce at A-pool prices.



**Thumbs down**

472

245

Fearing that it would drive up costs and eliminate jobs, opponents are lining up against the Draft Designs Bill, which would largely prohibit the manufacture of spare parts by anyone other than the original maker. But the motor industry and other powerful interests are just as determined to push the Bill through (*Business & Technology* June 21)

The Bill has been amended substantially since it was proposed a year ago, but it would still erect so many bureaucratic hurdles for independent suppliers and manufacturers of vehicle replacement parts that the booming sector, which has created 70 000 jobs in four years, would all but die. The Bill is an attempt by vehicle manufacturers to control the lucrative after-sales market by giving themselves a monopoly over the manufacture and sale of components that go into their vehicles.

"The second attempt is no better than the first — it is a thoroughly bad law that would harm the spare-parts industry, lose jobs and fuel inflation," says Marius le Roux, a patent attorney who has broken ranks with his peers in opposing the Bill.

Criticising the Bill in recent weeks have been the Automobile Association of SA (AA), the short-term insurance industry and Louise Tager of the Harmful Business Prac-

**BUSINESS & TECHNOLOGY**

tices Committee

Says SA Insurance Association spokesman Damon Deavin "The Act clearly creates a monopoly and our main concern is that costs to the end user will increase, ultimately pushing up premiums at a time when neither the industry nor the economy can afford it."

Says AA spokesman Quinton van Eerden "It appears that the Bill could have adverse implications for the spare-parts industry. Ultimately we have to decide whether the legislation will benefit the motorist." He says the AA is still formulating its final recommendation. All comments must be submitted to the advisory committee appointed by Minister of Trade, Industry & Tourism Org Marais by September 30.

Critics mainly object to the Bill because it would grant manufacturers the right to register for protection the design of functional parts, in addition to aesthetic parts such as grilles and bumpers, which already have protection. Carmakers argue that they need this protection to maintain safety standards and protect customers from pirate parts, fraudulently passed off as originals. But opponents say the Bill is overkill, it would stifle the many legitimate businesses to get at a few bad apples.

The Bill, however, would make exceptions. Spare-parts makers could obtain a licence to manufacture a specific part, but the item must be one that is replaced regularly.

And obtaining a licence would be an onerous procedure. Licences would have to be approved by no less an official than the Minister. And before one is approved — the ability to supply the component at half the going price would make a good case for approval — the Minister must publish the planned approval and allow time for comment. Vehicle manufacturers are likely to object every time.

The lucky applicant making it through this administrative gauntlet still would have to pay royalties to the owner of the registered functional design. The applicant could decide not to go ahead after all if the Minister sets the royalty payments too high and wipes out the applicant's potential profit margin. The Minister also would wield the power to say where the spare parts could be exported, if at all.

To add insult to injury, the Bill would not allow licences for imported spare parts — the very sector of the industry that is keeping prices in check. In other words, suppliers whose livelihood depends on imported parts will be out of business as soon as the Bill becomes law.

"This constitutes government interference in trade and industry at a time when government's stated policy is the exact opposite — de-regulation," says Le Roux. "This concept is unheard of in intellectual property law."

"More than 100 000 parts could be affected," says John Rich, MD of spare-parts dealer Midas. "The Bill could include every nut or bolt. It will keep a lot of attorneys very happy."

To top it all off, the Bill would prohibit

any outside manufacturing of a spare part for the first two years after the vehicle manufacturer puts it on the market. This would give the vehicle manufacturer time to decide which functional designs to register while giving it a monopoly over the replacement of every part in its vehicles. By the time the grace period is over, copying the spare parts would be less attractive because new models would be on the market.

Naturally, the Bill has the support of a large number of patent attorneys. Advisory committee member Chris Job, who is also the attorney acting for BMW and Toyota, says "The majority recognise the basic need in a healthy economy to protect innovation and encourage expenditure of effort and money on original research and capital investment."

But says Midas's Rich "At the end of the day, the Bill seeks to protect the motor manufacturers, who are well established in the country and are all doing well, despite the recession." ■

## ARMING CONSUMERS WITH CODES (245)

A year after the effort to devise codes of conduct for business was announced, the Harmful Business Practices Committee is running into some obstacles.

The three-year-old committee, chaired by Louise Tager, is looking into creating codes for the after-sales motor industry, the property and building sectors, the advertising industry and the furniture trade. *FM 23/8/91*

In the process, Tager has become embroiled in a dispute with the Furniture Traders' Association of SA, which sees her investigation as "unjustified interference."

Says executive director Frans Jordaan: "During the Seventies, the association drew up its own code. But since then, the Credit Agreements Act imposed a num-

ber of new regulations on the industry. Together with the requirements of the Usury Act and the Stamp Duties Act, we feel that no further regulations are required. In fact, we find it strange that Tager, who is a leading lobbyist for deregulation in SA, now wants to impose new regulations."

Advertising Standards Authority chairman Jack Siebert says the authority is negotiating with the committee to have its existing code adopted for the committee's purpose. "We have effectively operated our code for 21 years and are not aware of what the committee has in mind as far as changes are concerned."

Tager says her focus is on harmful practices that hurt consumers; codes would help reduce these practices.

## Pharmaceuticals probe runs into complications

(245) WILLIAM GILFILLAN (8/23)

THE Competition Board's investigation into alleged restrictive practices by pharmaceutical manufacturers was running up against a number of complicated issues, Competition Board chairman Pierre Brooks said on Monday.

The Board was trying to ascertain whether manufacturers were adopting discriminatory pricing practices which restricted competition in the wholesale and retail distribution network.

Brooks said the investigation was being complicated by high levels of pilferage in the industry and the distribution of samples to doctors.

Pilferage interfered with the pricing system as it could create a situation in which retailers might be able to sell pharmaceuticals at prices below the wholesalers' prices, he said. *Blow 29/8/91*

Brooks said the Board was not looking at a "one exit pricing system" because it accepted that higher discounts could be given on higher volumes sold. It wanted a non-discriminatory pricing system.

Retailers and wholesalers were the prime instigators of the investigation as they claimed manufacturers had been discriminatory in their pricing between various customers, Brooks said.

Competition Board clears Anglo on GFSAs holding

# Monopolies: shot

# across the bows

STimes (Burs) 29/9/91

245

THE Competition Board has ruled that Anglo American and De Beers' purchase of shares in Gold Fields of SA last year does not constitute a restrictive practice.

In a finding which has the force of law, it has also ruled that the purchase did not result in an acquisition or a monopoly.

But in a postscript, which has no legal weight but conveys the views of the authors, the board warns that the big financial houses must get their houses in order or the Government will intervene to end excessive economic concentration.

The board says "Some measure of corporate conglomeration or diversification is not only tolerable but desirable. However, the indications are that both from an economic and a political perspective, the degree of economic concentration in this country is probably too high."

"The captains of industry should be in the vanguard of reform. If as a result of a lack of action or resolve, there should be no discernible improvement in the situation in the short term, it is conceivable that a few years hence more dramatic steps akin to those introduced by the Supreme Commander for the Allied Powers in Japan after the Second World War, which included the Elimination of Excessive Concentration of Economic Power Act of 1947, are likely to be implemented."

## Waters

Anglo has taken strong exception to certain statements in the board's "judgment". Spokesman Michael Spicer says "We are pleased that the Competition Board has found so unequivocally for Anglo American and De Beers on all three grounds of its investigation — but many of its incidental statements are highly debatable."

"The chairman of the board got into highly controversial waters earlier this year when he proposed an administrative system of competition policing which would enable him and his board not only to be judge, but to be prosecutor and executioner at the same time — with retrospective powers to boot."

"Many of the assertions in the postscript have an almost polemical flavour and would be highly debatable in the SA and international context."

Gold Fields of SA accepts the judgment and agrees with most of the points raised, says director Bernard van Rooyen.

The board is severely critical of directors sitting on the boards of competing companies and says "Many South African directors who serve on the boards of competing companies are not concerned about or perhaps unaware of their tenuous legal position or the dictates of commercial morality."

"For example, various forms of collusion, namely price fixing, market sharing

By DAVID CARTE

and collusion on conditions of supply have been outlawed.

The collusive activity can be effected by means of an agreement, arrangement, understanding, business practice or method of trading.

"The possibility cannot be excluded that a board meeting could be used for that purpose, and persons serving on the boards of rival companies cannot blame other business associates or the general public for being sceptical about such a state of affairs."

Mr Spicer says Anglo's holding in GFSAs and its representation on the board date to the formation of the West Wits mine in 1932. GFSAs came out of West Wits.

By 1971, when GFSAs became the listed holding company, Anglo had two directors on the GFSAs board. They were not there to thwart competition.

Anglo has a policy of not allowing its directors to sit on non-group companies. Few exceptions to this rule are permitted and they have been cases where companies approached Anglo to have representation on their boards so as to benefit from the experience of relevant individuals — the *raison d'être* of the non-executive director.

The Competition Board reports that GFSAs contended the purchase of shares by Anglo and De Beers was a restrictive practice and/or an acquisition and/or placed the companies in a monopoly position.

## Voted

GFSAs contended that Anglo's holding was "not a portfolio investment but a mechanism to ensure it had veto power to counteract Rembrandt Group's increased stake in GFSAs (which was not to their liking) in accordance with their philosophy of 'who needs takeovers when you can control with a minority stake'."

GFSAs asked the board to ensure that Peter Gush, Anglo's representative on its directorate, vacate his position. Mr Gush was voted off the GFSAs board on January 15, 1991.

The Competition Board interprets this as vindication of Anglo's point that it has no right or power to appoint directors to the GFSAs board.

In its submission, Anglo

□ To Page 3

# SABC concedes on licence discount

By Paula Fray  
Consumer Reporter

The SABC backed down on a decision not to pass on the 2 percent reduction in VAT on 1991/92 licence fees yesterday after talks with the consumer watchdog body, Vatwatch

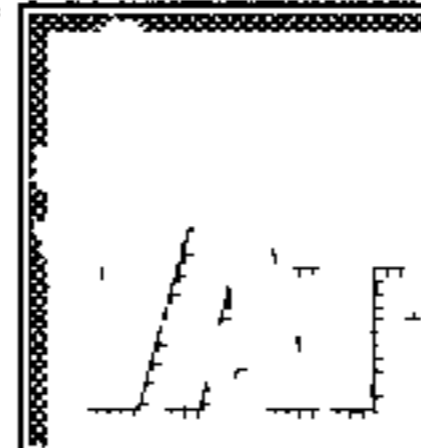
The corporation is now prepared to accept licence payments after September 30 of R147, despite R150 being shown on statements sent to viewers

Those who pay before September 28 will escape VAT

## Important signal

The SABC had said that for technical and administrative reasons it could not reduce VAT on licences from 12 percent to 10 percent, but that adjustments would be made next year

The decision to charge only 10 percent is seen as a coup for the consumer body



Vatwatch chairman Professor Louise Tager said that by recalculating the VAT rate on licences, the SABC was sending an important signal to commerce and industry

"Large organisations ought to set an example to smaller businesses and discourage anyone from using weak arguments as a smokescreen that prevents consumers from enjoying cost benefits from VAT."

● A 45-minute television programme, developed to counter public ignorance about the effect of VAT on prices, is being screened on TV1 this month

According to Vatwatch, which will monitor price trends before and after the introduction of VAT, the programme explains why the new tax need not cause a general rise in prices

Produced by a leading firm of tax consultants, the programme will be screened each Tuesday and Wednesday at 9 15 am. The final programme will be shown on September 25

A Vatwatch spokesman said the presentation had been developed to counter public ignorance about VAT's cost effects

"Consumers must not fall into the trap of believing that business costs, and therefore prices, will rise as a result of VAT," he said

## Fall away

"Businesses registered as 'vendors' in terms of VAT will obtain a full tax credit for their payments. In this way, VAT will not be a cost borne by the business

"In fact, tax that business used to pay on a wide range of items will fall away under VAT"

"This major saving which the business sector will begin to enjoy on September 30 ought to be passed on to consumers"

Star 11/9/91

245

# Sunday film, liquor ban set to bite dust

By Helen Grange  
Pretoria Bureau



Sundays — traditionally “nothing to do” days in South Africa — are set to become as active as any other day if the Government’s plan to introduce movies and allow open liquor trade on Sundays is approved by Parliament.

A White Paper proposing the removal of “irritating” obstacles blocking the way to realising the country’s full tourism potential is currently being finalised by Tourism Minister Dr Org Marais.

He feels strongly that restrictions on Sunday liquor trade, entertainment and shopping hours need to be lifted in order to boost trade and provide the public with a choice.

The current constraints on cinema screening and other entertainment on Sundays and public holidays is also to be reviewed by the Department of Justice.

“If movies are screened on television on a Sunday, I cannot see the difference in allowing them to be shown in a cinema,” said Dr Marais.

The Minister has proposed that — in order to avoid trampling on people’s sensitivities — each region under its own local authority can decide the extent to which it allows Sunday entertainment.

This proposal is also being

looked at in the Department of Justice’s review.

“The Department of Tourism’s policy is to try to deregulate the tourist industry as far as possible, removing the obstacles which prevent the free flow of tourists.

“The current situation where it is illegal to have a glass of beer without ordering food in some establishments on a Sunday is unnecessary.

“We are, at the same time, aware that some people feel strongly about religious days. This is why regional authorities should have the power to decide what they want,” Dr Marais said.

Another obstacle to tourism were the current laws governing liquor, which made it extremely difficult for a business to get a liquor licence — and yet once it had been issued, it was almost impossible for authorities to withdraw it.

“We need a new Liquor Act which does not concern itself with the profitability of a business as it does now — but has more power to withdraw a licence if it is misused,” Dr Marais said.

He gave the assurance, however, that he was not in favour of supermarkets being granted liquor licences as this would upset the competitive balance among the smaller businesses which traditionally sold liquor.

The White Paper is expected to be completed by the end of the month, Dr Marais said.



**BUSINESS**

# Bill to scupper parts 'pirates'

*W/Week 13 9-19 91*

*(245) 1991*

**T**HE "pirate" spare parts business will be dealt a big blow if a proposed law is passed by parliament.

The Draft Designs Amendment Bill, published for discussion at the end of June, will make it illegal to copycat certain parts of not only motor cars, but also those of machinery, plant and equipment.

According to patent lawyer Marus Le Roux, the Bill creates a new kind of registered right, other than copyright, patent or trademark. This new right applies to a "functional design".

Anything which has a new shape when it is released on to the market can be registered, no matter how simple. No originality or inventiveness is required. Even an engine exhaust pipe

with a bend in a different place from previous exhaust pipes or a piston ring with an extra groove will qualify for registration.

So original equipment manufacturers such as car manufacturers registered and parts they manufacture protected in law against copying. There is no need for law protecting ordinary mass-produced articles, Le Roux argues.

South Africa already has copious statutory law protecting intellectual property rights, as well as a well-developed common law protecting against "passing off" or unlawful competition. No

such right, says Le Roux, is granted in major industrial countries of the world. National Association of Motor Manufacturers of South Africa (Naamsa) director Nico Vermeulen says the Bill is still under investigation by Naamsa, and the association will have more to say about it after September 30, the cut-off date for submission of comment to

A new draft Bill to protect functional designs will clamp down on 'pirate' parts manufacturers but may lead to soaring prices.

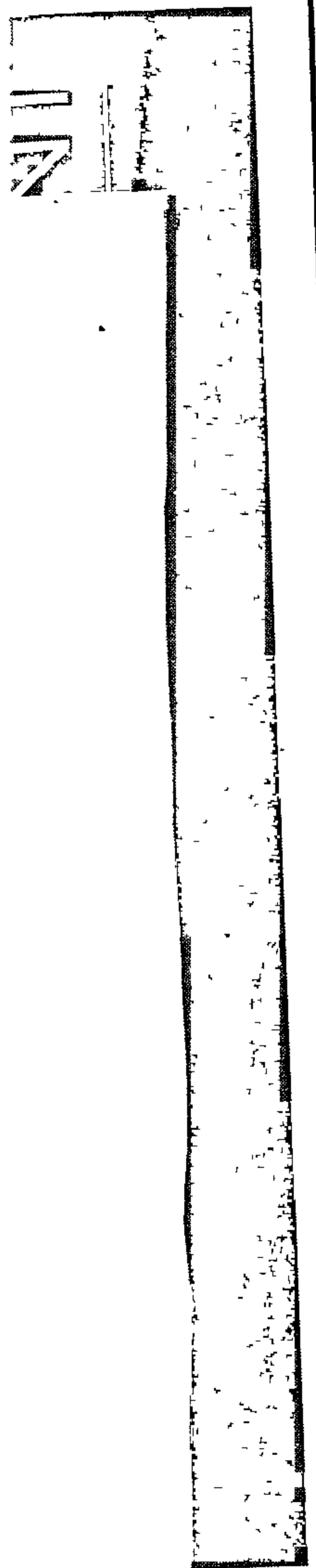
**REG RUMNEY reports**

Le Roux notes the Bill allows a manufacturer to get a licence, whether the original manufacturer likes it or not, to make spare parts. This, he considers, is unacceptable government intervention when the government is committed to deregulation. Moreover, it doesn't allow the import of non-genuine parts, but the importers of spare parts provide competition in a market which would otherwise be dominated by original equipment manufacturers.

If the Bill is passed, Le Roux says, among other effects will be a rise in the price of spare parts and cost of repair and insurance of machinery, motor vehicles and plant will increase.

"It should also be noted that the envisaged compulsory licence for 'spare' parts does not permit the importation of non-genuine parts, but only their manufacture in South Africa. This means, even if large-scale compulsory licensing is authorised by the minister and assisting local manufacturers can remain profitable in the face of royalties payable to the owners of the registered functional designs, that the industrial sector which relies on importation of low-priced parts and components will face gradual closure.

"This is the very sector which provides competitiveness in a market which would otherwise be dominated by original equipment manufacturers."



# Anti-monopoly laws applauded

By Patrick Laurence  
Star 30/9/91.

South Africa needs effective anti-monopoly legislation, Anglo American chairman Julian Ogilvie Thompson has told The Star

"It is extremely important (to) have strong anti-monopoly, anti-restrictive practices legislation," Mr Ogilvie Thompson said

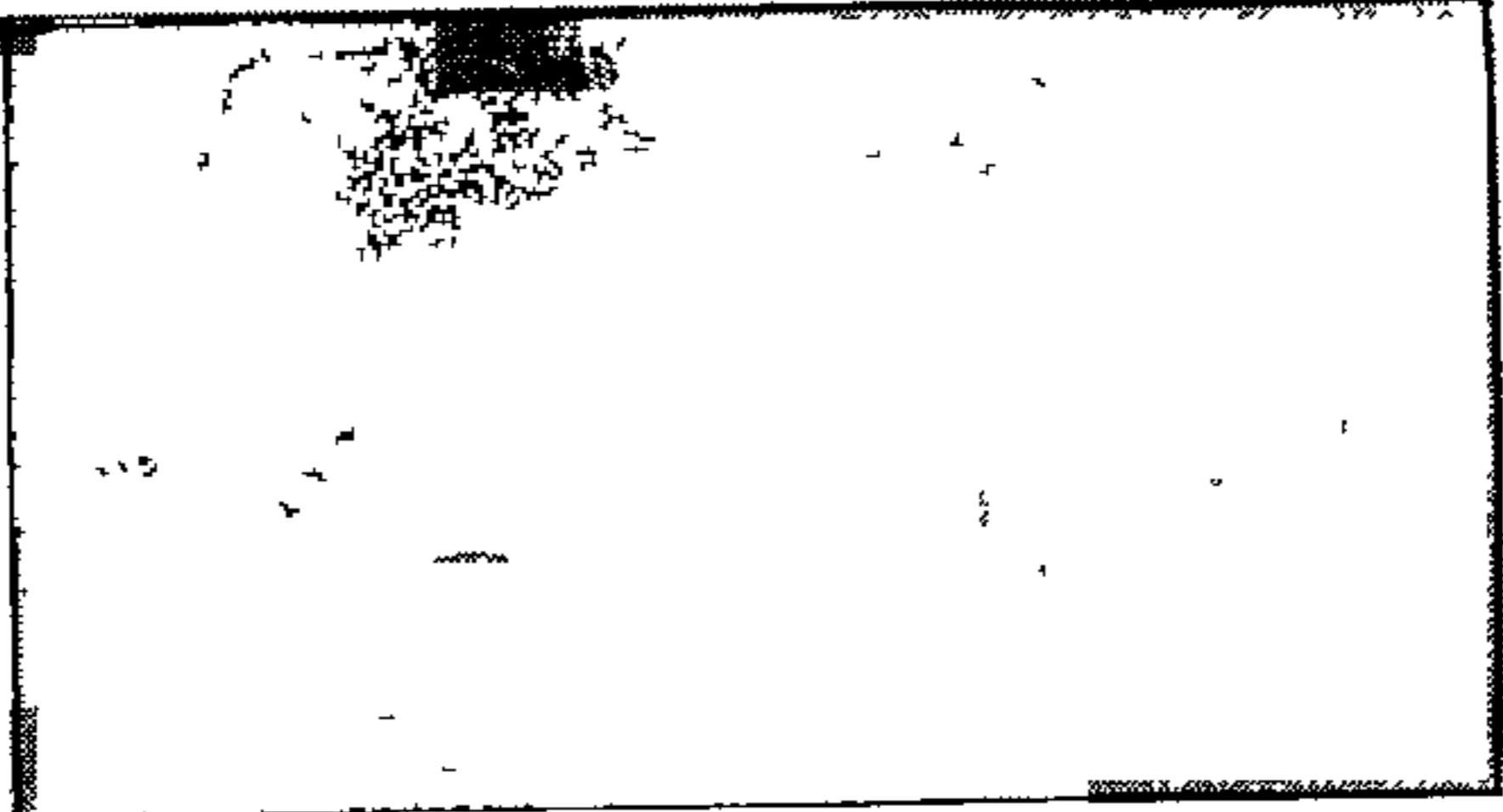
"We think this must be continually reviewed and, if necessary, revised"

Mr Ogilvie Thompson's assessment was made, coincidentally, on the eve of a critical finding by the Competition Board on the acquisition of shares last year by Anglo American and its sister company, De Beers, in Gold Fields of South Africa

The board found that the purchase of shares by Anglo and De Beers did not constitute a restrictive practice or amount to acquisition by the companies of Gold Fields

Nor did it signal an end to competition between Anglo and Gold Fields in the gold mining industry, nor the establishment of a monopoly

The board calculated that Anglo American and De Beers had acquired more than the



Julian Ogilvie Thompson review laws against restrictive practices regularly

18 percent share in Gold Fields necessary to block special resolutions in Gold Fields. However, it said the power to exercise a veto did not in itself constitute a restrictive practice

But, in a postscript to its specific finding, the board noted

that concern over the extent of corporate conglomeration in South Africa was "widespread and covers all shades of political opinion"

Mentioning Anglo American and Rembrandt specifically, it concluded that the time was opportune for them "to focus on the wider implications of the substantial network of formal relationships that exist between the major conglomerates in South Africa"

Commenting on the Maintenance of Promotion of Competition Act, Mr Ogilvie Thompson said "I think it must be effective, and I think it is effective too."

Asked whether he was opposed to the law being given more teeth, he replied "If it needs more teeth, certainly it should have more teeth. We have consistently said so"

But he added "What you can't do is pick up the legislation, say, in the United States and plonk it down in South Africa and say it'll work. You've got to adapt your legislation to the realities, facts and possibilities of the situation"

Developing his point, he said "You can't say that no one in South Africa can have more than 20 percent of the market, because then you won't get the

economies of scale (to compete on the world market)"

In the United States it was possible to limit the share of the market in any commodity to 20 percent and "still have the five biggest producers in the world"

South Africa, Mr Ogilvie Thompson said, could not afford to do so "any more than Switzerland, Holland and Sweden"

These countries, like South Africa, had companies which were very large in relation to their own economies, but quite small on the world scale

In a related development, Anglo American spokesman Michael Spicer has reacted sharply to a renewed call by ANC president Nelson Mandela for the nationalisation of mines and financial institutions

Responding to a speech made by Mr Mandela at a banquet in Somerset West, Mr Spicer expressed disappointment at the ANC leader's "archaic and bankrupt thinking", warning that it would stifle initiative, block investment and lead to a flight of capital and skills just as surely as a rise in taxes

He noted that an invitation, to the ANC to discuss economic policy had still to be accepted after two years



CORRUPTION BILL <sup>FM 4/10/91</sup>  
**Weapon for harassment?**

The Corruption Bill, drafted at government's request by the Law Commission to tighten up existing legislation, does that — and more. (245)

Businessmen and civil servants could end up serving life sentences if found guilty under the proposed legislation. The problem is that they can't be certain just what corrup-



Poolman



Leon

tion is Except for a reference to "any benefit not legally due," the Bill does not define corruption — in fact, nothing is defined.

The Bill is short on detail (less than two pages), wide in application (jurisdiction is extended outside SA) and lethal in effect. It could be interpreted to cover everything from a business lunch to an overt bribe.

Says Afrikaanse Handelsinstituut CE Joe Poolman. "The Bill is wide enough to include normal everyday business practice, previously considered legitimate. One doesn't need regulations which interfere with business ac-

tivity not regarded as corruption in the strict sense. If government has good reason to enact fresh legislation, it must specify the types of crimes included and excluded, otherwise the Bill could become a joke."

The Law Commission intentionally cast the net wide. In a memorandum to the Bill, it admits that "extensive definitions" were specifically avoided to prevent restricting the categories of persons who may be bribed.

Says the Bill's chief researcher, Michael Palumbo. "One doesn't want to exclude people who need to be included." He says this is the problem with existing legislation. "If a business lunch intends to constitute a bribe, why should it be excluded from the Act? Otherwise, where does one draw the line?"

But, says Sacob legal manager Ken Warren. "Business needs an environment of certainty. In its present form, accepted business practices could fall foul of the legislation. The Bill needs clarity."

He is particularly critical of the wide discretionary powers given the courts to determine sentence — everything except the death penalty is possible. "Penal legislation should lay down parameters as a guideline to the courts," he says. Palumbo retorts that the proposed penal provisions are identical to those in existing legislation.

Other loopholes have also been closed.

□ A person receiving a bribe may be found guilty of corruption even if the person giving the bribe is acquitted,

□ Situations where "benefits" are offered to persons other than the bribe-taker are covered — for example, his family or persons on whose behalf he acts.

□ The Bill covers activity outside SA, providing there is a "connection" inside the Republic. But it doesn't define "connection". So the position of a SA businessman forced to pay a bribe in a foreign country (Kerzner's case) could be uncertain, though Palumbo denies that the Bill seeks to safeguard the interests of other countries.

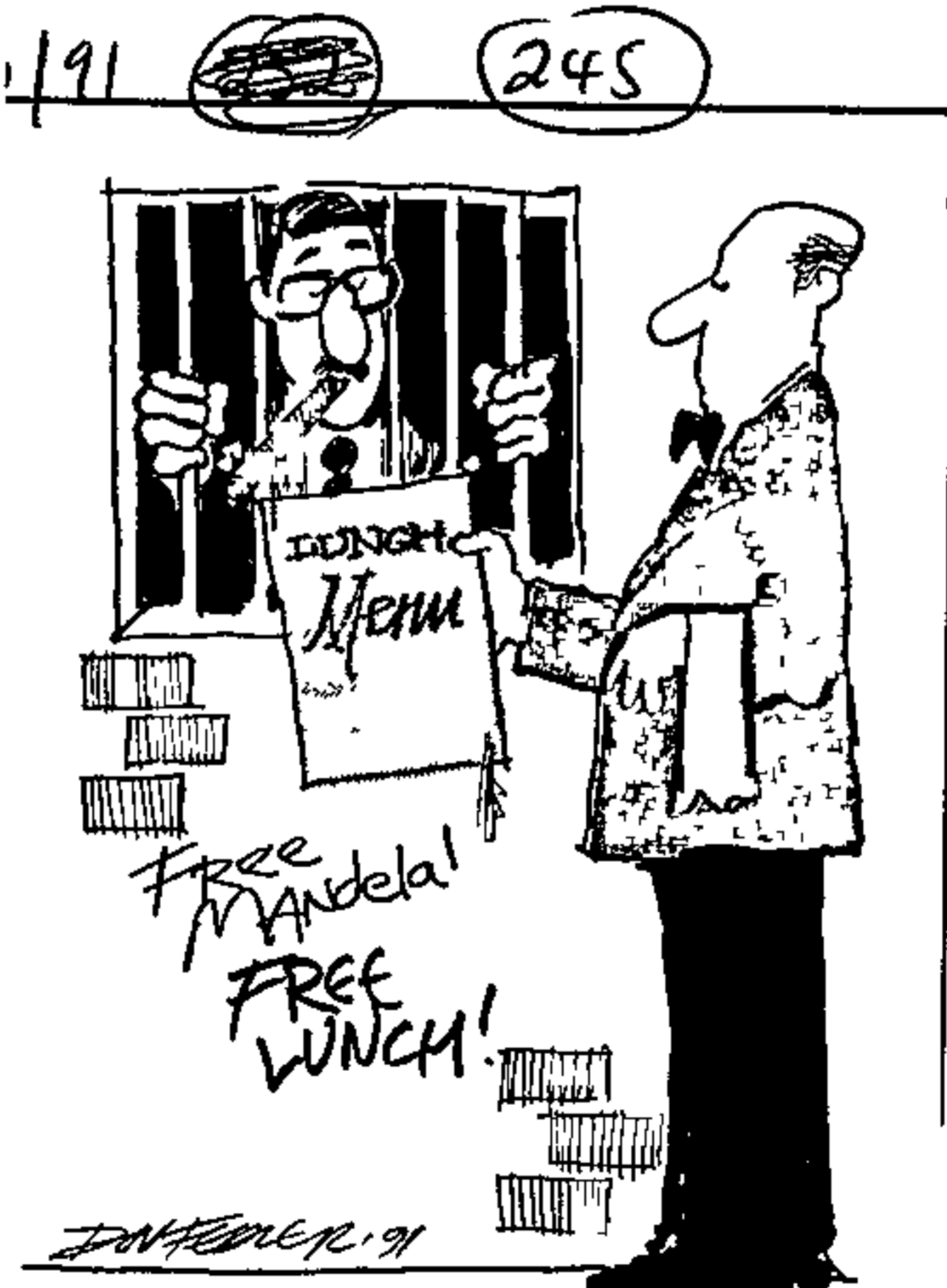
Critics are concerned that the Bill, if enacted, could give government — present or future — a powerful weapon against business. Says the DP's Tony Leon. "The proposed legislation could become a bureaucrat's dream for harassment and oppression. It's open to abuse and malice."

Warren suggests that common law and existing legislation are adequate. "Rather than introduce draconian legislation, the existing legislative system needs to be streamlined to dispose of matters quickly."

The Bill, in whatever form, is unlikely to end corruption, as it seeks only to address symptoms rather than causes. Says Warren. "One needs to establish whether corruption is motivated solely by greed and avarice, or whether it's an increasing reaction to inflation, high taxation and over-regulation."

Leon describes the Bill as "a mile wide and an inch deep" and says it is doomed to fail without any effective mechanism for enforcement. "How can you expect government to police corruption when it can't catch murderers and car thieves?" he asks.

SA FINANCIAL MAIL, OCTOBER 4, 1991



He believes the Bill is mainly targeted at the endemic and deep-rooted corruption which usually takes place at high level. But he says the solution doesn't lie in new far-reaching legislation. Government must introduce proper disclosure by public servants and legislators of personal interests.

"We need 'sunshine legislation' of all holdings, directorships, consultancies and interests which may be related to legislative or executive acts," he says. "An Ombudsman, with power, would do more than another piece of legislation, which, however well-intentioned, could end up being abused or as ineffectual as a toothless chihuahua." ■

# Flak for Designs Bill

THE Competition Board has joined consumer groups which are opposing the Draft Design Bill. If passed it could, for example, lead to higher prices for motor spares as it would ban the sale of "pirate parts", which sell for much less than those bearing the brand name of the vehicle concerned.

In many cases pirate parts are identical to the branded products and are made by the same manufacturers. Price differences are sometimes as much as 30%.

Pirate-parts sales boomed after 1988, when amendments to the Copyright Act were introduced as an anti-sanctions measure to make it easier for local manufacturers to copy foreign designs. According to an estimate

by the Automobile Association this spawned a R5.8-billion-a-year industry that now employs 73 000 people.

The new Bill seeks to bring SA legislation more in line with international norms. It was first introduced last

## Competition Board defends 'pirate parts'

By DON ROBERTSON

year, but because of opposition it has since been watered down.

Pierre Brooks, chairman of the Competition Board, says he has no problem with the intention of the Bill, which is to protect intellectu-

al property rights.

But, he says, this cannot be viewed in isolation, and the legislation does not properly address the problem of protection versus competition.

"This is particularly so in the automotive spare-parts industry, where we have proof of this."

Groups such as the Auto-

mobile Association (AA), the Motor Industries Federation (MIF), the SA Insurance Association and members of the National Association of Automobile Component and Allied Manufacturers (Naacam) have reacted strongly to the Bill.

Denzyl Vermooten, executive director of Naacam, says that about 90% of the Bill refers directly to motor-component manufacturers.

Owen Dean, a member of the SA Institute of Intellectual Property Law (SAIPL), disputes this and says it is aimed at the "functional design" of all industrial products.

The National Association of Automobile Manufacturers of SA (Naamsa), representing motor manufacturers as well as SAIPL, supports the Bill, though Dr Dean says the component industry might need special attention.

### Monopoly

Nico Vermeulen, director of Naamsa, says "functional design" needs protection in a developing country, but he recognises that a compromise between the many parties subject to the Bill will have to be negotiated.

Chief protagonists in opposition to the Bill are the AA and the MIF. They say it will give motor manufacturers a monopoly in the supply and price of spares. Consumers will have no choice as to which part to buy.

The AA says the claim by manufacturers that they need to recover the cost of research and development through the sale of parts holds no credence, as the research is done overseas and imported into SA under licence.

The AA adds that it has not yet been proved that pirate parts are less reliable than original equipment parts.

Both feel the Bill will cause job losses and facilitate monopolistic pricing.

Mr Vermooten says the Bill represents a further regulation of commerce and industry, which goes against the government's intention to deregulate.

The Bill will affect all manufactured items, including products such as furniture, tools, mechanically engineered units and kitchen utensils.



DENZYL VERMOOTEN



NICO VERMEULEN

### THE

TWICE already this year gold dealers have been caught with their pants down as the metal looked to go better, then bombed out.

They are hoping this week's fillip is third-time lucky, but none is taking chances. Gold strengthened to \$356.30 without faltering, but shares edged up incrementally. Before the rally there was plenty of jobbing stock, but when institutions returned as buyers scrip dried up.

Gold's rally came on news that Soviet gold reserves are an order of magnitude below what was thought. Oil prices also firmed, with North Sea Brent rising to \$21.50 a barrel as Europe goes into winter.

Over the week Kloof added 250c to R30.75, Driefontein 185c to R37.75 and Freegold 260c to R25.

Platinums picked up on the back of gold and on the unbundling of Rusplats, which is to distribute to members its holdings in Lebowa Plats.

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## Voltex confident about Usko's cabling

MYRON BERZACK of Voltex — the cabling company that took control of Usko this week — is confident that Usko's cabling will have a significant impact on the bottom line.

In a novel deal — the terms of which have not been made absolute — Voltex will inject R70-million into Usko in return for the issue of shares that will give Voltex 80% of the enlarged company.

Voltex is not throwing R70-million into a dead duck. The interest lies in Usko's non-ferrous division, which houses four cabling operations as well as a clutch of worthwhile investments.

Mr Berzack says there were other bidders for Usko, which partly explains the haste behind the deal and the fact that the details are not yet ironed out.

"Usko's cabling operations are complementary to our own divisions," says Mr Berzack.

He believes the subscription for shares is a novel move in SA. Because the deal is imperative to Usko's survival, and because the existing major shareholders would not inject capital, an offer to Usko's minority will not be required by the JSE in

## Usko's cabling

By JULIE WALKER

spite of an effective change of control.

Mr Berzack says one of the first steps will be to reduce Usko's debt burden, possibly through a rights issue.

### Negated

Usko has already sold its steel interests for R55-million, and its vanadium operations to RhoVan. After these disposals, Usko has negative shareholders' funds, and debt believed to be R60-million to R80-million.

"Usko's non ferrous division was making fair money, but it was negated by the loss-makers in the rest of the group," says Mr Berzack. He is cagey over just how much Usko's cabling does earn, but R20-million before interest and tax is probably conservative.

"Once we have brought down the interest bill, Usko should turn out to be a real bargain."

This year Barlows' Reun-



MYRON BERZACK

ert bought Cullinan's shareholding in African Cables in a R76-million deal.

Another large cable company, Aberdare, issued a warning on July 4, but cancelled negotiations two weeks later. It is believed to have looked at Usko too.

The other part of Friday's announcements concerns the cancellation by Usko of 20-

year agreements with RhoVan to produce vanadium pentoxide flake.

Usko's financial difficulties have necessitated the cancellation. It must pay RhoVan R19-million cash before March 1992. Usko will also sell to RhoVan the assets used in the vanadium operations, free of liabilities and contingencies, for R1

### Options

RhoEx will buy Usko's shares in Rhosco (the holding company of RhoVan) and the options Usko holds in RhoVan, for R2.1-million.

Vanadium has been an expensive exercise for both Usko and for Rand Mines, whose loss-making Vansa mine had to be closed last year.

### Polymer merger

HOECHST SA and Sentrachem, joint shareholders of Plastomark, are to merge their engineering polymer divisions.

The new company, Plastomark Engineering Polymers, will become a subsidiary of Plastomark, and will be the largest supplier of engineering thermoplastics and thermosets in Southern Africa.

The product range will include modified polypropylene, high-density polyethylene, engineering polymers and associated products such as nylon.

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ALLAN SWART & ASSOCIATES #7489

FM 11/10/91

245

protection under the Draft Designs Bill."

The Bill will keep the patent attorneys busy Reyburn says it will be possible to obtain a petty patent for individual components, as well as for an overall machine "The amount of legal work will proliferate"

The Bill also leaves room for widespread uncertainty and abuse In the event of a dispute, parties would appear before a tribunal of patent attorneys or practising advocates, rather than the Supreme Court Clashes of interests are inevitable Says Reyburn "It seems inherently wrong that patent attorneys and advocates will end up judging their competitors or their clients' work"

A memorandum accompanying the Bill states that it is well-acknowledged that a gap exists in SA for this legislation, and that the system of petty patents has been successful in at least 19 countries Reyburn, however, challenges the efficacy of some of these systems. He sees no need for the proposed legislation He says it is possible now to obtain a patent relatively quickly and inexpensively for both major and minor inventions "Thus it can be contended that SA's existing patent system already incorporates a petty patent system."

Reyburn is particularly concerned that both Bills are being proposed at a time when SA should be cutting back on legislation in order to re-enter world trade successfully and encourage the start of small industries "We need to harmonise our law with European legislation as far as possible" ■

## DRAFT DESIGNS BILL

FM 11/10/91

## Switching strategy

**Opposition** has steadily mounted to the controversial Draft Designs Bill Last week the Competition Board joined ranks with the Automobile Association, Motor Industries Federation, short-term insurance industry and National Association of Automobile Component and Allied Manufacturers in condemning the proposed legislation as anti-competitive

But car manufacturers, patent attorneys and other powerful interests have an alternative strategy in case the Designs Bill gets killed It's called the Draft Petty Patents Bill

Published at the end of August, the new Bill would have much the same effect as the first Bill. It would give car manufacturers control of the after-market in motor spare parts by largely prohibiting the manufacture of spare parts by anyone other than the original maker The result could be the loss of the thousands of jobs that independent manufacturers and suppliers have created in the past few years (*Business & Technology* August 16)

The new Bill provides blanket protection for low-level technology In a nutshell — an innovator who makes minor steps forward in technology may obtain a 10-year monopoly on the manufacture, sale, importation and use of similar products Any new item that involves an "inventive step" — a mere advance in the art is sufficient — and that is capable of being used or applied in trade, industry or agriculture, would qualify for protection if the Bill became law Clearly, the intention of the Bill is to reduce the level of inventiveness required for patentability, petty patents would be relatively easy to obtain Certainly, new spare parts for vehicles and machinery would be ideal candidates for such protection

Says Webber Wentzel patent attorney Lawrence Reyburn "The Petty Patents Bill creates a new form of property centred on low-level technology, as opposed to the higher technology of full patents. It would provide protection for things that aren't inventions under the Patents Act, and include many objects that could also qualify for

# Another salvo fired at conglomerates

w/mail  
By REG RUMNEY 11/10 - 17/10/91  
THE Competition Board has given the green light to the Columbus Stainless Steel Project — but warned that it might take action in future.

This is the second occasion in recent weeks when Competition Board (CB) chairman Pierre Brooks has issued an apparently favourable finding about an acquisition or merger, but added his note of caution and disquiet about the state of affairs.

The decision was there will be no formal investigation of the deal in

which Barlow Rand sold Middelburg Steel & Alloys and Barlow's chrome interests to a "consortium comprising companies in the Sanlam and Anglo American/De Beers groups".

But Brooks concludes: "In view of the potential negative effects the transaction could eventually have on competition between these two groups the clearance thereof perforce only signifies qualified approval of the venture."

In the Board's Report No 30 which investigated Anglo and De Beers

building up their share stake in Gold Fields of SA, it was found that no monopoly situation had been created, and no further action needed to be taken by the board or the minister.

But the GFSA report has an extensive postscript, apparently to spur debate, which notes "the indications are that both from an economic and political point of view the degree of concentration in this country is probably too high".

In his latest report, Brooks, outlining a possibly more active role for the board, notes: "... it is important for competition policy to be directed not only at arresting the drift towards coalescence of the different groups but also at purposeful group disentanglement and the identification and elimination of restrictive practices spawned by an excessive concentration of economic power."

In clearing the Columbus deal, the CB struck a compromise between the desirability of domestic competition and industrial development. This Anglo spokesman Michael Spicer identifies as one of the problems with the CB's approach. In reference to the successful newly industrialised countries, he poses the rhetorical question: "Why do small countries have big companies?"

There are a number of issues which he says are not dealt with adequately in the purely theoretical framework of the CB's views. How to deconcentrate? To whom to sell off companies? Since big foreign investors would probably be frowned upon, only other conglomerates would be able to buy. What to do with the money? For example, a conglomerate investing money abroad from sold-off companies here would be accused of being unpatriotic. But if it bought new South African companies with the money it would be accused of spreading its tentacles again.

Spicer reckons a corollary of deconcentration would have to be liberalisation of markets.

Star 13/11/91

# Code governing 'grey imports' mooted

Consumer Reporter 248

A code of conduct for the sale of "grey imports" is being considered by the Business Practices Committee following numerous complaints earlier this year that consumers paid more for the "cheaper" products

Grey imports bear the names of well-known brands but, as

they are not brought in by official distributors, have no after-sales service

BPC chairman Professor Louise Tager said the committee was looking at a code of conduct for the sale of "grey imports" or parallel goods where there was no service back-up or spare parts

The code would include an obligation to the seller to inform customers as well as an obligation on the buyer to check the product. The warning of "let the buyer beware" would also apply, Professor Tager said

Consumer Council assistant director, communications, Daan Kruger said the consumer body welcomed the moves

**KENNISGEWING 1087 VAN 1991****DEPARTEMENT VAN HANDEL EN NYWERHEID****WET OP SKADELIKE SAKEPRAKTYKE, 1988**

Ek, David de Villiers Graaff, Adjunkminister van Handel en Nywerheid en Toerisme, handelende namens die Minister van Handel en Nywerheid en Toerisme, na oorweging van 'n verslag deur die Sakepraktiekomitee met betrekking tot 'n ondersoek waarvan in Kennisgewing 256 van 1991 in *Staatskoerant* No 13061 van 15 Maart 1991 kennis gegee is, welke verslag gepubliseer is in Kennisgewing 1086 in *Staatskoerant* No 13620 van 15 November 1991, is van oordeel dat 'n skadelike sakepraktyk bestaan wat nie in die openbare belang geregverdig is nie, en oefen hiermee my bevoegdhede uit kragtens artikel 12 (1) (b) en (c) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No 71 van 1988), soos in die Bylae uiteengesit.

**D. DE V. GRAAFF,**

Adjunkminister van Handel en Nywerheid en Toerisme

**BYLAE**

In hierdie kennisgewing, tensy uit die samehang anders blyk, beteken—

“skadelike sakepraktyk” die beskikbaarstelling van finansiering, die verlening van bystand aan skuldenaars of die onderneem van betalings namens skuldenaars aan skuldeisers deur die partye;

“die partye” mnre Lucifer Spokie van Zyl, André Smith, Jan Human, Philip Venter en Novio Financial Advisors BK (CK90/24792/23), hetsy hulle onafhanklik of tesame met iemand anders optree.

