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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 Sakepraktiky, 1988 (Wet No. 71 van 1988), publiseer ek, Kent Diederich Skelton Durr, Minister van Handel en Nywerheid en Toerisme, hiermee die verslag van die Sakepraktikekomitee 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 Sakepraktiky.
- IV. Voorstellings deur SFL.
- V. Evaluasie van die sakepraktiky.
- VI. Gevolgtrekking en aanbevelings.

I. Inleiding

Die Sakepraktikekomitee het kragtens artikel 8 (1) (a) van die Wet op Skadelike Sakepraktiky, 1988 ("die Wet"), ondersoek ingestel na 'n bemarkingspraktiky 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.

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.

Die Adjunk-minister van Ekonomiese Sake en Tegnologie, handelende namens die Minister van Ekonomiese Sake en Tegnologie, het by Algemene Kennisgewing 1131 van 1989, gepubliseer in die *Staatskoerant* van 6 September 1989, kragtens artikel 8 (5) van die Wet 'n tydelike bevel uitgereik wat die partye verhoed het om enige sakepraktyk toe te pas waarby versekeringsooreenkomste aangegaan word op die grondslag dat applikante vir versekeringsdekking kommissie ontvang ten opsigte van enige soortgelyke ooreenkomste wat aangegaan word deur enige ander persoon as die applikant.

Talle geskrewe en mondelinge vertoë is gemaak na aanleiding van die Kennisgewing kragtens artikel 8 (4) van die Wet.¹

II. Die partye

Set for Life Insurance and Marketing is 'n beslote korporasie waarvan mnr. John Drinkwater die enigste lid is. Set for Life ("SFL") word beskryf as 'n trustee vir die Standard General Versekeringsmaatskappy Bpk. ten opsigte van 'n groepsversekeringskema wat deur SFL bemark word. Mnr. Drinkwater maak daarop aanspraak dat hy Set for Life besit.

III. Die Sakepraktyk

Die sakepraktyk van SFL en mnr. Drinkwater behels 'n skema in terme waarvan maandeliks hernubare lewensversekering bemark word deur 'n netwerk deeltydse agente wat as lede van SFL beskryf word. Die agente ontvang 'n kommissie om deelnemers aan die SFL Group Life Line Benefit Scheme te werf. Die skema word deur die Standard General Versekeringsmaatskappy Bpk. onderskryf.

Die betrokke versekeringspolis het 'n maandelikse premie van R100. Betaling van 'n aanvanklike premie van R300, plus 'n bedrag van R15 vir 'n opleidingshandleiding vir agente word vereis voordat aansoeke van voornemende agente/versekeringsaansoekers aanvaar word. Versekerdes word in staat gestel om dieselfde polis aan 'n verdere vier persone te verkoop elkeen waarvan weer op sy beurt die transaksie kan herhaal. Deelnemers aan die skema ontvang 'n afnemende kommissie op verdere transaksievlakke. Kommissies is ontvangbaar tot en met transaksies op die sesde vlak van deelname.

SFL beweer dat deelnemers maandeliks kommissies kan verdien van soveel as R29 112. Ten einde hierdie akkumulerende kommissie te kan verdien moet verdere transaksies op ses vlakke plaasvind in meervoud van vier.²

'n Premie-inkomste van R546 000 per maand ($5\,460 \times R100$) word deur SFL benodig om 'n maandelikse agentkommissie van R29 112 moontlik te maak. Op die eerste vlak is kommissie betaalbaar in 'n bedrag van R10. Die kommissie neem af tot R5 op die sesde vlak. Die veronderstelling dat R45 uit elke R100 ontvang aan kommissies toegewys word ondersteun die berekening dat R245 700 as kommissies uitbetaal word uit elke R546 000 wat ontvang word. Die onderskrywer ontvang R25 van die premiebedrag. Dit beteken dat uit 'n bedrag van R546 000 premie-inkomste benodig om een agent se maandelikse inkomste van R29 112 moontlik te maak die onderskrywer R136 500 ontvang terwyl kommissies R245 700 sal bedra (insluitende R29 112 vir een persoon). SFL ontvang R30 uit elke R100, d.w.s. R163 800 vir elke deelnemer wat R29 112 ontvang. Kommissies aan ander deelnemers beloop dan R216 588.

The Deputy Minister of Economic Affairs and Technology, acting on behalf of the Minister of Economic Affairs and Technology, by General Notice 1131 of 1989, published in the *Government Gazette* of 6 September 1989, in terms of section 8 (5) of the Act issued a temporary order restraining the parties from applying any business practice whereby insurance agreements are concluded on the basis that applicants for insurance cover receive commission in respect of any similar agreements concluded by any other person than the applicant.

