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GENERAL NOTICES

NOTICE 492 OF 1993

DEPARTMENT OF TRADE AND INDUSTRY

HARMFUL BUSINESS PRACTICES ACT, 1988

I, David de Villiers Graaff, Deputy Minister of Trade and Industry, acting on behalf of the Minister of Finance and of Trade and Industry, do hereby, in terms of section 10 (3) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), publish the report of the Business Practices Committee on the result of an investigation made by the Committee pursuant to General Notice 903 published in *Government Gazette* No. 14322 dated 9 October 1992 and General Notice 1052 published in *Government Gazette* No. 14407 dated 20 November 1992, as set out in the Schedule.

D. DE V. GRAAFF,

Deputy Minister of Trade and Industry.

ALGEMENE KENNISGEWINGS

KENNISGEWING 492 VAN 1993

DEPARTEMENT VAN HANDEL EN NYWERHEID

WET OP SKADELIKE SAKEPRAKTYKE, 1988

Ek, David de Villiers Graaff, Adjunkminister van Handel en Nywerheid, handelende namens die Minister van Finansies en van Handel en Nywerheid, publiseer hiermee, kragtens artikel 10 (3) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 71 van 1988), die verslag van die Sakepraktykekomitee oor die uitslag van die ondersoek deur die Komitee gedoen kragtens Algemene Kennisgewing 903 gepubliseer in *Staatskoerant* No. 14322 gedateer 9 Oktober 1992 en Algemene Kennisgewing 1052 gepubliseer in *Staatskoerant* No. 14407 gedateer 20 November 1992, soos in die Bylae uiteengesit.

D. DE V. GRAAFF,

Adjunkminister van Handel en Nywerheid.

SCHEDULE

BUSINESS PRACTICES COMMITTEE

REPORT IN TERMS OF SECTION 10 (1) OF THE HARMFUL BUSINESS PRACTICES ACT, 1988 (ACT No. 71 OF 1988)

Report No. 26

M. C. ADENDORFF, J. HEPBURN, J. A. COETZEE, A. E. MULLER AND A. JACOBS

Contents

M. C. ADENDORFF, J. HEPBURN, J. A. COETZEE, A. E. MULLER AND A. JACOBS

1. INTRODUCTION

As a result of several complaints received by the Business Practices Committee (the Committee) regarding the business practices of M. C. Adendorff, J. Hepburn, A. E. Muller and A. Jacobs, it was decided to institute an investigation in terms of section 4 (1) (c) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988) (the Act). This preliminary investigation was followed by an investigation in terms of section 8 (1) (a) of the Act.

The complaints pertained to a business practice whereby prospective transport contractors were invited, through continuous advertisements in the press, to conclude agreements for the provision of highly profitable transport contracts. The business practice is described fully in paragraph 3.

2. THE PARTIES

In General Notice 903 in *Government Gazette* No. 14322 of 9 October 1992, notice was given of the Committee's intention to institute a formal investigation, in terms of section 8 (1) (a) of the Act, into the business practices conducted by M. C. Adendorff, J. Hepburn, A. E. Muller, A. Jacobs, Prime Truck Hire, Prima Vragmotorhuur, Five Star Combi Hire, Five Star Taxi's, Check Hire, Ace Hire, Club Hire and any employee or agent of the above-mentioned (the business).

Clients were led to believe that the above-mentioned businesses were separate juristic persons. The names Prime Truck Hire, Prima Vragmotorhuur, Five Star Combi Hire, Five Star Taxi's, Check Hire, Ace Hire and Club Hire were merely trade names.

In reaction to the above-mentioned notice in the *Government Gazette* the Committee has received several sworn affidavits from clients of the parties concerned, indicating that J. A. (Riaan) Coetzee acted as negotiator on behalf of the above-mentioned business in certain of the transactions. Coetzee declined the opportunity to inform the Committee about his involvement with the business and it was decided to institute an investigation into the business practice of Coetzee. Notice of the proposed investigation was published in *Government Gazette* No. 14407 of 20 November 1992 under General Notice 1052.

3. THE BUSINESS PRACTICE

The business practice applied by the parties concerned are divided in two categories:

3.1 *Transport contracts in respect of trucks*

Advertisements appeared in *Beeld* and *Rapport* on a regular basis inviting the public to enter into agreements with Prima Vragmotorhuur, Prime Truck Hire and Ace Hire. The advertisements, *inter alia,* emphasized "prime earnings and high current profits". In terms of the agreements clients would be appointed, with the assistance of the business, as subcontractors to execute transport contracts on behalf of principals. During interviews with prospective clients the impressive but false pretence of an established and prosperous business was upheld. Income projections with a guaranteed minimum income were made. Probable profits in the region of R10 000 to R12 000 per month were promised to prospective clients. Requests by clients to be provided with proof of construction activities were evaded or reassuringly answered.