1. Die skadelike sakepraktyk word hiermee onwettig verklaar.

2. Die partye word hiermee gelas—

(a) om af te sien van die toepassing van die skadelike sakepraktyk;

(b) om op te hou om enige belang in 'n besigheid of tipe besigheid te hê wat die skadelike sakepraktyk bedryf, of om enige inkomste daaruit te verkry,

(c) om te gener tyd die skadelike sakepraktyk te bedryf nie,

(d) om te gener tyd enige belang in 'n besigheid of tipe besigheid wat die skadelike sakepraktyk bedryf te bekom nie, of om enige inkomste daaruit te verkry nie

3. Hierdie kennisgewing tree in werking op die datum van publikasie hiervan

(15 November 1991)

**KENNISGEWING 1088 VAN 1991****VERBETERINGSKENNISGEWING****SUID-AFRIKAANSE RESERWEBANK****ARTIKEL 30 VAN DIE WET OP DEPOSITO-NEMENDE INSTELLINGS, 1990****FINALE REGISTRASIE. FRENCH BANK OF SOUTHERN AFRICA BEPERK**

Algemene Kennisgewing 1011 in *Staatskoerant* No 13597 van 1 November 1991 word hiermee gewysig deur die datum 1991-09-17 in die Afrikaanse teks te vervang met die datum 1991-10-17

(15 November 1991)

**NOTICE 1087 OF 1991****DEPARTMENT OF TRADE AND INDUSTRY****HARMFUL BUSINESS PRACTICES ACT, 1988**

I, David de Villiers Graaff, Deputy Minister of Trade and Industry and Tourism, acting on behalf of the Minister of Trade and Industry and Tourism, after having considered a report by the Business Practices Committee in relation to an investigation of which notice was given in Notice 256 published in *Government Gazette* No 13061 of 15 March 1991, which report was published in Notice 1086 in *Government Gazette* No 13620 of 15 November 1991, and being of the opinion that a harmful business practice exists which is not justified in the public interest, hereby exercise my powers in terms of section 12 (1) (b) and (c) of the Harmful Business Practices Act, 1988 (Act No 71 of 1988), as set out in the Schedule

**D. DE V. GRAAFF,**

Deputy Minister of Trade and Industry and Tourism

**SCHEDULE**

In this notice, unless the context indicates otherwise—

“harmful business practice” means the making available of financing, the rendering of assistance to debtors or the undertaking of payments on behalf of debtors to creditors by the parties,

“parties” means Messrs Lucifer Spokie van Zyl, André Smith, Jan Human, Philip Venter and Novio Financial Advisors CC (CK90/24792/23), whether acting independently or in concert with any other person

1. The harmful business practice is hereby declared unlawful

2. The parties are hereby directed to—

(a) cease applying the harmful business practice,

(b) cease to have any interest in a business or type of business which applies the harmful business practice or to derive any income therefrom;

(c) refrain from at any time applying the harmful business practice;

(d) refrain from at any time obtaining any interest in or deriving any income from a business type of business applying the harmful business practice

3 This notice shall come into operation upon the date of publication hereof.

(15 November 1991)

**NOTICE 1088 OF 1991****CORRECTION NOTICE****SOUTH AFRICAN RESERVE BANK****SECTION 30 OF THE DEPOSIT-TAKING INSTITUTIONS ACT, 1990****FINAL REGISTRATION FRENCH BANK OF SOUTHERN AFRICA LIMITED**

General Notice 1011 in *Government Gazette* No 13597 of 1 November 1991 is hereby amended by substituting the date 1991-10-17 for the date 1991-09-17 in the Afrikaans text.

(15 November 1991)

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3 000 charges of fraud involving contravention of exchange control regulations, GST evasion and unlawful importation of films on which copyright existed.

He said the film titles had absolutely no bearing on the actual film. "There were no complete films. Each reel contained scraps of film trailers,

from these films as there was not one completely full-length feature," he said. The trial continues before Mr Justice Didscott

## Call for 'findings' in food price investigation

BLOEMFONTEIN — A call for the Board of Trade and Industries to conduct the investigation into the increase in food prices objectively, so that actual findings could be reached, has been made by Free State Agricultural Union president Piet Gous. 31 Dec 11/12/91.

Gous said the impression was often wrongly created that it was the farmer, as primary producer of agricultural products which form part of the "food basket", who

was responsible for food price increases. Such an inference, said Gous, was far from the truth. (SEE) (245)

Farmers found it difficult to recover their input costs, while the consumer had to "pay through the neck" for food.

Against this background the Free State Agricultural Union would welcome a speedy conclusion of the investigation, with clear findings and recommendations to put matters into perspective — Sapa

ADAM

# PRICES - Control & Contraventions

- 93 -

1993

Year	WHITE	COLOURED	ASIAN	AFRICAN	TOTAL
1969	-	-	-	-	-
1971	-	-	-	-	-
1973	0.0%	0.0%	0.0%	0.0%	0.0%
1975	0.0%	0.0%	0.0%	0.0%	0.0%
1977	0.0%	0.0%	0.0%	0.0%	0.0%
1979	0.0%	0.0%	0.0%	0.0%	0.0%
1981	0.0%	0.1%	0.0%	0.0%	0.0%
1983	0.1%	0.5%	0.0%	0.0%	0.0%
1985	0.0%	0.0%	0.0%	0.0%	0.0%
1987	0.1%	0.0%	0.0%	0.0%	0.0%
1988	0.4%	0.0%	0.0%	0.0%	0.0%
1989	0.0%	0.0%	0.0%	0.1%	0.0%

3.22 Women as a percentage of Total Artisans

Year	WHITE	COLOURED	ASIAN	AFRICAN	TOTAL
1969	67.7%	29.2%	3.1%	0.0%	50634
1971	66.4%	29.8%	3.8%	0.0%	60777
1973	59.9%	35.9%	4.2%	0.0%	62752
1975	51.9%	39.1%	4.9%	4.1%	64943
1977	52.7%	38.2%	4.9%	4.2%	56297
1979	47.9%	43.0%	7.3%	1.8%	56880
1981	41.1%	39.5%	6.6%	12.8%	65349
1983	37.3%	49.4%	6.9%	6.4%	56994
1985	33.3%	48.2%	7.6%	10.8%	50459
1987	42.2%	38.7%	4.0%	15.1%	34847
1988	32.6%	44.9%	5.8%	16.7%	49812
1989	31.6%	38.4%	6.3%	23.7%	51387

3.21 Percentage Distribution of Artisans

Year	WHITE	COLOURED	ASIAN	AFRICAN	TOTAL
1969	34274	14803	1557	0	50634
1971	40363	18094	2320	0	60777
1973	37565	22559	2628	0	62752
1975	33674	25425	3207	2635	64943
1977	29671	21492	2751	2376	56297
1979	27208	24468	4175	1016	56880
1981	26882	25836	4287	8336	65349
1983	21212	28131	3916	3667	56994
1985	16802	24332	3835	5474	50459
1987	14665	13479	1398	5272	34847
1988	16053	22346	2890	8339	49812
1989	16246	19713	3245	12169	51387

3.20 Total no. of Artisans by Population Group

Year	WHITE		COLOURED		ASIAN		AFRICAN	
	M	F	M	F	M	F	M	F
1969	34274	-	14803	-	1557	-	-	-
1971	40363	-	18094	-	2320	-	-	-
1973	37565	-	22559	-	2628	-	-	-
1975	33674	2	25425	0	3207	0	2635	0
1977	29671	4	21492	3	2751	0	2376	0
1979	27208	13	24468	5	4175	0	1016	0
1981	26882	8	25836	41	4287	3	8336	0
1983	21212	68	28131	312	3916	15	3666	1
1985	16802	16	24332	6	3835	0	5471	3
1987	14665	33	13474	5	1398	0	5272	0
1988	16053	184	22346	1	2890	0	8329	10
1989	16246	14	19692	21	3244	1	12125	44

BUILDING

3.19



# Business practice Bill

S7A2 14/1/93 (245)

PARLIAMENT — The property of a person involved in a harmful business practice may in future be attached or a curator appointed to take over the control and management of his business, in terms of draft legislation published yesterday.

Other proposals mooted by the Harmful Business Practices Amendment Bill include

- That decisions of a special business practices court be open to appeal to the Appellate Division or to a full bench

of the Supreme Court

- The repeal of the power of the Minister to request the Price Controller to set a maximum price or charge

- That liaison committees be appointed to advise the Business Practices Committee on matters referred to them by the chairman to improve liaison between the committee and self-regulatory institutions and consumer organisations.

- That a vice-chairman be appointed to the committee to promote co-ordination — Sapa.

## Malpractice <sup>(245)</sup> is the target

CAPE TOWN — The property of a person involved in a harmful business practice may be attached, or a curator appointed for a business, in terms of draft legislation published yesterday

Other proposals mooted by the Harmful Business Practices Amendment Bill include: *BIDAM 14/1/93*

That decisions of a special business practices court should be open to appeal to the Appellate Division or a full bench of the Supreme Court,

Repealing of the power of the Minister to request the price controller to set a maximum price or charge.

— Sapa

# Report on control boards ready

*Sowetan*  
By Mzimkulu Malunga

A REPORT proposing radical reforms relating to marketing and control boards is to be released tomorrow.

Last week's dramatic Government decision to privatise the Banana Board is believed to be in anticipation of far-reaching recommendations by a committee investigating marketing and control boards

111193  
245  
~~245~~  
■ Investigating committee proposes radical reforms:

The committee is headed by Professor Eckard Kassier of Stellenbosch University

In terms of the liberalisation programme, the Banana Board is to first forfeit its statutory powers before being converted into a public company called Subtropico

Producers will be the sole owners  
Shareholding is to be determined by

producer's production over the past five years

The control of the Meat Board is also being scaled down

Producers have a choice to sever ties or work with the board. They can slaughter at abattoirs of the choice

Independent producers can now directly compete with the parastatal Abacor.

## Govt could probe control boards again

PRETORIA — In anticipation of a report next week proposing freer markets for agricultural goods, government is considering appointing another committee to investigate the future of control boards.

The Agriculture Department yesterday announced that a government-appointed committee, under the chairmanship of Stellenbosch University professor Eckard Kassier, would publish its report next Tuesday *BIPM 51193*.

The committee, established in the wake of reports criticising the Marketing Act, is expected to propose substantial reforms to

TIM COHEN

the Act, under which the control boards were set up.

The new committee will investigate Kassier's recommendations, which are expected to propose measures to make agricultural products more susceptible to market forces.

The policy committee will be "quite large" and include representatives from SA's 22 agricultural control boards.

Kassier yesterday declined to comment on the contents of his report.

# Consumer Council hits retailers' bread pricing

MARIANNE MERTEN

A CONSUMER Council survey of bread prices released in Pretoria this week has criticised pricing structures at cafés and chain stores, claiming that they sell bread at above the recommended price

Said Consumer Council executive director Jan Cronje "Most cafés clearly ignore the recommended maximum price of R1,75 for a standard 800g loaf of white bread and R1,50 for brown bread. They are still selling white bread for up to R1,96 and brown for up to R1,80

"Chain stores were charging 11c more for white bread and 9c more for brown than three months ago when they undertook to keep prices as low as possible"

OK Bazaars did not undertake to hold prices at levels of three months ago, and put up its bread prices in line with Wheat Board increases

"We sell white bread nationally at R1,65 and brown bread at R1,37," said OK Bazaars merchant director food, Mervyn Kratzick.

"As far as Pick 'n Pay is concerned, we have set a national policy. We are selling white bread at R1,62 and brown bread at R1,37," said Pick 'n Pay hypermarkets GM perishables Ian Eadie

Checkers prices in southern Transvaal were R1,63 for white bread and R1,38 for brown bread. It was part of its commit-

ment to consumers to keep prices low, a Shoprite-Checkers spokesman said

"Chain stores are very fair; there is hardly any markup on the retail price. We are selling white bread below the recommended price at R1,65 and brown bread at R1,45," a spokesman for Blue Ribbon Auckland Park Bakeries said.

Catering, Restaurant and Tea Room Association executive director Frank Swarbreck said: "We have never agreed to the recommended price. We were sidelined at the crucial meeting in November."

The association, which represented café owners, favoured a free market and believed the return to retail price maintenance had resulted in everybody putting up their prices gradually, Swarbreck said.

The cafés were providing a convenience service which should be allowed to cost a little more, he said.

The Consumer Council supported free market principles, but was concerned about consumers' ability to react to unreasonable prices and/or quality, public relations manager Paul Roos said.

"We need discerning consumers. Our main task is consumer education. The emphasis is not on playing policeman"

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Star 17/2/93

# Economic malpractices curb growth — Minister

CAPE TOWN — Government expenditure had to be contained and the productivity and international competitiveness of the economy lifted to a far higher level to raise economic growth, Deputy Minister of Trade and Industry David Graaff said yesterday.

Introducing second reading debate on the Harmful Business Practices Amendment Bill, Graaff said one of the first goals of consumer protection must be to generate viable and sustainable job growth through economic progress.

The Government could not do it alone, and it would require

the will of the masses to energise the economy.

The Government would also have to support economic policies sympathetic to economic life and liberty

Private property and freedom of contract were institutions which merited strong recognition in any Bill of Rights.

"These values must be protected and jealously safeguarded if the widely experienced human suffering caused by a struggling economy is to be ameliorated"

Intervention, such as provided by the Harmful Business Practices Act, was sometimes necessary to protect these values

"When commercial behaviour

deceives the consumer, he is entitled to look to the Government for help."

The Act had introduced a system of consumer codes which would serve various purposes, including guidelines for possible ministerial action.

They outlined the difference between acceptable and unacceptable commercial conduct, and furnished a basis for consumer education.

The Bill also provided for the appointment of a curator in cases where urgent action was required to prevent the squandering of the public's money or its removal from the country.

There were 80 investigations by the Business Practices Committee in progress. — Sapa.

STAL 17/2/93

## Bill 'to combat deception of public'

*BIDAM 17/2/93*  
**CAPE TOWN** — The aim of the Harmful Business Practices Bill, originally initiated as a result of the Kubus milk culture scandal, was to combat business practices which deceived the public, Deputy Trade and Industry Minister David Graaff said in Parliament yesterday.

The Bill, if enacted, will replace the existing Harmful Business Practices Act.

It would introduce a system of consumer codes which would set the parameters for possible ministerial action.

The codes outlined the difference between acceptable and unacceptable commercial conduct and for the appointment of a committee to consider when urgent

**TIM COHEN**  
 action was required to prevent the squandering of the public's money. (245)

DP MP for Hillbrow Lester Fuchs said while his party supported the Bill in principle, he was concerned that if the Bill were to become law it would allow the attachment of assets without first obtaining a court order.

"We should be mindful of vesting in a committee, or in a curator, powers which the courts themselves are reluctant to exercise," he said during the second reading debate on the Bill

# Laws that make

MORE than 90 laws, policies and practices inhibit the South African economy, says the Nedcor/Old Mutual sponsored Professional Economic Panel. "The problem is that small and medium emerging enterprises (SMEEs) are shackled. The need to reform is urgent," says PEP.

"There has been such legislative diarrhoea over the years that there is now more than one Act for every word the average person knows in his or her mother tongue."

PEP has listed these laws and practices where a majority of PEP members were in consensus. The list is confined to the removal, relaxation or reform of obstacles to SMEEs.

PEP says most South Africans live under conditions in which the enforcement of most laws is arbitrary, impossible or manifestly absurd. Bad law leads to abuse and corruption.

"Corrupt officials and politicians use such laws to get at rivals and to collect bribes and protection money."

PEP has compiled a 60-page document on legal and policy reforms needed to free the economy and create a vibrant small and medium enterprise sector.

Subjects as diverse as animal slaughter and cigarette smoking are addressed, including

- The common law of product safety liability is adequate to deal with cases such as animal slaughtering and meat processing. Grading could be introduced on a voluntary basis for the export and First World sector.

- Bakeries and butcheries should be treated as ordinary businesses. Special licensing provisions should go.

- Entry barriers into trades, occupations and professions should be systematically and critically examined. "As a rule, formal qualifications should be replaced entirely by tests of competency."

- Close corporations are still subject to excessive formalities such as registra-

# an ass of SA's economy

By KEVIN DAVIE

tion, record-keeping and reporting.

- Most government housing would be condemned under building standard or solum laws. Prohibitions on the private sector have exacerbated, if not caused, the housing shortage. Building codes and minimum standards should be scrapped in low income areas to allow maximum opportunities for owner builder and SMEE building contracting.

## Protection

- A computer system should be used to register property transfers, mortgages and leases, allowing conveyancing to be scrapped in simple cases. "Technology can provide better protection than conveyancers. The only merit in the present system is that it protects conveyancers," says PEP.

- The small claims court should be extended to include legal personae such as SMEEs (at present only individuals can use these courts).

The value of small claims should be increased to R10 000.

- The Deposit taking Institutions Act makes SA one of the most difficult and costly countries in which to establish a deposit taking institution. "In the real world, especially in black communities, the DTI laws are transgressed by many stokvels, savings and loan clubs and co-ops," says PEP.

The formal financial institutions are unjustifiably regarded as somewhat of a sacred cow in SA. It is clear that greater relaxation is necessary in the interests of SMEEs and the economy in general.

- Credit controls should be scrapped in their entirety.

## Absurd

- Switzerland, a country the size of the Transkei, has 300 independent electricity companies, 100 of which produce electricity. PEP says electricity vending in SA should be decriminalised.

- An explosion of SMEEs occurred in the Ciskei after businesses with fewer than 20 employees were exempted from the Factories, Machinery and Building Work Act, despite the extremely unfavourable political climate. "A South African version of the Ciskei Small Business Deregulation Act should be adopted."

- The present absurd situation where gambling is only allowed in the homelands should be normalised, subject at most to controls found in other countries.

- The Businesses Act (which substantially deregulates licensing provisions but is yet to be implemented in some provinces because of opposition from bureaucrats) should be brought into operation throughout the country.

"There is probably no other single measure that could create a greater number of opportunities for SMEEs than this. All the potential resistance has been raised and identified. It is clearly based on self-serving elitism and vested interests."

- Zoning should be sufficiently relaxed to allow for



ROB LEE coordinator of the PEP panel

unobtrusive home businesses. "The automatic or default position should be that home businesses are allowed, to the extent that they do not unduly disturb neighbours."

- Hotel and boarding room grading should be optional.

- The import of all used products for resale in the formal sector should be exempt from import quotas and duties.

- SMEEs should be exempt from labour legislation, which has been designed for big business and organised labour. "The majority of workers and job seekers are not represented by unions, and it is their interests that have to be served."

- All forms of black title to land should be automatically converted to ownership.

## Access

- All SMEEs of a certain size should be exempted from as many levies (such as regional service) and charges as possible.

- All licensing, except where special circumstances which clearly apply, such as in the sale of liquor and fire arms, should be abolished. There should be free and easy access to the liquor trade at both production and distribution levels.

- The right to dispense medicines should be decontrolled so that the law provides for no more than that a qualified person distribute prescription medicines.

- Private, competing postal services should be allowed to the Post Office.

- The right to public interest or class actions in the

courts should be introduced. "Private use of trains on existing tracks should be encouraged immediately. Trains could be bought or leased from Spoornet."

- The Stamp Duties Act, which applies to a wide variety of agreements, contracts, licences and documents, should be repealed as soon as possible.

## Bizarre

- All restrictions on the provision of telephone products and services should be lifted and the statutory telephone monopoly should be phased out.

- Transfer duty in mortgage and land registration should be abolished.

- SMEEs should not be required to register their employees with the Unemployment Insurance Fund.

- A bizarre situation has arisen where the state employs costly teams, such as the Diamond Squad, to lay traps to prosecute (persecute) people engaged in a mutually volitional trade.

"Clearly, no one is harmed by such trade except a tiny vested interest. There is an argument for restriction on trade in uncut diamonds, namely that the international diamond cartel is of great value to SA."

"However, it is doubtful whether this argument can justify the fact that IDB offenders are sent to jail for longer terms than murderers."



# SABS to lose monopoly 245

PRETORIA — The SA Bureau of Standards will lose its monopoly on testing products after a new Standards Act is introduced in Parliament this session

The Act, expected to be cleared by government lawyers next week, would provide benefits and opportunities for SA businesses, a Trade and Industry Department spokesman said

"The crux of the Act is that it will allow other institutions that are willing and able to get involved in the testing of standards."

While the SABS, in conjunction with industry and producers, would continue to set appropriate quality standards, new testing organisations could speed up the process of quality verification.

An SABS spokesman said although the organisation had 700 technical and 700 administrative staff, backlogs did occur. "If the Act is passed, the SABS will be placed in a more competitive environment."

ADRIAN HADLAND

The Trade and Industry spokesman also said the privatisation of the testing process could lead to a reduction in the cost of quality certification "It would be better and quicker if more than one group could be consulted on product certification and it would ensure that charges are more market-related."

The SABS spokesman said while the infrastructure required to establish a testing facility was prohibitive, "one can expect people to try"

Denel's Gerotek division already does specialised standard testing.

Denel group communication executive Paul Holtzhausen said opening the standard testing industry would create an environment where setting standards and test-

□ To Page 2

## SABS 245 ADM 22/1/93

ing were separated, "allowing complete objectivity in both fields". This would bring SA closer to the European approach and ease mutual recognition agreements.

"The consequence will be to boost our export industry in the highly benefited, high technology product sector," he said

The SABS spokesman said the new legislation was unlikely to pose a real threat to the existence of the SABS, with an annual budget of around R150m. With the opening

□ From Page 1

of international markets and the different quality requirements stipulated, the SABS was likely to play a continuing role in an increasingly complicated field

The Trade and Industry spokesman said the question of how accreditation would be granted to companies wishing to join the standard testing industry and the inclusion of agricultural products and foodstuffs within the ambit of the new Act were the final clauses still under discussion

## 'New' attitude needed

B10M 4/2/93

ADRIAN HADLAND

PRETORIA — It is vital that local businessmen reappraise their attitudes towards the competitive process as SA re-enters international markets, says Competition Board chairman Pierre Brooks. (245)

"We are moving from what in many respects is a siege economy to being part of the international community and there is still a lack of appreciation for the way effective competition is supposed to work"

Consumers did not realise that introducing competitiveness did not necessarily mean the immediate lowering of prices, he said. On occasion, such as when the market sharing arrangement between bakeries fell away and increased transport costs had to be included in the price of bread, it could mean the opposite.

Brooks said some businessmen were too selective in their commitment to the private enterprise system and apparently did not recognise an effective competition policy was one of the system's cornerstones. With the Competition Board established only in 1980, SA's economy had a long history of non-competitiveness.

# Casinos have had their chips as Govt pounces

Star 30/1/93.

245

THE gambling industry was left stunned yesterday when Justice Minister Kobie Coetsee confirmed he would not be renewing the moratorium on prosecution of hundreds of illegal casinos across the country.

A four-month-long moratorium on prosecutions came into effect after a special sitting of Parliament in October. At that time, loopholes in the Gambling Act, which allowed casinos to proliferate, were plugged. The moratorium expires at midnight tomorrow.

Estimates have put the number of illegal casinos at between 1 500 and 2 000 with about 60 000 people in their employ. Total monthly turnover is estimated to "easily surpass" R100 million.

"Most people in the industry firmly believed the moratorium would be extended, at least until the Howard Commission (into gambling in South Africa) had reported back on its findings and recommendations," said one angry casino owner, who refused to be named.

Asked to comment on how the move would affect the Jack O'Black chain of casinos — one of the largest and oldest operators — attorney Hymie Sussman replied: "How do you think it will affect me! I won't answer stupid ques-

**THOUSANDS of jobs are on the line, but operators may go underground, reports MANDY JEAN WOODS.**

tions. I have no comment to make."

Karos Hotels chairman Selwyn Hurwitz did not return calls yesterday afternoon.

Narcotics Bureau chief Colonel Neels Venter last week said the police would act in accordance with the law, and that if the law prohibited the operation of casinos, police would take appropriate action and close them down.

## Pressure

Gambling Association co-chairman Grant Kaplan said he was in "no doubt the police will move swiftly to close casinos".

Sun International managing director Ken Rosevear said he was very pleased that the uncertainty regarding illegal casinos had been resolved. "Hopefully the Howard Commission's report will be out soon and then we will know where we stand with regard to gambling in South Africa."

Independent casino operators and the Gambling Association of South Africa have repeatedly

maintained that Sun International was pressuring the Government to shut down small casinos because of the effect it had on its own business. Rosevear denied the claims, saying: "It was recognised by everyone that we needed clear laws on gambling..."

A casino operator said of the move: "You can bet on one thing — everyone will just go underground. We have about 1 500 members and those people aren't exactly going to go away."

Kaplan said he had been contacted late this week to make additional representation on why the moratorium should be extended.

"I noted that if the Howard Commission was due to make a finding in three months, why shouldn't the moratorium be extended? By closing the casinos, a lot of people would be deprived of work," he said.

In addition, Kaplan said the Gambling Association was in the throes of setting up a deal with a Cape-based charity which would have seen it take a percentage of the association's profits — up to R10 million a month.

South Africa would also lose out on investment worth millions of dollars. He said a number of foreign players had shown great interest in injecting capital into the industry.

S/Times (Buss) 21/2/93 (245)  
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# A scrap over scrap

By CIARAN RYAN

THE Competition Board has called for a revision of trade policies which allow two companies a monopoly in exports of scrap metal and industrial copper

The board blocked the proposed R600-million merger of Haggie subsidiary Copalcor and Non-Ferrous Metals (NFM) on the grounds that it constitutes a restrictive practice.

The two companies control between 70% and 100% of the domestic industrial copper product market, with sales of more than R650-million a year.

In addition to having a monopoly on both the purchasing of scrap metal and the sale of semi-finished and finished copper, Copalcor and NFM enjoy import protection in the form of a 15% ad valorem duty.

Furthermore, all exports must be channelled through the two companies because of the system of export permits which applies to copper products. A 15% duty is charged on scrap exports

Competition Board chairman Pierre Brooks says independent scrap metal suppliers do not have the freedom to export outside these two companies. "This monopoly is made worse by a system of import and export controls.

"We made recommendations to the Department of Trade and Industry on revising the tariff structure which applies to the industry. We feel there is good reason to do away with export controls and export tariffs."

There are approximately 200 smaller scrap dealers in SA, most of whom are obliged to sell their scrap to the two largest companies.

NFM, owned by the Lazarus family, is the smaller of the two operations.

## Risk

The merger was motivated on the grounds that export sales would increase by R100-million over the next two years through improved efficiencies, rationalisation and economies of scale

If the merger did not go ahead, it was alleged that both businesses were at risk of closure. Export sales from the two companies are currently worth R200-million a year.

The R600-million merger was to have been effected by means of a share swap, which would leave Haggie with 50% of the equity in a new holding company and the Lazarus family with the balance

Neither company would exercise outright control for two years, but thereafter either party had an option to acquire a controlling interest. The board found that Haggie would in all probability end up with a monopoly of the non-ferrous scrap and industrial copper markets after two years.

The price of semi-finished and finished products are determined by import parity pricing, taking the London Metal Exchange price as the basis, adding transport costs and a 15% ad valorem duty to arrive at local prices.

The presence of two large competitors in the market maintained a degree of competitive pressure on prices paid to scrap metal suppliers

The board found that competition would be eliminated if the merger went ahead, reducing competitive pressures on prices paid to suppliers. The board had started to investigate the scrap metal industry prior to the merger after complaints had been received from scrap metal dealers.

The final decision on the merger rests with the Minister of Public Enterprises, Dawie de Villiers, but provisions exist for appeals to be made against ministerial decisions.

South African Airways must increase its fares if the passenger is to benefit from a more competitive environment, says the chairman of the Competition Board, Dr Pierre Brooks. It is a decision that has far-reaching implications for the power of parastatals and other dominant players in the market place. Here advocate SOLLY TUCKER, a member of the council of the Institute of Directors and chairman of York Timber, explains why this is so.



Solly Tucker

# Dr Brooks's medicine for greedy predators

The Competition Board's recent report to the Minister of Public Enterprises on South African Airways, seeks to negate "anti-competitive behaviour" by the flagship airline following the dismantling of its statutorily enshrined monopoly.

The interesting feature in its recommendation to the Minister, is that the Board's action is being launched against prices that are too low!

Can prices ever be too low?

The Competition Board's report shows how low prices can be against the consumer's best interests and hurt the free market system.

Dr Pierre Brooks, Chairman of the Board, says that complaints lodged against corporatised and "commercialised" parastatals have in recent times increased both in number and complexity.

Government policy of commercialisation is intended, inter alia, to reduce or eliminate the taxpayer's financial commitment to parastatals. This puts pressure on the managers of parastatals not only to trim their particular operations, but to seek increased revenues: for instance, by extending the scope of their activities or by "anticompetitive behaviour" such as predatory pricing.

## Predatory pricing

Dr Brooks's report to the Minister does not use the words, "predatory pricing", but that, in essence, is the mischief which the Board now seeks to redress in the SAA issue.

Predatory pricing refers to conduct by a major, well financed player in the market place, aimed to acquire or preserve monopoly power by underselling its rivals. In its most orthodox form, predatory pricing means driving rivals out of business by selling below cost.

This kind of anticompetitive

behaviour is actionable under American antitrust laws as well as in antimonopoly doctrines in other Western jurisdictions.

Predatory pricing is not condemned because it results in current lower prices. It is condemned because, if successful, it will result in reduced output and higher prices.

A price is predatory if it is reasonably calculated to drive rivals from the market today or else discipline them so that the predator can enjoy monopoly pricing in the future.

This is the underlying principle of anti-competitive conduct found by the Board in the loss-making pricing policy of SAA: it was held to be unfair to its rivals, Flitestar and Comair and, also, against the public interest.

The two smaller airlines, although acting independently, were being pressed to meet the prices of the dominant price leader or lose market share to SAA whose predatory pricing strategy served to boost SAA's dominant position and diminish effective competition in the market.

The Board found that it is crucial for SAA, especially in view of this status as a State-controlled operation, to set commercially realistic prices. Its failure to do so and to diminish capacity commensurate with the Government's policy objectives amounted to anti-competitive behaviour.

To remedy the situation the board recommended, inter alia, that SAA adjust its prices on certain popular domestic routes to 1991 levels in real terms and maintain these levels with biannual adjustments until its domestic operation becomes profitable; and, that SAA reduces flight frequency on the same routes within two months to a level 30 percent lower than the previous years.

Dr Brooks accepts that his

Board's recommendations, if implemented, would probably result in an increase in airfares

It would not be in the long term interests of consumers if SAA were allowed to continue with its pricing policy which resulted in substantial losses that will ultimately have to be borne by the taxpayer or could even lead to the withdrawal of its rivals from the market.

The action against SAA by the Competition Board will no doubt be very carefully studied by other parastatals, whose number and magnitude continues to escalate — Transnet, Telkom the Post Office, Denel, Soekor, Abakor, Escom and now, the youngest, but powerful, creature of "commercialisation", Safcol (South African Forest Company Limited)

## Private sector

Will similar principles apply, on proper cause shown, to predatory pricing and other anticompetitive conduct by the private sector majors? Who doubts that in the present prolonged recession some heavy-weight players have driven or are driving their less well-financed competitors out of business? In a slump effectiveness and efficiency are not necessarily guarantees of viability in the teeth of ruthless predators.

For society as a whole to prosper, corporate leaders, private or public, must shape their actions to ensure the free market system works for the common good

This is a watershed finding by the Competition Board that augurs well for wholesome standards of competition and for level playing fields in the market place.

Directors throughout South Africa, will salute Dr Pierre Brooks and his Competition Board for a momentous, courageous and insightful initiative

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# Flying in the face of fair play

SITewes (Buss) 28/2/93

THE Competition Board's findings that SAA must conduct itself on a commercial basis and produce a return for its shareholder may seem like a statement of the obvious. But it raises an important question to whom must state-owned corporations answer?

The government, the consumer or the principles of fair play?

In the end the principles of fair play are most important, not lower fares born out of ruinous fare-cutting, since this confers a passing benefit to consumers. If the price war drives competitors out of business, you again revert to monopolistic pricing and consumers are penalised. Fair play implies a duty to make sound commercial decisions which reward the providers of capital and do not threaten the capital base of the company.

In SAA's case, the state is the sole shareholder. The transformation from a state-owned monopoly plied with cheap capital to state-owned corporation subject to the same rules as everyone else is an uneasy one.

On the one hand, it must fight off the competitive challenge and on the other make a return for its shareholder.

One can understand the instinct to jealously protect its markets, but SAA lost sight of which master it is answerable to.

The Competition Board report on

The Competition Board's report on SAA's commercial conduct establishes important principles governing the competitive behaviour of state-owned corporations. Comment by **CIARAN RYAN**

deregulation of the domestic air transport industry establishes the ground rules for the competitive behaviour of state-owned corporations. "SAA is required to establish itself on a commercial basis," says the report. "It is expected to conduct its business in such a manner as to yield an appropriate return on assets employed, as well as produce a dividend to its shareholders."

## Dominant

SAA has made losses since the commercialisation of parent Transnet in 1991. Filtestar entered the market on the basis that SAA had been instructed to operate its domestic routes on a commercial basis.

As SAA was already making a loss on these routes when Filtestar began operating, one would have expected the dominant player and price leader to increase prices and reduce capacity.

Instead, SAA threw itself further into the red by increasing capacity

and lowering fares, despite its requirement to act commercially.

Although Filtestar is making losses, the report states that SAA is not the sole cause. Filtestar's yields have consistently been below those of SAA. "This may be an effect of SAA's superior service frequency, but may also have its roots in poor marketing by Filtestar." The recession is also blamed for Filtestar's losses.

The Board suggests a regular review of domestic fares to place SAA on a profitable footing and restore seat yields to January 1991 levels. SAA says it has already implemented many of the recommendations, and fare increases were announced in January.

The report answers several questions which had been raised over the privatisation of state corporations. It is reassuring to note that there is no cross-subsidisation between Transnet and SAA, and that SAA's assets were acquired at fair market values. There were fears that SAA would

steal competitive advantage by acquiring its assets at below market rates.

The Competition Board notes that SAA increased flight capacity by between 12% and 15% last year, but this was less than anticipated by Filtestar.

Other state corporations which have bumped heads with the private sector are Denel, in the telemetry field, and Transnet, which made a foray into the laundry business and stopped a competitor from acquiring land at Richards Bay.

## Vigilance

Telkom is getting its first taste of competition with the introduction of cellular phones, and CSIR, careful to avoid accusations of unfair competition, could throw its more than R600-million research assets and over 2 000 scientists at the private sector.

The private sector, which has much to lose, is quick to cry foul play when the public sector enters its markets. Provided this is not a departure from its core business, there is nothing to stop parastatals competing on the same terms as everyone else.

Vigilance is required by the Competition Board to ensure that the rules of the game are respected by the newly commercialised participants as well as the old.

Star 4/18/93

(245)



# Bid to put brake on shady business operators

By June Bearzi  
Star Line

Legislation is in the pipeline which should put a halt to shady business operators who fleece the public

Draft laws giving wide-ranging powers to the Harmful Business Practices Committee (a Government watchdog body working under the aegis of the Department of Trade and Industry) provide it with the clout it has lacked over the years to clamp down on recalcitrant

business promoters and protect the public's interests

It allows the Trade and Industry Minister to grant the body powers to shut down a business for six months while it is being probed, wrest financial control from it, install a curator, and freeze and seize assets

The committee's inability to prevent trucking king Riaan Coetzee from running scam operations brought shortcomings in the Harmful Business Practices Act into sharp focus

Several of Coetzee's victims believe that if the committee

had been able to force him to relinquish the reins of his Midrand ventures Truckkor, Conomy and SA Rebuild, they would have recouped at least some of their money

Star Line has investigated and exposed several other schemes in which consumers lost hundreds of millions of rands. This prompted the committee to probe them

Some of the exposés were on money-lending boss Spokie Lucifer van Zyl, who ran Novio and Reficul Financial Advisors,

Execulease, which promised to take over car leases but failed to pay out clients for their vehicles, and wayward timeshare schemes Flexi Club and Summer Leisure

Tow truck racketeers who snatched cars from accident scenes and held them to ransom until exorbitant fees were paid as well as certain retirement villages were also probed by the committee after Star Line investigations. However, in all these instances, consumers lost their money as the committee did not have sufficient powers

'Consumers must receive benefits'

# Govt drops VAT on some basic foods

BJ/DM 11/3/93

245

FINANCE Minister Derek Keys last night announced the zero rating of VAT on certain basic foodstuffs from next month — a move that will mean an immediate 10% reduction in some food prices.

The decision, aimed at helping the poorest sections of the community, came after months of difficult negotiations with the Cosatu-led VAT Co-ordinating Committee (VCC). Keys described the deal with the VCC as "a meeting of the minds of two parties formerly at loggerheads". The VCC said the zero rating was "the best that could be achieved at the present time".

Keys's decision flies in the face of IMF advice to keep the system pure but goes a long way towards lessening the threat of mass action after the Budget.

The following foods would be zero rated from April 7. rice, fresh vegetables (dehydrated, canned and bottled vegetables are excluded), fresh fruit, vegetable oil used for cooking (excluding olive, soya-bean and cotton seed oil), milk (excluding condensed, flavoured, sweetened, evaporated and concentrated but including ultra-high temperature treated milk), cultured milk, brown wheaten meal, raw eggs and bean family vegetables.

The VCC regretted the decision not to zero rate red and white meat, white bread and fish.

An issue of major concern to Keys and the VCC was whether the price reductions would be passed on to consumers. Keys said the Food Logistics Forum had made a valuable contribution to bringing the "unbridled" rises in food prices during 1992 under control. "We appeal to them to play

GRETA STEYN

an equally valuable role now in ensuring that the prices of the products concerned reflect their changed VAT status."

The VCC said it would approach the food industry and retailers to ensure the price decreases were passed on to consumers.

The VCC had also tried to secure zero rating of electricity, water, medical services and medicines as well as to extend the tax breaks to small businesses. Keys said, however, that it would be a "wasteful, expensive and inappropriate remedy" and that direct attention by the different authorities would be the correct approach. The Finance Department had facilitated the committee's access to these authorities, but would not be further involved.

The VCC said it had discussed with Eskom ways of providing cheaper electricity to poor communities. Eskom would propose to the National Electrification Forum plans for block tariffs which provided a cheap lifeline supply of electricity to households which consume little power.

Cosatu issued a statement last night warning that the zero rating of foodstuffs should in no way be seen as a trade-off for an increase in the general VAT rate. Noting that the rate was expected to rise to 12%-14%, Cosatu said: "We want to warn the government our people are not prepared for this, and are not prepared to accept it." It also regretted the decision not to zero rate medicines.

Keys said there were problems associated with the zero rating of products — it weakened the efficiency of the VAT system and distorted relative prices.



# Competition is the key

W/Mail 12/3-18/3/93.

Weekly Mail Reporter

THE Keys model not only insists on higher labour productivity — it is strongly critical of the lack of competition in South African business.

And the document recommends the final decision on matters brought before the Competition Board be taken out of the hands of the government and put before a "competition tribunal" backed up by a special competition appeals court.

"With regard to the structure of the market, economic concentration, mainly in the form of oligopolies, is a salient feature of the South African economy. These conglomerates are characterised by interlocking directorships and cross-shareholding."

The authors go on to say the existence of concentrations of power cannot be held solely responsible for the lack of effective competition. And they accept the argument that such concentrations could even be an advantage in international competition.

"However, this does not mean that concentrations of power are always in the interests of the community," say the authors. They can lead to uncompetitive behaviour like price determination not based on supply and demand.

Hence the structure and behaviour of the market should be monitored to see that restraints on the entry of new participants and illegal practices like horizontal price collusion should be eliminated.

Among other suggestions, the document

recommends:

● Price collusion, market sharing, maintenance of resale prices and collusion on tenders should be declared illegal in terms of the Competition Act, and the competition tribunal should be able to declare other forms of anti-competitive conduct illegal on an ad hoc basis.

● On all prospective acquisitions of a predetermined size, or which could lead to predetermined levels of concentration in specific markets, notice to the authorities should be compulsory.

● Acquisitions, restrictive practices, statutory rights and government concessions which could result in monopolies should be evaluated more critically without sacrificing efficiency.

● Company legislation and tax measures should not restrict competition between conglomerates.

● Higher fines for infringements should be considered.

The document balances calls for regulation with calls for deregulation to remove impediments to entering and participating in the market system. Deregulation, the document adds, does not apply solely to government departments but all government institutions. So decreasing tariff protection is also a form of deregulation.

Foreign competition is often the only source of competition in the small domestic market. The protection of local businesses through protective tariffs or surcharges should be guarded against.

(245)

18

## Large handouts for white farms

TIM COHEN

CAPE TOWN — Just under 40% of the Agricultural Development Department's 1991/92 expenditure was spent on subsidies, according to a report tabled in Parliament yesterday

The department, which is concerned with "white" agriculture, published its report on the 1991/92 financial year. *BIDAM*

Agricultural financing was the largest expenditure item of the department's R771,7m allocation, accounting for 40,3% of spending.

Almost all of the agricultural financing was devoted to subsidies. *17/3/93*

Financial assistance consisted mainly of loans and subsidies made available to farmers from the agricultural credit account.

Aid for debt consolidation came to R98,7m, crop production loans were R157,1m. Land bought was R10m

Subsidies paid came to R305,3m of which interest subsidies on carryover debt and new production credit accounted for R112,6m. Drought aid to stock farmers was R50,3m and farm labourer housing R16,5m.

## ANC branches to thrash out regionalism policy

BILLY PADDOCK

THE ANC will hold a national conference at the weekend to finalise its position on regionalism and it is understood that the Consultative Business Movement's (CBM) report on the issue will be discussed.

All 14 ANC regions will meet in Johannesburg on Friday and Saturday to discuss amendments to a draft policy on regionalism, which ANC negotiators say has contributed positively in talks with government.

They claim positions in the draft document contributed to a deal on a government of national unity

The draft did not specify the number of regions that should be demarcated. But the ANC has at other times proposed 10-region and 16-region demarcations. Experts gathered by the CBM favoured the smaller number of regions

An ANC source yesterday said the draft policy was not expected to be altered substantially, although there would be considerable debate on the number of regions

Another issue that will draw heated debate is the status of regions in a new SA. It is understood that some branches within the ANC would favour greater autonomy than others.

All the branches appear to favour a strong central government that would devolve powers to regions but retain ultimate control over them

The source said the final proposal on regionalism would be presented to the proposed commission on delimitation, and then to the elected constitution-making body

Our political staff reports from Cape Town that the ANC yesterday called on government to unilaterally end the "independence" of Transkei, Bophuthatswana, Venda and Ciskei. The ANC warned that there could be no resolution of the SA conflict unless and until the TBVC homelands were reincorporated and citizenship restored unconditionally to their inhabitants.

It said there was no possibility of holding national elections without the participation of the millions of people in the TBVC homelands

The ANC said it was disturbed in the light of this to learn government was "touting for the concept that Bophuthatswana should be treated as a special case and not be subject to agreements on reincorporation".

## Bill modernises rights around movable goods

CAPE TOWN — A Bill was tabled in Parliament yesterday aimed at modernising the rights of notarial bondholders of movable goods

The Security by Means of Movable Property Bill also strengthens the rights of the grantors of credit compared to those of landlords where a lessee is in default

The Bill notes that although pledge offers an excellent form of security, it no longer satisfies the needs of the modern commercial world, primarily because the pledgor loses the use

and enjoyment of the goods

The Bill acts on a finding of the SA Law Commission which recommends changes that will mean goods will be deemed to have been pledged to the bondholder as if they have been delivered to him in pledge.

The Bill effectively extends to the whole country the situation that exists in only Natal.

Currently a notarial bond regis-

tered in Natal with regard to specified movable property has the effect of a real right, because legislation provides that the property is deemed to have been given in pledge even though delivery has not taken place

A landlord currently has a tacit hypothec (a charge in property in favour of a creditor) over the lessee's property if the lessee is in arrears with rent.

The legislation proposes removal of this right in respect of most goods sold in terms of credit agreements.

# Probe of oil deal expected

THE Competition Board is expected to announce a probe into the controversial retail rationalisation plan (Ratplan) tomorrow

Critics of the plan — an informal agreement between government and the oil companies which has restricted new entrants to the industry — believe such an investigation is long overdue

The 30-year-old plan has many opponents, including the AA and Pick 'n Pay chairman Raymond Ackerman, who believe it encourages unfair competition by preventing companies from distributing cut-price petrol

Supporters, however, claim that the plan lends stability to the market and that despite its restrictive nature petrol prices have decreased in real terms in recent years

PETER DELMAR

The plan is due to run until 1995, by which time the eight siteholders will be allowed to establish 200 new filling stations and to relocate almost the same number

Mineral and Energy Affairs Minister George Bartlett promised earlier this month to remove much of the secrecy which has surrounded SA's petroleum industry since the imposition of sanctions

It is believed that the Competition Board decided to act after receiving a number of formal complaints against the plan. An informed source said the investigation was expected to be published in tomorrow's Government Gazette.

A board spokesman yesterday declined to confirm that the announcement of a probe was imminent

BUREAU OF STANDARDS  
FM 19/3/93  
**Facing a new test**

The SA Bureau of Standards will get more competition next month, providing a boost to local private testing services and to trade with the European Community

The revised Standards Act, which will allow private businesses to test more products, will bring SA closer into line with

Gatt when it takes effect on April 1 This will pave the way for EC recognition of bureau standards and reciprocal SA recognition of EC standards without the need for dual testing

Trade & Industry Deputy Minister David Graaff says "The changing international scenario has made it imperative that all technical barriers to free trade be done away with"

The deregulation is expected to speed up the process of quality verification, cut testing costs and, ultimately, make the SABS operate in a more competitive way

Of course, it could be some time before outside players offer any meaningful competition to the bureau Establishing large-scale testing facilities can be prohibitively expensive Says the SABS's Martin Kellermann "I don't believe there will be a flood of activity High-tech labs and equipment cost a fortune and no-one is going to make the investment overnight"

But Robert Peeters, of product quality controller SGS, suggests that his company can already certify many local goods marked for export

It's clear that government also wants the bureau, with its 700 technical and 700 professional employees, to operate more like a business Says Graaff "The legislation will enable the SABS to become more financially self-sufficient"

Such talk raises the question of whether government is preparing the bureau for privatisation It now generates about 80% of its R120m annual budget through quality certification, testing and other services, but tough competition after deregulation could see the deficit balloon The bureau's director-general, Jean du Plessis, maintains that the setting of standards will always remain a function of government, not part of a for-profit organisation

Some argue that the legislation doesn't go far enough towards deregulation Though the private sector will now be able to test more products against non-compulsory specifications — about 80% of the SABS's work — the bureau remains the sole custodian of all standards setting It has the power to police the private-sector players, though Department of Trade & Industry legal adviser Johan Strydom suggests that the Act also allows the private sector to police the SABS

The Free Market Foundation's Marc Swanepoel says an independent body should be responsible for setting standards He adds that opening up the setting of standards to competition would raise standards or make them more realistic "Standards are now set as minimum standards" He adds that the standing of an organisation setting standards could develop with its competence.