Written and oral submissions were made by numerous persons and bodies pursuant to the Notice in terms of section 8 (4) of the Act.¹

II. The parties

Set for Life Insurance and Marketing is a close corporation of which Mr John Drinkwater is the sole member. Set for Life ("SFL") is described as a trustee for the Standard General Insurance Company Ltd in respect of a group insurance scheme marketed by SFL. Mr Drinkwater claims to own Set for Life.

III. Description of the business practice

The business practice applied by SFL and Mr Drinkwater involves a scheme in terms of which monthly renewable life insurance is marketed through a network of part time agents who are described as members of SFL. The agents receive a commission for finding participants in the SFL Group Life Line Benefit Scheme. The scheme is underwritten by the Standard General Insurance Company Limited.

The insurance policy in question carries a monthly premium of R100. An initial premium of R300, plus payment of R15 for an agent's manual is required before applications by prospective agents/insurance applicants are accepted. Insured persons are enabled to market the same policy to a further four persons each of whom in turn is enabled to repeat the transaction. Participants in the scheme receive a reducing commission on subsequent transaction levels. Commissions are receivable on transactions up to and including the sixth level of participation.

SFL alleges that participants can earn monthly commissions of up to R29 112. In order to realise this accumulated commission further transactions must occur on six levels in multiples of four each.²

A premium income of R546 000 per month by SFL is required to support a monthly agent's commission of R29 112 ($5\,460 \times R100$). Commission is payable in an amount of R10 on the first level, reducing to R5 on the sixth level. The presumption that R45 out of every R100 received is allocated to commissions supports the calculation that R245 700 is paid in commissions out of every R546 000 received. The actual amount of the premium received by the underwriter amounts to R25. This means that from an amount of R546 000 premium income required to support one agent's monthly income of R29 112 the underwriter receives R136 500 while commissions will amount to R245 700 (including one person receiving R29 112). SFL receives R30 out of every R100, i.e. R163 800 for each participant who receives R29 112. Commissions to other participants will total R216 588.

Ten einde die potensiele maandelikse inkomste van R29 112 van een agent te verdien moes 'n totaal van 5 460 transaksies gesluit gewees het. Geprojekteer op 'n jaarlikse basis sou die realisering van 'n inkomste van R349 344 deur slegs een deelnemer ontvangs van 'n totale jaarlikse premie-inkomste van R6 552 000 ($R546\ 000 \times 12$) noodsaak. Indien in gedagte gehou word dat ten einde hierdie aanvanklike jaarlikse inkomste van R349 344 te verseker die sluiting van 5 460 addisionele transaksies nodig sou gewees het, sal bereiking van dieselfde jaarlikse vlak van inkomste ten opsigte van die addisionele 5 460 deelnemers 'n verdere jaarlikse premie-inkomste van R35 773 920 000 ($5\ 460 \times R6\ 552\ 000$) verg. Dit sou die verkoop van 'n addisionele 29 811 600 polisse vereis.

Die volgende sake is gedoen gedurende die aange-deuide periodes:

Periode	Verkope	Premie
17.6.89-25.8.89.....	1 970	R147 750
25.8.89-31.8.89.....	363	R 27 255
1.9.89- 6.9.89.....	Nul	Nul
TOTAAL.....	2 333	R174 975
Minus kansellasië	361	R 27 075

Om 'n maandelikse inkomste van R29 112 vir die bestaande 1 972 polishouers te verseker moet 'n verdere 10 767 120 polisse verkoop word ($5\ 460 \times 1972$), en sal die totale maandelikse premie-inkomste R4 057 872 000 [$(5\ 460 + 1\ 972) \times R546\ 000$] moet beloop. Om 'n soortgelyke maandelikse inkomste vir hierdie addisionele deelnemers moontlik te maak sal 'n verdere 58 788 475 200 polisse verkoop moet word.

IV. Voorstellings deur SFL

Die SFL bemerkingsliteratuur bestaan uit verskeie stelle dokumentasie. In waarna verwys sal word as die SFL pamflet word die voorstelling gemaak dat deelname in SFL onbepaald sekuriteit vir die deelnemer sal verseker, sowel as gemoedsvrede, 'n aanvullende inkomste en finansiële beloning. Alhoewel die pamflet nie uitdruklik sê dat die bedrag van R29 000 per maand verdien sal word nie laat die tabel op p. 6 daarvan min twyfel dat hierdie bedrag maklik verdien kan word en dat deelname in die skema waarskynlik hierdie vlak van inkomste vir deelnemers byna vanselfsprekend sal verseker.

