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GENERAL NOTICES

NOTICE 2969 OF 2004

DEPARTMENT OF TRADE AND INDUSTRY CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Mandisi Mpahlwa, MP, Minister of Trade and Industry, do hereby, in terms of section 10(3) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), publish the report of the Consumer Affairs Committee on the result of an investigation made by the Committee pursuant to General Notice 2138 of 2004 as published in Government Gazette No 26884 dated 23 September 2004, as set out in the Schedule.



M B M MPAHLWA

MINISTER OF TRADE AND INDUSTRY

SCHEDULE

CONSUMER AFFAIRS COMMITTEE

REPORT IN TERMS OF SECTION 10(1) OF THE
CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988
(ACT NO. 71 OF 1988)

Report No 119

An investigation in terms of section 8(1)(a) of the
Consumer Affairs (Unfair Business Practices) Act, 71 of 1988,
into the business practices of Johan Parsons and
Financial Empowerment Network (Pty) Ltd

1. THE CONSUMER AFFAIRS COMMITTEE

The Consumer Affairs Committee (the Committee), a statutory body in the Department of Trade and Industry (**the dti**) administers the Consumer Affairs (Unfair Business Practices) Act, 71 of 1988 (the Act). The purpose of the Act is to provide for the prohibition or control of certain business practices. An unfair business practice is defined⁽¹⁾ as any business practice which could harm the relationship between businesses and consumers or which will unreasonably prejudice, deceive or unfairly affect consumers.

The Act is enabling and not prescriptive. The main body of the Act is devoted to various administrative procedures, the investigative powers of its investigating officials, the types of investigations the Committee could undertake and the powers of the Minister of Trade and Industry (the Minister). The Act confers wide investigative powers on the Committee. The investigations are carried out by the Consumer Investigations Directorate (the Directorate) of **the dti**. There are two types of investigations which the Committee could undertake when appraising the business practices of an individual or an entity, namely: an "informal" section 4(1)(c) investigation or a "formal" section 8(1)(a) investigation.

The usual procedure when the Committee receives a complaint, is to undertake a section 4(1)(c) investigation into the business practices of the person or entity complained about. This type of investigation enables the investigators to make preliminary enquiries to establish how the business functions. No publicity is afforded to section 4(1)(c) investigations.

When the committee has decided to undertake a section 4(1)(c) investigation, or has published a notice to undertake a section 8(1)(a) investigation, it may, in terms of section 9 of the Act, at any time thereafter negotiate with any person or entity, with a view to making an arrangement which in the opinion of the Committee will ensure the discontinuance of an unfair business practice which exists or may come into existence.

Should the Committee be of the opinion that there is evidence of an unfair business practice and it resolves to further investigate the matter, notice of a section 8(1)(a) investigation is published in the *Government Gazette*.⁽²⁾ The Minister is not empowered to make any decisions regarding the discontinuance of a particular business practice on the strength of a 4(1)(c) investigation. He may do so following an 8(1)(a) investigation.

The Act does not make provision that a section 8(1)(a) investigation must be preceded by a section 4(1)(c) investigation. If the Committee is of the opinion that there is *prima facie* evidence of an unfair business practice, it could dispense with the 4(1)(c) investigation.

Should the Committee, after an 8(1)(a) investigation, find that an unfair business practice exists, it recommends corrective action to the Minister to ensure the discontinuance of that practice.⁽³⁾ The Minister's order is published in the *Government Gazette*. An infringement of such an order is a criminal offence, punishable by a fine of R200 000 or five years imprisonment or both a fine and imprisonment.

(1) See section 1 of the Act for the definition of an unfair business practice.

(2) In most cases the Committee is able to resolve the matter and it is then unnecessary to proceed with a formal investigation.

(3) The powers of the Minister are set out in section 12 of the **Act**.