Swanepoel says the current situation — which allows only the bureau to set standards — allows for established companies to set criteria for government based on their own manufacturing specifications "This tends to cut out smaller or new players" A

case in point, he says, is the US Environmental Protection Agency, which sets standards for pollution He says the agency is continually criticised because its standards are influenced by car makers and other groups that want to protect their own technology

Under the new legislation, the private sector's role will be curtailed through an accreditation system that still has to be formulated Says Strydom "Every Tom, Dick and Harry won't be able to enter the arena Government's intention is that future players will be competent to perform certification"

The bureau's Kellermann says there's a need to ensure that the quality of certification does not drop "We want certification in SA to have credibility elsewhere in the world We've worked hard over the past 10 years to keep standards high Too many certifiers on the market could lead to a price war and lowering of standards But we don't want to create another monopoly The SABS has enjoyed such a monopoly for the past eight years, though more by default than design"

FM 19/3/93

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REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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## STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

245

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CAPE TOWN, 19 MARCH 1993

KAAPSTAD, 19 MAART 1993

No. 14661

STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

19 March 1993

No 454

19 Maart 1993

54  
- hereby notified that the State President has assented  
following Act which is hereby published for general  
-tion —

Hierby word bekend gemaak dat die Staatspresident sy  
goedkeuring gegee het aan die onderstaande Wet wat hierby  
ter algemene inligting gepubliseer word —

of 1993: Standards Act, 1993

No 29 van 1993 Wet op Standaarde, 1993

# ACT

To provide for the promotion and maintenance of standardization and quality in connection with commodities and the rendering of services, and for that purpose to provide for the continued existence of the South African Bureau of Standards, as the national institution for the promotion and maintenance of standardization, and the control thereof by a council, and for matters connected therewith.

*(English text signed by the State President )  
(Assented to 11 March 1993 )*

**B**E IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows —

## Definitions

1. In this Act, unless the context otherwise indicates—

- (i) “amendment”, with regard to a standard or compulsory specification, includes complete substitution, with or without alteration of one or more of or all the provisions, or the scope and purport, thereof, (xxxiv) 5
- (ii) “article” includes any commodity, (i)
- (iii) “auditor” means a person appointed as auditor in terms of section 28(1)(a)(ii) for the purposes of this Act, (xv) 10
- (iv) “certification mark” means a certification mark referred to in section 18(1)(a), (xx)
- (v) “chairman” means the person appointed as the chairman of the council in terms of section 7(1)(a)(i), (xxxii)
- (vi) “code of practice” means, in the case of a code of practice referred to in section 16(3)(a)(i), a description of— 15
  - (a) the terminology to be used,
  - (b) the method to be applied or the procedure to be followed,
  - (c) the material to be used,
  - (d) any requirements to be met, 20
 in connection with the execution in an orderly, systematic, practical, efficient, safe or effective manner of an act performed with a view to achieving a stated purpose or obtaining a stated result, (iv)
- (vii) “commodity” includes an element or characteristic, or a category or system, of some commodity, (viii) 25
- (viii) “compulsory specification” means a compulsory specification referred to in section 22, (xxviii)
- (ix) “council” means the Council of the South African Bureau of Standards referred to in section 6, (xviii)
- (x) “distinctive mark” means a distinctive mark referred to in section 18(1)(d), (xiii) 30
- (xi) “examine” includes inspect, (xiv)
- (xii) “financial institution” means a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No 39 of 1984), and includes a bank as defined in section 1 of the Banks Act, 1990 (Act No 94 of 1990), (iii) 35
- (xiii) “importer” means an importer as defined in section 1(1) of the Customs and Excise Act, 1964 (Act No 91 of 1964), (vii)
- (xiv) “inspector” means a person appointed as an inspector in terms of section 28(1)(a)(i), (vi) 40
- (xv) “issue”, with regard to a standard or a publication, includes making available by means of electronics, photography or another medium, (xxv)
- (xvi) “manufacture” includes produce, assemble, alter, modify, adapt, convert, process or treat, (xxix) 45

# WET

Om voorsiening te maak vir die bevordering en handhawing van standaardisasie en kwaliteit in verband met kommoditeite en die verskaffing van dienste, en om vir dié doel voorsiening te maak vir die voortbestaan van die Suid-Afrikaanse Buro vir Standaarde, as die nasionale instelling vir die bevordering en handhawing van standaardisasie, en die beheer daarvan deur 'n raad, en vir aangeleenthede wat daarmee in verband staan.

(Engelse teks deur die Staatspresident geteken )  
(Goedgekeur op 11 Maart 1993 )

**D**AAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg —

## Woordomskrywing

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
- 5 (i) “artikel” ook ’n kommoditeit, (ii)  
(ii) “die SABS” die Suid-Afrikaanse Buro vir Standaarde bedoel in artikel 2(1), (xxxiii)  
(iii) “finansiële instelling” ’n finansiële instelling soos omskryf in artikel 1 van die Wet op Finansiële Instellings (Belegging van Fondse), 1984  
10 (Wet No 39 van 1984), en ook ’n bank soos omskryf in artikel 1 van die Bankwet, 1990 (Wet No 94 van 1990), (xii)  
(iv) “gebruikskode”, in die geval van ’n gebruikskode bedoel in artikel 16(3)(a)(i), ’n beskrywing van—  
15 (a) die terminologie wat gebruik word,  
(b) die metode wat toegepas of die prosedure wat gevolg moet word,  
(c) die materiaal wat gebruik moet word,  
(d) enige vereistes waaraan voldoen moet word,  
in verband met die uitvoering op ’n ordelike, stelselmatige, praktiese, bekwame, veilige of doeltreffende wyse van ’n handeling wat verrig word ten einde ’n vermelde doel te bereik of resultaat te verkry; (vi)  
20 (v) “hierdie Wet” ook ’n regulasie, (xxxiv)  
(vi) “inspekteur” ’n persoon wat ingevolge artikel 28(1)(a)(i) as ’n inspekteur aangestel is, (xiv)  
(vii) “invoerder” ’n invoerder soos omskryf in artikel 1(1) van die Doeanen Aksynswet, 1964 (Wet No 91 van 1964), (xiii)  
25 (viii) “kommoditeit” ook ’n element of eienskap, of ’n kategorie of stelsel, van die een of ander kommoditeit, (vii)  
(ix) “merk”, hetsy in ’n samestelling met enige ander woord gebruik al dan nie, ook enige simbool, teken, tekening, ontwerp, wapen, embleem, voorstelling, opskrif, naam, woord, handtekening, letter of syfer, of ’n kombinasie van twee of meer daarvan, (xvii)  
30 (x) “merkpermit” ’n merkpermit bedoel in artikel 20(1)(b), (xx)  
(xi) “merkspesifikasie” ’n merkspesifikasie bedoel in artikel 19, (xxi)  
(xii) “Minister” die Minister van Handel en Nywerheid, (xxii)  
35 (xiii) “onderskeidingsmerk” ’n onderskeidingsmerk bedoel in artikel 18(1)(d), (x)  
(xiv) “ondersoek” ook inspekteur, (xi)  
(xv) “ouditeur” ’n persoon wat ingevolge artikel 28(1)(a)(ii) as ouditeur vir die doeleindes van hierdie Wet aangestel is, (iii)  
40 (xvi) “president” die persoon wat ingevolge artikel 10(1) die president van die SABS is, (xxiv)

- (xvii) "mark", whether used in a compound with any other word or not, includes any symbol, sign, drawing, design, badge, emblem, representation, heading, name, word, signature, letter or numeral, or any combination of two or more thereof, (ix)
- (xviii) "mark of authenticity" means a mark of authenticity referred to in section 18(1)(c); (xxxiii) 5
- (xix) "mark of proof" means a mark of proof referred to in section 18(1)(b); (xvii)
- (xx) "mark permit" means a mark permit referred to in section 20(1)(b), (x)
- (xxi) "mark specification" means a mark specification referred to in section 19, (xi) 10
- (xxii) "Minister" means the Minister of Trade and Industry; (xii)
- (xxiii) "prescribed" means prescribed by regulation, (xxxi)
- (xxiv) "president" means the person who is the president of the SABS in terms of section 10(1), (xvi) 15
- (xxv) "reference material" means any material or substance one or more characteristics of which are such that it may be used —  
 (a) for the calibration of any apparatus,  
 (b) for the testing of the accuracy of any method of measurement, or  
 (c) for the determination, by comparison therewith, of any characteristic, including purity, of any other material or substance, (xxx) 20
- (xxvi) "regulation" means a regulation in force in terms of this Act, (xix)
- (xxvii) "sales permit" means a sales permit referred to in section 23(1)(c), (xxvii)
- (xxviii) "sell" includes— 25  
 (a) display, offer or advertise for sale,  
 (b) export from the Republic for or in pursuance of a sale,  
 (c) have in possession for the purpose of sale, trade, manufacture or export from the Republic, (xxvi)
- (xxix) "specification" means, in the case of a specification referred to in section 16(3)(a)(i) — 30  
 (a) a description of a commodity with reference to its characteristics, including its nature, quality, strength, efficacy, purity, composition, assembly, quantity, dimensions, mass, grade, design, layout, durability, capacity, format, operation, performance, origin or age, whichever may be applicable, 35  
 (b) a description of the manner of manufacture of a commodity, including the components thereof, the material or substance from or with which it shall be manufactured, and the characteristics, requirements, handling and treatment of such components, material or substance, and the characteristics of the commodity, whichever may be applicable, 40  
 as well as a description of related matters deemed necessary or expedient, including —  
 (i) the marking, handling, packing, storage and transport of a commodity; or 45  
 (ii) the manner of installation of the commodity to ensure efficient performance, (xxi)
- (xxx) "standard" means a standard referred to in section 16(3)(a)(i) or (8), (xxii)
- (xxx1) "standard method" means, in the case of a standard method referred to in section 16(3)(a)(i), a description of— 50  
 (a) the preparatory steps to be taken,  
 (b) the equipment, material or substance to be used,  
 (c) the procedure to be followed,  
 for the purpose of determining the nature, purity, composition, dimensions, performance or other characteristics of any commodity, (xxiii) 55
- (xxxii) "system", with regard to a commodity, means a system which is designed to achieve a particular purpose or to perform a specific function, (xxiv)
- (xxxiii) "the SABS" means the South African Bureau of Standards referred to in section 2(1), (ii) 60
- (xxxiv) "this Act" includes a regulation (v)



- (xvii) "proefmerk" 'n proefmerk bedoel in artikel 18(1)(b), (xix)
- (xviii) "raad" die Raad van die Suid-Afrikaanse Buro vir Standaarde bedoel in artikel 6, (ix)
- (xix) "regulasie" 'n regulasie wat ingevolge hierdie Wet van krag is, (xxvi)
- 5 (xx) "sertifiseringsmerk" 'n sertifiseringsmerk bedoel in artikel 18(1)(a), (iv)
- (xxi) "spesifikasie", in die geval van 'n spesifikasie bedoel in artikel 16(3)(a)(1)—
- 10 (a) 'n beskrywing van 'n kommoditeit met verwysing na die eienskappe daarvan, met inbegrip van die aard, kwaliteit, sterkte, doeltreffendheid, suiwerheid, samestelling, montering, hoeveelheid, afmetings, massa, graad, ontwerp, uitleg, duursaamheid, vermoë, formaat, werking, werkverrigting, herkoms of ouderdom daarvan, wat ook al van toepassing is,
- 15 (b) 'n beskrywing van die wyse van vervaardiging van 'n kommoditeit, met inbegrip van die komponente daarvan, die materiaal of stof waaruit of waarmee dit vervaardig moet word, en die eienskappe, vereistes, hantering en behandeling van sodanige komponente, materiaal of stof, en die eienskappe van die kommoditeit, wat ook
- 20 al van toepassing is, asook 'n beskrywing van verwante aangeleenthede wat nodig of wenslik geag word, met inbegrip van —
- (i) die merk, hantering, verpakking, opberging en vervoer van 'n kommoditeit; of
- 25 (ii) die wyse van installering van die kommoditeit om doeltreffende werkverrigting te verseker, (xxix)
- (xxii) "standaard" 'n standaard bedoel in artikel 16(3)(a)(1) of (8), (xxx)
- (xxiii) "standaardmetode", in die geval van 'n standaardmetode bedoel in artikel 16(3)(a)(1), 'n beskrywing van—
- 30 (a) die voorbereidende stappe wat gedoen moet word,
- (b) die toerusting, materiaal of stof wat gebruik moet word,
- (c) die prosedure wat gevolg moet word,
- vir die doel van die bepaling van die aard, suiwerheid, samestelling, afmetings, werkverrigting of ander eienskappe van 'n kommoditeit,
- 35 (xxx1)
- (xxiv) "stelsel", met betrekking tot 'n kommoditeit, 'n stelsel wat ontwerp is om 'n besondere doel te bereik of 'n bepaalde funksie te verrig, (xxxii)
- (xxv) "uitreik", met betrekking tot 'n standaard of 'n publikasie, ook beskikbaar stel deur middel van elektronika, fotografie of 'n ander medium, (xv)
- 40 (xxvi) "verkoop" ook—
- (a) vir verkoop uitstal, aanbied of adverteer,
- (b) vir verkoop of ingevolge 'n verkoping uitvoer uit die Republiek, of
- (c) vir die doel van verkoop, handel, vervaardiging of uitvoer uit die Republiek besit, (xxviii)
- 45 (xxvii) "verkoopspermit" 'n verkoopspermit bedoel in artikel 23(1)(c), (xxvii)
- (xxviii) "verpligte spesifikasie" 'n verpligte spesifikasie bedoel in artikel 22, (vii)
- (xxix) "vervaardig" ook produseer, monteer, verander, modifiseer, aanpas, ombou, bewerk of behandel, (xvi)
- 50 (xxx) "verwysingsmateriaal" enige materiaal of stof waarvan een of meer eienskappe sodanig is dat dit gebruik kan word—
- (a) vir die kalibrering van 'n apparaat;
- (b) vir die toets van die akkuraatheid van 'n meetmetode, of
- 55 (c) vir die bepaling, deur vergelyking daarmee, van enige eienskap, met inbegrip van suiwerheid, van 'n ander materiaal of stof; (xxv)
- (xxx1) "voorgeskryf" by regulasie voorgeskryf, (xxiii)
- (xxxii) "voorsitter" die persoon wat ingevolge artikel 7(1)(a)(1) as die voorsitter van die raad aangestel is, (v)
- 60 (xxxiii) "waarmerk" 'n waarmerk bedoel in artikel 18(1)(c), (xviii)
- (xxxiv) "wysiging", met betrekking tot 'n standaard of verpligte spesifikasie, ook algehele vervanging, met of sonder verandering van een of meer van óf al die bepalings, óf die bestek en strekking, daarvan (1)

**Continuation of South African Bureau of Standards**

2. (1) The South African Bureau of Standards established by section 2 of the Standards Act, 1945 (Act No 24 of 1945), shall, notwithstanding the repeal of the Standards Act, 1982 (Act No 30 of 1982), by this Act, continue to exist as a juristic person known as the SABS and is the national institution for the promotion and maintenance of standards 5

(2) Notwithstanding anything to the contrary in this Act or any other law contained, any assets or property, whether movable or immovable, obtained by way of ownership by the council prior to the commencement of this Act, shall be deemed to be owned by the SABS 10

(3) The registrar of deeds concerned shall make the entries or endorsements in or on any relevant register, title deed or other document in his office or submitted to him which he may deem necessary in order to give effect to the provisions of this section, and no office fee or other charge shall be payable in respect of any such entry or endorsement 15

(4) Notwithstanding anything to the contrary in this Act or in any other law contained, all rights obtained or obligations incurred by the council prior to the commencement of this Act, shall be deemed to have been obtained or incurred by the SABS

**Objects of SABS 20**

3. The objects of the SABS are—

- (a) to obtain membership of foreign or international bodies having any objects similar to an object of the SABS;
- (b) to obtain the co-operation of State departments, local authorities, other public bodies, representatives of any branch of commerce and industry and other persons, 25
- (c) to accredit laboratories and to administer schemes with regard to laboratories thus accredited,
- (d) to assess quality systems and to administer the certification by such systems thus assessed, 30
- (e) to assess the competence of, and to accredit, quality practitioners,
- (f) to test precision and measuring instruments, gauges and scientific apparatus in order to determine their accuracy, and to calibrate them,
- (g) to examine, test or analyse articles, materials and substances,
- (h) to supply reference material for specific purposes, 35
- (i) to furnish reports and issue certificates in connection with examinations, tests, analyses, calibrations and assessments carried out by the SABS, subject to the conditions it may consider expedient,
- (j) to supply information and guidance,
- (k) to compile and issue recommended practices as a supplement to a relevant standard, 40
- (l) to issue as a national standard a specification, code of practice or standard method, and to administer schemes based thereon,
- (m) to control the use of distinctive marks, certification marks, marks of proof and marks of authenticity, 45
- (n) to assist a person or State department in the preparation and framing of any document which embodies characteristics similar to those of a standard, and
- (o) to perform, in so far as it is not repugnant to or inconsistent with the provisions of any Act of Parliament, such functions as the Minister may assign to the SABS, 50

so as to promote and maintain standardization and quality regarding commodities and the rendering of services

**Functions, powers and duties of SABS**

4. (1) The functions, powers and duties of the SABS shall be to achieve its objects with the means at its disposal, and for the purposes of achieving those objects the SABS may— 55

- (a) with the approval of the Minister, granted with the concurrence of the

### Voortbestaan van Suid-Afrikaanse Buro vir Standaarde

2. (1) Die Suid-Afrikaanse Buro vir Standaarde ingestel by artikel 2 van die Wet op Standaarde, 1945 (Wet No 24 van 1945), bly ondanks die herroeping van die Wet op Standaarde, 1982 (Wet No 30 van 1982), deur hierdie Wet, 5 voortbestaan as 'n regspersoon bekend as die SABS en is die nasionale instelling vir die bevordering en handhawing van standarde

(2) Ondanks andersluidende bepalings van hierdie Wet of enige ander wet word enige bates of goed, hetsy roerend of onroerend, wat voor die inwerking-treding van hierdie Wet deur die raad in eiendom verkry is, geag die eiendom 10 van die SABS te wees

(3) Die betrokke registrateur van aktes moet die inskrywings of aantekeninge wat hy nodig ag ten einde aan die bepalings van hierdie artikel gevolg te gee, maak in of op enige betrokke register, titelbewys of ander stuk in sy kantoor of aan hom voorgelê, en geen kantoorgelde of ander gelde is ten opsigte van so 'n 15 inskrywing of aantekening betaalbaar nie

(4) Ondanks andersluidende bepalings van hierdie Wet of enige ander wet word alle regte of verpligtinge wat voor die inwerkingtreding van hierdie Wet deur die raad verkry of aangegaan is, geag deur die SABS verkry of aangegaan te wees

### Oogmerke van SABS

- 20 3. Die oogmerke van die SABS is—
- (a) om lidmaatskap te verkry van buitelandse of internasionale liggame wat enige oogmerke het wat soortgelyk aan 'n oogmerk van die SABS is,
  - (b) om die samewerking van Staatsdepartemente, plaaslike owerhede, ander openbare liggame, verteenwoordigers van enige vertakking van 25 die handel en nywerheid en ander persone te verkry,
  - (c) om laboratoriums te akkrediteer en skemas met betrekking tot laboratoriums aldus geakkrediteer, te administreer;
  - (d) om kwaliteitstelsels te beoordeel en die sertifisering deur sodanige stelsels aldus beoordeel, te administreer,
  - 30 (e) om die bevoegdheid van kwaliteitspraktisyns te beoordeel en hulle te akkrediteer,
  - (f) om presisie- en meetinstrumente, meters en wetenskaplike apparaat te toets ten einde die juistheid daarvan te bepaal, en hulle te kalibreer,
  - (g) om artikels, materiale en stowwe te ondersoek, te toets of te ontleed,
  - 35 (h) om verwysingsmateriaal vir bepaalde doeleindes te verskaf,
  - (i) om onderworpe aan die voorwaardes wat hy dienstig ag, verslae te verstrek en sertifikate uit te reik in verband met ondersoeke, toetse, ontledings, kalibrerings en beoordelings deur die SABS uitgevoer,
  - (j) om inligting en leiding te verskaf,
  - 40 (k) om aanbevole praktyke aanvullend tot 'n toepaslike standaard uit te reik,
  - (l) om spesifikasies, gebruikskodes of standaardmetodes as nasionale standarde uit te reik, en skemas wat daarop gebaseer is, te adminis- treer,
  - (m) om die gebruik van onderskeidingsmerke, sertifiseringsmerke, 45 proefmerke en waarmerke te beheer,
  - (n) om hulp te verleen aan 'n persoon of Staatsdepartement by die voorbereiding en opstel van enige dokument waarin eienskappe soortgelyk aan dié van 'n standaard uiteengesit word, en
  - 50 (o) om vir sover dit nie strydig of onbestaanbaar met die bepalings van 'n Wet van die Parlement is nie, die werksaamhede te verrig wat die Minister aan die SABS opdra,
- ten einde standaardisasie en kwaliteit betreffende kommoditeite en die verskaf-  
fing van dienste te bevorder en te handhaaf

### Werksaamhede, bevoegdheid en pligte van SABS

- 55 4. (1) Die werksaamhede, bevoegdheid en pligte van die SABS is om met die middele tot sy beskikking sy oogmerke te bereik, en ten einde daardie oogmerke te bereik, kan die SABS—
- (a) met die goedkeuring van die Minister, verleen met die instemming van

- Minister of State Expenditure, purchase, hire or otherwise acquire, or possess or alienate immovable property and let or otherwise encumber that property,
- (b) with the approval of the Minister, granted with the concurrence of the Minister of Finance, raise money by way of loans, 5
- (c) purchase, hire or otherwise acquire, or possess, movable property, and let, pledge, encumber or dispose of that property,
- (d) supply reference material and issue directives in connection with such material,
- (e) at the request of any person, body, organization, administration or authority and subject to the conditions determined by the SABS, conduct examinations, tests or analyses or cause them to be conducted in respect of any article, material or substance, 10
- (f) purchase or otherwise acquire a sample of any article in order to investigate, test or analyse it, and, for the purposes of a specification, determine the sampling, examination, testing or analysis procedures to be followed in order to assess whether there has been compliance with the relevant characteristic requirements or the manner of manufacture of a commodity, 15
- (g) with the approval of the Minister, on its own or in collaboration with any person, establish a company for a specific purpose which is relevant to the objects of the SABS, and for this purpose acquire an interest in or control over a company or other juristic person, 20
- (h) make grants to universities, technikons, colleges and other educational institutions,
- (i) provide and promote training, and for this purpose grant bursaries and study loans, 25
- (j) establish and control facilities, including laboratory, test and training facilities,
- (k) subject to the provisions of this Act, determine and collect fees for services rendered under this Act, and 30
- (l) in addition to any function, power or duty that the SABS is required or empowered to perform, exercise or execute in terms of the provisions of this Act or any other law, do everything that is conducive to the achievement of its objects or is calculated, directly or indirectly, to enhance the value of or render profitable the property or rights of the SABS 35
- (2) The SABS may issue to a person—
- (a) who manufactures outside the Republic an article a consignment of which is intended for importation into the Republic, or
- (b) who intends to import a consignment of an article manufactured outside the Republic, 40
- a certificate in which it is declared that such consignment complies with or has been manufactured in accordance with the requirements determined in terms of this Act
- (3) The SABS shall—
- (a) subject to the payment of the prescribed remuneration, undertake the investigations or research which the Minister may assign to it, and 45
- (b) at the request of the Minister, advise the Minister concerning any matter which is relevant to the objects of the SABS

#### Exercise of powers outside Republic

5. (1) The SABS may in the exercise of its powers and in order to achieve its objects— 50
- (a) enter into an agreement with,
- (b) render assistance to, or
- (c) obtain the co-operation of,
- a person, body, organization, administration, authority or government in any country or territory outside the Republic 55
- (2) The Minister may with the concurrence of the Minister of State Expenditure indemnify the SABS against any losses which it may incur consequent upon any act or omission of the person, body, organization, administration, authority or government referred to in subsection (1), provided such act was performed or omission was made with the approval of or at the request of the Minister 60

- die Minister van Staatsbesteding, onroerende goed aankoop, huur of andersins verkry, of besit of vervreem, en daardie goed verhuur of andersins beswaar,
- 5 (b) met die goedkeuring van die Minister verleen met die instemming van die Minister van Finansies, geld by wyse van lenings opneem,
- (c) roerende goed aankoop, huur of andersins verkry, of besit, en daardie goed verhuur, verpand, beswaar of vervreem,
- (d) verwysingsmateriaal verskaf en voorskrifte in verband daarmee uitreik,
- 10 (e) op versoek van 'n persoon, liggaam, organisasie, administrasie of owerheid en op die voorwaardes deur die SABS bepaal, ten opsigte van 'n artikel, materiaal of stof ondersoek of toetse uitvoer of laat uitvoer, of ontledings doen of laat doen,
- (f) 'n monster van 'n artikel aankoop of andersins verkry ten einde dit te ondersoek, te toets of te ontleed, en, vir die doeleindes van 'n spesifikasie, die monsterneming-, ondersoek-, toets- of ontledingsprosedures bepaal wat gevolg moet word ten einde te beoordeel of daar aan die toepaslike eienskapsvereistes of die wyse van vervaardiging van 'n kommoditeit voldoen is,
- 15 (g) met die goedkeuring van die Minister, op sy eie of tesame met enige persoon, 'n maatskappy oprig vir 'n bepaalde doel wat met die oogmerke van die SABS verband hou en vir dié doel 'n belang in of beheer oor 'n maatskappy of ander regspersoon verkry;
- (h) toekennings doen aan universiteite, teknikons, kolleges en ander opvoedkundige instellings,
- 25 (i) opleiding verskaf en bevorder en vir dié doel beurse en studieleenings toeken,
- (j) fasiliteite wat laboratorium-, toets- en opleidingsfasiliteite insluit, instel en beheer,
- (k) behoudens die bepalinge van hierdie Wet, gelde hef vir dienste kragtens hierdie Wet gelewer, en
- 30 (l) benewens enige werksaamheid, bevoegdheid of plig wat die SABS ingevolge die bepalinge van hierdie Wet of enige ander wet moet of kan verrig of uitoefen, alles doen wat bevorderlik is vir die bereiking van sy oogmerke of bereken is om, regstreeks of onregstreeks, die waarde van die goed of regte van die SABS te verhoog of winsgewend te maak
- 35 (2) Die SABS kan aan 'n persoon—
- (a) wat buite die Republiek 'n artikel vervaardig waarvan 'n besending vir invoer in die Republiek bestem is, of
- (b) wat van voorneme is om 'n besending van 'n artikel wat buite die
- 40 Republiek vervaardig is, in te voer,
- 'n sertifikaat uitreik waarin verklaar word dat daardie besending voldoen aan of vervaardig is ooreenkomstig die vereistes bepaal ingevolge hierdie Wet
- (3) Die SABS moet—
- (a) onderworpe aan die betaling van die voorgeskrewe vergoeding, die
- 45 ondersoek of navorsing onderneem wat die Minister aan hom opdra, en
- (b) op versoek van die Minister, die Minister van advies dien aangaande enige aangeleentheid wat verband hou met die oogmerke van die SABS

#### 50 Uitoefening van bevoegdhede buite Republiek

5. (1) Die SABS kan by die uitoefening van sy bevoegdhede en ten einde sy oogmerke te bereik—

- (a) 'n ooreenkoms sluit met,
- (b) hulp verleen aan, of
- 55 (c) die samewerking verkry van,
- 'n persoon, liggaam, organisasie, administrasie, owerheid of regering in enige land of gebied buite die Republiek
- (2) Die Minister kan met die instemming van die Minister van Staatsbesteding die SABS vrywaar teen verliese wat hy mag ly as gevolg van 'n handeling of
- 60 versuim van die persoon, liggaam, organisasie, administrasie, owerheid of regering bedoel in subartikel (1), mits sodanige handeling of versuim met die goedkeuring of op versoek van die Minister geskied het

**Continuation of Council of South African Bureau of Standards**

6. The Council of the South African Bureau of Standards established by section 4 of the Standards Act, 1962 (Act No 33 of 1962), shall, notwithstanding the repeal by this Act of the Standards Act, 1982 (Act No 30 of 1982), but subject to the conditions of this Act, continue to exist

5

**Constitution and functions of council**

7. (1) (a) The council shall consist of—
- (i) a chairman and six other members appointed by the Minister; and
  - (ii) the president, who shall serve on the council by virtue of his office
- (b) A member referred to in paragraph (a)(i) shall have particular knowledge or experience of matters which are relevant to the objects of the SABS. 10
- (2) A member referred to in subsection (1)(a)(i) shall hold office for the period determined by the Minister, but not exceeding three years, and shall be eligible for reappointment
- (3) A member referred to in subsection (1)(a)(i) shall vacate his office if— 15
- (a) he reaches the age of 70 years,
  - (b) he is declared insolvent or surrenders his estate for the benefit of his creditors,
  - (c) he is found guilty of an offence and sentenced to imprisonment without the option of a fine, 20
  - (d) he is absent from three consecutive meetings of the council without the consent of the chairman unless the council condones his absence on good cause shown,
  - (e) he resigns as a member,
  - (f) (i) he is in terms of the provisions of the Electoral Act, 1979 (Act No 45 of 1979), nominated as a candidate for election as a member of Parliament, or 25
  - (ii) he is in terms of the provisions of the Republic of South Africa Constitution Act, 1983 (Act No 110 of 1983), nominated as a member of Parliament, or is appointed or designated as a member of the President's Council, or 30
  - (g) his term of office is terminated under subsection (4).
- (4) The Minister may at any time discharge a member referred to in subsection (1)(a)(i) from office if he is of the opinion that there are sound reasons for discharging such member from office 35
- (5) If a member dies or by written notice, directed to the Minister, resigns or in terms of subsection (3) or (4) ceases to be a member, the Minister may, subject to the provisions of this section, appoint a person in his place for the unexpired portion of his term of office.
- (6) (a) The president shall be the vice-chairman of the council, and shall during the absence or incapacity of the chairman act as chairman 40
- (b) If the president is unable to act as chairman at a meeting of the council in terms of paragraph (a), the members present shall elect one of their number to act as chairman at that meeting
- (7) The SABS may pay to a member referred to in subsection (1)(a)(i) who is not in the full-time employment of the State, such allowances as the Minister may determine with the concurrence of the Minister of State Expenditure 45
- (8) The council shall control the affairs of the SABS by—
- (a) determining the direction and objectives of the SABS, and
  - (b) exercising control in general over— 50
    - (i) the performance of the functions,
    - (ii) the exercise of the powers; and
    - (iii) the execution of the duties, of the SABS.

**Meetings of council**

55

8. (1) (a) The meetings of the council shall be held at such times and places as the council may determine
- (b) The chairman, or in his absence or incapacity the president, may at any time

**Voortbestaan van Raad van Suid-Afrikaanse Buro vir Standaard**

6. Die Raad van die Suid-Afrikaanse Buro vir Standaard ingestel by artikel 4 van die Wet op Standaard, 1962 (Wet No 33 van 1962), bly ondanks die herroeping van die Wet op Standaard, 1982 (Wet No. 30 van 1982), deur 5 hierdie Wet, maar behoudens die bepalings van hierdie Wet, voortbestaan

**Samestelling en werksaamhede van raad**

7. (1) (a) Die raad bestaan uit—  
 (i) 'n voorsitter en ses ander lede wat deur die Minister aangestel word, en  
 (ii) die president, wat ampshalwe in die raad dien  
 10 (b) 'n Lid bedoel in paragraaf (a)(i) moet beskik oor besondere kennis of ondervinding van aangeleenthede wat met die oogmerke van die SABS verband hou  
 (2) 'n Lid bedoel in subartikel (1)(a)(i) beklee sy amp vir die tydperk deur die Minister bepaal, maar vir hoogstens drie jaar, en kan weer aangestel word  
 15 (3) 'n Lid bedoel in subartikel (1)(a)(i) ontruim sy amp indien hy—  
 (a) die ouderdom van 70 jaar bereik,  
 (b) insolvent verklaar word of sy boedel ten bate van sy skuldeisers oorgee,  
 (c) aan 'n misdryf skuldig bevind word en tot gevangenisstraf sonder die keuse van 'n boete gevonniss word;  
 20 (d) sonder verlof van die voorsitter van drie agtereenvolgende vergaderings van die raad afwesig is tensy die raad by die aanvoer van goeie gronde sy afwesigheid kondoneer,  
 (e) as lid bedank,  
 (f) (i) ingevolge die bepalings van die Kieswet, 1979 (Wet No 45 van 25 1979), as 'n kandidaat vir verkiesing tot lid van die Parlement genomineer word, of  
 (ii) ingevolge die bepalings van die Grondwet van die Republiek van Suid-Afrika, 1983 (Wet No 110 van 1983), as lid van die Parlement benoem of as lid van die Presidentsraad aangestel of  
 30 (g) kragtens subartikel (4) van sy amp onthef word  
 (4) Die Minister kan 'n lid bedoel in subartikel (1)(a)(i) te eniger tyd van sy amp onthef indien hy van oordeel is dat daar gegronde redes is om sodanige lid van sy amp te onthef  
 35 (5) Indien 'n lid te sterwe kom of by skriftelike kennisgewing, gerig aan die Minister, bedank of ingevolge subartikel (3) of (4) ophou om 'n lid te wees, kan die Minister, behoudens die bepalings van hierdie artikel, iemand vir die onverstreke deel van sy ampstermyn in sy plek aanstel  
 (6) (a) Die president is die visevoorsitter van die raad, en tree gedurende die 40 afwesigheid of onvermoe van die voorsitter as voorsitter op  
 (b) Indien die president nie ingevolge paragraaf (a) in staat is om as voorsitter op 'n vergadering van die raad op tree nie, kies die aanwesige lede uit hul midde iemand om by daardie vergadering as voorsitter op te tree  
 (7) Die SABS kan aan 'n lid bedoel in subartikel (1)(a)(i) wat nie in die 45 healtydse diens van die Staat is nie, die toelaes betaal wat die Minister met die instemming van die Minister van Staatsbesteding bepaal  
 (8) Die raad beheer die sake van die SABS deur—  
 (a) die rigting en doelstellings van die SABS te bepaal, en  
 (b) in die algemeen beheer oor—  
 50 (i) die verrigting van die werksaamhede,  
 (ii) die uitoefening van die bevoegdhede, en  
 (iii) die uitvoering van die pligte,  
 van die SABS uit te oefen

**Vergaderings van raad**

- 55 8. (1) (a) Die vergaderings van die raad word gehou op die tye en plekke wat die raad bepaal  
 (b) Die voorsitter, of gedurende sy afwesigheid of onvermoe die president,

convene a special meeting of the council, which shall be held at such time and place as the chairman or the president, as the case may be, may direct

(2) The quorum for a meeting of the council shall be a majority of its members

(3) The procedure at meetings of the council, including the keeping of minutes, shall be as prescribed 5

(4) A decision of the council shall be taken by resolution by the majority of the members present at any meeting of the council, and in the event of an equality of votes on any matter, the person presiding at the meeting concerned shall have a casting vote in addition to his deliberative vote

#### Committees of council 10

9. (1) The council may—

(a) establish one or more committees to perform, subject to the instructions of the council, such functions of the council as the council may determine, and

(b) at any time dissolve or reconstitute a committee referred to in paragraph (a) 15

(2) The council may—

(a) appoint any person as a member of a committee referred to in subsection (1)(a), or

(b) at any time terminate the membership of a person referred to in paragraph (a) 20

(3) If a committee referred to in subsection (1) consists of more than one member, the council shall designate a member of the committee as chairman thereof

(4) The SABS may pay to the members of a committee referred to in subsection (1) who are not in the full-time employment of the State, or are not members of the council or employees of the SABS, such remuneration and allowances as the Minister, with the concurrence of the Minister of State Expenditure, may determine 25

#### President of SABS

10. (1) The council shall appoint a chief executive officer for the SABS, who shall occupy the post of president of the SABS 30

(2) The president shall be responsible for the management of the affairs of the SABS and shall report to the council on such affairs as may be required by the council

(3) The president shall be appointed for a period not exceeding five years on the conditions, including conditions relating to the payment of remuneration, allowances and other benefits, as the council may determine in accordance with a system approved by the Minister, with the concurrence of the Minister of State Expenditure, as such system is amended from time to time 35

(4) The president may, at the expiration of his period of office, be reappointed 40

(5) Whenever for any reason the president is absent or unable to carry out his duties or whenever the office of president is vacant, the council may, on such conditions and subject to the payment of such remuneration and allowances as it may determine, in accordance with a system approved by the Minister, with the concurrence of the Minister of State Expenditure, as such system is amended from time to time, appoint another person to act as president until the president can resume his functions or until the vacancy is filled, and that other person shall, while so acting, have all the powers and perform all the duties of the president 45

(6) Any reference to the Director-General of the South African Bureau of Standards in any law, contract, register, record or other document shall, from the date of the commencement of this Act, be construed as a reference to the president 50

#### Appointment of staff, and conditions of service

11. (1) (a) The council may, subject to paragraph (b) and on such conditions as it may determine, appoint the employees of the SABS whom it deems necessary to assist the SABS in the performance of its functions. 55

(b) The SABS shall pay to its employees such remuneration, allowances, subsidies and other benefits as the council may determine, in accordance with a



kan te eniger tyd 'n spesiale vergadering van die raad belê, wat gehou word op die tyd en plek wat die voorsitter of die president, na gelang van die geval, gelas

(2) Die kworum vir 'n vergadering van die raad is 'n meerderheid van sy lede

(3) Die prosedure by vergaderings van die raad, met inbegrip van die hou van notules, is soos voorgeskryf

(4) 'n Besluit van die raad word geneem by 'n besluit van die meerderheid van die lede wat op 'n vergadering van die raad aanwesig is, en by 'n staking van stemme oor enige aangeleentheid het die persoon wat op die betrokke vergadering voorsit, 'n beslissende stem benewens sy beraadslagende stem

## 10 Komitees van raad

9. (1) Die raad kan—

(a) een of meer komitees instel om, onderworpe aan die voorskrifte van die raad, dié werksaamhede van die raad te verrig wat die raad bepaal, en

(b) te eniger tyd 'n komitee bedoel in paragraaf (a) ontbind of hersaamstel

(2) Die raad kan—

(a) enige persoon as 'n lid van 'n komitee bedoel in subartikel (1)(a) aanstel, of

(b) te eniger tyd die lidmaatskap van 'n persoon bedoel in paragraaf (a) beëindig

(3) Indien 'n komitee bedoel in subartikel (1) uit meer as een lid bestaan, wys die raad 'n lid van die komitee as voorsitter daarvan aan

(4) Die SABS kan aan die lede van 'n komitee bedoel in subartikel (1) wat nie in die heeltydse diens van die Staat is nie, of nie lede van die raad of werknemers van die SABS is nie, die besoldiging en toelaes betaal wat die Minister met die instemming van die Minister van Staatsbesteding bepaal

## President van SABS

10. (1) Die raad stel 'n hoof- uitvoerende beampste vir die SABS aan, wat die pos van president van die SABS beklee

(2) Die president is vir die bestuur van die sake van die SABS verantwoordelik en doen oor daardie sake verslag aan die raad soos deur die raad verlang

(3) Die president word aangestel vir 'n tydperk van hoogstens vyf jaar op die voorwaardes, met inbegrip van voorwaardes betreffende die betaling van besoldiging, toelaes en ander voordele, wat die raad bepaal ooreenkomstig 'n stelsel wat die Minister met die instemming van die Minister van Staatsbesteding goedkeur, soos daardie stelsel van tyd tot tyd gewysig word

(4) Die president kan by die verstryking van sy ampstermyn weer aangestel word

(5) Wanneer die president om die een of ander rede afwesig is of nie in staat is om sy pligte uit te voer nie, of wanneer die amp van president vakant is, kan die raad op die voorwaardes en onderworpe aan die besoldiging en toelaes wat hy bepaal, ooreenkomstig 'n stelsel wat die Minister met die instemming van die Minister van Staatsbesteding goedkeur, soos daardie stelsel van tyd tot tyd gewysig word, iemand anders aanstel om as president waar te neem totdat die president sy werksaamhede kan hervat of totdat die vakature gevul is, en terwyl hy aldus waarneem, het daardie ander persoon al die bevoegdhede en verrig hy al die pligte van die president

(6) Enige verwysing na die Direkteur-generaal van die Suid-Afrikaanse Buro vir Standaard in enige wet, kontrak, register, aantekening of ander dokument word vanaf die datum van die inwerkingtreding van hierdie Wet uitgelê as 'n verwysing na die president

## Aanstelling van personeel, en diensvoorwaardes

11. (1) (a) Die raad kan, behoudens paragraaf (b) en op die voorwaardes wat hy bepaal, die werknemers van die SABS aanstel wat hy nodig ag om die SABS behulpsaam te wees by die verrigting van sy werksaamhede

(b) Die SABS betaal aan sy werknemers die besoldiging, toelaes, subsidies en ander voordele wat die raad bepaal, ooreenkomstig 'n stelsel wat die Minister

system approved by the Minister, with the concurrence of the Minister of State Expenditure, as such system is amended from time to time

(2) The council may from time to time, on such conditions and against such security as it may deem fit—

- (a) provide collateral security, including guarantees, to a registered financial institution in respect of a loan granted to an employee of the SABS by that financial institution, to enable the employee to acquire, improve or enlarge immovable property for residential purposes, 5
- (b) build, cause to be built, purchase or rent houses, flats, flat buildings or other similar dwelling units for occupation by employees, and may sell or let those houses, flats or dwelling units to employees, or otherwise dispose of, let or otherwise deal with those houses, flats, flat buildings or dwelling units, 10
- (c) establish, institute, erect or maintain sports and recreation facilities, social clubs, social and health services, car parking facilities, crèches and pre-school centres, restaurants, hostels, bursary schemes for purposes of study or other similar undertakings or schemes which in its opinion may be beneficial to its employees, and may for this purpose utilize part of its assets, 15
- (d) establish motor vehicle schemes for employees of the SABS, and 20
- (e) grant a loan to an employee—
  - (i) for the purposes of study by that employee,
  - (ii) which may be used by that employee for such purposes as the council may determine, provided that such purposes shall be in the interest of the SABS, or 25
  - (iii) for any other purpose up to an amount of not more than the monthly salary due to that employee after deductions

(3) The council may, on such conditions as it may deem fit, second an employee temporarily to a State department, the government of another country or territory, an institution or a person in or outside the Republic, provided that— 30

- (a) such an employee consents to such secondment, and
- (b) such an employee's rights, privileges and benefits by virtue of his conditions of service as an employee of the SABS are not adversely affected by such secondment

## **Financing** 35

12. (1) The funds of the SABS shall consist of—

- (a) money appropriated by Parliament,
- (b) money obtained by virtue of the provisions of this Act or any other law,
- (c) money, donations, interest, dividends, royalties, rent or contributions received from any source, 40
- (d) money obtained by the SABS in terms of section 4(1)(b),
- (e) the proceeds from the sale of shares, and from dividends on shares held by the SABS, in any company or other juristic person referred to in section 4(1)(g), and
- (f) revenue obtained from the sale of— 45
  - (i) publications prepared by the SABS, including publications in which a standard is contained,
  - (ii) other publications which are relevant to the objects of the SABS;
  - (iii) reference material; and
  - (iv) any assets of the SABS 50

(2) (a) The council —

- (i) shall in each financial year, at a time determined by the Minister, submit a statement of the estimated income and expenditure of the SABS during the following financial year, and
- (ii) may at any time during a financial year submit supplementary statements of the estimated income and expenditure of the SABS for that financial year, 55

met die instemming van die Minister van Staatsbesteding goedkeur, soos daardie stelsel van tyd tot tyd gewysig word

(2) Die raad kan van tyd tot tyd op die voorwaardes en teen die sekerheid wat hy goedvind—

- 5 (a) kollaterale sekerheid, met inbegrip van waarborge, aan 'n geregistreerde finansiële instelling verskaf ten opsigte van 'n lening wat deur daardie finansiële instelling aan 'n werknemer van die SABS toegestaan is, ten einde die werknemer in staat te stel om onroerende eiendom vir die doeleindes van bewoning te verkry, te verbeter of te
- 10 vergroot;
- (b) woonhuise, woonstelle, woonstelgeboue of ander dergelike wooneenhede vir bewoning deur werknemers bou, laat bou, koop of huur, en kan daardie woonhuise, woonstelle of wooneenhede aan werknemers verkoop of verhuur, of daardie woonhuise, woonstelle, woonstelgeboue of wooneenhede andersins vervreem, verhuur of andersins
- 15 daarmee handel,
- (c) sport- en ontspanningsgeriewe, sosiale klubs, sosiale en gesondheidsdienste, motorparkeerfasiliteite, bewaarskole en voorskoolse sentrums, restaurante, tehuse, beursskemas vir studiedoelindes of ander dergelike ondernemings of skemas wat na sy oordeel vir sy werknemers voordelig kan wees, instel, stig, oprig of bedryf, en kan vir hierdie doel van sy bates aanwend,
- 20 (d) motorvoertuigskemas vir werknemers van die SABS instel, en
- (e) 'n lening aan 'n werknemer toestaan—
- 25 (i) vir die doeleindes van studie deur daardie werknemer,
- (ii) wat deur daardie werknemer aangewend kan word vir die doeleindes deur die raad bepaal mits daardie doeleindes in belang van die SABS is, of
- (iii) vir enige ander doel tot 'n bedrag van nie meer nie as die
- 30 maandelikse salaris wat aan daardie werknemer betaalbaar is na aftrekkings