"So simply put, the growth of your co-operative is not only as a result of your efforts, but as a result of the combined efforts of everyone, in all generations. Not only will you be helping people in your own co-operative, you will also be part of other persons co-operatives who will be helping you . . . Your first goal is to help four people. Secondly, help them do the same and your commission will grow month by month as the process continues. No inventory, no worries, no administration to take care of. Nobody can lose a cent, as they buy monthly and consume the product monthly."

Die SFL-opleidingshandleiding gee aan voornemende versekeringskopers voor dat deur in die skema te deel 'n jaarlikse inkomste van R29 000 per maand verdien kan word³. Dit word beweer dat deelname in die skema neerkom op betrokkenheid by 'n besigheid⁴. Dit word ook aangedui dat die besigheid se geaardheid ko-operatief is, d.w.s. iets wat geskep word "when a number of people work together to achieve a common goal or result."⁵

In order to earn the potential monthly income of R29 112 for one agent a total of 5 460 transactions need to have been concluded. Projected on an annual basis realising an income of R349 344 for only one participant would necessitate receipt of a total annual premium income of R6 552 000 ($R546\ 000 \times 12$). Bearing in mind that ensuring this initial annual income of R349 344 would have necessitated the conclusion of 5 460 additional transactions, achieving the same annual level of income in respect of the additional 5 460 participants would require a further annual premium income of R35 773 920 000 ($5\ 460 \times R6\ 552\ 000$). This would entail the sale of an additional 29 811 600 policies.

The following business was transacted during the periods indicated:

Period	Sales	Premium
17.6.89-25.8.89.....	1 970	R147 750
25.8.89-31.8.89.....	363	R 27 255
1.9.89- 6.9.89.....	Nil	Nil
TOTAL	2 333	R174 975
Less cancellation	361	R 27 075

In order to ensure a monthly income of R29 112 for the existing 1 972 policy holders a further 10 767 120 policies will need to be sold ($5\ 460 \times 1\ 972$), and the total monthly premium income will amount to R4 057 872 000 [$(5\ 460 + 1\ 972) \times R546\ 000$]. In order to enable a similar monthly income for these additional participants a further 58 788 475 200 policies will need to be sold.

IV. Representations by SFL

The SFL promotional literature consists of several sets of documentation. In what will be referred to as the SFL pamphlet it is represented that participation in SFL will ensure indefinite security for the participant, peace of mind, a supplementary income, and financial rewards for participants. Although the pamphlet does not explicitly say that the amount of R29 000 per month will be earned the schedule on p. 6 thereof leaves little doubt that earning this amount of monthly income is a simple matter and that participation in the scheme is likely to ensure this level of income for participants virtually as a matter of course.

"So simply put, the growth of your co-operative is not only as a result of your efforts, but as a result of the combined efforts of everyone, in all generations. Not only will you be helping people in your own co-operative, you will also be part of other persons co-operatives who will be helping you . . . Your first goal is to help four people. Secondly, help them do the same and your commission will grow month by month as the process continues. No inventory, no worries, no administration to take care of. Nobody can lose a cent, as they buy monthly and consume the product monthly."

The SFL training manual represents to prospective insurance purchasers that by participating in the scheme an annual income of R29 000 per month can be earned³. It is claimed that participation in the scheme amounts to being involved in a business⁴. It is also indicated that the nature of the business is that of a co-operative, i.e. something created "when a number of people work together to achieve a common goal or result."⁵

Die SFL-pamflet (p.6) bevat 'n illustrasie van hoe die ko-operatiewe bestaande uit ses generasies van vier lede elk lei tot 'n maksimum geakkumuleerde inkomste van R29 112 per maand.

Saamgelees met die verskeie verwysings na 'n maandelikse verdienste van hierdie bedrag in die opleidingshandleiding is die gevolgtrekking onvermydelik dat dit die bedoeling is dat potensiele versekeringskopers moet glo dat hierdie soort inkomste met volle vertroue verwag kan word. Die kombinasie van die bemarkingsliteratuur, die opleidingshandleiding, en die gekoppelde versekeringstransaksie dra alles by om die indruk te laat dat die SFL skema 'n bona fide besigheidsgeleentheid is.

V. Evaluasie van die sakepraktyk

In sy voorlegging aan die komitee voer mnr. Drinkwater aan dat SFL nie 'n skema is om gou ryk te word nie maar dat dit 'n geleentheid skep vir mense om hulle eie besighede te begin, wat, met volgehoue inspanning, hulle in staat sal stel om 'n maksimum van R29 112,00 per maand te verdien. Hy beweer dat nie elke deelnemer bereid sal wees om die verlangde volgehoue inspanning aan die dag te lê nie en dat nie elkeen derhalwe die maksimum bedrag aan kommissie sal verdien nie. Hierdie stellings skep 'n gans ander indruk as die beeld wat gevorm word uit die aantreklike bemarkingsliteratuur van SFL. Die komitee bevind dat SFL in sy voorstellings verbruikers mislei of waarskynlik sal mislei oor die waarskynlikheid dat die potensieel enorme inkomste wat adverteer word wel verdien sal word. Terwyl deelnemers in die aanvanklike stadia van die skema inderdaad wonderlike verdienstes mag verkry is daar geen vooruitsig dat hierdie tipe verdienste op die lang duur gehandhaaf kan word nie. Die versuim om hierdie aspek van die skema te openbaar kom neer op 'n wesenlike wanvoorstelling.

Die volgende argumente word verder namens die partye aangevoer:

- (1) Geen persoon wat aan die skema deelneem loop die risiko van 'n verlies nie, aangesien daar slegs 'n vergoeding betaal word vir versekeringsdekking terwyl daar terselfdertyd gratis 'n geleentheid bestaan om 'n inkomste te verdien.
- (2) Versadiging is hoogstens teoreties. Geen besigheid het nog ooit 'n mark versadig nie.
- (3) Die skema kom op niks meer neer nie as 'n bemarkingsmetode vir versekering.
- (4) Daar word geen beloftes gemaak betreffende die inkomste wat verdien staan te word nie. Die deelnemers word slegs bewus gemaak van die maksimum kommissies wat moontlik verdien kan word.

Die partye se voorlegging beklemtoon dit dat daar geen risiko van 'n verlies van die belegging bestaan nie en dat daar geen onafwendbare punt van ineenstorting of versadiging is nie. ["The amounts earned by those insured under the scheme are dependent upon the assistance and training they give and the selling effort of those in the generations who have purchased insurance from them. Even if the so-called 'saturation point' is reached (which is unlikely) there is no inevitable point of collapse."]

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

The SFL pamphlet (p.6) contains an illustration of how the co-operatives consisting of six generations of four members each lead to a maximum total accumulated commission of R29 112 per month.

Read with the several references to the monthly earning of this amount in the manual the conclusion is inescapable that potential insurance purchasers are intended to believe that the earning of this order of income is to be confidently expected. The combination of promotional literature, training manual and linked sale of insurance all contribute to creating the impression that the SFL scheme is a bona fide business opportunity.

V. Evaluation of the business practice

In his submission to the Committee Mr Drinkwater has stated that SFL is not a "get rich quick" scheme but that it provides an opportunity for people to start their own businesses which, with sustained effort, will allow them to earn a maximum of R29 112,00 per month. He states that not every participant is going to be prepared to put in the required sustained effort and therefore not everyone will earn the maximum amount of commission. These statements paint a far different picture from the impression that is created by the attractive promotional documents used to market SFL. The committee finds that in its representations SFL deceives or is likely to deceive consumers as to the probability of earning the potentially huge incomes that are advertised. While participants in the initial stages of the scheme may indeed reap magnificent rewards there is no prospect of this kind of reward being sustainable in the long run. Failure to disclose this aspect of the scheme constitutes a significant misrepresentation.

The following arguments are further adduced on behalf of the parties:

- (1) No person who participates in the scheme runs the risk of loss, in view of the fact that they are simply paying a consideration for insurance cover whilst at the same time for no financial investment have the opportunity to earn an income.
- (2) Saturation is purely theoretical. No business has ever saturated a market.
- (3) The scheme amounts to nothing more than a method of marketing life insurance.
- (4) No promises are made regarding commissions which will be earned. The participant is merely made aware of the maximum commissions which he can possibly earn.

The parties' submission stresses that there is no risk of loss of investment and that there is no inevitable point of collapse or saturation. ["The amounts earned by those insured under the scheme are dependent upon the assistance and training they give and the selling effort of those in the generations who have purchased insurance from them. Even if the so-called 'saturation point' is reached (which is unlikely) there is no inevitable point of collapse."]

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

komitee is tevrede dat die sakepraktyk beskryf in afdeling IV 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.

Dit lei geen twyfel nie dat die werklike verwerwing van die aangeduide kommissies regstreeks afhanklik is van die volgehoue deelname van addisionele lede. Mnr. Drinkwater se voorlegging gee inderdaad toe dat:

“the growth in each member's Cooperative will be slow and progressive and dependent on effort. It will vary from person to person, but in all cases it is a steady and predictable growth.”

Die potensiele verdien van die inkomste is regstreeks en matematies gekoppel aan die getal addisionele deelnemers. Na die komitee se mening is dit juis hierdie eienskap wat die SFL-skema gelyk stel aan 'n lotery.