(3) Die raad kan op die voorwaardes wat hy goedvind 'n werknemer tydelik aan die diens van 'n Staatsdepartement, die regering van 'n ander land of gebied, of 'n instelling of persoon binne of buite die Republiek, afstaan, mits—

- 35 (a) so 'n werknemer tot sodanige afstand instem, en
- (b) so 'n werknemer se regte, voorregte en voordele uit hoofde van sy diensvoorwaardes as 'n werknemer van die SABS nie deur sodanige afstand benadeel word nie

### Finansiering

- 40 12. (1) Die fondse van die SABS bestaan uit—
- (a) geld deur die Parlement bewillig,
- (b) geld verkry uit hoofde van die bepalings van hierdie Wet of enige ander wet,
- (c) geld, skenkings, rente, dividende, tantieme, huur of bydraes uit enige
- 45 bron ontvang,
- (d) geld ingevolge artikel 4(1)(b) deur die SABS verkry,
- (e) die opbrengs van die verkoop van aandele, en van dividende op aandele deur die SABS gehou, in enige maatskappy of ander regs persoon bedoel in artikel 4(1)(g), en
- 50 (f) inkomste verkry uit die verkoop van—
- (i) publikasies opgestel deur die SABS, met inbegrip van publikasies waarin 'n standaard vervat is,
- (ii) ander publikasies wat verband hou met die oogmerke van die SABS,
- 55 (iii) verwysingsmateriaal, en
- (iv) enige bates van die SABS
- (2) (a) Die raad—
- (i) moet in elke boekjaar, op 'n tydstip deur die Minister bepaal, 'n staat van die geraamde inkomste en uitgawes van die SABS vir die daaropvolgende boekjaar, en
- 60 (ii) kan op enige tydstip gedurende 'n boekjaar aanvullende state van die geraamde inkomste en uitgawes van die SABS vir daardie boekjaar,

to the Minister for his approval, granted with the concurrence of the Minister of State Expenditure

(b) The SABS shall not incur expenses which may result in the total amount approved under paragraph (a) being exceeded

(3) The SABS shall utilize its funds for defraying expenses in connection with the performance of its functions and the exercise of its powers in accordance with the statements referred to in subsection (2)(a) Provided that the SABS— 5

(a) may utilize any amount or portion of an amount required to be so utilized for a particular purpose in connection with a specified matter, for any other purpose in connection with the performance of its functions, 10

(b) may carry forward any balance of such funds remaining at the end of the financial year concerned, to its next financial year for defraying any expenses in connection with the performance of its functions; and

(c) shall, notwithstanding the provisions of paragraphs (a) and (b), utilize any donations or contributions referred to in subsection (1)(c) in accordance with the conditions, if any, imposed by the donor or contributor concerned 15

(4) The SABS may, notwithstanding the provisions of subsection (3)(b), invest any unexpended portion of its funds with a financial institution approved by the Minister with the concurrence of the Minister of Finance 20

(5) The SABS may establish such reserve funds and deposit therein such amounts as the Minister with the concurrence of the Minister of State Expenditure may approve Provided that the particulars of the reserve funds shall be reflected in the annual report

**Accounting officer** 25

13. (1) In addition to the other functions and duties entrusted to him by this Act, the president shall be the accounting officer charged with the responsibility of accounting for all money received, the utilization thereof and the use and care of the property of the SABS

(2) The accounting officer shall cause such records of account to be kept as are necessary to represent fairly the state of affairs and business of the SABS and to explain the transactions and financial position of the business of the SABS 30

#### **Auditing and annual report**

14. (1) The Auditor-General shall audit the books of accounts, accounting statements and annual financial statements of the SABS 35

(2) The council shall—

(a) furnish to the Minister such information as he may call for from time to time in connection with the activities and financial circumstances of the SABS, and

(b) as soon as practicable after the end of each financial year submit to the Minister an annual report on the affairs and functions of the SABS in respect of that financial year which shall, *inter alia*, include a statement of income and expenditure and a balance sheet certified by the Auditor-General and such further particulars as the Minister may require 40 45

(3) The Minister shall table the annual report referred to in subsection (2)(b) in Parliament—

(a) within 14 days after receipt thereof, if Parliament is in ordinary session, or

(b) if Parliament is not in ordinary session, within 14 days of the commencement of its next ensuing ordinary session 50

#### **Recovery of loss and damage**

15. (1) If the accounting officer is convinced that a person who is or was in the employment of the SABS has caused the SABS any loss or damage because he—

(a) failed to collect money due to the SABS and for the collection of which he is or was responsible, 55

(b) is or was responsible for an irregular payment of money of the SABS or for a payment of such money not supported by a proper voucher;

aan die Minister voorlê vir sy goedkeuring, wat met die instemming van die Minister van Staatsbesteding verleen word

(b) Die SABS gaan geen uitgawes aan wat kan meebring dat die totale bedrag wat kragtens paragraaf (a) goedgekeur is, oorskry word nie

5 (3) Die SABS wend sy fondse aan om uitgawes in verband met die verrigting van sy werksaamhede en die uitoefening van sy bevoegdhede te bestry ooreenkomstig die state bedoel in subartikel (2)(a) Met dien verstande dat die SABS—

(a) 'n bedrag of gedeelte van 'n bedrag wat vir 'n besondere doel in verband met 'n bepaalde aangeleentheid aldus aangewend moet word, vir 'n ander doel in verband met die verrigting van sy werksaamhede kan aanwend,

(b) enige saldo van sodanige fondse wat aan die einde van 'n betrokke boekjaar oorbly, na die volgende boekjaar kan oordra ter bestryding van uitgawes in verband met die verrigting van sy werksaamhede, en

15 (c) ondanks die bepaling van paragrawe (a) en (b), skenkings of bydraes bedoel in subartikel (1)(c), moet aanwend ooreenkomstig die voorwaardes, as daar is, wat die betrokke skenker of bydraer opgelê het

(4) Die SABS kan, ondanks die bepaling van subartikel (3)(b), enige onbestede gedeelte van sy fondse belê by 'n finansiële instelling wat die Minister met die instemming van die Minister van Finansies goedkeur

20 (5) Die SABS kan die reserwefondse instel en die bedrae daarin stort wat die Minister met die instemming van die Minister van Staatsbesteding goedkeur Met dien verstande dat die besonderhede van die reserwefondse in die jaarverslag weerspieël word

## 25 Rekenpligtige beampte

13. (1) Benewens die ander werksaamhede en pligte deur hierdie Wet aan hom opgedra, is die president die rekenpligtige beampte belas met die verantwoording van al die geld ontvang, die aanwending daarvan en die gebruik en versorging van die eiendom van die SABS

30 (2) Die rekenpligtige beampte moet die rekeningkundige aantekeninge laat hou wat nodig is om die stand van die sake en besigheid van die SABS redelik weer te gee en om die transaksies en finansiële toestand van die besigheid van die SABS te verduidelik

## Ouditering en jaarverslag

35 14. (1) Die Ouditeur-generaal ouditeer die rekeningboeke, rekeningstate en finansiële jaarstate van die SABS

(2) Die raad moet aan die Minister—

(a) die inligting verstrek wat hy van tyd tot tyd in verband met die bedrywighede en geldelike omstandighede van die SABS aanvra, en

40 (b) so gou moontlik na die einde van elke boekjaar 'n jaarverslag voorlê wat onder meer insluit 'n staat van inkomste en uitgawe en 'n balansstaat wat deur die Ouditeur-generaal gesertifiseer is en die ander besonderhede wat die Minister verlang

(3) Die Minister lê die jaarverslag bedoel in subartikel (2)(b) in die Parlement

45 ter Tafel—

(a) binne 14 dae na ontvangs daarvan indien die Parlement in gewone sessie is, of

(b) indien die Parlement nie in gewone sessie is nie, binne 14 dae na die aanvang van sy eersvolgende gewone sessie

## 50 Verhaal van verlies en skade

15. (1) Indien die rekenpligtige beampte oortuig is dat iemand wat in diens van die SABS is of was die SABS enige verlies of skade berokken het deurdat hy—

(a) versuim het om geld verskuldig aan die SABS vir die invordering waarvan hy verantwoordelik is of was, in te vorder,

55 (b) vir 'n onreëlmatige uitbetaling van geld van die SABS of vir 'n uitbetaling van sodanige geld wat nie deur 'n behoorlike bewysstuk gestaaf word nie verantwoordelik is of was,

(c) is or was responsible for a deficiency in, the destruction of or damage to money, stamps, face value documents and forms of the SABS having a potential value, securities, equipment, stores or other property of the SABS,

(d) is or was responsible for a claim against the SABS, or the fruitless expenditure of money of the SABS due to an omission to carry out his duties or due to exceeding his powers, 5

the accounting officer shall determine the amount of such loss or damage, and may order that person, by notice in writing, to pay to the SABS, within 30 days from the date of such notice, the whole or any part of the amount so determined 10

(2) If a person who is in the employment of the SABS and who has in terms of subsection (1) been ordered to pay an amount, fails to pay the amount within the period stipulated in the notice concerned, the amount shall, subject to the provisions of subsections (4) and (5), be recovered from his monthly salary. Provided that such deduction shall not in any month exceed a fourth of his monthly salary 15

(3) (a) If a person who was in the employment of the SABS and who has in terms of subsection (1) been ordered to pay an amount, fails to pay the amount within the period stipulated in the notice concerned, the accounting officer may, subject to the provisions of paragraph (b) and subsections (4) and (5), recover the amount from the person concerned by legal process 20

(b) If any money is due by the SABS to a person referred to in paragraph (a), the amount referred to in that paragraph shall, subject to the provisions of subsections (4) and (5), be deducted from the amount thus due

(4) If a person who has in terms of subsection (1) been ordered to pay an amount, offers, within the period stipulated in the notice concerned, to pay the amount in instalments, the accounting officer may allow him to pay in such instalments and on such conditions as the accounting officer may consider reasonable 25

(5) A person who has in terms of subsection (1) been ordered to pay an amount, may— 30

(a) within a period of 30 days from the date of such order appeal in writing against such order to the council, stating the grounds for his appeal, and the council may, after such investigation as it may deem necessary, dismiss the appeal, or order that the appellant be exempted, either wholly or partly, as the council may deem fair and reasonable, from the payment of such amount, or 35

(b) apply within a period of 30 days from the date of such order, or within such further period as the court may allow, to a competent court for an order setting aside such first-mentioned order or reducing such amount, and the court may upon such an application, if it is not convinced by the accounting officer on the merits of the case that the order was rightly made or that the amount is correct, make an order setting aside such first-mentioned order or reducing that amount, as the case may be 40

## Standards 45

16. (1) The council shall publish by notice in the *Gazette* the norm which the SABS uses to set or amend a standard

(2) The SABS shall as far as possible ensure that in the setting or amendment of a standard—

- (a) the norm referred to in subsection (1) is maintained, 50
- (b) the latest technological development is considered, and
- (c) the interests of all parties concerned, including the manufacturer, supplier and consumer, are considered

(3) (a) The SABS may—

- (i) set and issue as a standard a specification, code of practice or standard method, 55
- (ii) amend a set standard, or
- (iii) withdraw a set standard

(b) A standard may be set merely by referring to a provision which occurs —

- (c) vir 'n tekort in of die vernietiging of beskadiging van die geld, seels, sigwaardestukke of vorms van die SABS wat 'n potensiele waarde het, sekuriteite, uitrusting, voorrade of enige ander goed van die SABS verantwoordelik is of was,
- 5 (d) weens versum om sy pligte uit te voer of weens oorskryding van sy bevoegdheid vir 'n eis teen die SABS of vir 'n vrugtelose uitgawe van die SABS se gelde verantwoordelik is of was,
- moet die rekenpligtige beampte die bedrag van sodanige verlies of skade vasstel, en kan hy so iemand by skriftelike kennisgewing gelas om die geheel of 'n
- 10 gedeelte van die bedrag wat aldus vasgestel is, binne 30 dae vanaf die datum van die kennisgewing aan die SABS te betaal
- (2) Indien iemand wat in diens van die SABS is en wat ingevolge subartikel (1) gelas is om 'n bedrag te betaal, versum om die bedrag te betaal binne die tydperk in die betrokke kennisgewing bepaal, word die bedrag, behoudens die
- 15 bepalinge van subartikels (4) en (5), van sy maandelikse salaris afgetrek. Met dien verstande dat so 'n aftrekking nie in een maand meer as 'n kwart van sy maandelikse salaris beloop nie
- (3) (a) Indien iemand wat in diens van die SABS was en wat ingevolge subartikel (1) gelas is om 'n bedrag te betaal, versum om die bedrag te betaal
- 20 binne die tydperk in die betrokke kennisgewing bepaal, kan die rekenpligtige beampte, behoudens die bepalinge van paragraaf (b) van subartikels (4) en (5), die bedrag deur middel van geregtelike proses op die betrokke persoon verhaal
- (b) Indien enige geld deur die SABS aan die persoon bedoel in paragraaf (a) verskuldig is, word die bedrag bedoel in daardie paragraaf, behoudens die
- 25 bepalinge van subartikels (4) en (5), afgetrek van die bedrag aldus verskuldig.
- (4) Indien iemand wat ingevolge subartikel (1) gelas is om 'n bedrag te betaal, binne die tydperk in die betrokke kennisgewing bepaal, aanbied om die bedrag in paaiemente te betaal, kan die rekenpligtige beampte hom toelaat om te betaal
- in die paaiemente en op die voorwaardes wat die rekenpligtige beampte redelik
- 30 ag.
- (5) Iemand wat ingevolge subartikel (1) gelas is om 'n bedrag te betaal, kan—
- (a) binne 'n tydperk van 30 dae vanaf die datum van daardie lasgewing skriftelik by die raad teen so 'n lasgewing appèl aanteken, met opgaaf
- 35 van die gronde van die appèl, en die raad kan, na die ondersoek wat hy nodig ag, die appèl verwerp of gelas dat die appellant geheel en al of ten dele, na gelang van wat die raad billik en redelik ag, van die betaling van daardie bedrag kwytgeskeld word, of
- (b) by 'n bevoegde hof aansoek doen binne 'n tydperk van 30 dae vanaf die
- 40 datum van daardie lasgewing, of binne die verdere tydperk wat die hof toelaat, om 'n bevel waarby die lasgewing tersyde gestel of daardie bedrag verminder word, en die hof kan op so 'n aansoek, indien hy nie deur die rekenpligtige beampte aan die hand van die omstandighede van die geval oortuig word dat die lasgewing tereg gegee is of dat daardie bedrag juis is nie, 'n bevel uitreik waarby die lasgewing tersyde
- 45 gestel word of daardie bedrag verminder word, na gelang van die geval

### Standaarde

16. (1) Die raad moet die norm wat die SABS gebruik om 'n standaard vas te stel of te wysig, by kennisgewing in die *Staatskoerant* bekend maak
- (2) Die SABS moet sover moontlik verseker dat by die vasstelling of wysiging
- 50 van 'n standaard—
- (a) die norm bedoel in subartikel (1) gehandhaaf word,
- (b) die jongste tegnologiese ontwikkeling in ag geneem word, en
- (c) die belange van alle belanghebbendes, met inbegrip van die vervaardiger, leweransier en verbruiker, in ag geneem word
- 55 (3) (a) Die SABS kan—
- (i) 'n spesifikasie, gebruikskode of standaardmetode as 'n standaard vasstel en uitreik,
- (ii) 'n vasgestelde standaard wysig, of
- (iii) 'n vasgestelde standaard intrek
- 60 (b) 'n Standaard kan vasgestel word bloot deur te verwys na 'n bepaling wat voorkom—

- (i) in any other standard set by the SABS, or  
 (ii) in a document in the nature of a specification, code of practice or standard method issued by a foreign or international body having objects similar to any object of the SABS and which it deems fit to issue as a standard for the purposes of this Act 5
- (4) (a) The council may in any manner make known the setting and issue of a standard, and any amendment or withdrawal thereof  
 (b) If a standard or an amendment thereof is made known in terms of paragraph (a) by notice in the *Gazette*, it shall be sufficient if the notice concerned—  
 (i) states the title and number of the standard, and 10  
 (ii) contains a résumé of the scope and purport of that standard or the amendment thereof
- (5) (a) Subject to the provisions of the Agricultural Product Standards Act, 1990 (Act No 119 of 1990), or the Liquor Products Act, 1989 (Act No 60 of 1989), no person shall issue a document which creates or may create the impression that it contains a standard as contemplated in this Act, unless it is issued in terms of this Act 15  
 (b) If the Agricultural Product Standards Act, 1990, or the Liquor Products Act, 1989, applies to a commodity, a standard in respect of such commodity shall only be set or amended in accordance with the terms and conditions of an agreement entered into by the council and the Director-General Agriculture 20
- (6) The control over the use or application of codes of practice or any category of codes of practice which have been set and issued as a standard shall be as prescribed
- (7) The SABS may levy fees— 25  
 (a) in respect of the setting and issue of a standard,  
 (b) in respect of services rendered in connection with the control over the use or application of codes of practice or any category of codes of practice which have been set and issued as a standard, and  
 (c) in regard to the participation in any scheme operated by the SABS 30
- (8) At the commencement of this Act a specification referred to in section 13, a code of practice referred to in section 18, a standard method referred to in section 19 or a document referred to in section 19(4) of the Standards Act, 1982 (Act No 30 of 1982), which is in force in terms of the provisions of that Act, shall be deemed to be a standard which has been set and issued in terms of the provisions of this Act 35
- (9) If a provision referred to in subsection (3)(b) is amended any reference to that provision shall be construed as a reference to the provision as amended

#### Copyright in standards and publications

17. (1) Notwithstanding the provisions in any other law contained— 40  
 (a) the copyright in a standard or a publication issued by the council shall vest in the SABS, and  
 (b) the SABS shall not be deprived of the copyright referred to in paragraph (a) if a standard, or a provision of such standard, or any publication issued by the SABS, is incorporated in a law in terms of section 31(1)(a) 45  
 or the provisions of any other law
- (2) No person shall, without the authorization of the SABS, in any manner or in any form publish, reproduce or record any document or part thereof in respect of which the copyright vests in the SABS in terms of subsection (1) Provided that any person may at any time make a copy of such document or part thereof for his own use 50

#### Establishment of marks

18. (1) The Minister may, subject to the provisions of subsection (2) and on the recommendation of the council, by notice in the *Gazette* establish, alter or abolish— 55  
 (a) certification marks,



- (i) in 'n ander standaard wat deur die SABS vasgestel is; of  
(ii) in 'n dokument, met die aard van 'n spesifikasie, gebruikskode of  
standaardmetode, wat uitgereik is deur 'n buitelandse of internasionale  
liggaam met oogmerke soortgelyk aan 'n oogmerk van die SABS en  
5 wat die SABS geskik ag om as 'n standaard vir die doeleindes van  
hierdie Wet vas te stel en uit te reik
- (4) (a) Die raad kan die vasstelling en uitreiking van 'n standaard, en enige  
wysiging of intrekking daarvan, op enige wyse bekend maak  
(b) Indien 'n standaard of 'n wysiging daarvan ingevolge paragraaf (a) by  
10 kennisgewing in die *Staatskoerant* bekend gemaak word, is dit voldoende indien  
die betrokke kennisgewing—  
(i) die titel en nommer van die standaard vermeld, en  
(ii) 'n samevatting van die bestek en strekking van daardie standaard of die  
wysiging daarvan bevat
- 15 (5) (a) Behoudens die bepalings van die Wet op Landbouprodukstandaarde,  
1990 (Wet No 119 van 1990), of die Wet op Drankprodukte, 1989 (Wet No 60  
van 1989), mag niemand 'n dokument wat die indruk skep of kan skep dat dit 'n  
standaard soos beoog in hierdie Wet bevat, uitreik nie tensy dit ingevolge die  
bepalings van hierdie Wet uitgereik word.  
20 (b) Indien die Wet op Landbouprodukstandaarde, 1990, of die Wet op  
Drankprodukte, 1989, op 'n kommoditeit van toepassing is, word 'n standaard  
ten opsigte van sodanige kommoditeit slegs vasgestel of gewysig ooreenkomstig  
die bepalings en voorwaardes van 'n ooreenkoms wat deur die raad en die  
Direkteur-generaal Landbou aangegaan is
- 25 (6) Die beheer oor die gebruik of toepassing van gebruikskodes of 'n kategorie  
gebruikskodes wat as 'n standaard vasgestel en uitgereik is, is soos voorgeskryf  
(7) Die SABS kan geïde hef—  
(a) ten opsigte van die vasstelling en uitreiking van 'n standaard,  
(b) ten opsigte van dienste gelewer in verband met die beheer oor die  
30 gebruik of toepassing van gebruikskodes of 'n kategorie gebruikskodes  
wat as 'n standaard vasgestel en uitgereik is; en  
(c) ten opsigte van die deelname aan 'n skema wat deur die SABS bedryf  
word
- (8) By die inwerkingtreding van hierdie Wet word 'n spesifikasie bedoel in  
35 artikel 13, 'n gebruikskode bedoel in artikel 18, 'n standaardmetode bedoel in  
artikel 19 of 'n dokument bedoel in artikel 19(4) van die Wet op Standaarde,  
1982 (Wet No 30 van 1982), wat van krag is ingevolge die bepalings van daardie  
Wet, geag 'n standaard te wees wat ingevolge die bepalings van hierdie Wet  
vasgestel en uitgereik is
- 40 (9) Indien 'n bepaling bedoel in subartikel (3)(b) gewysig word, word enige  
verwysing na daardie bepaling uitgelê as 'n verwysing na die bepaling soos  
gewysig.

#### Outeursreg oor standaarde en publikasies

17. (1) Ondanks die bepalings van die een of ander wet—  
45 (a) vestig die outeursreg van 'n standaard of 'n publikasie wat deur die raad  
utgereik is, in die SABS, en  
(b) word die SABS nie van die outeursreg bedoel in paragraaf (a) ontdoen  
nie indien 'n standaard, of 'n spesifieke bepaling daaruit, of 'n  
publikasie deur die SABS uitgereik, ingevolge artikel 31(1)(a) of die  
50 bepalings van enige ander wet, in 'n wet ingelyf word
- (2) Niemand mag sonder die magtiging van die SABS enige dokument of 'n  
gedeelte daarvan ten opsigte waarvan die outeursreg ingevolge subartikel (1) in  
die SABS vestig op enige wyse of in enige vorm publiseer, reproduseer of vaslê  
nie. Met dien verstande dat 'n persoon te eniger tyd vir eie gebruik 'n kopie van  
55 so 'n dokument of gedeelte daarvan kan maak

#### Instelling van merke

18. (1) Die Minister kan, behoudens die bepalings van subartikel (2) en op  
aanbeveling van die raad, by kennisgewing in die *Staatskoerant*—  
(a) sertifiseringsmerke,

- (b) marks of proof,
- (c) marks of authenticity, and
- (d) distinctive marks

(2) A mark shall not be established as a mark in terms of subsection (1) if such mark is registered as a trade mark in terms of the provisions of any law with regard to the registration of trade marks or so closely resembles such a mark as to be likely to be mistaken for it. 5

(3) A mark which has been established as a mark in terms of subsection (1) or so closely resembles such a mark as to be likely to be mistaken for it, shall not be registered as a trade mark under any law with regard to the registration of trade marks 10

(4) A mark which has been established in terms of subsection (1) shall be deemed to be a mark the use of which is absolutely prohibited in terms of section 15(1) of the Merchandise Marks Act, 1941 (Act No 17 of 1941), except by the SABS or its mandatories 15

(5) At the commencement of this Act a standardization mark referred to in section 14(1) of the Standards Act, 1982 (Act No 30 of 1982), which is in force in terms of the provisions of that Act, shall be deemed to be a certification mark

### Mark specification

19. (1) (a) The council may, subject to the provisions of section 20(1), by notice in the *Gazette* determine that a certification mark may be applied to a commodity falling within the scope of a specific specification which has been set and issued as a standard 20

(b) The notice referred to in paragraph (a) shall contain a résumé of the scope and purport of the specification concerned 25

(2) (a) Upon the publication in the *Gazette* of a notice referred to in subsection (1)(a), the specification concerned shall become a mark specification

(b) If a specification which has been set and issued as a standard, is amended in terms of section 16(3)(a)(ii), the specification concerned as amended shall, for the purposes of subsection (1)(a), be deemed to be the mark specification 30

(3) At the commencement of this Act a standard specification referred to in section 15(1) of the Standards Act, 1982 (Act No 30 of 1982), which is in force in terms of the provisions of that Act, shall be deemed to be a mark specification

### Application of certification mark

20. (1) (a) A certification mark shall only be applied or used in a manner authorized by this Act 35

(b) No person shall apply a certification mark to a commodity except under a mark permit issued in terms of section 25 and unless that commodity complies with or has been manufactured in accordance with the relevant mark specification

(2) For the purposes of this section a person shall be deemed to have applied a certification mark to a commodity if he has — 40

(a) applied that certification mark to any container or covering of the commodity concerned or to any label attached to the said commodity or to any container or covering thereof,

(b) placed or enclosed the commodity concerned in any container or covering to which that certification mark has been applied or to which is attached any label to which the said certification mark has been applied; or 45

(c) in connection with the sale of the commodity concerned, directly or indirectly referred to that certification mark in a manner or under circumstances likely to convey the impression that the said commodity complies with or has been manufactured in accordance with the relevant mark specification 50

(3) (a) If a certification mark is altered in terms of section 18(1), the SABS may authorize the continued use of that certification mark as it existed prior to the 55

- (b) proefmerke,
- (c) waarmerke, en
- (d) onderskeidingsmerke,

instel, verander of afskaf

5 (2) 'n Merk word nie as 'n merk ingevolge subartikel (1) ingestel nie indien sodanige merk ingevolge die bepalings van 'n wet met betrekking tot die registrasie van handelsmerke as 'n handelsmerk geregistreer is of soveel op so 'n merk lyk dat dit waarskynlik daarvoor aangesien sal word

10 (3) 'n Merk wat as 'n merk ingevolge subartikel (1) ingestel is of soveel op so 'n merk lyk dat dit waarskynlik daarvoor aangesien sal word, word nie kragtens 'n wet met betrekking tot die registrasie van handelsmerke as 'n handelsmerk geregistreer nie

15 (4) 'n Merk wat as 'n merk ingevolge subartikel (1) ingestel is, word geag 'n merk te wees waarvan die gebruik, uitgesonderd deur die SABS of sy gevolmagtigdes, ingevolge artikel 15(1) van die Handelswaremerkewet, 1941 (Wet No 17 van 1941), geheel en al verbied is

20 (5) By die inwerkingtreding van hierdie Wet word 'n standaardmerk bedoel in artikel 14(1) van die Wet op Standaarde, 1982 (Wet No 30 van 1982), wat van krag is ingevolge die bepalings van daardie Wet, geag 'n sertifiseringsmerk te wees

#### Merkspesifikasie

19. (1) (a) Die raad kan, behoudens die bepalings van artikel 20(1), by kennisgewing in die *Staatskoerant* bepaal dat 'n sertifiseringsmerk aangebring mag word op 'n kommoditeit wat binne die bestek val van 'n bepaalde spesifikasie wat as 'n standaard vasgestel en uitgereik is

(b) Die kennisgewing bedoel in paragraaf (a) moet 'n samevatting van die bestek en strekking van die betrokke spesifikasie bevat

(2) (a) By die publikasie in die *Staatskoerant* van 'n kennisgewing bedoel in subartikel (1)(a), word die betrokke spesifikasie 'n merkspesifikasie

30 (b) Indien 'n spesifikasie wat as 'n standaard vasgestel en uitgereik is, ingevolge artikel 16(3)(a)(ii) gewysig word, word die betrokke spesifikasie soos gewysig, vir die doeleindes van subartikel (1)(a) geag die merkspesifikasie te wees

35 (3) By die inwerkingtreding van hierdie Wet word 'n standaardspesifikasie bedoel in artikel 15(1) van die Wet op Standaarde, 1982 (Wet No 30 van 1982), wat van krag is ingevolge die bepalings van daardie Wet, geag 'n merkspesifikasie te wees

#### Aanbring van sertifiseringsmerk

40 20. (1) (a) 'n Sertifiseringsmerk mag slegs aangebring of gebruik word op 'n wyse wat deur hierdie Wet gemagtig word

(b) Niemand mag 'n sertifiseringsmerk op 'n kommoditeit aanbring nie behalwe kragtens 'n merkpermit uitgereik ingevolge artikel 25 en tensy daardie kommoditeit voldoen aan of vervaardig is ooreenkomstig die toepaslike merkspesifikasie

45 (2) By die toepassing van hierdie artikel word iemand geag 'n sertifiseringsmerk op 'n kommoditeit aan te gebring het indien hy—

(a) daardie sertifiseringsmerk aangebring het op 'n houer of omhulsel van die betrokke kommoditeit of op 'n etiket wat aan genoemde kommoditeit of aan 'n houer of omhulsel daarvan geheg is,

50 (b) die betrokke kommoditeit geplaas of ingesluit het in 'n houer of omhulsel waarop daardie sertifiseringsmerk aangebring is of waaraan 'n etiket geheg is waarop genoemde sertifiseringsmerk aangebring is, of

55 (c) in verband met die verkoop van die betrokke kommoditeit regstreeks of onregstreeks na daardie sertifiseringsmerk verwys het op 'n wyse of onder omstandighede wat waarskynlik die indruk sal wek dat genoemde kommoditeit voldoen aan of vervaardig is ooreenkomstig die toepaslike merkspesifikasie

(3) (a) Indien 'n sertifiseringsmerk ingevolge artikel 18(1) verander word, kan die SABS die voortgesette gebruik van daardie sertifiseringsmerk soos dit

alteration thereof on such conditions, including conditions regarding the withdrawal of the authorization, as it may deem expedient in the particular instance

(b) A certification mark referred to in paragraph (a) shall, during the period of the continued use thereof, be deemed to be a certification mark which has not been so altered by the Minister 5

(4) (a) The SABS may—

(i) subject to the conditions it deems necessary, grant permission to a person entitled under a mark permit to apply a certification mark to a commodity, to apply to the commodity concerned a code mark approved by the SABS in lieu of that certification mark, and 10

(ii) for the purpose of the application of a code mark referred to in subparagraph (i), suspend or amend any condition to which the issue of the said mark permit is subject

(b) The code mark referred to in paragraph (a)(i) shall be deemed to be a certification mark 15

### Limitations on certain claims

21. (1) No person shall in connection with the sale of a commodity refer directly or indirectly to the SABS or the council in a manner or under circumstances likely to create the impression that such commodity has been approved by the SABS or the council, unless such commodity complies with or has been manufactured in accordance with a mark specification and such person has under a mark permit applied the relevant certification mark to such commodity 20

(2) No person shall claim or declare that he or any other person complied with a standard unless — 25

(a) such claim or declaration is true and accurate in all material respects, and

(b) the identity of that person or of the person on whose authority such claim or declaration is made, is clear

(3) The SABS may in connection with any claim or declaration referred to in subsection (2) evaluate, examine, test or analyse any article to confirm the truthfulness or accuracy of such claim or declaration and, in the event of its proving false or inaccurate, the person by whom the claim or declaration was made, shall be liable for the payment of the full cost incurred by the SABS in regard to such evaluation, examination, test or analysis 30

(4) The provisions of subsection (3) shall not be construed as preventing any person from evaluating, examining, testing or analysing any article in order to determine whether any claim or declaration referred to in subsection (2) is true and accurate 35

(5) Notwithstanding the provisions of subsection (1) —

(a) a trader may advertise or otherwise make known the fact that a certification mark has been applied to a commodity sold by him provided that he mentions or displays the trade name or trade mark of that commodity at the same time in the advertisement or notification concerned, 40

(b) any person required to make a statement in a contract, tender, quotation or other similar document as to the question whether any commodity offered or supplied by him complies with or has been manufactured in accordance with a particular mark specification, may make such a statement, but only if such statement is correct and he confirms that statement in an affidavit or affirmation, and 50

(c) any person may advertise or otherwise make known the fact that he has used a commodity to which a certification mark has been applied in an installation or in a process of manufacture, provided that he mentions or displays the trade name or trade mark of that commodity at the same time in the advertisement or notification concerned 55

### Compulsory specifications

22. (1) (a) The Minister may, subject to the provisions of subsections (3)(a) and

bestaan het voor die verandering daarvan magtig op die voorwaardes, met inbegrip van die voorwaardes betreffende die intrekking van die magtiging, wat hy in die besondere geval dienstig ag

(b) 'n Sertifiseringsmerk bedoel in paragraaf (a) word, gedurende die tydperk van die voortgesette gebruik daarvan, geag 'n sertifiseringsmerk te wees wat nie aldus deur die Minister verander is nie

(4) (a) Die SABS kan—

(i) onderworpe aan die voorwaardes wat hy dienstig ag, aan 'n persoon wat kragtens 'n merkpermit geregtig is om 'n sertifiseringsmerk op 'n kommoditeit aan te bring, toestemming verleen om in die plek van daardie sertifiseringsmerk 'n kodemerk deur die SABS goedgekeur op die betrokke kommoditeit aan te bring, en

(ii) vir die doel van die aanbring van 'n kodemerk bedoel in subparagraaf (i), enige voorwaarde waaraan genoemde merkpermit by uitreiking onderworpe is, opskort of wysig

(b) Die kodemerk bedoel in paragraaf (a)(i) word geag 'n sertifiseringsmerk te wees

#### Beperkings op sekere aansprake

21. (1) Niemand mag in verband met die verkoop van 'n kommoditeit regstreeks of onregstreeks na die SABS of die raad verwys op 'n wyse of onder omstandighede wat waarskynlik die indruk sal wek dat daardie kommoditeit deur die SABS of die raad goedgekeur is nie, tensy daardie kommoditeit voldoen aan of vervaardig is ooreenkomstig 'n merkspesifikasie en so iemand die toepaslike sertifiseringsmerk kragtens 'n merkpermit op daardie kommoditeit aangebring het

(2) Niemand mag daarop aanspraak maak of verklaar dat hyself of enige ander persoon aan die bepalings van 'n standaard voldoen het nie, tensy—

(a) sodanige aanspraak of verklaring in alle wesenlike opsigte waar en juis is, en

(b) die identiteit van daardie persoon of van die persoon op wie se gesag sodanige aanspraak of verklaring gemaak word, duidelik blyk

(3) Die SABS kan in verband met 'n aanspraak of verklaring bedoel in subartikel (2), enige artikel beoordeel, ondersoek, toets of ontleed om die waarheid of juistheid van die aanspraak of verklaring te bevestig en, indien dit in enige opsig onwaar of onjuis blyk, is die persoon wat die aanspraak of verklaring gemaak het aanspreeklik vir die betaling van die SABS se volle koste in verband met sodanige beoordeling, ondersoek, toets of ontleding

(4) Die bepalings van subartikel (3) word nie so uitgelê nie dat enige persoon daardeur verhinder word om 'n artikel te beoordeel, te ondersoek, te toets of te ontleed ten einde te bepaal of 'n aanspraak of verklaring bedoel in subartikel (2) waar en juis is

(5) Ondanks die bepalings van subartikel (1)—

(a) kan 'n handelaar die feit adverteer of op 'n ander wyse bekend maak dat 'n sertifiseringsmerk aangebring is op 'n kommoditeit wat hy verkoop mits hy die handelsnaam of handelsmerk van daardie kommoditeit tegelykertyd in die betrokke advertensie of bekendmaking vermeld of vertoon,

(b) kan iemand van wie daar verlang word om in 'n kontrak, tender, prysopgawe of ander soortgelyke dokument 'n verklaring te doen aangaande die vraag of 'n kommoditeit wat deur hom aangebied of verskaf word, voldoen aan of vervaardig is ooreenkomstig 'n bepaalde merkspesifikasie, so 'n verklaring doen, maar slegs indien so 'n verklaring juis is en hy daardie verklaring in 'n beedigde of bevestigde verklaring bekragtig, en

(c) kan iemand die feit adverteer of op 'n ander wyse bekend maak dat hy 'n kommoditeit waarop 'n sertifiseringsmerk aangebring is in 'n installasie of in 'n vervaardigingsproses gebruik het mits hy die handelsnaam of handelsmerk van daardie kommoditeit tegelykertyd in die betrokke advertensie of bekendmaking vermeld of vertoon

#### 60 Verpligte spesifikasies

22. (1) (a) Die Minister kan, behoudens die bepalings van subartikels (3)(a) en

(5) and after the expiry of the period referred to in subsection (3)(b), on the recommendation of the council and to promote and maintain standardization and quality if safety, health, consumer protection or the environment is concerned, by notice in the *Gazette*—

- (i) declare a specification which has been set and issued as a standard or a provision of such specification, to be a compulsory specification; 5
- (ii) amend a compulsory specification, or
- (iii) withdraw a compulsory specification

(b) The notice referred to in subsections (1)(a)(i) and (ii) shall contain full particulars of such specification, provision or amendment 10

(2) (a) A declaration referred to in subsection (1)(a)(i) or an amendment referred to in subsection (1)(a)(ii) shall come into operation on a date fixed in the notice, which date shall be not less than two months after the date of the publication of such notice

(b) Different dates may be fixed in terms of paragraph (a) on which different provisions of a compulsory specification shall come into operation 15

(c) The Minister may alter a date referred to in paragraph (a) or (b) by notice in the *Gazette*

(3) If the Minister intends to publish a notice under subsection (1)(a)(i) or (ii), he shall publish in the *Gazette* a preliminary notice— 20

(a) in which full particulars are set out of the specification or the provision of the specification he intends to declare to be a compulsory specification, or of the amendment of a compulsory specification, and

(b) in which all interested persons are invited to lodge objections to the proposed notice he intends to publish, or any part thereof, in writing at a stated address and before a stated date, which shall be not less than two months after the date of the publication of such preliminary notice 25

(4) The Minister shall consult with the Minister to whom the administration of any other law has been assigned if that law, or the regulations promulgated thereunder, lays down or may lay down requirements in respect of a commodity or the manufacture thereof which is the subject of a preliminary notice referred to in subsection (3)(a) 30

(5) The Minister shall not publish a notice referred to in subsection (1)(a)(i) or (ii) if in his opinion such a notice differs materially from the preliminary notice concerned 35

(6) The Minister may by notice in the *Gazette*—

(a) determine that a commodity that complies with a compulsory specification shall be marked in the prescribed manner with an appropriate distinctive mark,

(b) determine the requirements regarding the marking of a commodity in accordance with its origin, batch, date of manufacture, characteristics or other particulars of a commodity falling within the scope of a compulsory specification and which a manufacturer or importer shall indicate on that commodity; 40

(c) amend a requirement referred to in paragraph (b), and 45

(d) withdraw a notice referred to in paragraph (a), (b) or (c)

(7) (a) At the commencement of this Act a compulsory specification referred to in section 16(1)(a) of the Standards Act, 1982 (Act No 30 of 1982), which is in force in terms of the provisions of that Act, shall be deemed to be a compulsory specification for the purposes of this Act 50

(b) At the commencement of this Act a requirement referred to in section 16(1)(c) of the Standards Act, 1982, which is in force in terms of the provisions of that Act, shall be deemed to be a requirement determined under subsection (6)(b)

(8) The Minister may, in order to give effect to the provisions of subsections (1)(a) and (6), publish only one notice in the *Gazette* 55

#### **Effect of declaration as compulsory specification and application of distinctive mark**

23. (1) (a) No person shall sell a commodity to which a compulsory specification applies, unless— 60

- (5) en na afloop van die tydperk bedoel in subartikel (3)(b), op aanbeveling van die raad en ter bevordering en handhawing van standaardisasie en kwaliteit indien veiligheid, gesondheid, verbruikersbeskerming of die omgewing betrokke is, by kennisgewing in die *Staatskoerant*—
- 5 (1) 'n spesifikasie wat as 'n standaard vasgestel en uitgereik is, of 'n bepaling van sodanige spesifikasie, tot 'n verpligte spesifikasie verklaar,
- (ii) 'n verpligte spesifikasie wysig, of
- (iii) 'n verpligte spesifikasie intrek
- (b) Die kennisgewing bedoel in subartikel (1)(a)(i) en (ii) moet volledige
- 10 besonderhede van sodanige spesifikasie, bepaling of wysiging bevat
- (2) (a) 'n Verklaring bedoel in subartikel (1)(a)(i) of 'n wysiging bedoel in subartikel (1)(a)(ii) tree in werking op 'n datum in die kennisgewing bepaal, welke datum minstens twee maande na die datum van die publikasie van sodanige kennisgewing moet wees
- 15 (b) Verskillende datums kan ingevolge paragraaf (a) bepaal word waarop verskillende bepalinge van 'n verpligte spesifikasie in werking tree
- (c) Die Minister kan 'n datum bedoel in paragraaf (a) of (b) by kennisgewing in die *Staatskoerant* verander
- (3) Indien die Minister van voorneme is om 'n kennisgewing kragtens
- 20 subartikel (1)(a)(i) of (ii) te publiseer, publiseer hy in die *Staatskoerant* 'n voorlopige kennisgewing—
- (a) waarin volledige besonderhede uiteengesit word van die spesifikasie of die bepaling van die spesifikasie wat hy voornemens is om tot 'n verpligte spesifikasie te verklaar, of van die wysiging van 'n verpligte
- 25 spesifikasie, en
- (b) waarin alle belanghebbendes uitgenooi word om skriftelik beswaar teen die voorgestelde kennisgewing wat hy voornemens is om te publiseer, of enige gedeelte daarvan, in te dien by 'n vermeldde adres en voor 'n vermeldde datum, wat minstens twee maande na die datum van die publikasie van sodanige voorlopige kennisgewing moet wees
- 30 (4) Die Minister moet oorleg pleeg met die Minister aan wie die uitvoering van enige ander wet opgedra is indien daardie wet, of die regulasies daarkragtens uitgevaardig, vereistes stel of kan stel ten opsigte van 'n kommoditeit of die vervaardiging daarvan wat die onderwerp is van 'n voorlopige kennisgewing
- 35 bedoel in subartikel (3)(a)
- (5) Die Minister publiseer nie 'n kennisgewing bedoel in subartikel (1)(a)(i) of (ii) nie indien so 'n kennisgewing na sy oordeel wesenlik verskil van die betrokke voorlopige kennisgewing
- (6) Die Minister kan by kennisgewing in die *Staatskoerant*—
- 40 (a) bepaal dat 'n kommoditeit wat aan 'n verpligte spesifikasie voldoen, op die voorgeskrewe wyse met 'n toepaslike onderskeidingsmerk gemerk moet word,
- (b) die vereistes bepaal met betrekking tot die aanbring van 'n merk op 'n kommoditeit ooreenkomstig sy oorsprong, lot, datum van vervaardiging, eienskappe of ander besonderhede van 'n kommoditeit wat binne
- 45 die bestek van 'n verpligte spesifikasie val en wat 'n vervaardiger of invoerder op daardie kommoditeit moet aanbring,
- (c) 'n vereiste bedoel in paragraaf (b) wysig, en
- (d) 'n kennisgewing bedoel in paragraaf (a), (b) of (c) intrek
- 50 (7) (a) By die inwerkingtreding van hierdie Wet word 'n verpligte spesifikasie bedoel in artikel 16(1)(a) van die Wet op Standaarde, 1982 (Wet No 30 van 1982), wat van krag is ingevolge die bepalinge van daardie Wet, geag 'n verpligte spesifikasie vir die doeleindes van hierdie Wet te wees
- (b) By die inwerkingtreding van hierdie Wet word 'n vereiste bedoel in artikel
- 55 16(1)(c) van die Wet op Standaarde, 1982, wat van krag is ingevolge die bepalinge van daardie Wet, geag 'n vereiste bepaal kragtens subartikel (6)(b) te wees
- (8) Die Minister kan, ten einde aan die bepalinge van subartikels (1)(a) en (6) gevolg te gee, slegs een kennisgewing in die *Staatskoerant* publiseer

#### 60 **Uitwerking van verklaring tot verpligte spesifikasie en aanbring van onderskeidingsmerk**

23. (1) (a) Niemand mag 'n kommoditeit waarop 'n verpligte spesifikasie van toepassing is, verkoop nie, tensy—

- (i) such a commodity complies with or has been manufactured in accordance with the compulsory specification concerned, and
- (ii) if applicable, the distinctive mark referred to in section 22(6)(a) has been applied to the commodity concerned in the prescribed manner as set out in the notice concerned, and such commodity has been marked in accordance with the requirements referred to in section 22(6)(b) 5
- (b) The provisions of section 20(2) shall *mutatis mutandis* apply to the application of a distinctive mark to a commodity
- (c) The SABS may issue a sales permit exempting the person to whom it has been issued from the provisions of paragraph (a) 10
- (2) The prescribed records shall be kept by the seller, manufacturer or importer in respect of sales, or quantities manufactured or imported, of a commodity to which a compulsory specification applies
- (3) The prescribed fees shall be payable to the SABS by a manufacturer or importer of a commodity to which a compulsory specification applies 15
- (4) A commodity to which a compulsory specification applies and which is manufactured outside the Republic shall be deemed to comply with the provisions of subsection (1)(a) if that commodity has been certified by a person or organization recognized by the Minister by notice in the *Gazette*. Provided that if the Minister so directs, such a commodity shall be tested or examined and if it is found that that commodity does not comply with the provisions of subsection (1)(a)(i), it may be dealt with in terms of section 24(3) 20