Die elemente van 'n lotery word dikwels beskryf as bestaande uit 'n prys, 'n teenwaarde vir die prys, en die vasstelling deur kans van diegene wat in aanmerking kom om die prys te wen. Die sakepraktyk van SFL is wesenlik soortgelyk aan skemas wat beskryf is in sulke gewysdes soos *S. v. Midas Novelties (Pty) Ltd and Another* en *S. v. Mbonambi*,⁶ vervolgens wat uitloop het op veroordelings kragtens die Wet op Dobbelaar, 1965. Die Appèlhof het in *S. v. Midas* daarop gewys dat talle skemas van hierdie aard, naamlik skemas waar iets verkoop word wat 'n tipe kettingreaksie tot gevolg het wat dan aanleiding gee tot die toevalling van verdienste, wengeld of kommissies, al gedien het voor die Howe in hierdie land en in Brittanje. Die komitee gaan respektvol akkoord met die Appèlhof se waarskuwing dat elke geval geheel en al op sy eie feite geoordeel moet word.

Indien daar enige verskil is tussen die SFL-skema en skemas soos die wat voorgekom het in *S. v. Midas* en *S. v. Mbonambi* is dit in die graad van betrokkenheid van die deelnemers en in die rol van die versekeringsprodukt waarom die skema gestruktureer is.

In SFL se geval ondergaan deelnemers oënskynlik 'n opleidingskursus wat hulle sal toerus vir die uitdagings verbonde aan verkope aan verdere deelnemers. Die sogenaamde SFL Agent's Training Manual is 'n versameling van gemeenplase en alledaagshede wat as 'n tegniese handleiding optree. Dit is 'n deursigtige poging om die werklike aard van die SFL skema te verdoesel.⁷

Die feit dat versekeringsdekking verkrygbaar is as noodsaaklike deel van deelname aan die skema kan veroorsaak dat die ander aspekte van die skema oor die hoof gesien word, naamlik die dubbelelemente waarna reeds verwys is. Met inagneming van gewysdes soos *R. v. Ellis Brown*⁸ asook *S. v. Midas* en *S. v. Mbonambi* is dit duidelik dat die blote feit dat die skema bedryf word agter die fasade van die verkoop van versekering op 'n kommissiebasis dit nie minder van 'n lotery maak nie.

Die vraag of die komitee se sienswyse dat die SFL-skema op 'n lotery neerkom relevant is vir die bepalings van artikel 1 (xi) van die Wet kan nou oorweeg word.

Die komitee is van oordeel dat SFL en mnr. Drinkwater verbruikers (d.w.s. gewone lede van die publiek) mislei deur deelname aan die skema te bemark as deelname in 'n gewone besighedsgeleentheid, iets wat dit

that the business practice described in section IV of this report constitutes a business practice for the purposes of section 1 (iii) (b).

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.

There is no doubt that the actual earning of the commissions held out is dependent directly on the continuing participation of additional members. Mr Drinkwater's submission indeed acknowledges that:

“the growth in each member's Cooperative will be slow and progressive and dependent on effort. It will vary from person to person, but in all cases it is a steady and predictable growth.”

The potential earning of income is directly and mathematically linked to the number of additional participants. In the committee's view it is this feature which renders the SFL scheme equal to a lottery.

The elements of a lottery are what is often referred to as a prize, consideration for the prize, and the determination by chance of eligibility for winning the prize. The business practice of SFL is essentially similar to schemes described in such cases as *S. v. Midas Novelties (Pty) Ltd and Another* and *S. v. Mbonambi*,⁶ prosecutions which resulted in convictions under the Gambling Act, 1965. The Appellate Division pointed out in *S. v. Midas* that numbers of schemes of this nature, schemes whereby something is sold which starts off a species of chain reaction giving rise to the accrual of earnings or winnings or commissions, have been before the Courts of this country and also the Courts of England. The committee respectfully agrees with the Appellate Division's warning that each case must be entirely dependent in the final analysis on its own facts.

If there is any difference between the SFL scheme and schemes such as those under consideration in *S. v. Midas* and *S. v. Mbonambi* it is in the degree of involvement of participants and in the role played by the insurance product around which the scheme is constructed.

In SFL's case participants purportedly undergo a course of training which will prepare them for the challenges of making sales to further participants. The so-called SFL Agent's Training Manual is a collection of homilies and clichés masquerading as a technical manual. It is a transparent attempt to disguise the real nature of the SFL scheme.⁷

The fact that insurance cover is obtained as an essential part of participation in the scheme may lead one to disregard the other aspects of the scheme, namely the lottery elements already referred to. Regard being had to cases such as *R. v. Ellis Brown*⁸ and *S. v. Middas* and *S. v. Mbonambi* it is clear that the mere fact that the scheme is conducted behind the facade of selling insurance on a commission system does not render it any the less a lottery.