#### Non-compliance with compulsory specification

24. (1) If the president upon reasonable grounds suspects that a commodity, excluding a commodity referred to in section 23(4), or a consignment or batch thereof does not comply with or has not been manufactured in accordance with the compulsory specification that applies to it, he may direct a person in whose possession or under whose control that commodity, consignment or batch is, to keep it in his possession or under his control, at or upon premises mentioned in the directive, until the said directive is withdrawn by the president in writing 25 30
- (2) (a) If a certificate referred to in section 4(2) has not been issued in respect of a consignment of a commodity to which a compulsory specification applies and which has been imported into the Republic, the Commissioner of Customs and Excise may, subject to the provisions of paragraph (b), cause that consignment to be secured at the request of the president until the president withdraws his request 35
- (b) For the purposes of paragraph (a) the provisions of the Customs and Excise Act, 1964 (Act No 91 of 1964), with regard to the securing of goods, shall *mutatis mutandis* apply
- (3) If it is found by the SABS, or as a result of a test or examination referred to in section 23(4), as the case may be, that a commodity referred to in subsection (1) or (2) does not comply with the compulsory specification concerned, the Minister may direct in writing that — 40
- (a) an importer of the consignment concerned of the said commodity return it to the country of origin, 45
- (b) the consignment or batch concerned of the said commodity be confiscated and destroyed, or
- (c) the consignment or batch concerned of the said commodity be dealt with in such other manner as may be stated in the directive

#### Permits

25. (1) An application for a mark permit or a sales permit shall be made to the SABS and shall be accompanied by the fees determined by the SABS
- (2) The SABS may—
- (a) issue a mark permit or sales permit for an indefinite period or for a fixed period subject to such conditions as it may deem necessary, 55



- (i) so 'n kommoditeit voldoen aan of vervaardig is ooreenkomstig die betrokke verpligte spesifikasie, en
- (ii) indien van toepassing, die onderskeidingsmerk bedoel in artikel 22(6)(a) op die voorgeskrewe wyse soos in die betrokke kennisgewing uiteengesit op die betrokke kommoditeit aangebring is, en sodanige kommoditeit ooreenkomstig die vereistes bedoel in artikel 22(6)(b) gemerk is
- (b) Die bepalings van artikel 20(2) is *mutatis mutandis* van toepassing op die aanbring van 'n onderskeidingsmerk op 'n kommoditeit
- (c) Die SABS kan 'n verkoopspermit uitreik wat die persoon aan wie dit uitgereik word van die bepalings van paragraaf (a) vrystel
- (2) Die voorgeskrewe aantekeninge moet deur die verkoper, vervaardiger of invoerder ten opsigte van die verkope, of hoeveelhede vervaardig of ingevoer, van 'n kommoditeit waarop 'n verpligte spesifikasie van toepassing is, gehou word
- (3) Die voorgeskrewe gelde is aan die SABS betaalbaar deur 'n vervaardiger of invoerder van 'n kommoditeit waarop 'n verpligte spesifikasie van toepassing is
- (4) 'n Kommoditeit waarop 'n verpligte spesifikasie van toepassing is en wat buite die Republiek vervaardig is, word geag aan die bepalings van subartikel (1)(a) te voldoen indien daardie kommoditeit gesertifiseer is deur 'n persoon of organisasie wat deur die Minister by kennisgewing in die *Staatskoerant* erken is. Met dien verstande dat indien die Minister aldus gelas, so 'n kommoditeit getoets of ondersoek moet word, en indien daar bevind word dat daardie kommoditeit nie aan die bepalings van subartikel (1)(a)(i) voldoen nie, kan daarmee ingevolge artikel 24(3) gehandel word

#### Nie-voldoening aan verpligte spesifikasie

24. (1) Indien die president op redelike gronde vermoed dat 'n kommoditeit, uitgesonderd 'n kommoditeit bedoel in artikel 23(4), of 'n besending of lot daarvan, nie voldoen aan of vervaardig is ooreenkomstig die verpligte spesifikasie wat daarop van toepassing is nie, kan hy 'n persoon in wie se besit of onder wie se beheer daardie kommoditeit, besending of lot is, gelas om dit in sy besit of onder sy beheer te hou, by of op 'n perseel in die lasgewing vermeld, totdat genoemde lasgewing skriftelik deur die president ingetrek word
- (2) (a) Indien 'n sertifikaat bedoel in artikel 4(2) nie uitgereik is nie ten opsigte van 'n besending van 'n kommoditeit waarop 'n verpligte spesifikasie van toepassing is en wat in die Republiek ingevoer is, kan die Kommissaris van Doeane en Aksyns, behoudens die bepalings van paragraaf (b), daardie besending op versoek van die president laat bewaar totdat die president sy versoek terugtrek
- (b) By die toepassing van paragraaf (a) is die bepalings van die Doeane- en Aksynswet, 1964 (Wet No 91 van 1964), met betrekking tot die bewaring van goedere *mutatis mutandis* van toepassing
- (3) Indien daar deur die SABS, of as gevolg van 'n toets of ondersoek bedoel in artikel 23(4), na gelang van die geval, bevind word dat 'n kommoditeit bedoel in subartikel (1) of (2) nie aan die betrokke verpligte spesifikasie voldoen nie, kan die Minister skriftelik gelas dat—
- (a) 'n invoerder van die betrokke besending van genoemde kommoditeit dit na die land van oorsprong terugstuur,
- (b) die betrokke besending of lot van genoemde kommoditeit in beslag geneem en vernietig word; of
- (c) daar met die betrokke besending of lot van genoemde kommoditeit gehandel word op enige ander wyse in die lasgewing vermeld

#### Permitte

25. (1) 'n Aansoek om 'n merkpermit of 'n verkoopspermit word by die SABS gedoen en gaan vergesel van die gelde wat die SABS bepaal
- (2) Die SABS kan—
- (a) 'n merkpermit of verkoopspermit uitreik vir 'n onbepaalde tydperk of vir 'n vasgestelde tydperk onderworpe aan die voorwaardes wat hy nodig ag,

- (b) withdraw or, subject to such conditions as it may deem necessary, suspend a permit referred to in paragraph (a), or terminate the suspension of such permit
- (3) The holder of a permit which has been withdrawn in terms of subsection (2)(b), or which has expired due to effluxion of time or any other cause, shall, at the written request of the SABS, forthwith return that permit to the SABS 5

#### Right to appeal to Minister

26. (1) (a) Any person who feels himself aggrieved by a decision of the SABS to refuse to issue to him a permit mentioned in section 25(2)(a), or to withdraw or suspend any of those permits issued to him, may appeal to the Minister in the prescribed manner and within the prescribed period 10
- (b) The Minister shall in the case of an appeal in terms of paragraph (a), confirm, amend or set aside the decision of the SABS
- (2) A decision of the SABS in terms of section 25(2)(b) to withdraw or suspend a permit, shall not be suspended and shall not lapse by reason of an appeal in terms of subsection (1) by such person against that decision 15

#### Marks of proof and marks of authenticity

27. (1) The application by a person authorized thereto by regulation of a mark of proof or mark of authenticity to an article in accordance with its characteristics, including its nature, quality, strength, purity, composition, quantity, dimensions, mass, grade, durability, origin or age, whichever may be applicable, or the material or substance from or with which or the manner in which it has been manufactured, shall be as prescribed 20
- (2) No person shall sell or otherwise alienate any article on which a mark of proof or a mark of authenticity may be applied in terms of subsection (1), unless that mark has been applied to the article by the SABS or a person authorized thereto in writing by the SABS 25
- (3) The SABS may levy fees for the application to an article of a mark of proof or a mark of authenticity by or on behalf of the SABS

#### Inspectors and auditors

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28. (1) (a) The council may in general or for a specific purpose—
- (i) appoint a suitably qualified employee as an inspector, or
- (ii) appoint a person, institution or organization as an auditor for the purposes of this Act
- (b) The council may withdraw an appointment referred to in paragraph (a) 35
- (c) An inspector or auditor shall be furnished with a certificate stating that he has been appointed in general or for a specific purpose as an inspector or auditor, as the case may be, for the purposes of this Act
- (d) The certificate referred to in paragraph (c) shall be signed by the president
- (e) The council may pay to an auditor the compensation agreed upon by the council and the auditor concerned 40
- (2) An inspector or auditor may, subject to the provisions of his appointment, for the purposes of this Act—
- (a) at any time during working hours and without prior notice enter any premises in or upon which— 45
- (i) there is an article in respect of which a compulsory specification, certification mark, mark of proof or mark of authenticity is in force,
- (ii) a manufacturing process or action in accordance with a provision of a standard is executed or is suspected to be executed,
- (iii) there is or was an article in respect of which the impression has been created that it complies with or has been manufactured in accordance with a mark specification or a compulsory specification, while such article in the opinion of the SABS does not comply with or has not been manufactured in accordance with such mark specification or compulsory specification; 50

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(b) 'n permit bedoel in paragraaf (a) intrek of, onderworpe aan die voorwaardes wat hy nodig ag, opskort, of die opskorting van sodanige permit beëindig

(3) Die houër van 'n permit wat ingetrek is ingevolge subartikel (2)(b), of wat weens tydsverloop of enige ander oorsaak verval het, moet daardie permit, op die skriftelike versoek van die SABS, onverwyld aan die SABS terugbesorg

#### Reg van appèl na Minister

26. (1) (a) Iemand wat hom veronreg ag deur 'n besluit van die SABS om die uitreiking aan hom van 'n permit vermeld in artikel 25(2)(a) te weier, of om enige van daardie permitte wat aan hom uitgereik is, in te trek of op te skort, kan op die voorgeskrewe wyse en binne die voorgeskrewe tydperk na die Minister appelleer

(b) Die Minister moet in die geval van 'n appèl ingevolge paragraaf (a) die besluit van die SABS bekragtig, wysig of tersyde stel

(2) 'n Besluit van die SABS ingevolge artikel 25(2)(b) om 'n permit in te trek of op te skort, word nie opgeskort en verval nie as gevolg van 'n appèl kragtens subartikel (1) deur so 'n persoon teen daardie besluit nie

#### Proefmerke en waarmerke

27. (1) Die aanbring deur 'n persoon by regulasie daartoe gemagtig van 'n proefmerk of 'n waarmerk op 'n artikel ooreenkomstig die eienskappe daarvan, met inbegrip van die aard, kwaliteit, sterkte, suiwerheid, samestelling, hoeveelheid, afmetings, massa, graad, duursaamheid, herkoms of ouderdom daarvan, wat ook al van toepassing is, of die materiaal of stof waaruit of waarmee of die wyse waarop dit vervaardig is, is soos voorgeskryf

(2) Niemand mag 'n artikel waarop 'n proefmerk of waarmerk ingevolge subartikel (1) aangebring kan word, verkoop of op 'n ander wyse vervoer nie, tensy daardie merk deur die SABS, of iemand skriftelik deur die SABS daartoe gemagtig, op daardie artikel aangebring is

(3) Die SABS kan gelde hef vir die aanbring deur of namens die SABS van 'n proefmerk of waarmerk op 'n artikel

#### Inspekteurs en ouditeure

28. (1) (a) Die raad kan in die algemeen of vir 'n bepaalde doel—

(i) 'n werknemer wat paslik gekwalifiseer is as 'n inspekteur aanstel; of

(ii) 'n persoon, instelling of organisasie as 'n ouditeur vir die doeleindes van hierdie Wet aanstel

(b) Die raad kan 'n aanstelling bedoel in paragraaf (a) intrek

(c) 'n Inspekteur of ouditeur word van 'n sertifikaat voorsien waarin vermeld word dat hy in die algemeen of vir 'n spesifieke doel as 'n inspekteur of ouditeur, na gelang van die geval, vir die doeleindes van hierdie Wet aangestel is

(d) Die sertifikaat bedoel in paragraaf (c) word deur die president onderteken

(e) Die raad kan aan 'n ouditeur die vergoeding betaal waarvoor die raad en die betrokke ouditeur ooreenkom

(2) 'n Inspekteur of ouditeur kan, behoudens die bepalings van sy aanstelling, vir die doeleindes van hierdie Wet—

(a) te eniger tyd gedurende werksure en sonder voorafgaande kennisgewing 'n perseel betree waarin of waarop—

(i) daar 'n artikel is ten opsigte waarvan 'n verpligte spesifikasie, sertifiseringsmerk, proefmerk of waarmerk van krag is,

(ii) 'n vervaardigingsproses of handeling ooreenkomstig 'n bepaling van 'n standaard uitgevoer of vermoedelik uitgevoer word;

(iii) daar 'n artikel is of was ten opsigte waarvan die indruk geskep is dat dit voldoen aan of vervaardig is ooreenkomstig 'n merkspesifikasie of 'n verpligte spesifikasie, terwyl sodanige artikel volgens die SABS se oordeel nie voldoen aan of vervaardig is ooreenkomstig sodanige merkspesifikasie of verpligte spesifikasie nie,

- (iv) the records with regard to the manufacture or sale of an article referred to in subparagraph (i), (ii) or (iii) are kept,
- (b) examine and take samples of an article referred to in paragraph (a)(1) or any component, material or substance in or upon the premises concerned used or suspected to be intended for use in the manufacture of such an article, and open and examine any package or container in or upon those premises which contains or is suspected to contain such an article or such a component, material or substance, 5
- (c) examine any operation or process carried on in or upon the premises referred to in paragraph (a) in connection with the manufacture of any article, if a compulsory specification, certification mark, mark of proof or mark of authenticity is in force for or with regard to such manufacture, 10
- (d) at any time demand from any person that he there and then or at a time and place fixed by the said inspector or auditor produce to him any book, notice, record, list or other document which is in the possession or custody or under the control of that person or any other person on his behalf, 15
- (e) examine a book, notice, record, list or other document referred to in paragraph (d) and make copies thereof or extracts therefrom or request that they be made, if it relates to an article referred to in paragraph (a)(1) or to a permit referred to in section 25(2), and require from a person referred to in paragraph (d) an explanation of any record or entry therein, and seize such a book, notice, record, list or other document if in his opinion it may afford evidence of any offence in terms of this Act, 20
- (f) with regard to any matter which he is investigating, question any person whom he finds in or upon the premises referred to in paragraph (a) or whom he on reasonable grounds suspects to be or to have been employed in or upon such premises or to have possession or custody of or control over anything referred to in this subsection, and 25
- (g) order a person referred to in paragraph (d) or (f) to appear before him at a time and place fixed by him, and at that time and place question that person with regard to any matter which is being investigated by him 30
- (3) An inspector or auditor entering any premises referred to in subsection (2)(a) may take an interpreter with him.
- (4) Any person who is in charge of premises referred to in subsection (2) shall at all reasonable times furnish such assistance as an inspector or auditor may require in the exercise of his powers under that subsection 35
- (5) An inspector or auditor exercising a power assigned to him by subsection (2) shall on demand of any person affected by the exercise of that power, produce the certificate referred to in subsection (1)(c) to that person 40
- (6) An auditor may check any relevant document of a manufacturer or importer of a commodity in respect of which a compulsory specification is in force to determine whether that manufacturer or importer has paid the prescribed fees referred to in section 23(3)

### Samples and information

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29. (1) Notwithstanding anything to the contrary in this Act contained, any person who—
- (a) manufactures any commodity and is entitled under a mark permit to apply a certification mark to such a commodity,
- (b) manufactures or sells any commodity for which or the manufacture of which a compulsory specification is in force, 50
- (c) manufactures or sells any article in respect of which a mark of proof or mark of authenticity is in force; or
- (d) performs an act or carries out a process in which a commodity referred to in paragraph (a), (b) or (c) is involved, 55
- shall at the written request of the SABS, within a period stated in the request, at his own cost—

- (iv) die aantekeninge met betrekking tot die vervaardiging of verkoop van 'n artikel bedoel in subparagraaf (i), (ii) of (iii) gehou word,
- 5 (b) 'n artikel bedoel in paragraaf (a)(1) of 'n komponent, materiaal of stof in of op die betrokke perseel wat gebruik word of vermoedelik bestem is om gebruik te word by die vervaardiging van so 'n artikel ondersoek en monsters daarvan neem, en enige pakket of houer in of op daardie perseel oopmaak en ondersoek wat so 'n artikel, komponent, materiaal of stof bevat of vermoedelik bevat;
- 10 (c) enige werksaamheid of proses ondersoek wat in of op die perseel bedoel in paragraaf (a) voortgesit word in verband met die vervaardiging van 'n artikel, indien daar vir of met betrekking tot sodanige vervaardiging 'n verpligte spesifikasie, sertifiseringsmerk, proefmerk of waarmerk van krag is,
- 15 (d) te eniger tyd van 'n persoon eis dat hy onverwyld of op 'n tyd en plek deur genoemde inspekteur of ouditeur bepaal aan hom 'n boek, kennisgewing, aantekening, lys of ander dokument voorlê wat in die besit of bewaring of onder die beheer is van daardie persoon of 'n ander persoon ten behoewe van hom;
- 20 (e) 'n boek, kennisgewing, aantekening, lys of ander dokument bedoel in paragraaf (d) ondersoek en afskrifte daarvan of uittreksels daaruit maak of versoek dat dit gemaak word, indien dit betrekking het op 'n artikel bedoel in paragraaf (a)(1) of op 'n permit bedoel in artikel 25(2), en van 'n persoon bedoel in paragraaf (d) 'n uitleg vorder van enige aantekening of inskrywing daarin, en beslag lê op so 'n boek, kennisgewing, aantekening, lys of ander dokument indien dit na sy oordeel bewys kan lewer van 'n misdryf ingevolge hierdie Wet,
- 25 (f) met betrekking tot 'n aangeleentheid wat hy ondersoek, enige persoon ondervra wat hy in of op 'n perseel bedoel in paragraaf (a) vind of wat hy op redelike gronde vermoed in diens is of was by of op so 'n perseel of die besit of bewaring het van of die beheer het oor enigiets in hierdie subartikel bedoel, en
- 30 (g) 'n persoon bedoel in paragraaf (d) of (f) gelas om voor hom te verskyn op 'n tyd en plek deur hom bepaal, en op daardie tyd en plek daardie persoon ondervra met betrekking tot enige aangeleentheid wat hy besig is om te ondersoek
- 35 (3) 'n Inspekteur of ouditeur wat 'n perseel bedoel in subartikel (2)(a) betree, kan 'n tolk met hom saamneem
- (4) Iemand wat toesig het oor 'n perseel bedoel in subartikel (2) moet te alle redelike tye die bystand verleen wat 'n inspekteur of ouditeur verlang by die
- 40 uitoefening van sy bevoegdheids kragtens daardie subartikel
- (5) 'n Inspekteur of ouditeur wat 'n bevoegdheid uitoefen wat by subartikel (2) aan hom toegewys is, moet op versoek van 'n persoon wat deur die uitoefening van daardie bevoegdheid geraak word, die sertifikaat bedoel in subartikel (1)(c) aan daardie persoon toon
- 45 (6) 'n Ouditeur kan enige toepaslike dokument van 'n vervaardiger of invoerder van 'n kommoditeit ten opsigte waarvan 'n verpligte spesifikasie van krag is, nagaan om te bepaal of daardie vervaardiger of invoerder die voorgeskrewe gelde bedoel in artikel 23(3) betaal het

### Monsters en inligting

- 50 29. (1) Ondanks andersluidende bepalings van hierdie Wet moet iemand wat—
- (a) 'n kommoditeit vervaardig en kragtens 'n merkpermit geregtig is om 'n sertifiseringsmerk op so 'n kommoditeit aan te bring,
- 55 (b) 'n kommoditeit ten opsigte waarvan of vir die vervaardiging waarvan 'n verpligte spesifikasie van krag is, vervaardig of verkoop,
- (c) 'n artikel ten opsigte waarvan 'n proefmerk of waarmerk van krag is, vervaardig of verkoop, of
- (d) 'n handeling verrig of 'n proses uitvoer waarby 'n kommoditeit bedoel in paragraaf (a), (b) of (c) betrokke is,
- 60 op skriftelike versoek van die SABS, binne 'n tydperk in die versoek vermeld, op eie koste aan die SABS—

- (i) transmit to the SABS such samples as may be specified in the request, of the article concerned for examination, testing or analysis, or
- (ii) furnish to the SABS such information as may be so specified with regard to the article concerned or its manufacture
- (2) (a) The SABS may examine, test or analyse a sample obtained in terms of this Act in order to determine whether the article, component, material or substance concerned complies with, or has the characteristics or has been manufactured in accordance with, the requirements of any provision applicable in terms of this Act 5
- (b) If any sample obtained in terms of this Act is damaged or destroyed during the process of examining, testing or analysing such sample, the SABS shall not be liable for the damage to or destruction of that sample 10
- (3) The result of any examination, test or analysis of any sample of a commodity to which a compulsory specification is in force, shall, until the contrary is proved, for all purposes be deemed to be valid for the whole consignment or batch from which the sample was obtained 15

### Restriction on use of word "standard"

30. (1) (a) Subject to the other provisions of this section and except with the written consent of the Minister—
- (i) no person shall under a name containing the word "standard"— 20
- (aa) conduct his affairs or business or carry on his occupation or trade, or
- (bb) be registered or licensed under any law,
- (ii) no mark containing the word "standard" shall be registered as a trade mark under any law with regard to the registration of trade marks, and 25
- (iii) no person shall sell any commodity under a mark which contains the word "standard" or under a description in which the said word is used in a manner likely to create the impression that that commodity complies with or has been manufactured in accordance with a mark specification, unless a certification mark has been applied to such a commodity in accordance with section 20(1). 30
- (b) The Minister may at any time withdraw the consent given by him in terms of paragraph (a) if he deems it necessary to avoid confusion or abuse
- (2) Any person who immediately prior to the commencement of the Standards Act, 1982 (Act No 30 of 1982), lawfully conducted his affairs or business, carried on his occupation or trade, or was registered or licensed under any law, under a name containing the word "standard", may notwithstanding the provisions of subsection (1)(a)(i) continue to conduct his affairs or that business or carry on that occupation or trade, or remain so registered or licensed, under that name 35
- (3) Any trade mark registered at the commencement of the Standards Act, 1982, and the sale of any commodity under such a trade mark, shall not be affected by the provisions of subsection (1)(a)(ii). 40

### Incorporation of standards in laws

31. (1) (a) If a standard has been published in the *Gazette*, such standard or a provision of such standard may be incorporated in any law by a mere reference to the title and number thereof 45
- (b) If a standard or a provision of such standard has been incorporated in any law in terms of paragraph (a) and that standard or provision is amended in terms of section 16(3)(a)(ii), the amended standard or provision shall be deemed to be so incorporated 50
- (2) A State department, local authority or other institution or body responsible for or involved in the administration of a standard or provision so incorporated shall keep available for free inspection at each of its offices where or from where the administration of that standard or provision is undertaken, a copy, issued by the SABS, of the full text of— 55

- (i) die monsters wat in die versoek gespesifiseer is, van die betrokke artikel vir die ondersoek, toets of ontleding lewer, of
- (ii) die inligting aldus gespesifiseer, betreffende die betrokke artikel of die vervaardiging daarvan verstrek
- 5 (2) (a) 'n Monster wat ingevolge hierdie Wet verkry is, kan deur die SABS ondersoek, getoets of ontleed word ten einde te bepaal of die betrokke artikel, komponent, materiaal of stof voldoen aan, of die eienskappe het of vervaardig is ooreenkomstig, die vereistes van enige bepaling wat ingevolge hierdie Wet van toepassing is.
- 10 (b) Indien 'n monster wat ingevolge hierdie Wet verkry is, beskadig of vernietig word tydens die proses om sodanige monster te ondersoek, te toets of te ontleed, is die SABS nie vir die beskadiging of vernietiging van daardie monster aanspreeklik nie
- (3) Die resultaat van 'n ondersoek, toets of ontleding van 'n monster van 'n 15 kommoditeit waarop 'n verpligte spesifikasie van krag is, word totdat die teendeel bewys is, vir alle doeleindes geag vir die hele besending of lot waaruit die monster verkry is, te geld

#### Beperking op gebruik van woord "standaard"

30. (1) (a) Behoudens die ander bepalings van hierdie artikel en behalwe met 20 die skriftelike toestemming van die Minister—
- (i) mag niemand onder 'n naam wat die woord "standaard" bevat —
- (aa) sy sake of onderneming bedryf of sy beroep of bedryf beoefen nie, of
- (bb) kragtens enige wet geregistreer of gelisensieer word nie;
- 25 (ii) mag geen merk wat die woord "standaard" bevat, as 'n handelsmerk kragtens 'n wet met betrekking tot die registrasie van handelsmerke geregistreer word nie, en
- (iii) mag niemand 'n kommoditeit verkoop onder 'n merk wat die woord 30 "standaard" bevat of onder 'n beskrywing waarin genoemde woord gebruik word op 'n wyse wat waarskynlik die indruk sal wek dat daardie kommoditeit voldoen aan of vervaardig is ooreenkomstig 'n merkspesifikasie nie, tensy 'n sertifiseringsmerk ooreenkomstig artikel 20(1) op so 'n kommoditeit aangebring is
- (b) Die Minister kan te eniger tyd die toestemming wat hy ingevolge paragraaf 35 (a) verleen het, intrek indien hy dit nodig ag ten einde verwarring of misbruik te voorkom
- (2) Iemand wat onmiddellik voor die inwerkingtreding van die Wet op Standaarde, 1982 (Wet No. 30 van 1982), wettig onder 'n naam wat die woord "standaard" bevat sy sake of onderneming bedryf het, sy bedryf of beroep 40 beoefen het, of kragtens 'n wet geregistreer of gelisensieer was, kan ondanks die bepalings van subartikel (1)(a)(i) onder daardie naam voortgaan om sy sake of daardie onderneming te bedryf of daardie beroep of bedryf te beoefen, of aldus geregistreer of gelisensieer bly
- (3) 'n Handelsmerk wat by die inwerkingtreding van die Wet op Standaarde, 45 1982, geregistreer was, en die verkoop van 'n kommoditeit onder so 'n handelsmerk, word nie deur die bepalings van subartikel (1)(a)(ii) geraak nie

#### Inlywing van standarde in wette

31. (1) (a) Indien 'n standaard in die *Staatskoerant* bekend gemaak is, kan 50 sodanige standaard of 'n bepaling uit sodanige standaard in 'n wet ingelyf word deur 'n blote verwysing na die titel en nommer daarvan
- (b) Indien 'n standaard of 'n bepaling uit sodanige standaard ingevolge paragraaf (a) in 'n wet ingelyf is en daardie standaard of bepaling ingevolge artikel 16(3)(a)(ii) gewysig word, word die gewysigde standaard of bepaling geag aldus ingelyf te wees
- 55 (2) 'n Staatsdepartement, plaaslike owerheid of ander instelling of liggaam wat verantwoordelik is vir of betrokke is by die uitvoering van 'n standaard of bepaling aldus ingelyf, moet 'n eksemplaar deur die SABS uitgereik by elk van sy kantore waar of vanwaar die uitvoering van daardie standaard of bepaling 60 onderneem word, ter kostelose insae beskikbaar hou, wat die volledige teks bevat van—

- (a) the standard concerned and every amendment thereof, and
- (b) every standard or document referred to in section 16(3)(b) the whole or a part of which appears in a standard referred to in paragraph (a), and every amendment thereof

(3) (a) Criminal prosecution may only be instituted against a person on a charge of having contravened or failed to comply with a provision so incorporated if the State department, local authority or other institution or body referred to in subsection (2) has in every case furnished to the attorney-general or public prosecutor concerned a copy issued by the SABS, of each relevant standard or document which he shall in terms of the said subsection keep available for free inspection

(b) The standard or document referred to in paragraph (a) shall on the mere production thereof be *prima facie* proof of the contents of the standard concerned or an amendment thereof

(4) At the commencement of this Act a provision incorporated in terms of section 33(1) of the Standards Act, 1982 (Act No. 30 of 1982), and the incorporation of which is still in force, shall be deemed to be incorporated in terms of subsection (1)(a)

### Secrecy

32. (1) Any person who is or was concerned in the performance of any function in terms of this Act, shall not disclose any information which he obtained in the performance of such a function except—

- (a) to the Minister,
- (b) to any person who of necessity requires it for the performance of his functions in terms of this Act,
- (c) if he is a person who of necessity supplies it in the performance of his functions in terms of this Act,
- (d) such information which is required in terms of any law or as evidence in any court of law;
- (e) to any competent authority which requires it for the institution, or an investigation with a view to the institution, of any criminal prosecution; or
- (f) by or on the authority of the Minister, the chairman or the president

(2) Notwithstanding the provisions of subsection (1), the disclosure of any information in connection with an invention shall not prejudice the rights of the SABS or any other person to obtain a patent in respect of such an invention

### Inventions by staff members and other persons

33. (1) (a) If any invention is made—

- (i) by an employee in the course of or in connection with the performance of his functions,
  - (ii) by a person while following a course of study with the assistance, whether financial or otherwise, of the SABS, or
  - (iii) by a person assisting the SABS with any investigation or research,
- the rights in respect of that invention shall vest in the SABS unless the SABS and the employee or person concerned have entered into a written agreement that the rights to the invention vest in the employee or person concerned or in that employee or person and the SABS jointly

(b) In the absence of an agreement referred to in paragraph (a), the SABS shall be deemed to be the sole inventor

(2) If the rights in respect of an invention vest solely in the SABS, the SABS may make such invention available for use in the public interest subject to such conditions as the council may determine

(3) The SABS may pay to an employee or person referred to in subsection (1)(a) money or royalties or, with the approval of the Minister granted with the concurrence of the Minister of State Expenditure, provide for financial participation by such employee or person in the profit obtained as a result of the use of an invention referred to in subsection (1)(a)

(4) The SABS may apply for a patent in respect of an invention referred to in subsection (1) if an agreement in terms of that subsection has not been entered



- (a) die betrokke standaard en elke wysiging daarvan, en  
 (b) elke standaard of dokument bedoel in artikel 16(3)(b) waarvan die geheel of 'n gedeelte daaruit voorkom in 'n standaard bedoel in paragraaf (a), en elke wysiging daarvan
- 5 (3) (a) Strafregtelike vervolging kan slegs teen 'n persoon ingestel word op 'n aanklag dat hy 'n bepaling aldus ingelyf, oortree het of versum het om daaraan te voldoen indien die betrokke Staatsdepartement, plaaslike owerheid of ander instelling of liggaam bedoel in subartikel (2) in elke geval 'n eksemplaar deur die SABS uitgereik van elke toepaslike standaard of dokument wat hy ingevolge
- 10 genoemde subartikel ter kostelose insae beskikbaar moet hou, aan die betrokke prokureur-generaal of staatsaanklaer verstrek het  
 (b) Die standaard of dokument bedoel in paragraaf (a) is by blote voorlegging daarvan *prima facie*-bewys van die inhoud van die betrokke standaard of 'n wysiging daarvan
- 15 (4) By die inwerkingtreding van hierdie Wet word 'n bepaling wat ingevolge artikel 33(1) van die Wet op Standaarde, 1982 (Wet No 30 van 1982), ingelyf is en waarvan die inlywing steeds van krag is, geag ingevolge subartikel (1)(a) ingelyf te wees

### Geheimhouding

- 20 32. (1) Iemand wat by die verrigting van 'n werksaamheid ingevolge hierdie Wet betrokke is of was, mag geen inligting wat hy by die verrigting van so 'n werksaamheid verkry het, openbaar nie behalwe—
- (a) aan die Minister,  
 (b) aan iemand wat dit noodsaaklikerwys vir die verrigting van sy werksaamhede ingevolge hierdie Wet nodig het,
- 25 (c) indien hy iemand is wat dit noodsaaklikerwys by die verrigting van sy werksaamhede ingevolge hierdie Wet verstrek,  
 (d) sodanige inligting wat ingevolge 'n wet of as getuie in 'n gereghof vereis word;
- 30 (e) aan 'n bevoegde gesag wat dit vir die instelling, of 'n ondersoek met die oog op die instelling, van 'n strafregtelike vervolging nodig het, of  
 (f) deur of op gesag van die Minister, die voorsitter of die president
- (2) Ondanks die bepalings van subartikel (1) sal die openbaring van enige inligting in verband met 'n uitvinding nie afbreuk doen aan die regte van die SABS
- 35 of 'n ander persoon om ten opsigte van so 'n uitvinding 'n patent te bekom nie

### Uitvindings deur werknemers en ander persone

33. (1) (a) Indien 'n uitvinding gedoen is—
- (i) deur 'n werknemer in die loop van of in verband met die verrigting van sy werksaamhede,
- 40 (ii) deur 'n persoon terwyl hy 'n studiekursus volg met die bystand, hetsy geldelik of andersins, van die SABS, of  
 (iii) deur 'n persoon wat die SABS met enige ondersoek of navorsing behulpsaam is,
- berus die regte ten opsigte van daardie uitvinding by die SABS, tensy die SABS
- 45 en die werknemer of persoon 'n skriftelike ooreenkoms gesluit het dat die regte op die uitvinding by die betrokke werknemer of persoon, of by daardie werknemer of persoon en die SABS gesamentlik, berus
- (b) By gebrek aan 'n ooreenkoms bedoel in paragraaf (a) word die SABS geag die enigste uitvinder te wees
- 50 (2) Indien die regte ten opsigte van 'n uitvinding by die SABS alleen berus, kan die SABS daardie uitvinding beskikbaar stel vir gebruik in die openbare belang onderworpe aan die voorwaardes wat die raad bepaal
- (3) Die SABS kan aan 'n werknemer of persoon bedoel in subartikel (1)(a) geld of tantieme betaal of, met die goedkeuring van die Minister verleen met die instemming van die Minister van Staatsbesteding, voorsiening maak vir gelde-
- 55 like deelname deur sodanige werknemer of persoon in die winste verkry as gevolg van die gebruik van 'n uitvinding bedoel in subartikel (1)(a)
- (4) Die SABS kan aansoek doen om 'n patent ten opsigte van 'n uitvinding bedoel in subartikel (1) indien 'n ooreenkoms nie ingevolge daardie subartikel

into, and shall for the purpose of the Patents Act, 1978 (Act No 57 of 1978), be regarded as the cessionary of the invention concerned

### Offences and penalties

34. (1) Any person who—
- (a) contravenes or fails to comply with any provision of this Act, or any directive, order, condition, requirement, determination or request made thereunder, 5
  - (b) refuses or fails to pay any money levied under this Act,
  - (c) falsely represents any material or substance to be reference material supplied by the SABS, 10
  - (d) falsely holds himself out to be an inspector, or to be an auditor for the purposes of this Act,
  - (e) makes any relevant statement to an inspector or auditor which is false in any material respect, knowing it to be false,
  - (f) refuses or fails to answer to the best of his knowledge any relevant question which an inspector or auditor has in the exercise of his powers put to him, 15
  - (g) refuses or fails to comply to the best of his ability with any lawful requirement, demand or order of an inspector or auditor, or
  - (h) hinders or obstructs an inspector or auditor in the exercise of his powers, 20
- shall be guilty of an offence
- (2) Any person who is convicted of an offence in terms of this Act shall—
- (a) in the case of a first conviction of an offence referred to in subsection (1)(a) read with section 3(i), 16(5), 17(2), 20(1), (3)(a) or (4)(a), 23(1)(a) or (2), 24(1), 25(2)(a) or (b) or 27(2) be liable to a fine, or to imprisonment for a period not exceeding two years, 25
  - (b) in the case of a second or subsequent conviction of an offence mentioned in paragraph (a), whether it be the same or some other offence mentioned in that paragraph, be liable to a fine, or to imprisonment for a period not exceeding four years, 30
  - (c) in the case of a first conviction of an offence referred to in subsection (1)(a) read with section 25(3), 29(1), 30(1)(a)(i)(aa) or (a)(iii) or 32(1), or an offence referred to in subsection (1)(b) to (h), be liable to a fine, or to imprisonment for a period not exceeding one year,
  - (d) in the case of a second or subsequent conviction of an offence mentioned in paragraph (c), whether it be the same or some other offence mentioned in that paragraph, be liable to a fine, or to imprisonment for a period not exceeding two years, and 35
  - (e) in the case of an offence referred to in subsection (1)(a) read with any other provision of this Act which is not mentioned in paragraphs (a), (b), (c) or (d), be liable to a fine, or to imprisonment for a period not exceeding one year 40
- (3) A court convicting any person of an offence in terms of this Act may, in addition to any penalty imposed in respect of that offence —
- (a) and subject to the provisions of subsection (4), order that a commodity, a consignment or batch of a commodity, any other article, or any material or substance in respect of which that offence was committed, be forfeited, and 45
  - (b) summarily enquire into and assess the monetary value of any advantage gained or likely to be gained by such person in consequence of that offence and impose on that person a fine to a maximum equal to the amount so assessed and, in default of payment, imprisonment for a period not exceeding one year 50
- (4) (a) The Minister shall, subject to the provisions of paragraph (b), generally or in a particular case determine the manner in which the forfeited goods referred to in subsection (3)(a) shall be dealt with 55

gesluit is nie, en word by die toepassing van die Wet op Patente, 1978 (Wet No 57 van 1978), beskou as die sessionaris van die betrokke uitvinding

#### Misdrywe en strawwe

34. (1) Iemand wat—
- 5 (a) enige bepaling van hierdie Wet, of enige lasgewing, bevel, voorwaarde, vereiste, bepaling of versoek daarkragtens gemaak of gedoen, oortree of versuim om daaraan te voldoen,
- (b) weier of in gebreke bly om enige gelde gehef kragtens hierdie Wet te betaal,
- 10 (c) valslik voorgee dat enige materiaal of stof verwysingsmateriaal is wat deur die SABS verskaf is,
- (d) homself valslik as 'n inspekteur, of as 'n ouditeur vir die doeleindes van hierdie Wet, voordoen,
- (e) 'n toepaslike verklaring aan 'n inspekteur of ouditeur doen wat in enige wesenlike opsig vals is, terwyl hy weet dat dit vals is,
- 15 (f) weier of in gebreke bly om na sy beste wete enige toepaslike vraag te beantwoord wat 'n inspekteur of ouditeur by die uitoefening van sy bevoegdhede aan hom gestel het,
- (g) weier of in gebreke bly om na sy beste vermoë te voldoen aan 'n wettige vordering, eis of bevel van 'n inspekteur of ouditeur, of
- 20 (h) 'n inspekteur of ouditeur by die uitoefening van sy bevoegdhede hinder of dwarsboom,
- is aan 'n misdryf skuldig
- (2) Iemand wat aan 'n misdryf ingevolge hierdie Wet skuldig bevind is, is
- 25 strafbaar—
- (a) in die geval van 'n eerste skuldigbevinding aan 'n misdryf bedoel in subartikel (1)(a) saamgelees met artikel 3(i), 16(5), 17(2), 20(1), (3)(a) of (4)(a), 23(1)(a) of (2), 24(1), 25(2)(a) of (b) of 27(2), met 'n boete, of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar,
- 30 (b) in die geval van 'n tweede of daaropvolgende skuldigbevinding aan 'n misdryf in paragraaf (a) vermeld, hetsy aan dieselfde of aan enige ander misdryf in daardie paragraaf vermeld, met 'n boete, of met gevangenisstraf vir 'n tydperk van hoogstens vier jaar;
- (c) in die geval van 'n eerste skuldigbevinding aan 'n misdryf bedoel in subartikel (1)(a) saamgelees met artikel 25(3), 29(1), 30(1)(a)(i)(aa) of (a)(iii), of 32(1), of aan 'n misdryf bedoel in subartikel (1)(b) tot (h), met 'n boete, of met gevangenisstraf vir 'n tydperk van hoogstens een
- 35 jaar,
- (d) in die geval van 'n tweede of daaropvolgende skuldigbevinding aan 'n misdryf in paragraaf (c) vermeld, hetsy aan dieselfde of aan enige ander misdryf in daardie paragraaf vermeld, met 'n boete, of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar, en
- 40 (e) in die geval van 'n skuldigbevinding aan 'n misdryf bedoel in subartikel (1)(a) saamgelees met enige ander bepaling van hierdie Wet wat nie in paragraawe (a), (b), (c) of (d) vermeld word nie, met 'n boete, of met gevangenisstraf vir 'n tydperk van hoogstens een jaar
- 45 (3) 'n Hof wat iemand skuldig bevind aan 'n misdryf ingevolge hierdie Wet kan, benewens enige straf ten opsigte van daardie misdryf opgelê —
- (a) en behoudens die bepalings van subartikel (4), beveel dat 'n kommoditeit, 'n besending of lot van 'n kommoditeit, enige ander artikel, of enige materiaal of stof ten opsigte waarvan daardie misdryf gepleeg is, verbeur word, en
- 50 (b) onmiddellik ondersoek instel na die geldelike waarde van enige voordeel wat so iemand toegeval het of waarskynlik sal toeval as gevolg van die betrokke misdryf, die bedrag daarvan bepaal en daardie persoon 'n boete tot 'n maksimum gelyk aan die aldus bepaalde bedrag oplê, en by wanbetaling gevangenisstraf vir 'n tydperk van hoogstens een jaar oplê
- 55 (4) (a) Die Minister bepaal, behoudens die bepalings van paragraaf (b), in die algemeen of in 'n bepaalde geval hoe daar oor die verbeurdverklaarde goedere bedoel in subartikel (3)(a) beskik moet word
- 60

(b) Section 35(4) of the Criminal Procedure Act, 1977 (Act No 51 of 1977), shall apply *mutatis mutandis* in the case of a forfeiture referred to in subsection (3)(a)

(5) Notwithstanding anything to the contrary in any other law contained, a magistrate's court shall be competent to impose any penalty provided for in this Act 5

(6) No person shall be convicted of an offence referred to in section 20(1) or (3), 23(1), 24(1), 25(2)(a) or (b), 27(2) or 32(1), if it is proved that he—

- (a) took all reasonable precautions against committing the offence concerned, and 10
- (b) at the request of the SABS, an inspector or an auditor furnished all information relating to the facts and attendant circumstances in connection with any act or omission constituting the alleged offence and which he should reasonably have at his disposal

#### **Disclosure of certain information to protect consumer** 15

35. (1) The president may, notwithstanding the provisions of section 32, if he is of the opinion that it is necessary in the public interest and to protect the consumer, reveal in any manner—

- (a) any information which in his opinion is necessary to prevent the public from being misled concerning any aspect regulated by this Act, 20
- (b) the fact that the use of an article is dangerous to the consumer, or
- (c) the name of a person who in his opinion does not comply with or does not comply fully with a provision of this Act or any aspect regulated by this Act

(2) The disclosure referred to in subsection (1) may include the trade name and trade mark of a commodity 25

#### **Presumption**

36. If it is necessary for the purposes of this Act to determine the importer of an article, it shall be presumed, unless the contrary is proved, that the person who is indicated on the documents concerning the import transaction as the importer, is 30 or was the importer of that article

#### **Regulations**

37. (1) The Minister may, after consultation with the council, make regulations, not inconsistent with the provisions of this Act, regarding any matter which in terms of this Act is required or permitted to be prescribed and, generally, 35 regarding any matter in respect of which he deems it necessary or expedient to make regulations in order to achieve the objects of this Act

(2) The power to make regulations in terms of subsection (1) shall include the power conditionally or unconditionally to restrict or prohibit any matter referred to in that subsection and to grant exemptions from, or to allow deviations with regard to, the payment of the prescribed fees. 40

(3) Different regulations which differ in the respects deemed expedient by the Minister, may, subject to the provisions of this Act, be made under subsection (1) in respect of different areas in the Republic or different commodities

(4) A regulation made under subsection (1) may in respect of any contravention thereof or failure to comply therewith, prescribe a penalty which, in the case of a first conviction, shall not exceed a fine of R 4000 or imprisonment for a period of one year or both that fine and that imprisonment, and, in the case of a second or subsequent conviction, a fine of R8 000 or imprisonment for a period of two years 45 or both that fine and that imprisonment 50

(b) Artikel 35(4) van die Strafproseswet, 1977 (Wet No 51 van 1977), is *mutatis mutandis* in die geval van 'n verbeurdverklaring bedoel in subartikel (3)(a) van toepassing

(5) Ondanks andersluidende bepalings van die een of ander Wet is 'n landdroshof bevoeg om enige straf op te lê waarvoor hierdie Wet voorsiening maak

(6) Niemand word weens 'n misdryf bedoel in artikel 20(1) of (3), 23(1), 24(1), 25(2)(a) of (b), 27(2) of 32(1) skuldig bevind nie, indien bewys word dat hy—

(a) alle redelike voorsorgmaatreels getref het teen die pleging van die betrokke misdryf, en

(b) op versoek van die SABS, 'n inspekteur of 'n ouditeur alle inligting aangaande die feite en bykomstige omstandighede in verband met enige handeling of versum wat die beweerde misdryf uitmaak en waaroor hy redelikerwys behoort te beskik, verstrek het

### 15 Bekendmaking van sekere inligting ter beskerming van verbruiker

35. (1) Die president kan, ondanks die bepalings van artikel 32, indien hy van oordeel is dat dit in die openbare belang en ter beskerming van die verbruiker noodsaaklik is—

(a) enige inligting wat volgens sy oordeel nodig is om te voorkom dat die publiek mislei word aangaande enige aangeleentheid wat hierdie Wet reel;

(b) die feit dat die gebruik van 'n artikel vir 'n verbruiker gevaarlik is, of

(c) die naam van 'n persoon wat volgens sy oordeel nie 'n bepaling van hierdie Wet of enige ander aangeleentheid wat hierdie Wet reel, nakom of behoorlik nakom nie,

op enige wyse openbaar.