The question can now be considered whether the committee's view that the SFL scheme constitutes a lottery has any relevance to the provisions of section 1 (vii) of the Act.

The committee is of the view that SFL and mr Drinkwater deceive consumers (i.e. ordinary members of the public) by promoting participation in the scheme as participation in an ordinary business opportunity,

gewis nie is nie. Hierdie gevolgtrekking geld ongeag van enige vervolging en/of skuldigbevinding in terme van die Wet op Dobbelaar.

Die komitee is verder van oordeel dat soos in die **Midas** en **Mbonambi** gevalle so ook die SFL skema bestem is tot versadiging en dat soos Wilson R gesê het in **Mbonambi** se saak:

"... no one who has applied his mind to the operation of a chain-letter scheme could be in any doubt as to the fact that the ultimate result must be that many members of the public will lose their money. The more successful such a scheme is at its commencement, the more certain is its ultimate crash."

Die feit dat verbruikers van geld afstand gedoen het waarvan hulle nie sou afstand gedoen het indien dit nie vir die (skadelike) sakepraktyk was nie is voldoende om onredelike benadeling van verbruikers daar te stel. Die komitee aanvaar dat verbruikers wat aan die skema deelgeneem het wel deels waarde vir hulle geld mag ontvang het. Hulle het egter nie waarde ontvang vir die enorme bedrae wat in kommissies uitbetaal is nie.

Wanneer 'n onderneming soos SFL ondergaan, soos wat dit uiteindelik moet, sal sommige verbruikers geld verloor. Indien die SFL tipe onderneming beskou word as 'n toelaatbare wyse van sake doen sal verhoudinge tussen besighede en verbruikers waarskynlik benadeel word.

Die openbare belang

In die lig van die bevinding dat die SFL skema 'n skadelike sakepraktyk daarstel moet die komitee oorweeg of hierdie skadelike sakepraktyk in die openbare belang geregverdig is.

In hierdie verband slaan die komitee ag op oorwegings soos die onwenslikheid van regulatoriese inmenging ten behoeve van verbruikers. Daar word ook oorweging geskenk aan kwessies soos die waarskynlikheid en omvang van finansiële verlies deur verbruikers indien 'n skadelike sakepraktyk ongehinderd toegelaat word, asook aan die feit of 'n skadelike sakepraktyk met beleid wat in wetgewing of die gemene reg vervat word bots, al dan nie.

Die komitee is oortuig daarvan dat hierdie wyse van sake doen nie in die openbare belang geregverdig kan word nie, ongeag daarvan of die betrokke skema mag neerkom op 'n delik of wanvoorstelling wat as 'n gedingsoorsaak in die hof sal staan.

VII. Gevolgtrekking en aanbevelings

By die besluit of 'n bepaalde sakepraktyk neerkom op 'n skadelike sakepraktyk vir die Wet se doeleindes sal die komitee, in die besonder wat betref die vraag of 'n skadelike sakepraktyk in die openbare belang geregverdig is, kennis neem van beleid wat in ander wetgewing vervat is, byvoorbeeld, die Wet op Dobbelaar, Wet No. 51 van 1965. Dit is die beleid in wetgewing wat relevant is en nie of besondere optrede lei tot vervolging en/of skuldigbevinding nie. Oor hierdie vrae moet die Prokureur-generaal en die strafhof uitsluisel gee. Die komitee gee nie voor om te besluit of SFL se optrede, byvoorbeeld, 'n oortreding kragtens die Wet op Dobbelaar daarstel nie.

Die komitee het bevind dat die skema deur SFL en mnr. John Drinkwater bedryf 'n skadelike sakepraktyk is vir die doeleindes van die Wet. Daar is geen gronde gevind wat die praktyk in die openbare belang regverdig nie.

something which it most assuredly is not. This conclusion holds irrespective of whether or not there is any prosecution and/or conviction in terms of the Gambling Act.

The committee is further of the view that as in the **Midas** and **Mbonambi** cases so the SFL scheme too is destined to end in a market glut and that as Wilson J has said in **Mbonambi**'s case:

"... no one who has applied his mind to the operation of a chain-letter scheme could be in any doubt as to the fact that the ultimate result must be that many members of the public will lose their money. The more successful such a scheme is at its commencement, the more certain is its ultimate crash."