(2) Die openbaarmaking bedoel in subartikel (1) kan die handelsnaam en handelsmerk van 'n kommoditeit insluit

### Vermoede

36. Indien dit vir die doeleindes van hierdie Wet noodsaaklik is om te bepaal wie die invoerder van 'n artikel is, word daar vermoed, tensy die teendeel bewys word, dat die persoon wat as invoerder op die dokumente aangaande die invoertransaksie aangedui word, die invoerder van daardie artikel is of was

### Regulasies

37. (1) Die Minister kan, na oorleg met die raad, regulasies uitvaardig, wat nie met die bepalings van hierdie Wet onbestaanbaar is nie, betreffende enige aangeleentheid wat ingevolge hierdie Wet voorgeskryf moet word of kan word en, in die algemeen, betreffende enige aangeleentheid ten opsigte waarvan hy dit nodig of dienstig ag om regulasies uit te vaardig ten einde die oogmerke van hierdie Wet te bereik of te bevorder

(2) Die bevoegdheid om regulasies ingevolge subartikel (1) uit te vaardig, omvat die bevoegdheid om 'n aangeleentheid bedoel in daardie subartikel voorwaardelik of onvoorwaardelik te beperk of te verbied of om vrystelling te verleen van, of afwykings toe te staan met betrekking tot, die betaling van die voorgeskrewe gelde.

(3) Verskillende regulasies wat verskil in die opsigte wat die Minister dienstig ag, kan, behoudens die bepalings van hierdie Wet, kragtens hierdie artikel uitgevaardig word ten opsigte van verskillende gebiede in die Republiek of verskillende kommoditeite

(4) 'n Regulasie uitgevaardig kragtens subartikel (1) kan ten opsigte van enige oortreding daarvan of versum om daaraan te voldoen, 'n straf voorskryf wat, in die geval van 'n eerste skuldigbevinding, 'n boete van R4 000 of gevangenisstraf vir 'n tydperk van een jaar of daardie boete sowel as daardie gevangenisstraf, en, in die geval van 'n tweede of daaropvolgende skuldigbevinding, 'n boete van R8 000 of gevangenisstraf vir 'n tydperk van twee jaar of daardie boete sowel as daardie gevangenisstraf, nie te bowe gaan nie

**Levying of interest**

38. (1) The SABS may levy interest in respect of money payable to it but which has not yet been paid, from a date on which such money became payable, except in respect of money payable by the State

(2) The rate at which interest referred to in subsection (1) shall be calculated, shall be the rate which is determined from time to time in terms of section 26(1) of the Exchequer Act, 1975 (Act No 66 of 1975), and which is applicable on the date on which the money referred to in subsection (1) is paid 5

**Delegations**

39. (1) The council may, subject to such conditions as it may impose— 10

(a) in writing delegate to the chairman, the president or a committee referred to in section 9(1)(a) any power conferred upon the council by or under this Act or any other law, or

(b) in writing authorize the chairman, the president or a committee referred to in section 9(1)(a) to perform any duty assigned to the council by or under this Act or any other law. 15

(2) The president may, subject to such conditions as he may impose—

(a) delegate a power to an employee, or

(b) authorize an employee to perform a duty,

which has been— 20

(i) delegated or assigned to the president under subsection (1), unless the council has in the delegation or assignment concerned determined otherwise, or

(ii) conferred or imposed on the president by this Act or any other law.

(3) The council or the president, as the case may be, shall not be divested of any power delegated under subsection (1) or (2), as the case may be, by it or him, and may amend or withdraw any decision made in the exercise of such delegated power 25

**Certain acts not interpreted as assurances or guarantees**

40. The fact that anything has been done under this Act by the Minister, the SABS, the council, a member of the council, a committee referred to in section 9(1)(a) or a member of such committee, the president or an employee of the SABS in connection with any article, material, substance, act or matter, shall not be interpreted as an assurance or a guarantee of any nature in respect of that article, material, substance, act or matter 30  
35

**Limitation of liability**

41. The State, the Minister, the SABS, the council, a member of the council, a committee referred to in section 9(1)(a) or a member of such committee, the president or an employee of the SABS shall not be liable in respect of anything done under this Act in good faith and without negligence 40

**Repeal of laws, and savings**

42. (1) Subject to the provisions of subsection (2), the Standards Act, 1982 (Act No. 30 of 1982), and the Standards Amendment Act, 1984 (Act No 50 of 1984), are hereby repealed

(2) Any proclamation, regulation, notice, order, prohibition, authorization, appointment, permission, information or document made, issued, imposed, granted or given and any other action taken under any provision of a law repealed under subsection (1), shall be deemed, if applicable, to have been made, issued, imposed, granted, given or taken under the corresponding provision of this Act 45

**Short title and commencement**

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43. This Act shall be called the Standards Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*

**Heffing van rente**

38. (1) Die SABS kan ten opsigte van die gelde wat aan hom betaalbaar is maar wat nog nie betaal is nie rente hef vanaf 'n datum waarop daardie gelde betaalbaar is, uitgesonderd ten opsigte van gelde deur die Staat betaalbaar

- 5 (2) Die koers waarteen rente bedoel in subartikel (1) bereken word, is die koers wat ingevolge artikel 26(1) van die Skatkiswet, 1975 (Wet No 66 van 1975), van tyd tot tyd bepaal word en wat van toepassing is op die datum waarop die gelde bedoel in subartikel (1) betaal word

**Delegerings**

- 10 39. (1) Die raad kan, onderworpe aan die voorwaardes wat hy oplê—  
 (a) skriftelik aan die voorsitter, die president of 'n komitee bedoel in artikel 9(1)(a) 'n bevoegdheid by of kragtens hierdie Wet of enige ander wet aan die raad verleen, delegeer, of  
 (b) die voorsitter, die president of 'n komitee bedoel in artikel 9(1)(a)  
 15 skriftelik magtig om 'n plig by of kragtens hierdie Wet of enige ander wet aan die raad opgedra, te verrig
- (2) Die president kan, onderworpe aan die voorwaardes wat hy oplê—  
 (a) aan 'n werknemer 'n bevoegdheid delegeer, of  
 (b) 'n werknemer magtig om 'n plig te verrig,  
 20 wat aan die president—  
 (i) kragtens subartikel (1) gedelegeer of toegewys is, tensy die raad in sy betrokke delegasie of toewysing anders bepaal het, of  
 (ii) by hierdie Wet of enige ander wet verleen of opgelê is
- (3) Die raad of die president, na gelang van die geval, is nie ontdoen van 'n  
 25 bevoegdheid deur hom kragtens subartikel (1) of (2), na gelang van die geval, gedelegeer nie, en kan 'n beslissing in die uitoefening van sodanige gedelegeerde bevoegdheid gegee, wysig of intrek

**Sekere handeling word nie as versekerings of waarborge vertolk**

- 30 40. Die feit dat enigiets kragtens hierdie Wet deur die Minister, die SABS, die raad, 'n lid van die raad, 'n komitee bedoel in artikel 9(1)(a) of 'n lid van so 'n komitee, die president of 'n werknemer van die SABS gedoen is in verband met 'n artikel, materiaal, stof, handeling of aangeleentheid, word nie vertolk as 'n versekering of waarborg van enige aard ten opsigte van daardie artikel, materiaal, stof, handeling of aangeleentheid nie

**35 Beperking van aanspreeklikheid**

41. Die Staat, die Minister, die SABS, die raad, 'n lid van die raad, 'n komitee bedoel in artikel 9(1)(a) of 'n lid van so 'n komitee, die president of 'n werknemer van die SABS is nie aanspreeklik ten opsigte van enigiets wat te goeder trou en sonder nalatigheid kragtens hierdie Wet gedoen is nie

**40 Herroeping van wette, en voorbehoude**

42. (1) Behoudens die bepalinge van subartikel (2) word die Wet op Standaard, 1982 (Wet No 30 van 1982), en die Wysigingswet op Standaard, 1984 (Wet No 50 van 1984), hierby herroep
- (2) Enige proklamasie, regulasie, kennisgewing, bevel, verbod, magtiging,  
 45 aanstelling, toestemming, inligting of dokument uitgevaardig, uitgerek, opgelê, gedoen, verleen, verstrek of gegee en enige ander stappe gedoen ingevolge enige bepaling van 'n wet wat kragtens subartikel (1) herroep is, word geag, indien van toepassing, ingevolge die ooreenstemmende bepaling van hierdie Wet uitgevaardig, uitgerek, opgelê, gedoen, verleen, verstrek of gegee te  
 50 gewees het

**Kort titel en inwerkingtreding**

43. Hierdie Wet heet die Wet op Standaard, 1993, en tree in werking op 'n datum deur die Staatspresident by proklamasie in die *Staatskoerant* bepaal





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REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

## STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

245

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CAPE TOWN, 19 MARCH 1993

No. 14665

KAAPSTAD, 19 MAART 1993

STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No 458 19 March 1993

No 458. 19 Maart 1993

It is hereby notified that the State President has assented to the following Act which is hereby published for general information —

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word —

No. 33 of 1993· Harmful Business Practices Amendment Act, 1993

No 33 van 1993 Wysigingswet op Skadelike Sakepraktyke, 1993

**GENERAL EXPLANATORY NOTE:**

- [ ]** Words in bold type in square brackets indicate omissions from existing enactments
- \_\_\_\_\_** Words underlined with a solid line indicate insertions in existing enactments

**ACT**

To amend the Harmful Business Practices Act, 1988, so as to insert certain definitions; to further regulate the constitution of the Business Practices Committee; to provide for the appointment of liaison committees; to further regulate the power of the committee to make known information on current policy in relation to business practices; to further regulate a period within which a certain return shall be furnished; to make further provision regarding investigations by the committee; to provide for the attachment of certain property; to further regulate certain negotiations by the committee; to provide for the appointment of curators in certain cases; to repeal the power of the Minister to request the Price Controller to fix a maximum price; and to grant a right of appeal in certain cases; and to provide for matters connected therewith.

*(English text signed by the State President )*  
*(Assented to 11 March 1993 )*

**B**E IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 71 of 1988**

1. Section 1 of the Harmful Business Practices Act, 1988 (hereinafter referred to as the principal Act), is hereby amended by the insertion after the definition of “business practice” of the following definition 5

“ ‘chairman’ means the chairman referred to in section 2(2),”

**Amendment of section 2 of Act 71 of 1988, as amended by section 1 of Act 64 of 1991**

2. Section 2 of the principal Act is hereby amended— 10

(a) by the substitution for subsection (2) of the following subsection.

“(2) (a) The committee shall consist of not fewer than four and not more than seven members appointed by the Minister on the grounds of having special knowledge of consumer affairs or knowledge of or experience in economics, industry, commerce, law or the conduct of public affairs, of whom the Minister shall designate one as chairman and one as vice-chairman 15

(b) The Minister shall determine whether a member of the committee shall be a full-time or a part-time member ”, and

(b) by the substitution for subsection (3) of the following subsection 20

“(3) When for any reason the chairman is not able to perform his functions or is not available, or when there is a vacancy in the office

## ALGEMENE VERDUIDELIKENDE NOTA:

- [ ] Woorde in vet druk tussen vierkantige hake dui skrapings uit bestaande verordenings aan
- \_\_\_\_\_ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan

# WET

Tot wysiging van die Wet op Skadelike Sakepraktyke, 1988, ten einde sekere omskrywings in te voeg; die samestelling van die Sakepraktykekomitee verder te reel; vir die aanstelling van skakelkomitees voorsiening te maak; die bevoegdheid van die komitee om inligting omtrent gangbare beleid met betrekking tot sakepraktyke bekend te maak, verder te reel; 'n tydperk waarbinne 'n sekere opgawe verstrek moet word, verder te reel; verdere voorsiening te maak betreffende ondersoeke deur die komitee; vir beslaglegging op sekere eiendom voorsiening te maak; sekere onderhandelinge deur die komitee verder te reel; vir die aanstelling van kurators in sekere gevalle voorsiening te maak; die bevoegdheid van die Minister om die Pryscontroleur te versoek om 'n maksimumprys vas te stel, te herroep; en 'n reg van appèl in sekere gevalle te verleen; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Engelse teks deur die Staatspresident geteken )  
(Goedgekeur op 11 Maart 1993 )

**D**AAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg —

## Wysiging van artikel 1 van Wet 71 van 1988

1. Artikel 1 van die Wet op Skadelike Sakepraktyke, 1988 (hieronder die Hoofwet genoem), word hierby gewysig deur na die omskrywing van “verbruiker” die volgende omskrywing in te voeg
- “ ‘voorsitter’ die voorsitter bedoel in artikel 2(2) ”

## Wysiging van artikel 2 van Wet 71 van 1988, soos gewysig deur artikel 1 van Wet 64 van 1991

2. Artikel 2 van die Hoofwet word hierby gewysig—
- (a) deur subartikel (2) deur die volgende subartikel te vervang
- “(2) (a) Die komitee bestaan uit minstens vier en hoogstens sewe lede deur die Minister aangestel op grond van hulle besondere kennis van verbruikersake of kennis van of ondervinding in die ekonomie, die nywerheid, die handel, die regte of die bestuur van openbare sake, van wie die Minister een as voorsitter en een as ondervoorsitter aanwys
- (b) Die Minister bepaal of 'n lid van die komitee 'n heeltidse of 'n deeltidse lid is”, en
- (b) deur subartikel (3) deur die volgende subartikel te vervang
- “(3) Wanneer die voorsitter om die een of ander rede nie in staat is om sy werksaamhede te verrig nie of nie beskikbaar is nie,

of the chairman, **[a member of the committee designated by the Minister]** the vice-chairman shall act as chairman ”

#### Insertion of section 3A in Act 71 of 1988

3. The following section is hereby inserted in the principal Act after section 3.

#### “Liaison committees

5

**3A.** (1) (a) The chairman may appoint one or more liaison committees, which shall advise the committee on such matters as the chairman may determine and refer to a liaison committee for advice

(b) A liaison committee shall consist of the number of members determined by the chairman

10

(2) A member of a liaison committee—

(a) shall be appointed for such period, but not exceeding three years, as the chairman may determine at the time of his appointment;

(b) who is not in the full-time service of the State, shall in connection with the activities of the liaison committee be paid such remuneration and allowances as the Minister may determine with the concurrence of the Minister of State Expenditure,

15

(c) shall vacate his office if he resigns as a member or if the chairman at any time terminates his period of office as a member because in the opinion of the chairman there are sound reasons for doing so,

20

(d) may be reappointed at the expiry of his period of office by effluxion of time

(3) The chairman and vice-chairman of a liaison committee shall be designated by the chairman

25

(4) The vice-chairman of a liaison committee shall act as chairman when the chairman of the liaison committee is not able to perform his functions or when he is not available, or when there is a vacancy in the office of the chairman of the liaison committee concerned

(5) (a) The meetings of a liaison committee shall be held at such times and places as the chairman of the liaison committee concerned may determine

30

(b) The person presiding at a meeting of the liaison committee concerned shall determine the procedure at the meeting

(c) The decision of a majority of the members of a liaison committee present at a meeting thereof shall constitute the decision of that liaison committee ”

35

#### Amendment of section 4 of Act 71 of 1988, as substituted by section 2 of Act 64 of 1991

4. Section 4 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph

40

“(a) shall from time to time make known information on current policy in relation to business practices in general and harmful business practices in particular, to serve as general guidelines for persons affected thereby,”

45

#### Amendment of section 6 of Act 71 of 1988

5. Section 6 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) No person shall in a notice under subsection (1) be directed to furnish the committee with a return specified in that notice within a period of less than **[14]** seven days after the date of the notice ”

50

of wanneer die amp van voorsitter vakant is, neem **['n lid van die komitee deur die Minister aangewys]** die ondervoorsitter as voorsitter waar ”

#### Invoeging van artikel 3A in Wet 71 van 1988

5 3. Die volgende artikel word hierby in die Hoofwet na artikel 3 ingevoeg

##### “Skakelkomitees

- 10 3A. (1) (a) Die voorsitter kan een of meer skakelkomitees aanstel,  
 wat die komitee adviseer aangaande aangeleenthede wat die voorsitter bepaal en na 'n skakelkomitee vir advies verwys
- (b) 'n Skakelkomitee bestaan uit die getal lede wat die voorsitter bepaal.
- (2) 'n Lid van 'n skakelkomitee—
- (a) word aangestel vir die tydperk, maar hoogstens drie jaar, wat die voorsitter ten tyde van sy aanstelling bepaal,
- 15 (b) wat nie in die heelydse diens van die Staat is nie, word in verband met die bedrywighede van die skakelkomitee die besoldiging en toelaes betaal wat die Minister met die instemming van die Minister van Staatsbesteding bepaal;
- (c) ontruim sy amp indien hy as lid bedank of indien die voorsitter te eniger tyd sy ampstermyn as lid beëindig omdat daar volgens die oordeel van die voorsitter gegronde redes daarvoor is,
- 20 (d) kan by die verstryking van sy ampstermyn deur tydsverloop weer aangestel word.
- (3) Die voorsitter en ondervoorsitter van 'n skakelkomitee word deur die voorsitter aangewys
- 25 (4) Die ondervoorsitter van 'n skakelkomitee tree op as voorsitter wanneer die voorsitter van die skakelkomitee nie in staat is om sy werksaamhede te verrig nie of nie beskikbaar is nie, of wanneer die amp van voorsitter van die betrokke skakelkomitee vakant is
- 30 (5) (a) Die vergaderings van 'n skakelkomitee word gehou op die tye en plekke wat die voorsitter van die betrokke skakelkomitee bepaal
- (b) Die persoon wat op 'n vergadering van die betrokke skakelkomitee voorsit, bepaal die prosedure op die vergadering
- 35 (c) Die besluit van 'n meerderheid van die lede van 'n skakelkomitee wat op 'n vergadering daarvan aanwesig is, maak die besluit van daardie skakelkomitee uit ”

#### Wysiging van artikel 4 van Wet 71 van 1988, soos vervang deur artikel 2 van Wet 64 van 1991

- 40 4. Artikel 4 van die Hoofwet word hierby gewysig deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang
- “*(a)* moet van tyd tot tyd inligting omtrent gangbare beleid met betrekking tot sakepraktyke in die algemeen en skadelike sakepraktyke in die besonder bekend maak, om te dien as algemene riglyne vir persone wat daardeur geraak word,”
- 45

#### Wysiging van artikel 6 van Wet 71 van 1988

5. Artikel 6 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang
- 50 “(2) Niemand mag in 'n kennisgewing kragtens subartikel (1) gelas word om 'n opgawe in daardie subartikel vermeld, binne 'n tydperk van minder as **[14]** sewe dae na die datum van die kennisgewing aan die komitee te verstrek nie ”

**Amendment of section 8 of Act 71 of 1988, as amended by section 1 of Act 43 of 1990****6. Section 8 of the principal Act is hereby amended—**

- (a) by the deletion of paragraph (c) of subsection (1),
- (b) by the substitution for subsections (2) and (3) of the following subsections, respectively 5
- “(2) An investigation in terms of subsection (1) or section 4(1)(c) shall not be made or proceeded with by the committee on its own initiative, if in the opinion of the Minister such an investigation is not in the public interest
- (3) **【Where】** If any action is prescribed by the Minister under subsection (5) of this section, the committee shall within **【three】** six months from the date of the notice contemplated in subsection (4) of this section report to the Minister in terms of section 10(1) on the result of the investigation, or on any arrangement which may have been made under section 9 ”, 10 15
- (c) by the substitution for subsection (5) of the following subsection
- “(5)(a) After such a notice relating to an investigation in terms of subsection (1)(a) has been published and before the relevant report is submitted to him the Minister may, on the recommendation of the committee— 20
- (i) prescribe by notice in the *Gazette*, for a period specified in the notice, but not exceeding the period of **【three】** six months referred to in subsection (3), such action as in the opinion of the Minister shall be taken to stay or prevent any harmful business practice which is the subject of the investigation and which the Minister has reason to believe exists or may come into existence, 25
- (ii) by notice in writing or by notice in the *Gazette*—
- (aa) attach any money or other property whether movable or immovable which is related to such investigation and which is held by any person on account or on behalf of or for the benefit of a person mentioned in the notice, or of a customer, debtor or creditor of the person mentioned in the notice, until a curator referred to in section 12(2) takes that money or other property into his possession, 30 35
- (bb) prohibit a person mentioned in the notice from withdrawing or otherwise dealing with any money or movable or immovable property mentioned in the notice 40
- (b) If the Minister has issued a written notice under paragraph (a)(ii), a copy of such notice shall as soon as practicable be published in the *Gazette*
- (c) If the Minister attached any immovable property under paragraph (a)(ii), he shall as soon as practicable notify the registrar of deeds of such attachment ”, and 45
- (d) by the substitution for subsection (6) of the following subsection
- “(6) A notice under subsection (5) may, on the recommendation of the committee, be amended or withdrawn by the Minister at any time **【and shall not be subject to review by or appeal to any court of law】** ” 50

**Amendment of section 9 of Act 71 of 1988****7. Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection**

- “(1) When the committee has decided to undertake a preliminary investigation in terms of section 4(1)(c), or has issued a notice in terms of section 8(4) in relation to an investigation in terms of section 8(1)(a), it may 55

**Wysiging van artikel 8 van Wet 71 van 1988, soos gewysig deur artikel 1 van Wet 43 van 1990**

6. Artikel 8 van die Hoofwet word hierby gewysig—
- (a) deur paragraaf (c) van subartikel (1) te skrap,
- 5 (b) deur subartikels (2) en (3) deur onderskeidelik die volgende subartikels te vervang
- “(2) ’n Onderzoek ingevolge subartikel (1) of artikel 4(1)(c) word nie deur die komitee op eie inisiatief ingestel of voortgesit indien so ’n ondersoek volgens die oordeel van die Minister nie in die openbare belang is nie
- 10 (3) **[Waar]** Indien enige stappe kragtens subartikel (5) van hierdie artikel deur die Minister voorgeskryf word, moet die komitee binne **[drie]** ses maande vanaf die datum van die kennisgewing in subartikel (4) van hierdie artikel beoog aan die Minister ingevolge artikel 10(1) verslag doen oor die uitslag van die ondersoek, of oor enige reeling wat kragtens artikel 9 getref is ”,
- 15 (c) deur subartikel (5) deur die volgende subartikel te vervang
- “(5)(a) Nadat so ’n kennisgewing wat betrekking het op ’n ondersoek ingevolge subartikel (1)(a), gepubliseer is en voordat die tersaaklike verslag aan hom voorgelê word, kan die Minister, op aanbeveling van die komitee—
- 20 (i) by kennisgewing in die *Staatskoerant* vir ’n tydperk in die kennisgewing vermeld, maar hoogstens die tydperk van **[drie]** ses maande in subartikel (3) bedoel, die stappe voorskryf wat volgens die oordeel van die Minister gedoen moet word om enige skadelike sakepraktyk wat die onderwerp van die ondersoek is en wat die Minister rede het om te vermoed bestaan of mag ontstaan, op te skort of te voorkom,
- 25 (ii) by skriftelike kennisgewing of by kennisgewing in die *Staatskoerant*—
- (aa) beslag lê op enige geld of ander eiendom hetsy roerend of onroerend wat in verband staan met so ’n ondersoek en wat gehou word deur ’n persoon op rekening, of namens of tot voordeel van ’n persoon vermeld in die kennisgewing, of van ’n afnemer, skuldenaar of skuld-eiser van die persoon vermeld in die kennisgewing, totdat ’n kurator bedoel in artikel 12(2) sodanige geld of ander eiendom in sy besit neem,
- 35 (bb) ’n persoon vermeld in die kennisgewing verbied om enige geld of roerende of onroerende eiendom wat in die kennisgewing vermeld word, te onttrek of andersins daarmee te handel
- (b) Indien die Minister kragtens paragraaf (a)(ii) ’n skriftelike kennisgewing uitgereik het, moet ’n afskrif van sodanige kennisgewing so gou doenlik in die *Staatskoerant* gepubliseer word
- 45 (c) Indien die Minister kragtens paragraaf (a)(ii) op enige onroerende eiendom beslag gelê het, moet hy die registrateur van aktes so gou doenlik van sodanige beslaglegging in kennis stel ”,
- 50 en
- (d) deur subartikel (6) deur die volgende subartikel te vervang
- “(6) ’n Kennisgewing kragtens subartikel (5) kan op aanbeveling van die komitee te eniger tyd deur die Minister gewysig of ingetrek word **[en is nie aan hersiening deur of appèl na enige geregshof onderworpe nie]** ”

55 **Wysiging van artikel 9 van Wet 71 van 1988**

7. Artikel 9 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang
- “(1) Wanneer die komitee besluit het om ’n voorlopige ondersoek ingevolge artikel 4(1)(c) in te stel of ’n kennisgewing ingevolge artikel 8(4) uitgereik het met betrekking tot ’n ondersoek ingevolge artikel 8(1)(a), kan
- 60

at any time thereafter negotiate with any person or body, corporate or unincorporate, with a view to making an arrangement which in the opinion of the committee will ensure the discontinuance of a harmful business practice which exists or may come into existence and which is the subject of the investigation, either wholly or to such extent as, in the opinion of the committee, it is not justified in the public interest ” 5

**Amendment of section 12 of Act 71 of 1988, as amended by section 3 of Act 43 of 1990**

**8. Section 12 of the principal Act is hereby amended—**

- (a) by the deletion of paragraph (a) of subsection (1), 10  
 (b) by the addition after paragraph (c) of subsection (1) of the following paragraph

“(d) if money was accepted from consumers and he deems it necessary to limit or prevent financial losses by those consumers, appoint a curator, with the concurrence of the special court, in order to realize the assets of the person involved in a harmful business practice and to distribute them between the consumers concerned and to take control of and manage the whole or any part of the business of such a person ”, 15 20

- (c) by the substitution for subsection (2) of the following subsection:

“(2) (a) The powers and duties of a curator referred to in subsection (1)(d) shall be determined by the Minister, who shall appoint such curator by letter of appointment setting out— 25

- (i) the name of the person in respect of whom the curator is appointed and his address; 25  
 (ii) directions in regard to the security which the curator has to furnish for the proper performance of his duties,  
 (iii) directions in regard to the remuneration of the curator, and  
 (iv) such other directions concerning the performance by such curator of his duties and functions, or the management of the affairs of the person concerned, or any other matter incidental thereto, as the Minister may deem necessary 30

(b) The Minister may appoint a person who is not employed by the curator, as joint curator 35

(c) The curator, or the joint curator who is not in the employ of the State, shall out of the funds of the person involved in the harmful business practice in respect of the services rendered by them, be paid such remuneration as the Master of the division of the Supreme Court of South Africa concerned may in consultation with the curator or the joint curator, as the case may be, determine. Provided that if the funds of the person involved in the harmful business practice appear to be insufficient to adequately compensate the curator or the joint curator, as the case may be, the curator or the joint curator shall in respect of the services rendered by them be paid such remuneration and allowances as the Minister with the concurrence of the Minister of State Expenditure may determine 40 45

(d) The Minister shall as soon as practicable announce the appointment of a curator and the powers granted to him on his appointment, and any amendment or withdrawal of such powers, by notice in the *Gazette* 50

(e) The Minister may, in the letter of appointment or at any time subsequent thereto, empower the curator in his discretion, but subject to any condition which the Minister may impose—

- (i) to suspend or restrict, as from the date of his appointment as curator or any subsequent date, the right of creditors of the person involved in the harmful business practice to 55



5 hy te eniger tyd daarna met enige persoon of liggaam, met of sonder  
 regs persoonlikheid, onderhandel ten einde 'n reeling te tref wat volgens die  
 oordeel van die komitee die beeindiging van 'n skadelike sakepraktyk wat  
 bestaan of mag ontstaan en wat die onderwerp van die ondersoek is, sal  
 verseker, hetsy geheel en al of vir sover dit volgens die oordeel van die  
 komitee nie in die openbare belang geregverdig is nie ”

**Wysiging van artikel 12 van Wet 71 van 1988, soos gewysig deur artikel 3 van Wet  
 43 van 1990**

8. Artikel 12 van die Hoofwet word hierby gewysig—
- 10 (a) deur paragraaf (a) van subartikel (1) te skrap,  
 (b) deur die volgende paragraaf na paragraaf (c) van subartikel (1) by te  
 voeg.
- 15 “(d) indien geld van verbruikers ontvang is en hy dit nodig ag  
 om finansiële verliese deur daardie verbruikers te beperk of  
 te voorkom, 'n kurator, met die instemming van die  
 spesiale hof, aanstel ten einde die bates van 'n persoon wat  
 in 'n skadelike sakepraktyk betrokke is, te gelde te maak en  
 te verdeel onder die betrokke verbruikers, en die beheer en  
 bestuur van die geheel of 'n gedeelte van die besigheid van  
 20 so 'n persoon oor te neem ”
- (c) deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) (a) Die bevoegdhede en pligte van 'n kurator bedoel in  
subartikel (1)(d) word bepaal deur die Minister, wat so 'n kurator  
per aanstellingsbrief aanstel waarin—
- 25 (i) die naam van die persoon ten opsigte van wie die kurator  
 aangestel word en sy adres,  
 (ii) voorskrifte met betrekking tot die sekuriteit wat die  
 kurator moet stel vir die behoorlike uitvoering van sy  
 pligte,  
 30 (iii) voorskrifte met betrekking tot die vergoeding van die  
 kurator; en  
 (iv) die ander voorskrifte wat die Minister nodig ag betref-  
 fende die uitvoering deur so 'n kurator van sy pligte en die  
 verrigting van sy werksaamhede of die bestuur van die  
 35 sake van die betrokke persoon of enige aangeleentheid  
 wat daarmee in verband staan,  
 uiteengesit word
- (b) Die Minister kan 'n persoon wat nie in diens van die kurator  
 is nie, as medekurator aanstel
- 40 (c) Daar word uit die fondse van die persoon betrokke by die  
 skadelike sakepraktyk aan die kurator, of aan die medekurator  
 wat nie in diens van die Staat is nie, ten opsigte van dienste deur  
 hulle gelewer sodanige vergoeding en toelaes betaal as wat die  
 Meester van die betrokke afdeling van die Hooggeregshof van  
 45 Suid-Afrika na oorleg met die kurator of medekurator, na gelang  
 van die geval, bepaal. Met dien verstande dat indien die fondse  
 van die persoon betrokke by die skadelike sakepraktyk onvol-  
 doende blyk te wees om die kurator of medekurator, na gelang  
 van die geval, na behore te vergoed, die kurator of medekurator  
 50 ten opsigte van dienste deur hulle gelewer sodanige vergoeding en  
 toelaes betaal word as wat die Minister met die instemming van die  
 Minister van Staatsbesteding bepaal
- (d) Die Minister moet so gou doenlik die aanstelling van 'n  
 kurator en die bevoegdhede by sy aanstelling aan hom verleen, en  
 enige wysiging of intrekking van sodanige bevoegdhede, by ken-  
 nisgewing in die *Staatskoerant* bekend maak.
- 55 (e) Die Minister kan, in die aanstellingsbrief of te eniger tyd  
 daarna, aan die kurator die bevoegdheid verleen om na goed-  
 dunke, maar behoudens enige voorwaarde wat die Minister oplaê—
- 60 (i) die reg van krediteure van die persoon betrokke by die  
 skadelike sakepraktyk om geld te vorder of te ontvang  
 wat deur daardie persoon aan hulle verskuldig is, op te

- claim or receive any money owing to them by that person,
- (ii) to make payments, transfer property or take steps for the transfer of property to any creditor or creditors of the person involved in the harmful business practice at such time, in such order and in such manner as he may deem fit, 5
- (iii) to cancel any agreement between the person involved in the harmful business practice and any other party. Provided that where the agreement so cancelled is a lease of movable or immovable property entered into by the person involved in the harmful business practice prior to the appointment of a curator, a claim for damages in respect of such cancellation may be instituted against that person after the expiration of one year as from the date of such cancellation unless the court grants permission that such claim may be instituted before the expiry of such period, 10 15
- (iv) to enter into agreements on behalf of the person involved in the harmful business practice,
- (v) to convene from time to time, in such manner as he may deem fit, a meeting of creditors of the person involved in the harmful business practice, for the purpose of establishing the nature and extent of that person's indebtedness to such creditors and for consultation with such creditors in so far as the curator deems it necessary, 20
- (vi) to negotiate with any creditor of the person involved in the harmful business practice with a view to the final settlement of the affairs of such creditor with that person, 25
- (vii) to make and carry out, in the course of his management of the affairs of the person involved in the harmful business practice, any decision which in terms of the provisions of the Companies Act, 1973 (Act No 61 of 1973), would have been required to be made by way of a special resolution contemplated in section 199 of that Act, 30
- (viii) to dispose, by public auction, tender or negotiation, of any asset of the person involved in the harmful business practice, including— 35
- (aa) any advance or loan, or
- (bb) any asset for the disposal of which approval in terms of section 228 of the Companies Act, 1973, is necessary
- (f) The Minister may, at any time and in any manner, amend or withdraw any power granted or duty imposed in the letter of appointment or under paragraph (e) 40
- (g) At the appointment of a curator—
- (i) the management of the business or affairs of the person involved in the harmful business practice shall vest in the curator, subject to the supervision of the Master, and any other person vested with the management of the affairs of that person shall be divested thereof, and 45
- (ii) the curator shall recover and take possession of all the assets of the person involved in the harmful business practice 50
- (h) While such person is under curatorship—
- (i) all actions and legal proceedings and the execution of all writs, summonses and other legal process against that person shall, subject to the provisions of paragraph (e)(iii), be stayed and not be instituted or proceeded with, without the leave of the court; and 55
- (ii) the operation of set-off in respect of any amount owing by a creditor to the person shall be suspended.

- skort of te beperk vanaf die datum van sy aanstelling as kurator of enige later datum,
- 5 (ii) aan enige krediteur of krediteure van die persoon betrokke by die skadelike sakepraktyk betalings te doen, eiendom oor te dra of stappe te doen vir die oordrag van eiendom op die tyd, in die volgorde en op die wyse wat hy goedvind,
- 10 (iii) 'n ooreenkoms tussen die persoon betrokke by die skadelike sakepraktyk en enige ander persoon op te sê Met dien verstande dat waar die ooreenkoms wat aldus opgesê word 'n huurkontrak van roerende of onroerende eiendom is wat deur die persoon betrokke by die skadelike sakepraktyk aangegaan is voordat 'n kurator aangestel is, 'n eis om skadevergoeding ten opsigte van so 'n opsegging teen daardie persoon ingestel kan word na verloop van 'n tydperk van 'n jaar vanaf die datum van sodanige opsegging tensy die hof toestemming verleen dat sodanige eis voor die verloop van sodanige tydperk ingestel kan word,
- 15 (iv) ooreenkomste namens die persoon betrokke by die skadelike sakepraktyk aan te gaan,
- 20 (v) van tyd tot tyd op die wyse wat hy goedvind 'n vergadering van krediteure van die persoon betrokke by die skadelike sakepraktyk te belê met die doel om die aard en omvang van die betrokke persoon se skuldvas teenoor sodanige krediteure te bepaal en origens oorleg te pleeg met sodanige krediteure vir sover die kurator dit nodig ag,
- 25 (vi) met enige krediteur van die persoon betrokke by die skadelike sakepraktyk te onderhandel met die oog op die finale afsluiting van die sake van so 'n krediteur met daardie persoon,
- 30 (vii) in die loop van sy bestuur van die sake van die persoon betrokke by die skadelike sakepraktyk, enige besluit te neem en uit te voer wat ingevolge die bepalinge van die Maatskappywet, 1973 (Wet No 61 van 1973), by wyse van 'n spesiale besluit beoog in artikel 199 van daardie Wet geneem sou moes word;
- 35 (viii) by wyse van openbare veiling, tender of onderhandeling, enige bate van die betrokke persoon te vervreem, asook te beskik oor—
- 40 (aa) 'n voorskot of lening; of  
(bb) enige bate vir die vervreemding waarvan goedkeuring ingevolge artikel 228 van die Maatskappywet, 1973, nodig is
- 45 (f) Die Minister kan te eniger tyd en op enige wyse 'n bevoegdheid verleen of plig opgelê in die aanstellingsbrief of kragtens paragraaf (e), wysig of intrek
- (g) By die aanstelling van 'n kurator—
- 50 (i) gaan die bestuur van die sake van die persoon betrokke by die skadelike sakepraktyk oor op die kurator, onderworpe aan die toesig van die Meester, en word enige ander persoon by wie die bestuur van die sake van daardie persoon berus, daarvan ontdoen, en
- 55 (ii) moet die kurator al die bates, boeke en dokumente van die persoon betrokke by die skadelike sakepraktyk opvorder en in besit neem
- (h) Terwyl so 'n persoon onder kuratele is—
- 60 (i) word alle gedinge en geregtelike verrigtinge en die tenuitvoerlegging van alle lasbriewe, dagvaardings en ander regsproses teen daardie persoon, behoudens die bepalinge van paragraaf (e)(iii), opgeskort en nie sonder die toestemming van die hof ingestel of voortgesit nie, en
- (ii) word die werking van skuldvergelyking ten opsigte van

(i) A curator shall act in the best interests of the clients, debtors and creditors of the person placed under curatorship

(j) When a notice whereby a curator is appointed is published under section 12(1)(d), all proceedings in connection with the winding-up of a company or close corporation which may be pending in a court of law and in respect of which a liquidator has been appointed, shall be suspended until the appointment of a curator, and any attachment or execution put in force against the estate or assets of that company or close corporation shall be void.

(k) No steps in terms of section 311 of the Companies Act, 1973, or in terms of section 72 of the Close Corporations Act, 1984 (Act No. 69 of 1984), for the conclusion of a compromise, arrangement or composition between a company or close corporation in respect of which a curator has been appointed in terms of this subsection and its creditors shall be taken and any such steps already commenced with shall not be proceeded with, and the costs in connection with such proceedings or steps already commenced with shall, unless the court concerned orders otherwise, be deemed to be part of the costs of the winding-up of that company or close corporation

(l) The curator shall report to the chairman on his administration of the affairs of the person involved in the harmful business practice, and shall at the request of the chairman provide any other information set out in that request.

(m) The curator shall keep proper record of the steps taken by him in the performance of his functions and of the reasons why such steps were taken", and

(d) by the deletion of subsection (3)

#### Amendment of section 13 of Act 71 of 1988

9. Section 13 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection

"(1) There shall be a right of appeal by any person affected by a notice under section 8(5), or 12(1)(b), **[or] (c) or (d)**, to a special court",

(b) by the substitution for subsection (13) of the following subsection

"(13) (a) The decision of a special court shall **[not]** be subject to **[review by or appeal to any court of law]** appeal

(b) The provisions of section 86A of the Income Tax Act, 1962 (Act No. 58 of 1962), shall apply *mutatis mutandis* to an appeal from the special court, and a reference in the Afrikaans text of that section to the 'Voorsitter van die spesiale hof' shall be construed as a reference to the 'president van die spesiale hof' and a reference in that section to the 'Commissioner' as a reference to the 'Minister' or the 'curator' concerned, as the case may be".

#### Short title

10. This Act shall be called the Harmful Business Practices Amendment Act, 1993

enige bedrag deur 'n krediteur aan die persoon verskuldig, opgeskort

(i) 'n Kurator moet optree in die beste belang van kliente, skuldenaars en skuldeisers van die persoon onder kuratele

5 (j) Wanneer 'n kennisgewing waarby 'n kurator aangestel word, kragtens artikel 12(1)(d) gepubliseer word, word alle verrigtinge in verband met die likwidasië van 'n maatskappy of beslote korporasie wat aanhangig mag wees in 'n geregshof en ten opsigte waarvan 'n likwidateur aangestel is, opgeskort totdat 'n kurator

10 aangestel word, en enige beslaglegging of eksekusie ingestel teen die boedel of bates van daardie maatskappy of beslote korporasie, is nietig

15 (k) Geen stappe ingevolge artikel 311 van die Maatskappywet, 1973, of ingevolge artikel 72 van die Wet op Beslote Korporasies, 1984 (Wet No. 69 van 1984), vir die aangaan van 'n skikking, reëling of akkoord tussen 'n maatskappy of beslote korporasie ten opsigte waarvan 'n kurator ingevolge hierdie subartikel aangestel is en sy krediteure mag aangegaan word nie en enige sodanige stappe waarmee reeds 'n aanvang gemaak is, word nie voortgesit

20 nie, en die koste in verband met sodanige verrigtinge of stappe wat reeds aangegaan is, word, tensy die betrokke hof anders gelas, geag deel te wees van die koste van die likwidasië van daardie maatskappy of beslote korporasie

25 (l) Die kurator doen verslag aan die voorsitter oor sy administrasie van die sake van die persoon betrokke by die skadelike sakepraktyk, en verskaf op versoek van die voorsitter enige ander inligting wat in daardie versoek uiteengesit word

30 (m) Die kurator moet behoorlik boekhou van die stappe deur hom gedoen by die verrigting van sy werksaamhede en van die redes waarom sodanige stappe gedoen is"; en

(d) deur subartikel (3) te skrap

#### Wysiging van artikel 13 van Wet 71 van 1988

9. Artikel 13 van die Hoofwet word hierby gewysig—

35 (a) deur subartikel (1) deur die volgende subartikel te vervang  
“(1) Daar is 'n reg van appèl deur enigiemand wat deur 'n kennisgewing kragtens artikel 8(5), of (12)(1)(b), **[of] (c) of (d)**, geraak word, na 'n spesiale hof”, en

40 (b) deur subartikel (13) deur die volgende subartikel te vervang:  
“(13) (a) Die beslissing van 'n spesiale hof is **[nie aan hersiening deur of appèl na enige geregshof]** aan appèl onderworpe **[nie]**

45 (b) Die bepalings van artikel 86A van die Inkomstebelastingwet, 1962 (Wet No 58 van 1962), is *mutatis mutandis* op 'n appèl vanaf die spesiale hof van toepassing, en 'n verwysing in daardie artikel na die 'Voorsitter van die spesiale hof' word uitgelê as 'n verwysing na die 'president van die spesiale hof' en 'n verwysing in daardie artikel na die 'Kommissaris' as 'n verwysing na die 'Minister' of die betrokke 'kurator', na gelang van die geval ”

#### Kort titel

10. Hierdie Wet heet die Wysigingswet op Skadelike Sakepraktyke, 1993



## Commission wants credit laws simplified

*BIDM 11493*  
SA's complicated credit legislation should be simplified and include a measure of deregulation, the SA Law Commission said in a working paper released yesterday.

The Usury Act and Credit Agreements Act should be replaced by a single Credit Act, and lay-by regulations under the Price Control Act should be replaced by a Lay-By Sales Act, the paper said. (245)

The commission said the Trade and Industry Ministry should be given "wide powers" including the authority to bar "certain classes of persons from entering

Business Day Reporter

into credit contracts as credit grantors"

The report is the result of a three-and-a-half year investigation by the commission into the Usury Act, the Credit Agreements Act and lay-by regulations under the Price Control Act.

"The research committee is of the opinion that the legislation protects the consumer and that it should not apply to persons and bodies that are not consumers," the paper said.

STREET TRADING

Breaking the deadlock

Two years after parliament passed the Business Act, three of the four provinces have yet to implement it. The Act scrapped shop-hour laws, many restrictions on hawkers and the need for most trading licences. But the measure has encountered strong resistance from local bureaucrats and pressure groups from the formal sector. Only the Cape has implemented it, though interim measures elsewhere have exempted traders from licensing requirements.

Now government is backtracking on its deregulatory thrust.

A proposed amendment to the Act could end the impasse by July. The Act now prohibits hawking in a few areas, such as near government buildings, but does not allow local authorities to place restrictions on hawking elsewhere.

The Law Review Project's Louise Tager says the amendment will allow local authori-

ties to restrict hawking in more areas. "The amendment will give local authorities the opportunity to better manage street vending."

She says an example of a restricted area would be a beachfront or shopping mall, where hawking would be allowed but under certain conditions.



Tager

Stepping backwards

Critics, particularly hawkers, argue that such an amendment is a step backwards and could pave the way for recalcitrant authorities and the formal sector to once again ban informal traders from the most lucrative trading spots (*Business & Technology* December 18).

Tager stresses that the amendment won't allow authorities to prohibit trading at will. She says the amendment will allow a local

authority to demarcate a restricted area only after its intention has been advertised for comment and approved by the administrator of the province.

She envisages that once an area has been set aside as restricted, a city council could lease the area to a company or group that could then determine specific controls on street trading for that area.

But this possibility would also have to be advertised, she says. First National Bank has plans to do this at its Bank City complex in Johannesburg.

"Of course public pressure is the best means to ensure that the amendment isn't abused," says Tager, who played a substantial role in making recommendations in the drafting of the Act.

She points out that local authorities will in any event have to become increasingly responsive to their changing constituency. "Meanwhile, a balance has to be struck between the city's ratepayers on the one hand and those who stimulate economic growth on the other."

SHIRAZ KADIA

FEATURE





# Board to probe directorships

810AM 20/4/93  
THE Competition Board is to investigate the practice of businessmen sitting on the boards of competing companies.

Competition Board chairman Pierre Brooks said yesterday "interlocking directorships" raised serious concerns, and he called into question whether directors risked breaching their duties under the Companies Act. The board would discuss proposals with major companies and industry groups over the next five months to curb the practice.

Brooks said the board was unlikely to recommend a ban, given the close links long forged between SA companies. But a form of "qualified prohibition" was an option, with cases judged on company size or whether a director held an executive or "downstream" position.

"It would be better if there weren't any interlocking directorships between competing companies. It is a question of marrying that to what is

(480) (245)  
ANDY DUFFY

practical," Brooks said.