It is sufficient to constitute unreasonable prejudice to consumers if they have parted with money that they would not have parted with were it not for the (harmful) business practice. The committee accepts that consumers who have participated in the scheme may have received some value for their money. They have not received value, however, for the vast amounts that are paid in commissions.

When a business such as SFL fails, as it eventually must, some consumers will lose money. If the SFL type of business is seen as a permissible way of doing business the relations between businesses and consumers are likely to be harmed.

Public interest

Having found that the SFL scheme constitutes a harmful business practice the committee must consider whether this harmful business practice is justified in the public interest.

In this respect the committee has regard to 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.

The committee is convinced that this method of doing business can not be justified in the public interest, irrespective of the question whether or not the scheme may or may not amount to a delict or actionable misrepresentation for the purposes of founding a cause of action in the courts of law.

VII. Conclusion and recommendations

In deciding whether a particular business practice is a harmful business practice for the purposes of the Act the committee will, particularly with regard to deciding whether a harmful business practice is justified in the public interest, take note of the policies embodied in other legislation, for example, the Gambling Act, No. 51 of 1965. It is the policies in legislation that are relevant, not whether particular conduct has resulted or may result in a prosecution and/or conviction. These are questions for the Attorney General and the criminal courts to decide. The committee does not purport to decide whether SFL's conduct, for example, constitutes a contravention under the Gambling Act.

The committee has found that the scheme operated by SFL and Mr Drinkwater constitutes a harmful business practice for the purposes of the Act. No grounds justifying the practice in the public interest have been found.

Dit word gevolglik aanbeveel dat die Minister die praktyk onwettig verklaar kragtens artikel 12 (1) (b) van die Wet en dat die genoemde partye gelas word kragtens artikel 12 (1) (c) van die Wet om van die toepassing of voortsetting van die skema af te sien, en op op te hou om enige belang in daardie besigheid of 'n tipe besigheid wat in soortgelyke sakepraktyk of skema bedryf te hê of om enige inkomste daaruit te verkry of om te gener tyd enige belang in 'n besigheid of tipe besigheid wat 'n soortgelyke sakepraktyk of skema bedryf te bekom of om enige inkomste daaruit te verkry nie.

- ⁽¹⁾ G. Gibson.
B. Rowe.
J. Meyer.
S. van der Laar.
Child Evangelism Training Institute.
S. Moschopoulos.
S. Carew.
On Shore (Edms.) Bpk.
S. Sayers.
G. de Ruig.
C. Silberman.
Lewe en Leierskap Dinamiek.
Rand Reef Mergers & Acquisitions (Edms.) Bpk.
F. Clegg.
J. A. Johnston.
C. A. Vermaak.
L. Scalzullo
S. du Plessis.
L. W. Niemand.
C. du Toit.
R. E. van Heerden.
E. van Rooyen.
H. du Toit.
L. Meyer.
D. Woudberg.
A. Enslin.
P. C. R. du Toit.
C. J. Jacobs.
G. L. Schetler.
P. W. van der Westhuizen.
P. Skinner.
J. S. McConnachie.
A. J. McConnachie.
S. R. M. Leask.
A. Jamieson.
Driftwood Enterprises.
Inhouse Marketing Bpk.
E. M. van Graan.
J. F. Drinkwater.
Die Vryemarkstigting (SA).
Die Lewensversekeringsvertegenwoordigers-vereniging van Suid-Afrika, The.
Die Langtermyn Versekeringsadvieskomitee.
Die Life Offices' Association of South Africa.
Consolidated Broking Services.
T. J. Botha.
Die Standard General Versekeringsmaatskappy Bpk.

- ⁽²⁾ Die voortgang van transaksies en die gepaardgaande inkomste word voorgestel deur die volgende tabel (p. 6 van die SFL pamflet):

It is accordingly recommended that the Minister declare the practice unlawful in terms of section 12 (1) (b) of the Act and that the said parties be directed in terms of section 12 (1) (c) of the Act to discontinue and refrain from at any time applying the said practice, and to cease having any interest in or deriving any income from that business or a business employing any similar business practice or scheme or to refrain from at any time having an interest in or deriving any income from that business or a business employing any similar business practice or scheme.