The board's findings would go to government early next year. If business chose to ignore the recommendations, the board would push government to legislate.

Limitations on interlocking directorships could hit groups such as Anglo American and De Beers.

Anglo American said it was waiting for the term "interlocking" to be defined, but welcomed the investigation.

"Much of the debate until now has been uninformed," a spokesman said.

Whether government will act is moot. It has already backtracked on a proposal in the summary of Finance Minister Derek Keys's normative economic model. The complete version of the model released immediately before the Budget excluded the proposal.

The main author of the model, central economic advisory services chief

Jan Dreyer, said the model was not meant to be prescriptive but to prompt debate — a view backed by Keys's office. Dreyer added that banning interlocking directorships could damage SA industry. "SA is very short of entrepreneurs. We should be careful not to chase people away."

The investigation drew a cautious welcome from the Institute of Directors, which counts directors from 90% of SA's 300 largest companies among its 1 600 members. Executive director Richard Wilkinson said the institute opposed interlocking directorships and the concentration of SA's board positions among a handful of directors. But the "incestuous" situation of shareholdings in SA meant such practices were inevitable.

According to McGregors Online, 24 of SA's business leaders held 520 executive positions. The busiest, Online said, were Anglo American directors Michael King and Clain Sunter, who held 24 directorships.

SITIMES [Russ] (78)  
**Dawie against copper merger**

MINISTER of Public Enterprises Dawie de Villiers has endorsed the Competition Board's recommendation that the proposed R600-million merger between Copalcor and Non-Ferrous Metals be blocked. A notice declaring the proposed merger unlawful will be published in the Government Gazette this week. The board opposed the merger on the grounds that it gave the two companies control of the copper scrap market.

(245)

# Regulations in Liquor Act to be relaxed

St Times (C Metro)  
9/5/93

By DINAH WHITE

RELAXATIONS to the Liquor Act could extend bottle-store hours and make licences easier to obtain, the deputy minister of trade and industry Mr David Graaff said this week.

Speaking at the Fedhasa regional congress in Caledon, he said the emphasis in changes proposed in the Liquor

Amendment Bill would be on extended licensing hours for stores and possibly amending the prohibition of sales on public holidays.

The government would also review Sunday sales on wine farms, Mr Graaff said.

**Standards**  
Cape Administrator Mr Kobus Meiring said he was looking to Fedhasa for guidance on the issue of no smoking in restaurants and whether this could be implemented by legislation.

Satour's director of standards, Mr Greg McManus, outlined a new voluntary national grading and classification scheme for all registered hotels.

The July 1 introduction of the new grading would bring hotel standards in line with their European counterparts.

Satour will in January next year publish and distribute 150 000 copies of their guide to Southern African accommodation.

Mr McManus advised hotels, "not to chase stars, as it will be the providing of service that is so important".

# Merger ban could cost R100m in alloy exports

3 Times (Russ)

16/5/93

COPPER-ALLOY processors Copalcor and Non-ferrous Metal Works (NMW) have protested at the Competition Board decision to disallow their merger.

The merger was banned by Public Enterprises Minister Dawid de Villiers.

Copalcor managing director Piet Malan says the decision is "not in the best interests of SA".

NMW director Bernhard Lazarus says "it is likely to have serious consequences

for the metallurgical-engineering industries".

Neither company will challenge the decision.

Mr Malan says the merger would have generated an extra R100-million in exports in the next two years because of improved competitiveness, productivity and economies of scale.

Both insist that the planned merger would not lead to a monopoly position. Both have adopted other measures to improve competition and reduce costs.

# Pressure on the barons of JSE rises

SI Times [Buss] 16/5/93

By CIARAN RYAN

PRESSURE is mounting for a break-up of South Africa's corporate conglomerates which are blamed for concentrating economic wealth in the hands of a tiny elite

The super-corporations came under the spotlight this week after Gencor decided to unbundle — one of the most significant events in SA business history

The Competition Board wants a revision of rules which allow pyramid companies on the JSE. A few families are able to control more than R100-billion of listed companies. In some cases, the families hold less than 10% of the equity

Anglo American, Barlows, Anglovaal and Rembrandt say they are able to mobilise capital for large projects, in many cases their assets trade at huge premiums to net asset value and that they bring considerable expertise to group companies.

The ANC plans to introduce tough anti-trust legislation which may enforce unbundling

An ANC spokesman says "Conglomerates can lead to monopolistic practices. Holding companies are able to exercise control over the investment policies of the operating arms

"This constrains the growth potential of small and black business."

Competition Board chairman Pierre Brooks says pyramiding — it allows minority shareholders to control huge conglomerates with relatively little capital outlay — deters foreign investment.

"We have excessive economic concentration and foreign businessmen have complained to me of the extent of pyramiding in SA. It is something they want to see removed before investing here."

JSE president Roy Andersen welcomes Gencor's decision, saying "We believe this unbundling will make an important contribution to improving liquidity on the JSE."

Sankorp chairman Marinus Daling says "We need investment in SA. Our highly controlled corporate structure is foreign to northern hemisphere investors"

Anglo American defends its corporate structure and cross-holdings on the basis that size is good for capital agglomeration.

A Barlows spokesman says unbundling would not unlock shareholder wealth because the shares do not trade at a discount to underlying assets

## Tight

Analysts say Barlows' net asset value is understated because of large unlisted holdings.

A Barlows spokesman says a head office enables a sharing of management and technical expertise.

SA Breweries says no single group has outright control of its shares and points to the threefold premium of the share price to net asset value.

"There is no value to unlock by unbundling SAB," says group financial director Selwyn MacFarlane. "We are a focused consumer group. Unbundling applies to conglomerates with interests which do not fit together, such as Gencor"

Rene de Wet, managing director of Pick 'n Pay, says unbundling would result in the Ackerman family's losing control

"From a shareholder point of view there is a lot of value attached to the Ackerman control of the group"

Business leaders praise Gencor's decision to demerge its non-mining interests. Although Sankorp will retain effective control, the move is seen as an important step for shareholder democracy



MARINUS DALING Out of kilter with northern hemisphere investors

Finance Minister Derek Keys, who put unbundling on the corporate agenda when he was Gencor chairman, says "Gencor has an outstanding record as an entrepreneur. I welcome the announcement of plans to unbundle in the belief that it will result in five entrepreneurs"

Brian Kantor, professor of economics at the University of Cape Town, says that although control of Gencor's operating subsidiaries will remain with Sanlam, shareholders will have a stronger influence on affairs

"Now the operating companies will be controlled directly through Sanlam rather than through the intermediary of Gencor management which may not necessarily be a good thing"

"We need to persuade the ANC that tight control by shareholders is a good thing. They appear to have picked up the US view of anti-trust behaviour which is outdated and in-

creasingly subject to criticism in America where shareholder control is generally weak," says Professor Kantor

Paul Beachy Head, general manager of investments at Southern Life, says "There are pros and cons to everything. I think Gencor has sacrificed some of the critical mass required to finance and undertake mega-projects such as Alusaf"

# R500m to bring electricity for all

SI Times [Buss] 16/5/93

By KEVIN DAVIE

ESKOM and the life insurers have struck a R500-million ground-breaking deal to part finance Eskom's R3-billion "electricity-for-all" drive.

The project — the insurers have agreed to a first tranche of R500-million — is the first by the Investment Development Unit of the Life Offices Association.

The IDU was set up to facilitate the flow of funds under the control of the life and pensions industry to socio-economic development.

The IDU has been investigating

enter the high-risk area of socio-economic upliftment because the pre-paid meters it initially ensure that it gets paid

Attempts to provide housing and other social services for blacks have, in contrast, largely been frustrated by rent, mortgage and service boycotts, high costs and poor quality and inefficient systems for collecting payment.

VISION

## CAPE TOWN'S CLAMP ON HAWKERS

FM 21/5/93

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Street traders in Cape Town's St George's Mall have accepted a deal to limit them to 60 stalls after they initially threatened to rebel against the new restriction. Under regulations published last week by Cape Administrator Kobus Meiring, however, it seems that only craft traders will be allowed. Traders were due to meet city officials this week to resolve the issue.

Until last week there were often more than 100 traders in the mall. Most sold clothing and other factory-made goods.

The traders moved into the mall last year after the Business Act came into force and deregulated hawking and business licences. The city council and retailers in the area immediately objected and appealed for Meiring to take action. But a move to restrict street trading was found technically invalid (*Business & Techno-*

*logy* December 18)

The agreement to allow 60 craft traders is a compromise by the city council, which had earlier decided that no trading would be allowed in the mall, and the traders. The move is also in line with a Cape Town Chamber of Commerce recommendation that the authorities should allow a reasonable amount of informal trading in the downtown mall network.

The chamber recommended that preference should be given to traders selling arts and crafts that would "add interest to the mall and reduce conflict with formal traders."

The traders said at the time that they were not totally opposed to the regulation but wanted it negotiated and not simply imposed by authorities.

Doctors and lawyers should be treated like any other businessmen, says Errol Price

# Scrap protection of professions

Star 21/5/93

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**R**ECENT developments have convinced many in South Africa of the need to free the economy from unnecessary restrictions which have hampered productivity and economic growth.

Thus we have seen the withdrawal by the State from the control of certain industries, or sectors of the economy, as well as the dismantling of such patently inefficient mechanisms as control boards.

Deregulation is not only of benefit in industries where the State has a direct or indirect interest, but also in those areas of the economy where over-regulation has led to the undesirable concentration of economic power in the hands of a few, or has created supply bottlenecks, resulting frequently in an upward pressure on prices.

It is also now recognised that these general principles are applicable not only where commodities are sold, but also in service industries in general, including those involving the supply of professional services.

For too long the professions

have been regarded as "sacred cows" — beyond public scrutiny in both their general practices as well as their pricing structures.

The idea that the organised professions are not to be judged by any of the criteria applicable to other sectors of the economy has been fostered in large measure by the professional bodies themselves.

As a matter of course, professional bodies tend to insist that they, and they alone, are competent to judge on matters such as the effectiveness of a practitioner's performance, ethical conduct, fee structures and so on.

In this attitude they have been aided and abetted by a largely unprincipled and frequently gullible South African public.

The concept that professions are fundamentally different from other types of businesses is not only misguided and naive, but positively harmful. If it is not understood that the demand and supply of professional services is subject to much the same economic forces as those acting on other types of non-professional services, the consequences are almost cer-

tain to be a misallocation of resources, distorted fee structures and the reduced availability of much-needed services.

Members of professions have historically insisted that they be given special statutory protection which has often been augmented by further regulations instituted by their particular governing organisations.

It is no coincidence, therefore, that the suppliers of services which are not traditionally treated as "professional" often aspire to that status so that they are able to organise themselves along the same lines and enjoy similar advantages.

However, since most professions — other than those in fixed-salary positions — like any other rational suppliers of services, wish to maximise their income and act accordingly within the parameter of their chosen occupation, the grounds for such pervasive protection are difficult to justify.

In July 1992, the Competition Board, following a request from the Cabinet, published a report regarding the inhibiting practice

of closed professions which are in conflict with the public interest. The board concluded that professional services should be subject to competition norms.

It pointed out that statutory and regulatory restrictions, which professionals had often stressed were for the protection of the public, were more usually designed for the protection of members of the professions.

It therefore recommended that restrictions on competition in the supply of professional services be speedily removed.

As a result, we are now beginning to see some tangible progress in the direction of deregulating certain professions — notably in medicine and pharmacy.

In some cases, it is fairly obvious that deregulation will lead to immediate benefits for the public. For example, the costs of prescription spectacles supplied by specialist retail outlets are far lower than those supplied by optometrists in private practice.

It is also fairly clear that the Government's stated intention of allowing pharmacies to operate on supermarket premises, and the wider supply of generic drugs, will result in substantial savings in the cost of medicines to the consumer.

In other cases, the nature and effects of the restrictions are less apparent. The legal profession, for example, is one of the most excessively regulated of all professions.

The result of this over-regulation of legal services is that this market is among the most distorted economically of any pertaining to professional services.

Any attempt to dispense with anachronistic privileges such as the advocates' exclusive rights of audience in the Supreme Court is fiercely resisted, regardless of the interests of the public.

At the same time we have recently witnessed the spectacle of attorneys in the Cape Province threatening confrontation with a major banking institution which had the temerity to suggest attorneys should reduce their consulting fees.

This instance highlights one of the main problems with regard to the cost of professional services. Generally, only a large institution

with financial muscle is capable of challenging an organised profession.

As the Competition Board pointed out in its report, the individual consumer is for all practical purposes powerless. The board concludes "only the greater exposure of professions to marketing forces can provide a proper balance."

The situation which now prevails in South Africa, where professional services are frequently beyond the reach of vast sections of the population, can no longer be tolerated.

Elite professional institutions, redolent of ancient class-divisions, and professionals sheltering behind protectionist economic barriers, cannot be allowed to maintain the status quo in the "new" South Africa.

Urgent attention must be given to changing the manner in which professionals operate in this society, in the face of the massive, political, social and economic changes already under way.

Errol Price is a lawyer practising in Johannesburg. □

# In the public interest

FM 28/5/93

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The Competition Board has a role — but does it have enough power?

**The Competition Board** is something of an enigma. Elements of big business fear it, small business reveres it and government sometimes ignores it.

The board's profile has been raised in recent months through its issue of a host of far-reaching recommendations — some of them hardly to do with private commercial transactions, the board's perceived focus.

For instance, the health sector was shocked last year by the board's finding that health care operates "restrictive practices that don't serve the public interest."

The resultant recommendations were even more disturbing to an industry that has been protected for years by a host of statutory regulations. Condemning maximum, minimum and recommended fees as price-fixing, the board proposed an end to the guaranteed payments that medical aid schemes make on receipt of a claim. It also said schemes should be allowed to supply and finance health care services.

Most of the board's recommendations became law in the Medical Schemes Amendment Act, passed in February.

Another recent landmark report has been

the one on the professions. The board has found — not unexpectedly — that a host of regulations restrict competition in each profession and guarantee professionals their (often exorbitant) fees.

And the board wasn't short on suggestions of how to end what it regards as an abusive situation. Some of these include ending all restrictions on advertising and marketing; allowing fees to be completely negotiable; and allowing a person with a lesser, but appropriate, qualification to perform certain services at competitive prices. The recommendations of this report, which amount to extensive deregulation, were submitted to Cabinet. They have had substantial influence on government attitudes.

The board's recommendations on health care and the professions are particularly significant because they amount to deregulation rather than new regulation.

The recent strengthening of support from government gives the Competition Board — traditionally constituted to prohibit restrictive business practices and to sanction acquisitions — a new dimension. Says board chairman Pierre Brooks. "The board is con-

cerned with restrictive provisions in areas such as housing, health and education, where over-regulation could push up the cost of these services to the public."

Brooks is also aware that other legally sanctioned practices restrict competition in the economy. "Tariff policy could be a particular hindrance to competition. If local firms aren't competing with one another, they should at least be competing with international players." He notes that as soon as local business becomes ineffective, it beats a trail to the Department of Trade & Tariffs, asking — in effect — for tariff protection against inefficiencies.

"This clearly isn't in the public interest," says Brooks. And he contests the traditional arguments from some businesses that, because of years of sanctions isolation, they simply can't compete internationally.

"One can only accept these arguments to a limited extent," maintains Brooks, "otherwise this would mean an effective ban on all imports — a move that's simply not going to happen as we move rapidly back into the international economy. We need to accept that firms come and go. Protecting against



competition can't secure a firm's existence forever. In the final analysis, market forces won't be denied. Firms that can't adapt will be swept away."

But do we need a Competition Board? Critics argue that market forces should remove the need for any formal competition policies and regulations. Wits University's Daniel Leach, a senior lecturer in business economics, is especially critical of competition policies and US-style anti-trust regulations.

Says Leach: "Authorities mostly don't understand what's happening in the marketplace. They tend to assume that certain practices are monopolies when they merely reflect effective competition. By constantly emphasising market share and concentration, they ignore the competitive rivalry among existing firms and the threat of new firms."

Leach says anti-trust legislation in the US has been used mostly by smaller firms to stave off cheaper prices offered by larger, more efficient operations. "In this sense, anti-trust policies have done little for the consumer. They have merely succeeded in protecting inefficient smaller players."

To illustrate this point, Leach cites the IBM case in the US. IBM spent 13 years in court, from 1969 to 1982, fighting off a host of complaints from smaller competitors. The US Justice Department eventually dismissed the case (with IBM's bill at US\$1bn).

Brooks disagrees. He says there will always be a need for a Competition Board or some equivalent institution to stop people distorting the market. "As soon as you collude to fix prices, market share and tenders, you don't have a free market. Without strictly enforced rules, the competitive market can be eroded and subverted from within through agreements not to compete."

"There can also be consolidation of industrial control in the hands of dominant firms and private and government power complexes. All countries whose economies are essentially market-driven have laws governing competition."

Brooks warns that countries which have interpreted *laissez faire* to mean "whatever business does is to the benefit of the market" have all ended up enforcing heavy anti-trust legislation. "Competition policy should seek to ensure that market forces rather than government intervention remains the accepted norm," says Brooks. The ANC has already warned that it will investigate the possibility of introducing anti-monopoly and merger policies to curb what it sees as monopolies and to end continued domination of the economy by a minority within the white sector. There have also been rumblings that it would break up conglomerates.

Brooks argues that the benefits of competition are at risk in markets which are concentrated. But he stresses the board accepts that some measure of corporate conglomeration or diversification is not only tolerable but desirable. "Monopolies are fine where they reach their position through com-

petitive superiority and don't abuse this position."

The degree of economic concentration in SA is probably too high, says Brooks. There is a danger in having five or six major groups co-existing in parallel, with companies within such groups confronting one another in numerous markets. This multimarket contact induces them to co-operate rather than compete, since they recognise that strong competition in one market might see their rivals retaliate in other markets. This situation is exacerbated, argues Brooks, by substantial inter-group cross shareholdings and interlocking directorates of competing companies.

Economists Brian Kantor and Jos Gerson, however, argue that pyramids and conglomerates allow for effective control of the managers of operating companies, overcoming the famous problem of separation of ownership from control — a feature that plagues companies in the US, where pyramid holdings are not allowed.

SA fared poorly in the recent World Com-



Brooks keeping the market open

petitiveness report, coming only 10th out of 14 newly industrialised nations, behind Hungary, Brazil, Taiwan and Singapore. Brooks says the anti-competitive climate has been even harsher because SA was without a comprehensive competition policy until 1980. "And even then, financial institutions were initially excluded from the provisions of the Act."

But the board, in its 13-year existence, has seldom interfered in the commercial transactions of big business. It has blocked only two mergers.

Copper giants Copalcor and Non-Ferrous Metals' proposed R600m merger was stopped last year for not being in the public interest. The board found that a merger

would certainly lead to a monopoly of the entire market — from the purchase of scrap metal through to the sale and manufacture of industrial copper products. Government approved the board's findings.

The board also tried to stop FSI's proposed merger with Arwa's ladies hosiery division. Government overruled the board in March last year, effectively giving FSI 99% market share.

The board is specifically empowered to investigate restrictive practices, acquisitions and monopoly situations — but it essentially lacks teeth, since its findings are merely forwarded to government, which still has the final say.

**Right of appeal**

Political influences highlight the urgent need for reform if the board is to have any role in a future society. "We need to depoliticise the whole process to exclude government involvement in decision-making in competition matters," says Brooks. He envisages a quasi-judicial status for the board, with rights of appeal to higher courts. But he is adamant that he does not want to build empires. "One needs only a few key staff with input from interested parties to ensure a cost-effective and efficient operation." His own Directorate of Investigations consists of only nine professional staff and three administrative personnel.

Brooks's push for greater independence from government is understandable, given his harsh treatment of semi-State organisations accused of anti-competitive behaviour in the private sector. On this score, Wits's Leach says the board is doing good work and could be useful in ridding the economy of State monopolies.

In recent months, Brooks has been inundated with complaints from the private sector covering a range of semi-State activity — accentuated, he says, by the poor economic climate. The private sector argues that it has to consider returns on capital and bankruptcy whereas semi-State companies — even the newly commercialised entities — can always rely on the State and, ultimately, the taxpayer to bail them out. This rationale was accepted by Brooks with his controversial recommendation to SAA to lift its prices to profitable levels and limit its flight frequency to give other players a chance.

He continues: "It's clear that the odds are loaded against these private-sector players. But we want to see as much competition as possible in the marketplace and, where appropriate, we are not averse to some competition coming from the public sector."

"It's a question of trying to work out a *modus operandi* whereby the resources of both sectors can be used to SA's benefit," says Brooks.

That seems sensible, but, as long as the decisions of the Competition Board remain dependent on the whims of whatever Minister has the power to overrule them, proponents of genuine competition will remain uneasy. ■

# Probe into parts, glass firms

THE Competition Board will investigate leading companies in the motor spares and glass sectors

A board spokesman said yesterday the investigation into the motor spares sector involved the FSI group and an acquisition by Varex in the motor engine parts market. Varex had been created by FSI subsidiary W & A last year through a series of mergers and acquisitions. (245)

The board said it had to determine if a proposed transaction between Varex, Alert Engine Parts (Eastern Province) and Alert Engine Parts (Namibia) constituted an acquisition as defined in Section 1 of the Competition Act (relating to takeover acquisitions and effects on competition)

The spokesman said the investigation

EDWARD WEST

followed a warning to FSI last year of a formal board investigation into any further acquisitions in the wholesale engine parts market.

In November the board expressed concern about the concentration of control in the market, after FSI subsidiary Vektra's purchase of Eddies Stores and certain Spareco outlets.

Varex chairman Alan Schlesinger said the group held a relatively small share of the overall parts market. The proposed acquisition would not change that situation significantly, he said.

To Page 2

## Probe

Buss. day

3/6/93

From Page 1

The investigation into the glass sector involved Plate Glass & Shatterprufe Industries (PGSI). The investigation — which was prompted by complaints to the board — would set out to determine whether one or more of the companies had a monopoly or was engaged in restrictive practices.

The board would also investigate acquisitions planned or made by PGSI in the past five years. (245)

The Competition Board investigation follows January's announcement of a second investigation by the Board on Tariffs and Trade in just over a year into what

PGSI claimed was the dumping of cheap clear flat glass imports in SA.

Rod Fehrsen, MD of Glass SA (a division of PGSI), said it was inevitable that competitors would retaliate against Glass SA's recent application for protection against dumping of building glass in SA by Far East manufacturers. (193) (192)

"In addition to indignation about our dumping application, recent changes in our distribution policy have apparently contributed to complaints against us by our competitors," Fehrsen said.

International norms favoured

# Competition Board to get more teeth

Buss. Day 7/16/93

GOVERNMENT has given in to demands that its policy on business competition be given muscle and that the Competition Board get extensive new powers.

(245)  
Legislation is expected to be tabled next year giving the board powers to ban certain deals and mergers and impose fines of millions of rands

A spokesman for Public Enterprises Minister Dawie de Villiers confirmed at the weekend that recommendations were being framed to change legislation regarding the board and its operations. Board chairman Pierre Brookes is heading talks which will lead to new legislation, pending Cabinet approval.

Brookes has previously argued that competition decision-making is too politicised. The board at present only makes recommendations to De Villiers, who has the final say.

Brookes wants undesirable business practices to be outlawed by legislation and not by government notice.

He has argued that maximum fines of R100 000 are woefully inadequate. In a recent discussion document, Brookes referred to Canadian competition laws which provide for fines of up to \$10m.

On Friday he added that EC competition rules made it possible for turnover-based fines to extract penalties running into millions of ecus.

Brookes confirmed the board had been asked to draw up new recommendations. "We have to come up with something, and if the basic principles are accepted by Cabinet, the recommendations will be published for comment."

PETER DELMAR

Brookes said the board would consult interested parties such as chambers of business and political parties before compiling its recommendations.

Asked how many of his suggested changes were likely to be incorporated in the recommendations, Brookes said he did not want to speculate, but "the principles we have raised are sound and are based on substantial research. They also follow internationally accepted norms."

Brookes said he could not speak for government on the independence of the board. However, international experience dictated that an effective competition policy had to be as depoliticised as possible.

He said he had not yet considered exactly how much maximum fines for anti-competitive actions should be, but believed there was considerable scope for raising the maximum. Parties injured as a result of anti-competitive practices should be enabled to institute private claims for damages arising from board rulings.

The Public Enterprises Ministry spokesman said the proposed changes were unlikely to come before Parliament during the current session. But Brookes was confident this would happen during the following session.

Brookes has also suggested the board be given the power to declare forms of anti-competitive behaviour unlawful as they arise. He believes all proposed business acquisitions of a pre-determined size should be compulsorily notifiable, while the board should be enabled to hire specialist staff or outside consultants for specific investigations.

# Competition Board 'needs remake'

Buss. Day  
MATTHEW CURTIN

THE COMPETITION Board has to be restructured if it is not to end up a paper tiger, hamstrung by red tape in spite of government plans to give it new powers.

Chairman Pierre Brooks said yesterday it was crucial to separate the board's investigative and decision-making functions. He had outlined his plans in a report — entitled Future Development on SA Competition Policy — distributed to government, the ANC, Sacob and other interested parties in September last year.

Brooks said there was understandable concern that the panel which investigated restrictive business practices also recommended action to government on curbing them.

The new board, which will have the

power to ban certain deals and mergers and impose multimillion-rand fines when legislation is tabled in Parliament next session, will consist of "an office for competitive matters" and a tribunal.

Brooks said the board's investigations department would become the business practices office.

If the office found a business practice undesirable, the matter would be referred to the tribunal. The tribunal would consist of experts appointed by government.

(245)  
It was vital to replicate the process of the civil courts in the board's workings to minimise bureaucratic restrictions, Brooks said. The board currently made recommendations to

8/16/93  
the Public Enterprises Department, and aggrieved parties could resubmit evidence and re-argue their cases, setting off the process again. In future, aggrieved parties would be able to appeal through the courts.

Efficiency would also be improved by ending the publication of reports in two languages. In future, a party would nominate a preferred language.

He said he was confident that the changes were supported by government and the business community.

An ANC spokesman said yesterday the organisation welcomed plans to give new powers to the board. Competition policy in SA was "currently non-existent" and although change was necessary, it should not be done unilaterally without due discussion.

ANDY DUFFY

THE country's only scrap-based copper refinery faces closure following the Competition Board's decision to block the R600m merger between Haggie Rand's Copalcor subsidiary and Non-

## Haggie copper refinery may close

Ferrous Metals (NFM).

Haggie said yesterday that the future of its Wadeville refinery was now under review as part of a rationalisation plan forced

by the board's decision.

Copalcor's operations were to be cut back by roughly 20% over the next two years, Haggie added, with the cuts concentrated on high volume business

Haggie finance director Bill Smart added that the Germiston refinery fell into this category. Its fate, and that of its 80 staff, would be determined by production changes currently being undertaken at Haggie's plant at Springs (245)

"Volumes are too marginal to keep this (Wadeville) going," Smart said. "We're examining very

carefully every area of our business" (257)

Copalcor, which has already cut staff by nearly a quarter to 1900 over the last 18 months, expected to lose a further 200 staff as a result of the contraction.

The announcement of the contraction follows less than a month after government backed the Competition Board's view that the merger should be barred.

Copalcor and NFM convert about 60 000 tons of scrap a year, producing R500m of semi-finished copper products, of which R100m was exported

# Trucking tycoon's methods 'harmful'

By Thabo Leshilo

Deputy Minister of Trade and Industry David Graaff has accepted the recommendations of the Business Practices Committee to have declared harmful "certain business practices" by millionaire trucking tycoon Riaan Coetzee and several colleagues, committee chairman Professor Louise Tager said yesterday.

Coetzee's practices were first exposed in a Star Line investigation. (245)

They relate to agreements for transport contracts with Coetzee's trucking ventures Prima Vragmotorhuur, Prime Truck Hire, Ace Hire, Five Star Combi Hire, Five Star Taxis, Check Hire and Club Hire.

Involved in the schemes are Alet Muller, Annette Jacobs, Michiel Adendorff and J Hepburn.

The businesses would appoint clients to carry out transport contracts as subcontractors on behalf of principals, said Tager.

Prospective clients were assured they would be helped to obtain financing for vehicles.

The clients had to make substantial advance payments in respect of goodwill.

"In terms of the contractual commitment between the client and the business, all advance payments would be forfeited in the event of the client not obtaining financing for the purchase of the vehicle."

The committee said no assistance was provided to obtain financing and no transport contracts for execution by clients were available.

# Trucking tycoon Coetzee punts 'lucrative scheme'

By June Bearzi  
Star Line

Unstoppable trucking tycoon Riaan Coetzee has again side-stepped Government moves, announced yesterday, to outlaw certain business practices in seven of his latest ventures.

He is now inviting the public to invest in a "lucrative tourist scheme" Sun Tours

Several prospective investors told Star Line that last month they had responded to advertisements offering a chance to get a foothold in the luxury bus industry.

After an initial visit to the Sun Tours offices in Main Road, Randburg, they said they were led to believe the company had a money-spinning

contract with hotel giant Sun International to operate luxury tour buses

Investors said they were told that for an initial R45 000 outlay they would secure the right to operate Sun Tours buses, which would earn them up to R20 000 a month.

Marsha Fourie of Vereeniging and Willie Dekker of Secunda said they realised after discussing the deals with Alet Muller at Sun Tours that the scheme was similar to the Coetzee transport scams exposed by Star Line over the last two years.

When Fourie challenged Muller about her association with Coetzee, Muller finally admitted she was working with the tycoon but claimed that The Star was intent on "sabotaging" their businesses.

Dekker said he was

told by Muller that Sun Tours would be operating from offices in George in the southern Cape.

Muller said tourist buses were in great demand because of the influx of foreign visitors

"The monthly income they promised sounded too good to be true. It later dawned on me that this was just another Coetzee scam," Dekker said.

In a special Government Gazette published yesterday, it was announced that the Coetzee companies, Prime Truck Hire, Ace Hire, Five Star Combi Hire, Five Star Taxis, Check Hire, Club Hire and Prima Vragmotorhuur had been found to be involved in harmful business practices.

It was pointed out that Coetzee's partners in these ventures were

Muller, Annette Jacobs, Michiel Adendorff and J Hepburn. (245)

Star Line has, over the last few months, run several articles, slating these seven ventures, which netted Coetzee more than R1 million

The latest move instigated by the Harmful Business Practices Committee follows a ban placed on Coetzee and his first group of schemes — Truckkor, Conomy and SA Rebuild — at the beginning of last year.

The Government action in both cases followed extensive Star Line investigations into Coetzee's business activities.

About 600 investors were snared by Coetzee and many were financially ruined after sinking tens of millions of rands into his schemes.

# Syndications: handle with care

By Alide Dasnois

CAPE TOWN — The mushrooming of property syndication schemes poses serious risks for investors, says Professor Louise Tager, head of the Business Practices Committee.

She told the Sapoa convention that these schemes generally attracted smaller investors who did not always realise their money was locked into the scheme; that unlisted shares could not be traded in the same way as listed ones.

"We're not saying these schemes should be stopped, but people must be properly informed. Full disclosure is critical."

The committee welcomed steps taken by Sapoa to regulate property syndication. But it would not hesitate to take steps against misleading advertise-

ments offering unrealistic profits.

Investors considering syndication schemes should know they did not entail property transactions, that investors did not own the property and that public companies were obliged to issue a prospectus before offering shares to the public.

## Expectations

The committee was also considering steps to protect consumers against the misleading use of words in transactions.

Professor Tager said words like ownership, property and share-blocks were being loosely used, creating expectations in the minds of consumers which were not met.

Examples of possible abuses:

● Share-block schemes — "The

public does not understand that being a shareholder in a share-block scheme does not mean owning the property. It is the company in which they hold shares that owns the property."

● Life-right schemes — "These are nothing more than leases for life. The term life rights conveys the impression that the holders have a form of title, which they do not."

● Retirement villages — Elderly people were often attracted to these schemes by the promise of security and frail-care centres, but "security is often not provided and frail-care centres, if they are constructed at all, are more often than not used as recreation facilities".

This would constitute a harmful business practice, she said. The legislation on retirement villages was under review.

Star 14/6/93

245



# Government help gives the system a flying start

St. Times (Buss) 20/6/93

(19) (245)

EDI has been implemented successfully in several countries with strong financial backing from governments.

The Taiwanese Government has, for example, committed US\$220-million to getting the country EDI active over five years. The Government of the Netherlands has spent 40-million guilders to do something similar. Both governments want their countries to be economically competitive.

In South Africa the situation is a little more complex because of other priorities. However, the Government, through SITPROSA has been involved in the simplification of trade for some time.

SITPROSA represents both public and private interests in trade simplification.

With a limited budget, it plays the role of facilitator and adviser in the implementation of EDI. It runs courses, its officials attend conferences and advise businesses interested in EDI.

## Standard

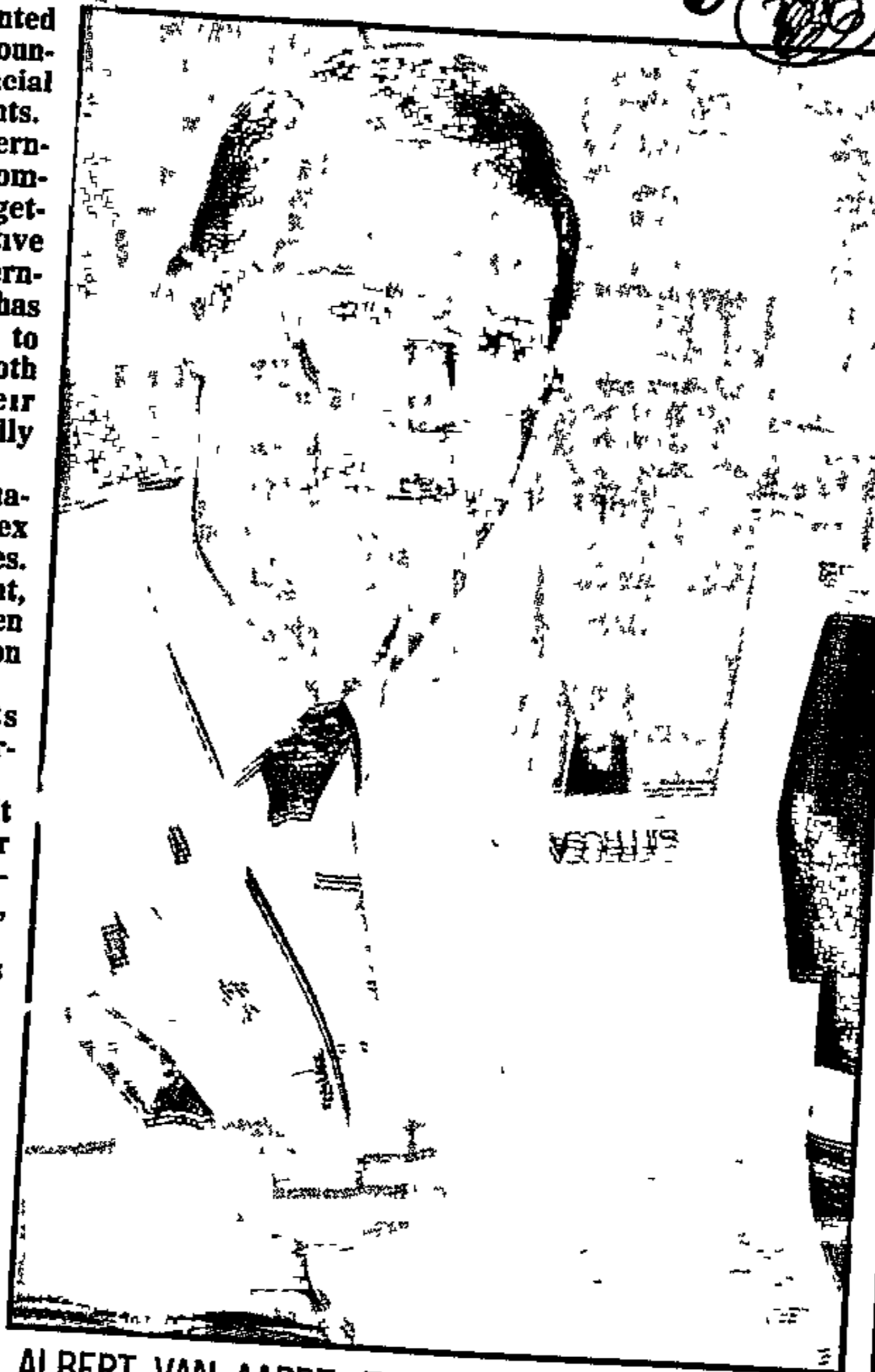
When EDI came to be recognised as a major way to simplify matters, the United Nations (through Economic Commission for Europe, Working Party 4) was asked to provide the international standards for EDI. Since then 126 messages have been published, plus rules and guidelines.

The standards being adopted in SA are largely based on those recommended by the UN and known as the EDI-FACT syntax (EDI for administration, commerce and transport).

It is a standard that can be used by all industries, in all vertical markets and is not limited in terms of application.

SITPROSA's role is twofold: to represent SA at deliberations on the UN recommendations and to publicise and promote them in this country.

SITPROSA chief executive Albert van Aardt has been elected to what is believed to be the highest appointment of a South African



ALBERT VAN AARDT: Top job at the United Nations

in the UN to date. He is the vice-rapporteur of the new UN board to standardise EDI in Africa.

His election indicates more widespread acceptance of SA by the international community.

Mr van Aardt says, "This work is essential if South Africa wishes to keep abreast of other countries."

The subcommittee for EDI (EDISC), which falls under the SABS Technical Committee for Information Technology, is made up of representative organisations. They range from mining, chemicals, health care, retailing and freighting to government bodies.

The SABS along with SITPROSA and SAANA (SA Ar-

ticle Numbering Association) have formed working groups to develop messages for specific industry sectors where no international messages exist or where UN standard messages are not suited to the SA environment.

Once the working groups have standardised messages, they are approved by the subcommittee and eventually published as recommended practice.

The manager, electronic engineering and physics, standards, at the SABS, Wojtek Skowronski, says: "At this stage we are publishing them only as recommended standards because things are changing so fast that we must be able to review and update them."

## Vanguard is out to break barriers

THE South African Vanguard Initiative is a non-profit organisation devoted to promoting economic development, productivity and international competitiveness through the use of value-added and data services.

The first stage of the Vanguard Initiative was to identify the needs of value-added data services, to quantify them and identify the funding.

Steering committee chairman Rob Peacock says: "In other countries similar initiatives have been largely government backed."

## Role

"But in this country it is up to private industry to develop strategies to promote international product distribution and domestic productivity through the implementation of electronic trading."

"Until now EDI communities have been evolving vertically with little cross-industry pollination. But eventually there has to be communication horizontally among different industries. It is our role to facilitate the breaking down of industry barriers."

The Vanguard Initiative is putting together a project plan which includes a promotional campaign, training scheme and consultancy.

"Similar campaigns have worked overseas and with sufficient funding we plan to implement them here," says Mr Peacock.

# Competition Board takes up price row

S/ Times 20/6/93

(245)

By GLENDA NEVILL

THE Competition Board is to investigate complaints by a group of franchisees of a leading national music chain, who claim their parent company is charging them prices for stock that make it difficult for them to compete with their opposition.

The complaints were lodged by eight branches of the Top CD retail outlets who say the parent company has cut off their supplies, leaving them in dire straits because suppliers are contractually precluded from dealing directly with them.

The Competition Board investigation was gazetted in the Government Gazette on Friday.

The board's investigation will be in terms of section 10 (1) of the Maintenance and Promotion of Competition Act.

The intention is to determine whether the franchise agreements between Top CD and parent company Dial-a-Movie (the franchisers), and agreements between the franchisers and the suppliers, constitute a restrictive practice.

## Branches

The branches that have laid the complaint are in Bloemfontein, Sandton, Verwoerdburg, Musgrave Centre in Durban, Westgate in Johannesburg, East Rand Mall, and the Waterfront and Cavendish Square in Cape Town.

Owners of the dissatisfied franchises claim they are unable to compete with other retailers because Top CD — which is owned by Dial-A-Movie, a company listed on the JSE — absorbs the discounts and rebates granted by suppliers.

The franchisees believe the discounts should be passed on to

them, which would allow them to immediately lower their prices.

The franchisees are also unhappy that suppliers will only deal directly with Top CD head office and not with individual franchise holders.

"We were told when we signed the contracts that we could buy stock from authorised suppliers. What we weren't told is that the suppliers were already tied to a contract with head office which precludes them from dealing directly with the franchisees," a source said.

## Discounts

Mr David Kahn, an attorney for Top CD, said last week that supplies had been cut off to all the eight franchisees because they were in arrears with either their payments for CDs supplied to them, or franchise and advertising fees and or establishment costs.

This is disputed by the franchisees who claim that many of the discrepancies are a result of "genuine disputes" which they say Top CD has refused to address.

Mr Kahn confirmed that the company was not passing on discounts to franchisees.

"The only reason we are getting these discounts is because we are buying on behalf of about 20 stores, who would anyway not be able to get individual discounts on bulk purchases."

"I am not aware of any written agreement that precludes them from dealing directly with a supplier, but the suppliers are refusing to deal with them as they are already dealing with us."

"However we have taken advice from counsel who have told us there

has been no breach of contract on our part."

Attorneys Mohamed Husain and Mark Radomsky of Edward Nathan and Friedland, who are representing six of the franchisees, said they were confident that the Competition Board would come to their clients' assistance.

Yesterday a spokesman for the franchisees said they had received verbal undertakings from local CD suppliers, who have indicated that they would be "happy to deal with individual stores. The suppliers had also indicated that they would also be prepared to pass on "substantial" discounts to them.

Top CD's parent com-

pany, Dial-a-Movie, was a top performer on the Johannesburg Stock Exchange in the first quarter of this year when its share price rose 355%. The chief Executive of Dial-A-Movie, Brian Cunningham, was recently quoted as saying that the CD business is expected to make up two-thirds of the company's profits in the current financial year, which ends this month.

Compact disc prices are a sensitive issue. Earlier this year top groups Dire Straits and Simply Red accused their record companies of "greed" because they were overpricing CDs.

Managers of these groups said record companies were "manipulating the market."

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# Dial-a-Movie franchise row

B/DAY • 22/6/93  
 MATTHEW CURTIN

PUBLIC Enterprises Minister Dawie de Villiers was considering placing a restraint of trade order on Dial-a-Movie, the listed video and CD store franchisor under investigation by the Competition Board for restrictive trade practices, a government source said yesterday.

The board announced on Friday that it was conducting a wide-ranging investigation into Dial-a-Movie and its Top CD franchise. The investigation hinges on complaints by some franchisees that Dial-a-Movie is preventing them from setting their own prices and buying stock directly from record companies, which offer significant discounts to retailers. The franchisees have alleged Dial-a-Movie pockets the discounts without passing on the benefits.

They say these practices are in breach of their franchise agreements, and are making their businesses uneconomic because they cannot compete with rival chains.

A restraint of trade order would prohibit the company from these activities, but a government source said De Villiers still had to evaluate a board recommendation on the issue. A Ministry spokesman said he could not comment yesterday.

Top CD franchisee committee spokesman Ron Hagger said he could not comment because of a confidentiality agree-

ment struck between the eight franchise owners he represented and Dial-a-Movie management while negotiations continued. Talks started on Sunday and are expected to finish tomorrow. Dial-a-Movie executive chairman Brian Cunningham is abroad and operations director Gert Nel was not available for comment.

It was reported at the weekend that a Dial-a-Movie spokesman confirmed the company had cut off supplies to the eight franchises which had registered the complaint. He confirmed Dial-a-Movie was not passing on discounts and said supplies had been cut to stores which were behind in their stock and advertising-fee payments, a charge denied by the franchisees who claimed the company was behind in meeting their queries on available discounts.

(245) It is not the first time Dial-a-Movie has fallen foul of the management of its franchises. At least 20 disgruntled franchisees cancelled contracts with the company for the management of its video stores in February 1990, complaining that the company was overspending on video titles and was not delivering the benefits promised from its advertising campaign.

# Dial-A-Movie to fight order

B/Sa.  
2/16/93

MATTHEW CURTIN

DIAL-A-MOVIE, the video and compact disc franchisor under investigation by the Competition Board, may apply for an amendment to a government restraint-of-trade order due to appear in tomorrow's Government Gazette. (245) (245)

Attorney David Kahn, representing the company in its dispute with a number of Top CD franchisees, said yesterday Dial-A-Movie was likely to make representations to the board to change the terms of the Public Enterprises Ministry directive

The directive from Minister Dawie de Villiers was issued on a board recommendation after the launch of a probe into allegations of restrictive business practices carried out by the

company. It prohibited Dial-a-Movie from exercising any bar on franchisees buying stock direct from music companies and setting prices.

Kahn said there was no question of the company being involved in price-fixing, a criminal offence under the Maintenance and Promotion of Competition Act. However, it was not possible to comment further on the dispute because of the sensitivity of negotiations with the franchisees.

A source close to the eight aggrieved Top CD franchise managers said tentative plans were being considered for new meetings with company management.

# Minister calls tune in row over contracts to sell CDs

SI Times EC Metro 2/11/93

A DIRECTIVE from the Minister of Public Enterprises Dr Dawie de Villiers has overridden a contract between Top CD franchisees and their parent company that precludes franchisees from dealing directly with CD and cassette suppliers

The directive, pub-

By **GLEND A NEVILL**

lished in the Government Gazette on Friday, ordered that the parent company, Dial-a-Movie, should not "directly or indirectly compel or induce their franchisees from charging a particular, or particular minimum, selling price"

This move follows a decision by the Competition Board to investigate complaints by eight branches of Top CD in the country — including two in Cape Town

The branches com-

plained that the parent company was not passing on large discounts from record companies that would have allowed them to drop their prices (245)

After the complaint was filed, the Competition Board instituted a two-point restraint of trade order on Dial-a-Movie under section 10 of the Maintenance and Promotion of Competition Act. (245)

The Competition Board's investigation into "restrictive business practices" would be

completed in three months, a spokesman for the Board said (245)

The attorney for the franchisees, Mr Mark Radomsky of Edward, Nathan and Friedland, said his clients wanted to be released from their contracts

## SABS issues warning on quality of SA products

MZIWAKHE HLANGANI (245)

THE poor quality of SA products would make the country uncompetitive in international markets, SA Bureau of Standards president Jean du Plessis said in his 1992 report

Du Plessis said the high costs of capital and labour placed limitations on industrial growth.