- ⁽¹⁾ G. Gibson.
B. Rowe.
J. Meyer.
S. van der Laar.
Child Evangelism Training Institute.
S. Moschopoulos.
S. Carew.
On Shore (Pty) Ltd.
S. Sayers.
G. de Ruig.
C. Silberman.
Lewe en Leierskap Dinamiek.
Rand Reef Mergers & Acquisitions (Pty) Ltd.
F. Clegg.
J. A. Johnston.
C. A. Vermaak.
L. Scalzullo
S. du Plessis.
L. W. Niemand.
C. du Toit.
R. E. van Heerden.
E. van Rooyen.
H. du Toit.
L. Meyer.
D. Woudberg.
A. Enslin.
P. C. R. du Toit.
C. J. Jacobs.
G. L. Schetler.
P. W. van der Westhuizen.
P. Skinner.
J. S. McConnachie.
A. J. McConnachie.
S. R. M. Leask.
A. Jamieson.
Driftwood Enterprises.
Inhouse Marketing Ltd.
E. M. van Graan.
J. F. Drinkwater.
Die Vryemarkstigting (SA).
The Life Underwriters' Association of South Africa.
The Long-Term Insurance Advisory Committee.
Die Life Offices' Association of South Africa.
Consolidated Broking Services.
T. J. Botha.
Standard General Insurance Company Ltd.

- ⁽²⁾ The progression of transactions and the accompanying income is represented by the following schedule (Schedule on p. 6 of the SFL pamphlet):

Deelnamestruktuur

Vlak-ke	Maande-likse kom-missie per lid	Maksi-mum to-tale ge-akku-muleerde kommis-sie per vlak	Geasso-sieerde transak-sies	Ge-akku-muleerde transak-sies
1	R10	R 40	4	4
2	R 9	R 184	16	20
3	R 8	R 696	64	84
4	R 7	R 2 488	256	340
5	R 6	R 8 632	1 024	1 364
6	R 5	R29 112	4 096	5 460

(3) Handleiding pp 6, 7, 9. ("_____ and _____ I have just started a new business that gives me a chance of earning up to R29 000 per month, part time, with NO capital investment. I am pretty excited and I would appreciate it if you would pay close attention while I explain it to you, as I would like your opinion to be based on the facts."; "This process continues for six generations, at which time you will be receiving R29 000,00 per month. That's very exciting isn't it?"; "So _____ and _____ would you like to become the founder of your own co-operative, and together we can start building your income towards that R29 000,00 per month, and at the same time provide immediate protection for yourself and your family??")

(4) Handleiding p. 6.

(5) Handleiding p. 2.

(6) 1966 (1) SA 492 (A); 1986 (3) SA 41 (N).

(7) Sien S. v. Mbonambi 1986 (3) SA 41 (N) 845: "In my opinion, at the highest for the appellant, salesmanship, skill and industry may give a participant a slight edge, certainly not enough to say that this is a determining or even an important factor."

(8) 1938 AD 98.

(9) 1986 (3) SA 839 (N) 846.

Participation Structure

Le-vels	Month-ly com-mission per member	Maxi-mum to-tal accu-mulated commis-sion per level	Asso-ciated transac-tions	Accumu-lated transac-tions
1	R10	R 40	4	4
2	R 9	R 184	16	20
3	R 8	R 696	64	84
4	R 7	R 2 488	256	340
5	R 6	R 8 632	1 024	1 364
6	R 5	R29 112	4 096	5 460

(3) Manual pp 6, 7, 9. ("_____ and _____ I have just started a new business that gives me a chance of earning up to R29 000 per month, part time, with NO capital investment. I am pretty excited and I would appreciate it if you would pay close attention while I explain it to you, as I would like your opinion to be based on the facts."; "This process continues for six generations, at which time you will be receiving R29 000,00 per month. That's very exciting isn't it?"; "So _____ and _____ would you like to become the founder of your own co-operative, and together we can start building your income towards that R29 000,00 per month, and at the same time provide immediate protection for yourself and your family??")

(4) Manual p. 6.

(5) Manual p. 2.

(6) 1966 (1) SA 492 (A); 1986 (3) SA 41 (N).

(7) See S. v. Mbonambi 1986 (3) SA 839 (N) 845: "In my opinion, at the highest for the appellant, salesmanship, skill and industry may give a participant a slight edge, certainly not enough to say that this is a determining or even an important factor."

(8) 1938 AD 98.

(9) 1986 (3) SA 839 (N) 846.

INHOUD

No.

Bladsy Koerant
No. No.

ALGEMENE KENNISGEWING

Handel en Nywerheid, Departement van
Algemene Kennisgewing

1440 Wet op Skadelike Sakepraktyke
(71/1988): Sakepraktykekomitee: Uitslag
van ondersoek: Set for Life Insurance
and Marketing BK

1 12197

CONTENTS

No.

Page
No. Gazette
No.

GENERAL NOTICE

Trade and Industry, Department of
General Notice

1440 Harmful Business Practices Act
(71/1988): Business Practices Committee:
Result of investigation: Set for Life Insur-
ance and Marketing CC

1 12197