Growth was further limited by lack of capital investment, frequently outdated capital equipment, illiteracy and a shortage of trained workers and managers

He expected the decline in growth rate to get worse in the year ahead

The recession, the longest since the Second World War, had an adverse effect on overall business activity. As a result of SA's economic structural problems there was little prospect of an early turnaround in conditions

Du Plessis attributed the limitations on industrial production to continuing harsh economic conditions

He said the nature of SABS's activities had insulated it from the recession. But declining production activity and price resistance among customers would make 1993 more difficult than 1992, he said.

The subdued state of the trading partners' economies would exacerbate the situation, he said.

Investigations, tests and services had remained the backbone of SABS's income.

These had contributed a 16,4% increase to R39m (R33,5m) in income. Self-generated income had risen to R73m (R60,7m)

Other important revenue sources included levies for compulsory specification, permit fees for standardisation marks, listing schemes and assessment services

# Govt delays move on drugs pricing policy

B/Day 28/6/93

**STRONG** reaction to government's decision to outlaw discriminatory pricing practices by drug manufacturers, due to come into effect today, has led Public Enterprises Minister Dawie de Vilhiers to amend and delay the prohibiting notice.

A revised notice, based on new representations to the Competition Board, was published in the Government Gazette on Friday and will take effect from August 10.

However, De Vilhiers said the recommended amendments "do not derogate from the principal purpose of the notice, which is to outlaw discriminatory practices which are distorting competition in the market without, on the evidence presented, yielding any substantial public interest benefits" (245)

Following an investigation, the board recommended last year that drug manufacturers should not discriminate in favour of dispensing doctors, who were found to be winning an increasing share of the R1,1bn drug market (182)

The pharmaceutical industry wel-

**MATTHEW CURTIN**

comed the ruling. Manufacturers were favouring trading doctors and private hospitals with special prices, which led to profit-taking by dispensing doctors with little benefit for patients.

De Vilhiers said reaction to the original notice had been widespread.

It is understood that the pharmaceutical industry and the Medical Association of SA were concerned that the ruling appeared to outlaw the offer of medicine samples and gifts by wholesalers to their customers.

De Vilhiers said the prohibition was couched in general terms which the courts would interpret on a case-by-case basis. The prohibition did not "oblige manufacturers to sell medicine to all buyers at the same price" or affect their distribution policy.

Manufacturers were not prevented from registering or marketing the same drugs at different prices as long as all purchasers had "equal access to the differently priced medicines"

# Fasa monitors probe

SOUTHERN BUSINESS 4-17-93

Business Times Reporter

THE Competition Board's probe into the dealings of Dial-a-Movie and Top CD could have huge ramifications for the franchising industry and as a result is being closely monitored by the Franchise Association of Southern Africa (Fasa)

Fasa, which wants to avoid government control of franchising, says if any feature of a member's activities is illegal or unethical, it would terminate their membership.

The Competition Board last week launched an official probe into claims by eight Top CD franchisees that the holding company Dial-A-Movie was involved in restrictive practices (245)

These include preventing stores from setting their own prices, forcing the franchisees to buy stock through Dial-A-Movie and failing to pass on discounts given by record companies

Fasa says agreements where franchisers are required to purchase goods from the franchisor are not unusual and are perfectly legitimate provided the arrangement is not contrary to the public interest or otherwise unethical (245)

"It is however fundamental that the franchiser should not profit from his franchisees in a secret or underhand way. Mark-ups on goods supplied by a franchisor to a franchisee should be reasonable and the franchisor should ensure that franchisees are fully aware of such mark-ups and any bulk discounts which may accrue to the franchisor"

Franchisees would be dissatisfied if they found that their franchisors were taking secret profits.



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# Anger over longer liquor sales hours

5 Times CC Metro 11/7/43

By JACOB DLAMINI

ANGRY independent liquor store owners have rejected proposals to extend trading hours of retail stores and have accused the government of insensitivity.

The proposals are part of the Liquor Law Amendment Bill, which went through its second reading in Parliament recently. In terms of the new Bill bottle stores would be allowed to trade from 8 am to 8 pm during weekdays and 8 am to 5 pm on Saturdays. The bill does not make provisions for trading on Sundays.

Bottle store owners claim that only chain stores stand to benefit as they have the resources to make staff adjustments. They say that extended trading hours would lead to an increase in robberies.

Raul Teixeira, executive member of the South African Liquor Store Owners Association, said: "There is no sales advantage for small traders. The law will mean convenient shopping hours for the consumer, but huge security risks for us."

Mr Teixeira said only chain stores would benefit from the new law as most were situated in shopping centres which had extensive security arrangements. "It is not fair that people who only form nine percent of the retail industry should be the only ones to benefit from the law," he said.

Mr Teixeira said his Association made representations to the government which were ignored. "We sent them a letter but our views were not considered. Maybe if we march they will listen to us," Mr Teixeira said.

Major chain stores have welcomed the new proposals but countered allegations made by the independent owners. They said the new bill would lead to staff and labour adjustments which could become costly.

"Small owners stand to benefit the most as they do not have unions to complain about overtime," said Rob Rutter, general manager of Benny Goldberg Liquor stores.

Mr Rutter said: "I will not be making any changes, so this will have no impact on my business."

The proposals were welcomed by Trevor Pearman, a director of Rebel Liquor Group. "We are in favour of the new bill. We want to provide the best possible service to our consumers," Mr Pearman said. He said his company would look at ways of making adjustments suit both the employees and the consumers.

Len Pfister, legal director for Western Province Cellars, also accepted the new bill saying, "The new bill does not prescribe to anybody. It merely provides maximum trading hours which can be ignored

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# Demand buoys up De Beers

DE BEERS reached a 12-month high of R88,75 after the Central Selling Organisation announced 42% higher diamond sales of \$2,54-billion for the first six months of 1993.

The CSO warns that although demand for rough stones remains firm, it would be unwise to consider the first-half jump a reliable guide for the year's outcome.

Sales were aided by seasonal factors, fewer Angolan and Zairean roughs, the first-quarter shortage of Russian polished stones, buoyant demand from India and increased exports of polished stones to America.

India has 250 000 diamond cutters who bring in stones for polishing and export. Full convertibility of the rupee improved their fortunes and they were able to handle more stones. The second-largest cutting centre is Israel with 9 000.

The dry season and political instability in Angola and Zaire have led to renewed

supply of stones from these areas, but not in the large quantities of last year.

Russian polished supply dried up because of the introduction of a 20% export surcharge. Although this is thought to have been removed, bureaucracy is hampering the normal flow of diamonds.

Another new source of supply in the second half of the year is the American Government, which sold \$77-million of roughs from its strategic stockpile and is believed to plan more sales.

The polished-stone market is weaker than that of roughs. The CSO predicts no dramatic improvement in retail sales until the world economy recovers.

Better sales allowed the CSO to lift average prices 1,5% in February, mainly on stones of three carats and greater, where demand is strongest.

In May, producers' delivery entitlements were raised 5% to 80%. This figure has now been lifted to 85%.

## Terra tops unlisted probe

THE Business Practices Committee, chaired by Louise Tager, is to investigate Terra Exploration & Development.

The inquiry will be undertaken in terms of the Harmful Business Practices Act.

Terra has issued shares to the public either for cash or in exchange for shares in other non-listed public companies. It was refused a JSE listing last year.

Terra is a subsidiary of Falcon Development. In the past few years it has undertaken an elaborate paper chase, issuing shares to holders of various companies controlled by Mike de Pinna.

The companies include Hemisphere, Redbark, New Era and Great African Resources. They all required qualified financial statements, generated little or no income and were largely dormant.

The committee will also investigate limited liability companies FCF Developing Capital, Falcon Developing Capital, FCF Securities and La Roc, and proprietaries Falcon Corporate Finance, REF Corporate Finance, Terra Holdings, Principal Securities, Principal Mining, Manresa Investments CC, all

subsidiaries, directors, employees, brokers or agents.

Anyone wishing to make a representation may write to the committee's secretary, Private Bag X84 Pretoria 0001, before July 22.

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# Anglo backs ANC call for competition probe

BizDay 12/1/93  
(245)

ANGLO American has thrown its weight behind the ANC's call for an independent inquiry into competition policy, saying the policy must be settled before real economic reform can go ahead.

In his 1993 annual statement, Anglo American chairman Julian Ogilvie Thompson said SA had to find a policy that would give it the "right mix" of strategies pursued by Pacific Rim nations and those in Europe.

An independent inquiry "would increase the likelihood of arriving at a consensus based on economic rather than political criteria, consistent with the sound macroeconomic framework the country is now developing".

The commission should be properly constituted, Ogilvie Thompson added, and chaired by an international expert, with representatives from government, trade unions, business and consumers.

The backing is the first olive branch publicly offered by big business to the ANC since the debate on anti-trust and competition

## ANDY DUFFY

policy heated up in December last year.

The ANC wants to implement anti-trust policies, which it argues would dilute ownership, boost competition and encourage foreign investment. The policy is in line with unbundling large conglomerates and the banning of cross-directorships, both of which could put the ANC at odds with Anglo.

Ogilvie Thompson said SA had to "restart and sustain economic growth" and broaden the participation of black South Africans in the economy. "Nothing should be done which thwarts these overriding goals," he said.

However, anti-trust legislation was not appropriate because SA was a developing country. "An acceptable trade-off has to be found," Ogilvie Thompson said. "SA cannot afford a purist competition policy that enfeebles the private sector's capacity to compete internationally and create wealth."

Despite the overture to the ANC, Ogilvie Thompson

still left himself at variance with the organisation, arguing that SA needed more large companies "if it is to hold its own in the 21st century".

Anglo's size and financial strength had allowed it to compete effectively at home and overseas, he added, and also take on large projects such as the R3,5bn Columbus stainless steel joint venture.

Ogilvie Thompson also reiterated opposition to unbundling.

Though Anglo did trade at an average discount to net asset value of around 21%, he said shareholder wealth was unlocked elsewhere in the premium at which the shares of Anglo's subsidiaries and associates traded.

Increased competition would not come from breaking up corporate masses, but exposing its companies to the full force of international trade.

Too much of the SA economy was dependent on the measures introduced during the apartheid years, Ogilvie Thompson said.

Competition at home and greater foreign investment hung on tariff reform coinciding with the gradual lifting of exchange controls.

Business 14/7/93

# Stones fly in glass industry

EDWARD WEST

INDEPENDENT glass distributors have thrown more stones for the Competition Board's current investigation into SA's leading producer, Plate Glass & Shatterprufe Industries

Triangle Glass and other independent glass distributors made representations to the Competition Board concerning Glass SA's proposed acquisition of Hardglass Safety Manufacturers, Triangle MD Cyril Gebhardt said in a statement. This development in the R1bn a year glass industry added fuel to the Competition Board's recent decision to investigate the structure and conduct of Glass SA's listed parent Plate Glass & Shatterprufe Industries

Glass SA subsidiary PFG Toughened Glass and Hardglass are SA's two major toughened architectural glass manufacturers. Gebhardt said the acquisition would allow Glass SA to further dominate the industry if it went ahead with the deal.

A Glass SA spokesman said the group had submitted a motivation to the Com-

petition Board for the proposed acquisition and was awaiting its advice (245)

On a related front, Triangle and its allies were embroiled in a battle with PFG through the Board on Tariffs and Trade (BTT) over anti-dumping duties. The BTT had postponed a final decision on this matter after refusing an application by PFG for renewal of provisional duties.

Adding to the furore was a complaint submitted to the Competition Board by car glass manufacturer Glasfit over PFG's refusal to continue to supply toughened glass to it at distributor prices, thus giving PG Automotive Safety Glass, a company within the stable of Plate Glass and Shatterprufe Industries, an unfair advantage.

"Glass SA claims that the additional production capacity at Hardglass will allow it to expand its export portfolio without having to erect a new plant, but we believe the motive is to control the industry and its price structures," said Gebhardt.

Star 20/1/93

### 'No evidence of collusion'

Competition Board chairman Dr Pierre Brooks, who is investigating the possibility of collusion between manufacturers over margarine price hikes, said in Cape Town yesterday that there is insufficient evidence to suggest collusion had taken place. The board launched its investigation last week after retailers announced price increases on margarine and low and medium fat spreads of up to 84 percent — Sapa

(245)

# Board strained by work load

THE Competition Board is straining under the heaviest work load it has ever faced as it prepares for an increasingly high-profile role in shaping business in SA.

Investigations director Wouter Meyer said yesterday the board was "inundated with work" and had never been busier in the past 10 years. *B. Bay*

Meyer said the board's attention was primarily focused on the new powers it was expected to win later this year — due to government plans to pass legislation enabling the board to ban certain deals and mergers and impose fines — and its long-standing investigation into the deregulation of professional services. *22/7/93*

The deregulation probe would be a time-consuming exercise. The board was investigating the ways in which statutory regulations could be eliminated in the legal, medical, veterinary, pharmaceutical and other professions that amounted to work reservation or restrictions on entry, marketing, price competition and association.

In addition, the board was dealing with eight key investigations and appeals:

□ A preliminary investigation into price

MATTHEW CURTIN

collusion in the sale of margarine sparked by last week's 84% price increase in some brands by the Shoprite/Checkers chain;

□ An investigation into price fixing and restrictive trade practices between listed franchisor Dial-a-Movie and its Top-CD outlets;

□ A delayed notice outlawing discriminatory pricing practices by drug manufacturers, which is effective on August 10;

□ The continuing probe into the structure and conduct of Plate Glass and Shatter-prufe Industries, *(245)*

□ The retail rationalisation plan probe into the informal agreement between government and the oil industry, which critics say prevents the sale of cut-price petrol;

□ The investigation into whether abattoir corporation Abacor is a monopoly;

□ A second investigation into the marketing of computer hardware and software by computer group ISM; and

□ The appeal by Transnet against government's decision to back board recommendations that it make land owned by it in Richards Bay available to a developer.

# Dial-A-Movie trade restraint lifted

<sup>Bliss</sup>  
THE Public Enterprises Ministry has lifted the restraint of trade order placed on Dial-A-Movie in June after a dispute with its franchise arm, Top CD, over pricing and record procurement. 9/8/93

Competition Board chairman Pierre Brooks said the company and its franchisee operations had come to an agreement which obviated the need for the order.

Under the agreement, Dial-A-Movie will no longer require its franchisees to adhere to a particular price for stock, and will not use fees which Top CD refuses to pay as a basis for withholding supplies.

The grievance between the company and its franchisees came to a head in June, when Top CD complained to the Competition Board that the parent company was charging it prices which made it difficult to compete. (245) (245)

The board launched a wide-ranging investigation into Dial-A-Movie on the grounds of restrictive practices, which

ROBYN CHALMERS

prompted Public Enterprises Minister Dawie de Villiers to place the interim trade restraint order.

Brooks says the investigation is still under way, with the board due to produce its report by October.

In a separate development, the board has put the spotlight on the proposed joint venture between Imperial Cold Storage and Nel's Bliss.

The two groups announced last month they planned to merge their milk and fruit juice interests into a venture with a R250m turnover.

The board said it was not consulted on the merger, being informed of the transaction only the day before the announcement, and had requested additional information from the organisations in order to determine whether it would institute a formal investigation.

# Medicine price regulation delayed

KATHRYN STRACHAN

EXPECTATIONS of an early introduction of a single "exit price" for medicines were dashed last week when pharmaceutical manufacturers lodged objections to planned regulation.

A single exit price has been seen as an aid to stabilising medicine costs.

Competition Board chairman Pierre Brooks said the appeal against a single exit price — the price at which medicines leave the factory — would result in a second inquiry which could take up to two years to complete.

At present, manufacturers charge different prices for their products, depending on the client.

On the basis of recommendations that followed a year-long inquiry by the Competition Board, Trade and Industry Minister Dawie de Villiers in May declared the

differential pricing of medicines unlawful. But in terms of the Maintenance and Promotion of Competition Act, the manufacturers had until last Tuesday to lodge an appeal against the introduction of a single price.

Brooks said last week a court with a judge and two assessors would soon be constituted to hear submissions. It was still to be decided whether the hearing would be held from the beginning, he said, adding that with so many interested parties the inquiry could take two years to complete.

The National Association of Pharmaceutical Wholesalers said many manufacturers had courted private clinics and dispensing doctors, promoting their products.

To Page 2

245

## Medicine

B/Day

16/8/93

From Page 1

by offering discounts that were not available to wholesalers.

This had led to a two-tier pricing system, with wholesalers being charged inflated prices to "balance the books".

The discount offered to doctors was rarely passed on to patients, the association claimed.

Brooks said the Competition Board report found the practice had also resulted in

many doctors trading in pharmaceuticals. The case of a large wholesale group, which found it cheaper to buy supplies from a certain doctor rather than from manufacturers, was an example of the distortion brought about by the policy.

Manufacturers, on the other hand, opposed the introduction of a uniform price because it interfered with their marketing strategies, he said.





ADRIAN HADLAND

PRETORIA — The weighing and measuring of products was increasingly becoming the responsibility of suppliers and industry, the SA Bureau of Standards (SABS) said at the weekend

Deputy Trade and Industry Minister David Graaff said the opening of a new R1,9m metrology building earlier this month signified a "decided shift from pure policing funded by the taxpayer, to facilitation and control partly funded by industry"

Industry would also take over the

## Firms get weighty responsibility

81 Day 231 8193  
calibration and certification of in-service measuring equipment with organisations receiving accreditation once they had demonstrated their competence

The move towards self-regulation, which included the earlier transfer of the trade metrology division from the department to the SABS, was a significant step toward improved consumer protection, Graaff said

An SABS statement said consumers had been short-changed on several occasions recently

The transfer of responsibility to industry would serve to prevent this in future, it said (245)

The bureau's trade metrology arm had been "sensitising" industry to its new role and responsibilities

"This has resulted in greater awareness in industry of how important it is for consumers to be correctly informed about the mass or volume of products"

# Should your doctor be a pill-pusher?

**Drug manufacturers** like to sell pills and capsules through doctors because they create demand for the product every time they write a prescription. Some doctors like to sell drugs directly to patients because of the huge profits — they buy drugs at a big discount and sell at close to the price any pharmacy would charge. A few even supply wholesalers and pharmacies. *Fm 10/9/93*

The Competition Board doesn't like this setup. It claims that consumers are the losers because they're forced to pay exorbitant prices in pharmacies so the drug companies can make up the discounts they hand out to doctors — discounts that doctors rarely pass on to patients. So in December the board recommended that the practice must be stopped by forcing manufacturers to end the special deals for doctors and charge the same prices to everyone — wholesalers, hospitals and doctors — adjusted only for volume and other factors.

In June, government agreed and the prohibition was to take effect last month. But at the last moment five of the big multinational drug companies appealed. The appeal could take two years — it probably will be six months before the Supreme Court even hears the case — so a debate that has raged for the past decade will continue for some time.

From a strictly free-market standpoint, the board has erred. Critics say that if drug companies want to offer big discounts to people who can push their products, that should be their right. If someone is making excessive profits, then there must be some government regulation or other intervention that's restricting competition and should be eliminated.

Government certainly has a massive role in the drug market. State hospitals buy 70% of the drug companies' output but use their clout to win big discounts so they supply only 30% of the companies' revenue. Then there are generic drugs: government still has not approved the sale of cheaper, generic equivalents of most drugs. Finally, there's the overregulation at the retail level: the corner pharmacies are still protected against competition from large chains such as Chicks and

Pick 'n Pay

(245)

The Representative Association of Medical Schemes (Rams), whose members foot the bills for the ever-more costly drugs, says addressing these issues will do much more to reduce drug prices than any difficult-to-enforce ban on discounts to doctors. Says Rams executive director Reg Magennis: "Rams does not believe that the introduction of this single measure will, in isolation, contribute significantly to reducing the medicine-cost spiral. This objective can be achieved only in the context of a comprehensive and well-structured strategy involving all players in the health-care system." *(10/9)*



Prescription drugs doctor's little helper

The dispute over the so-called dispensing doctors goes back to 1984. With drug prices escalating, government gave pharmacists the go-ahead to substitute generic equivalents for expensive branded drugs. So the manufacturers, angered by the reform, began encouraging more doctors to buy their branded drugs directly from them, sweetening deals with prices that undercut wholesalers by as much as 50%.

Eventually, pharmacists were barred from suggesting a generic substitute — the doctor or patient has to ask for it — but the cosy relationship between the doctors and manufacturers continued. Doctors now dispense about 30% of all private-sector prescription medicines, five years ago the figure was only

10%. Medical schemes report that last year some individual doctors dispensed more than R800 000 worth of medicine. Some earn more from dispensing than they do from their practices.

The mushrooming sales by doctors have raised ethical as well as legal questions: is it right for doctors, who stand to make a lot of money, to be pushing drugs through the prescription pen?

The Medical Act clearly prohibits doctors from trading, but the Medical & Dental Council has found it difficult to enforce these rules in all but a few cases.

It's not fine points of ethics, however, that concern the wholesalers and retailers, the issue for them is lost sales and profits. The manufacturers have to recoup these discounts from somewhere, says one wholesaler.

But the manufacturers apparently don't feel as strongly. Only five — SmithKline Beecham, Pfizer, Wellcome, Rhône-Poulenc Rorer and Glaxo — joined the appeal. SA Pharmaceutical Manufacturers' Association president Hugo Snyckers stresses that the manufacturers have supported the principle of charging the same price to everyone — called single-exit pricing — for some time. He says their complaint is over the vague and confusing wording of the ban on discounts.

Instead of doctors, however, the manufacturers may be contemplating an entirely different market. The Medical Schemes Amendment Act, which takes effect next year, allows medical schemes and group practices to run their own dispensaries, which will give them the bargaining power to negotiate for discounts from manufacturers. Says Snyckers: "We don't want to call in the lawyers or end up in court every time we want to strike a deal. One needs scope to negotiate."

Indeed, giving medical schemes more bargaining power, along with other reforms in the pipeline or under discussion — such as allowing large retail chains to run pharmacies, clearing the way for greater use of generics and dropping restrictions on the imports of some drugs — may make the whole issue of discounts to doctors moot by the time the appeal is finally heard.

## STEEL TRADE STILL UNDER THE MICROSCOPE

Fm 24/9/93

The long-awaited Competition Board report on alleged restrictive practices in the steel trade, which was reportedly ready to be turned over to Public Enterprises Minister Dawie de Villiers earlier this year, will be delayed for at least a few more months. (245)

"Hopefully, the report will be ready by the end of the year," says a board staff member. "Work pressures flowing from other priority investigations prevented its earlier completion, as expected."

The investigation is focused on steel traders, which buy steel from producers

such as Iscor and sell it to users, but Iscor also will be looked at because customers are able to buy directly from it in certain circumstances.

"We are also investigating alleged collusion between Copalcor and Non-Ferrous Metals in the purchasing of non-ferrous scrap," the staff member says. "But, while sales collusion is illegal, there is as yet no blanket ban on co-operative purchasing. However, if our investigation should show such behaviour to be against the public interest, it might also be outlawed."

## Food proposals 'will protect consumer'

THE ANC's proposals to drop the agriculture control boards in favour of deregulated food trade were in line with the country moving from an era of producer protection to one of consumer protection. *Biday*

This was the view of Stellenbosch University's Prof Ecker Kassier, who welcomed the proposals yesterday. Kassier published a report on control boards earlier this year. *27 1993*

The ANC produced a policy document at the weekend calling for the scrapping of more than 20 control boards and all restrictions on marketing and moving agricultural products. Only minimum health and hygiene regulations would remain.

GAVIN DU VENAGE

The ANC's report went further than the Kassier report, which recommended the boards remain in place but that their legislative powers be removed. Kassier proposed that farmers participate in control boards on a voluntary basis and be allowed to use other marketing channels. *(245)*

The ANC's land and agriculture policy centre recommended that a single regulatory and legislative system be set up to market agricultural products. However, Kassier warned yesterday that small farmers would need access to some form of marketing channel in place of the boards.

# Dial-A-Movie listing suspended

BY ROY COKAYNE

The JSE listing of video and compact disc franchiser Dial-A-Movie, among the Financial Mail's Top 300 industrial companies, has been suspended following its provisional liquidation in the Pretoria Supreme Court.

A spokesman for attorneys David Kahn & Associates in Johannesburg confirmed yesterday that Dial-A-Movie had been placed in provisional liquidation on Monday.

The spokesman said the application was brought by David Kahn & Associates as a creditor.

Staff at Dial-A-Movie's head office at Verwoerdburgstad were told last Thursday that an application was to be brought to liquidate the company.

Chief executive Brian Cunningham was unavailable for comment as he is currently overseas.

The Dial-A-Movie liquidation application followed a Ministry of Public Enterprise restraint of trade directive slapped on the company on June 18.

On the same day, a notice was published in the Government Gazette announcing a Competition Board investigation in terms of the Maintenance of Competition Act to determine whether any franchise agreements between Top CD (Pty) and Dial-A-Movie (Pty) and the company's franchisees constituted a restrictive practice.

The restraint of trade directive was withdrawn in August after Dial-A-Movie gave certain undertakings to the

Competition Board.

Prior to these two announcements, Dial-A-Movie was involved in a dispute with a number of its Top CD outlets.

These disputes have not yet been resolved but the franchised outlets are still operating. (245)

Competition Board chairman Pierre Brooks said the board's investigation had not yet been concluded.

He added that an extension had been granted to allow the Franchising Association to make a submission on the whole question of franchising in South Africa.

Brooks said apart from issuing a report on Dial-A-Movie, the idea was for the board to issue a specific document providing general background on franchising.

# Board will probe SAA

(245)

The Competition Board is to investigate alleged restrictive practices by South African Airways following a request by domestic airline Flitestar. Announcing the investigation yesterday, Competition Board chairman Dr Pierre Brooks said Flitestar had alleged the

dominant State-controlled SAA was guilty of restrictive practices. "Issues of concern are SAA's frequent-flyer programme, exclusive corporate discount arrangements, overriding commissions to agents and the improper use of its computer reservation

system." In terms of the Government's domestic air transport policy, SAA was required to shed capacity and operate as a commercial airline. Compliance with the policy necessarily entailed SAA reducing its staff — Sapa

# 'Restrictive' SAA under scrutiny

81504 18/10/93

STEPHANE BOTHMA

THE Competition Board is to investigate alleged restrictive practices by SAA for the second time in less than a year.

Board chairman Pierre Brooks said yesterday this followed a request from the privately owned domestic airline Flitestar, which claimed that state-controlled SAA was guilty of restrictive practices.

Issues to be examined by the board were SAA's frequent-flyer programme, allegations of improper use of its computer reservations system, exclusive corporate discount arrangements and overriding commission to agents, Brooks said.

Flitestar MD Jan Blake said the use of such incentive schemes was not necessarily anti-competitive, but the manner in which they were implemented could be

The board was also asked to look into the possibility of a code of conduct regarding computer reservation systems, Flitestar director Joggie Vermooten said. (245)

The investigation follows government's

appointment of a committee chaired by Civil Aviation Commissioner Japie Smit to investigate the state of SA's deregulated domestic air transport market. The committee's brief included making recommendations on the possible restructuring of the deregulation policy.

After January's investigation into SAA's operations, the board accused SAA of anti-competitive behaviour and recommended that it raise domestic fares and reduce capacity on primary domestic routes. This was in line with government policy and was, to an extent, implemented.

Brooks said "Flitestar is not convinced that the measures adopted thus far are adequate to ensure effective competition over the medium and long term."

An SAA spokesman said "We have been notified of the new investigation and will in due course give our input to the board."

# No crackdown on grey imports

By Day 29/10/93

PRETORIA — The Harmful Business Practices Committee said yesterday that regulating the parallel import market would not be in the economy's interests.

Committee chairman Louise Tager said licensed distributors of branded goods had complained that imports of grey goods — goods imported and sold without a guarantee from the manufacturer or authorised agent — undermined their businesses and reputations.

One distributor claimed smuggled or illegally imported electronic products worth more than R100m were brought into SA every year.

The committee recommended introducing a consumer code on warranty slips and sales receipts rather than a crackdown on the industry.

"The trend is to move away from regulated markets and protectionism," Tager said. "Protecting licensed importers could ultimately do the economy more harm than the importation of products that do not match local conditions."

According to submissions received by the committee, grey products were frequently intended for other countries and did not meet local specifications.

Grey marketers were also able to undercut licensed distributors as they did not have to spend money on product promotion, staff training and maintenance and often avoided import tariffs and duties. They did not offer technical back-up, servicing, compatible accessories or approved retail infrastructures.

Tager said many grey importers ran legitimate businesses. It was false to argue that prohibiting or re-

ADRIAN HADLAND

stricting parallel importation would protect investment in the distribution systems of licensed dealers.

"The only sustainable protection for this investment is competitive and productive superiority. If parallel importation threatens the local industry that industry would by definition be uncompetitive."

Consumers had the right to buy goods for which there was no warranty or back-up service, provided they were "fully aware thereof".

While it was impractical to oblige retailers and dealers to tell customers whether or not they belonged to authorised distribution networks, it should be possible for dealers to do so in consumer codes on warranty-related literature and on sales receipts.

A consumer code should inform customers whether products were guaranteed or supported by the manufacturer, the seller and/or any organisation not related to the manufacturer or licensed distributor, or not at all.

While dealers should refrain from misrepresenting the licensed distributors' support for any product, consumers also had a duty to obtain relevant warranty information, Tager said.

If dealers, grey or licensed, were found to have reneged on agreed after-sales services, steps would be taken in terms of the Harmful Business Practices Act.

Tager appealed to interest groups to submit proposals and comments on the proposed consumer code. She expected the code would be gazetted by early next year.



FLITESTAR vs SA AIRWAYS

# Upset in the making

**SA is not** following the script when it comes to airline deregulation. When other countries open up the industry and let competition reign, it's usually the government-owned or heavily cosseted private airlines that rapidly lose altitude. Having grown fat on protection, they're no match for more imaginative and aggressive rivals. The now defunct Pan-Am and Eastern in the US, and the money-losing Lufthansa and other State-owned European airlines are prime examples.

Just the opposite has happened locally since deregulation. The privately owned Flitestar was expected to make a quick meal out of SA Airways. Instead the upstart is bleeding red ink while the government-owned airline has trimmed its fat and learnt to adapt to competition. SAA turned a R70m loss in fiscal 1992 into a R78m profit in fiscal 1993, while the much smaller Flitestar has dropped R70m in the two years since it started.

Instead of the stodgy veteran asking for government help, it's the brash newcomer that's calling for a lifeline. Last month, for the second time in a year, Flitestar convinced the Competition Board to investigate whether SAA is competing fairly.

The first investigation ended in January with a recommendation that SAA should reduce its capacity and increase its fares on domestic flights, which it did. The second investigation, expected to be completed in two months, could result in much more stringent recommendations.

But if the result doesn't go Flitestar's way, the airline might not be able to survive for long. It has captured a respectable 22,5% of the market on the domestic routes it shares with SAA, but there's no end in sight to the losses. The three owners — Rentmeester Beleggings, which holds 46%; Safren Rennes Holdings, 37,5%; and Pretoria's De Meulenaar family, which holds the balance — are not willing to pump more capital into the operation. Money is so tight that advertising has been cut.

Critics point to Comair, which is making money by offering cut-rate flights from Johannesburg to Cape Town and Durban, and conclude that Flitestar's losses must be caused by mismanagement. But Flitestar denies this, quoting a study of Flitestar by international airline consultants SHE that "found that for our size, our cost structures and distances covered compare favourably with other airlines."

Flitestar claims that it entered the market after undertakings by government that SAA

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would be run as a commercial enterprise and that its capacity would be constrained, at least during a transitional period. If Flitestar can establish that these promises were specific enough to show that a breach has occurred, it may have a case for some accommodation. (245) (233)

If Flitestar folds, the shareholders will lose their entire R500m investment because the airline has no assets to sell. Its aircraft are leased; its offices rented. SAA maintains its aircraft and Safair does ground handling.

But if Flitestar can hold on for another year, it may get help from an unexpected source, the ANC. An ANC government might reverse the NP policy of commercialisation that has made SAA and other State-



owned companies leaner and more competitive than ever. If it uses SAA and the other companies as job-creation programmes and patronage pools as the Nats once did, Flitestar would get a second lease on life.

The Competition Board probe is looking at possible malpractices by SAA "resulting from its dominant position in the domestic air transport market." These possible malpractices could stem from how it handles its frequent-flier programme, corporate discount arrangements, payment of sometimes more than minimum commissions to travel agents, and its computer-reservation system.

Board chairman Pierre Brooks says this investigation will be more formal than the last one. If the finding goes against SAA, Public Enterprises Minister Dawie de Villiers, "may have to declare certain SAA conduct unlawful."

SAA CE Mike Myburgh's feeling is that Flitestar is using its position as the underdog to "get the board to carve pieces off of SAA. I agree that government's attitude should be to help the weaker airline stand on its own two feet, but not at the expense of the stronger one. Flitestar hasn't benefited from the help it was given by our reduction in capacity and increases in fares."

He says Flitestar's complaints about how SAA operates amount to objections against normal business practices. "Flitestar also operates a frequent-flier programme. Corporate discounts can be equated with volume discounts, and paying higher commissions to travel agents is probably the oldest way of doing business."

He denies that SAA's use of its computer reservation system puts Flitestar at a disadvantage. The airlines and local travel agents are linked by a computer system devised by SAA, but there are no specific allegations that SAA has manipulated this system to the other airlines' detriment.

Flitestar says it objects to SAA's frequent-flier programme because SAA has a much larger domestic route system, allowing customers to earn bonus miles on more flights and cash them in to more destinations. This puts Flitestar at a disadvantage, so it wants bonus miles earned on either airline to be good for flights on the other airline. But Myburgh says this would defeat the purpose of the programme, which is to reward customer loyalty.

Flitestar's complaint about corporate discounts is based on its fear that SAA is sewing up all the big corporate customers, such as Anglo American and Barlows. Finally, Flitestar's objection to higher commissions appears to be a red herring, for it gives a 9% commission on all tickets sold, one point more than the minimum, while SAA grants the higher commission only in certain cases.

SAA must be given time to show an adequate return on capital. But Flitestar's own capital inadequacy is not an argument against SAA's practice. Where Flitestar may have an argument is if government is in breach of specific undertakings, especially if it has welched on bringing SAA to full and final privatisation. ■

## Committee finding on interest overcharging

THE Business Practices Committee yesterday found that overcharging of interest rates on current accounts was mainly a result of poor communication between clients and banks, as well as human error resulting in incorrect rates being loaded into computers (245)

The committee had held discussions with the Council of Southern African Banks

SHARON WOOD

(Cosab), which had agreed to discuss the formulation of a Code of Good Banking Practice B/Daw 5/11/93

This would provide for information on dates, amounts and the nature of any charges, on interest debited or credited and on the interest rates applied, committee chairman Louise Tager said

## BUSINESS PRACTICES COMMITTEE

# Going after the bad guys

Fm 26/11/93

The Business Practices Committee was not greeted warmly when it began back in July 1988. Critics argued that its far-reaching powers would lead to price controls and wage freezes at a time when government was supposedly committed to deregulating the economy. The Free Market Foundation described the Act setting it up as the "type of legislation one would expect to find in the worst banana republic."

But with a host of public rip-offs amounting to hundreds of millions of rands being uncovered regularly — the milk culture saga was probably the final straw — government decided that consumers needed additional protection over and above the expensive and often inaccessible court system, protection that was already available in the US, UK, Australia and elsewhere.

The new committee was given the power to investigate any agreement, practice, scheme, operation, arrangement or understanding that it believes is a harmful or potentially harmful business practice. Its brief also included the right to search premises, seize documents and to recommend to the Minister of Trade & Industry that a business practice be stopped. Contravening the Minister's order carries a maximum penalty of R200 000 and five years in prison.

More than five years later, much of the furore has died down. Says Ken Warren, the SA Chamber of Business's director of legal affairs: "We support the work done by the committee and we believe its success has been largely due to the calibre of its seven members and the fact that it has had a strong private-sector representation. All the complaints we have referred to them have been dealt with promptly."

However, Free Market Foundation executive director Leon Louw remains wary of the committee's wide authority. "The committee's only saving grace is that it is chaired by Louise Tager." He's concerned that someone less learned, ethical and pro-free market could use the committee to shut down any business on a whim. He would prefer to see the committee prosecute an offender through the court system and make use of interdicts to stop any existing or potential harm. "We need laws that are more transparent and less dependent on the benevolence of power."

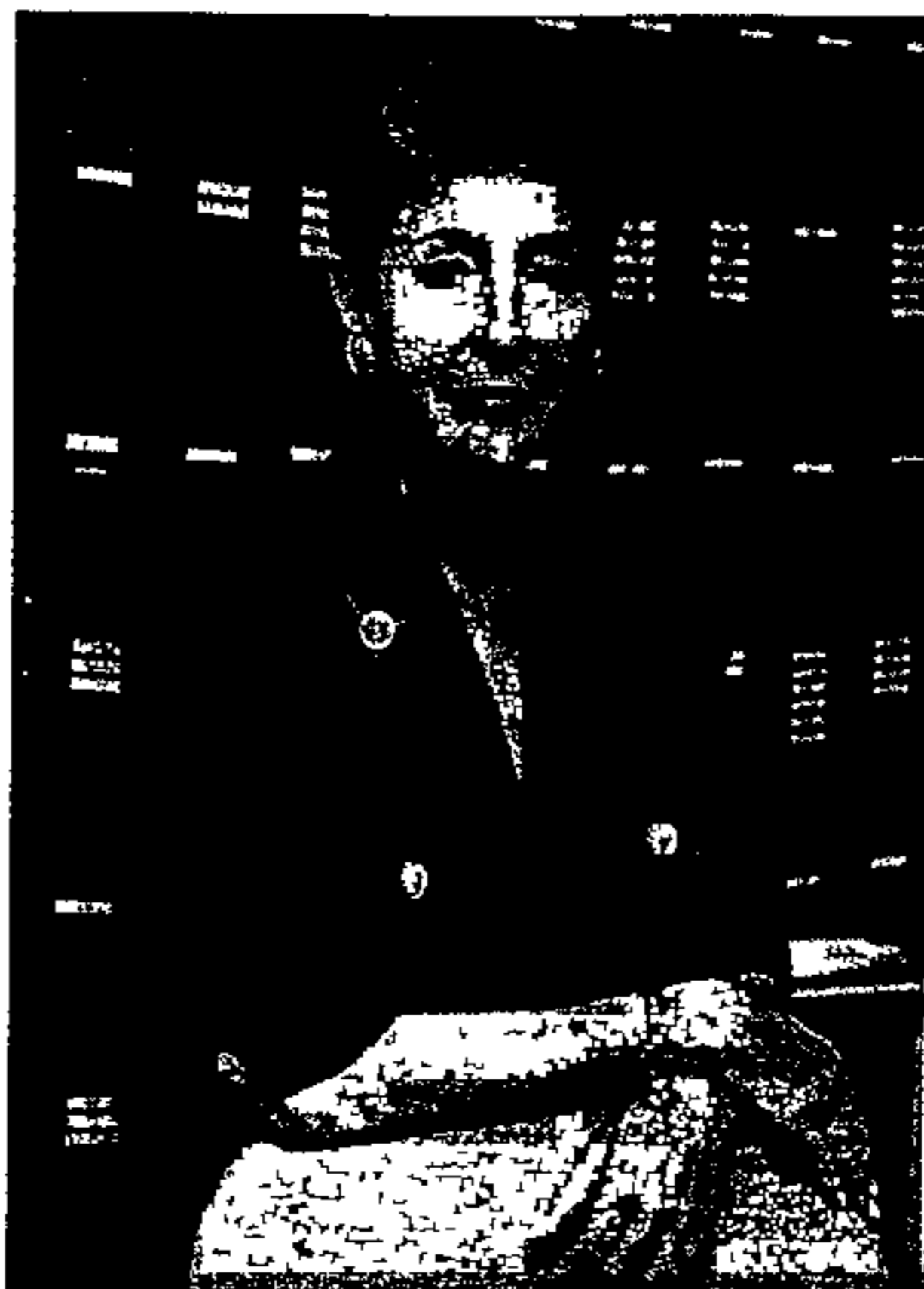
Tager insists that the committee's powers don't detract from any other legal remedies. "The consumer can still institute a civil action for damages against a party that has defrauded him or caused him loss. A criminal charge can also be laid."

But she points out that even if the defrauder is found guilty, there is little satisfaction for the consumer when the court fines or imprisons the wrongdoer. "The consumer's loss is simply not compensated." She stresses that the committee won't undertake an investigation unless there is a possibility of

harm to the consumer. The party under investigation has the benefit of a full hearing and the committee's findings, with reasons, are made available. "Anybody who acts any differently would be exceeding the parameters of the Act (245)"

But while speculation about the committee's future — as with the rest of the legal system — continues, it's clear there's a demand for its services now. By the end of last year, the committee had received 527 complaints and instituted 28 full investigations, many of the complaints are sorted out simply through an informal discussion.

Tager agrees that she's understaffed but says there's simply no point in asking for greater resources when the State can't afford more. Still, in recent months the committee's



**Tager** going beyond the court system to protect consumers

been given more teeth.

A recent amendment allows the committee to attach money or property related to the investigation and prohibit the person under investigation from dealing with the money or property concerned. The Minister, on the advice of the committee, also can appoint a curator to oversee the business, sell the assets and distribute the money among the victims.

Says Tager: "This power is intended to address the situation where the committee has recommended that a business be stopped, thus preventing further harm to consumers, but has been unable to redress losses already suffered. Parties under investigation are often in possession of valuable assets. For example, Riaan Coetzee of Truckor, who took around R20m from consumers for trucking contracts that never materialised, was in possession of 20 luxury cars that the committee could not touch when his

business was stopped."

Another amendment allows the Minister to issue a temporary order to stop a business practice for six months while the committee investigates. Previously, activity could only be halted for three months.

The most far-reaching amendment, though, is one that allows the committee to proceed with a preliminary investigation — seizing documents — without giving notice in the *Government Gazette*. Says Tager: "The notice had the effect of prejudicing the business in the public eye before an investigation was started. In any event, a preliminary investigation often ends there and doesn't lead to a final investigation."

Looking back on the committee's work, Tager says the area of greatest exploitation appears to be taking place through the sale of shares and debentures in public unlisted companies. "Thousands of small investors are persuaded to invest their life savings in shares that will in all probability never amount to anything." The problem is that shares in a public unlisted company are usually sold without a prospectus. The promoters argue that the sale is a private placing, therefore no prospectus is required.

"It is our view that the sale of shares to the public without adequate disclosure of information on the financial position of the company could constitute a harmful practice. Similarly, the sale of debentures in unlisted companies without a prospectus, in the case of Supreme Bond and others, constituted a harmful practice, particularly since they were sold to repay old debentures that were due, a purpose not disclosed to the public."

Tager says an increasing number of complaints have been received against people who liquidate their companies and immediately resume business under a new name.

Tager also says she's warned the public to beware of investing without adequate financial information about the company, but that a major problem is the abuse of the Companies Act. "The public perception is that statutory protection comes automatically with a public company. But statutory protection is a myth — who polices the statute?" She favours a dramatic revision of the Act.

On the other hand, Tager is happy about the committee's success in encouraging self-regulatory bodies in several industries to have their internal codes of conduct approved by the committee. Codes already are approved for the furniture, motor, advertising, timeshare and vehicle-recovery services industries. Codes for the building, travel and beauty sectors are being prepared.

Says Tager: "Codes contain norms and standards by which that particular sector has chosen to discipline itself. A code is, therefore, not a regulation imposed by government; it consists of the standards identified by fellow businessmen."

# Fuel industry faces new business rules

By CIARAN RYAN

THE Competition Board is expected to recommend a "managed deregulation" of the oil industry when it meets early in the new year.

The board will make recommendations on the Service Station Rationalisation Plan (Ratplan), an unsigned agreement between the Government, the Motor Industries Federation and oil companies to limit the number of service stations.

The board investigation follows complaints from the public that the Ratplan contravenes the Maintenance and Promotion of Competition

Act of 1979.

There are fears that abolishing the Ratplan without a similar deregulation of the oil industry could lead to a proliferation of petrol stations, forcing smaller stations to close.

"As long as you have price control over fuel, service station owners could approach the Government to raise the retail margin, claiming lower profits and tougher competition," says Wouter Meyer of the Com-

petition Board.

"It seems you cannot call for the abolition of the Ratplan without addressing fuel price control."

It is understood that the oil companies and the Government came out in favour of the continued operation of the Ratplan in the face of complaints that smaller service station owners were being forced out of business so that their site quotas could be allocated elsewhere.

The oil companies claim the sites were not economically viable, but this is rejected by garage owners.

The Ratplan regulates the increase of service stations by issuing oil companies with limited site quotas. To generate more quotas, oil companies must stop supplying or close down "uneconomic" sites so that newer, bigger stations may open elsewhere.

A total of 90 petrol stations were closed down in the last two years and 131 new ones opened up. The number of service stations has increased just 10% since the 1960s while fuel throughput has gone up 300%. Many of the service stations closed down are feasible businesses.