In terms of the agreement between the parties, acting under the trade names mentioned above, and the subcontractor, the latter had to purchase a truck. Prospective clients were assured that obtaining finance would not pose any difficulty, and that assistance would be rendered in this regard. Prospective clients were informed that transport contracts were available for immediate execution.

Upon signature of the contract clients were required to pay, by means of cash or a bank-guaranteed cheque, an amount in respect of goodwill of between R30 000 and R60 000. This amount did not include any payment towards the purchase price of a truck.

After they had signed the contract clients were told that they would be informed when finance would be provided. Clients were informed that they did not have to take steps for obtaining finance and to leave it to be attended to by the business. Most clients in fact did not take steps to obtain finance. Those who approached financial institutions were informed that finance in respect of these trucks would not be approved because of the high risk involved.

The business failed to obtain finance for clients. In terms of a stipulation in the contract the client was required to make available the truck within three months of the date of signing the contract. Failure to comply with this stipulation would constitute a breach of contract upon which the business could cancel the contract and all monies already paid by the client would be forfeited. After the lapse of three months clients were informed that since their failure to deliver the truck as agreed constituted a breach of contract all advance payments were therefore forfeited. The Committee has been informed of at least seven clients whose advance payments were forfeited in this way.

The business practice described above essentially corresponds to the business practice of J.A. (Riaan) Coetzee declared unlawful by the Minister in *Government Gazette* No. 13715 of 10 January 1992. The business practice being the subject of the present investigation was conducted from the same premises where Coetzee traded under the name of Truckkor.

3.2 *Minibusses for use as taxis*

Weekly advertisements were published in *Beeld* and *Rapport* inviting the public to take part in a recession proof business earning substantial profits. Upon making enquiries prospective clients were invited to the premises of the business for an interview. During the interview attempts were made to induce those enquiring to enter into an agreement with the business. The business, represented by one of the parties mentioned above, pretended that it had, or could obtain, control over certain public road transport permits issued in terms of the Road Transport Act, 1977 (Act No. 74 of 1977), and therefore was entitled to transport passengers on various routes in the Republic of South Africa, in the National States and the self-governing states.

Prospective clients had to purchase a minibus in their own name and make it available to the business to be put to use on a certain date (the effective date). Clients were assured that the business would provide assistance in obtaining financing. Clients undertook to purchase the minibusses from a specific supplier only. Should another supplier be used permission would have to be obtained from the business. The client also undertook responsibility for the maintenance of the minibus for the duration of the agreement.

In terms of the contract the client would be guilty of breach of contract if a minibus was not delivered to the business within 180 days of the effective date.

It was agreed that the business would recruit drivers for the minibusses and would also ensure that the licenses of these drivers were not endorsed in respect of any contravention of the Road Traffic Act.

The remuneration payable to clients for providing the minibus would amount to R1,15 per kilometre. The driver of the vehicle would pay, on a weekly basis, into the bank account of the client the income derived from the use of the minibus. The business represented that profits of between R10 000 and R12 000 could be realised monthly. On the seventh day of each month the subcontractor would provide the client with an income statement received from the driver of the minibus. On the seventh day of each month the client was required to pay an administration fee of 5 per cent of his income to the business. Contractually the business did not assume any liability for default by the drivers to make payments to the client.

In terms of the contract the client declares that he is aware that the Black taxi industry is closed and that it is difficult for an individual to obtain access to the business. He also undertakes to pay goodwill to the business to the amount of R30 000 per minibus. According to representatives of the business prospective clients could pay goodwill in two or three payments. Some clients in fact only paid part of the goodwill to the business.

The business had the right to cancel the contract after reasonable notice, in the event of the client's failure to adhere to any term of the contract. In the event of such cancellation the business was entitled to retain all payments by clients as part compensation for damages.

The Committee has received complaints from more than thirty people whose advance payments were forfeited in this way. The main reason for such forfeiture was evidently the non-deliverance of the minibusses as agreed between the parties. In these cases also the business did not provide assistance to clients in obtaining finance. From complaints received it is estimated that more than R1 million was paid to the business as goodwill.

One or two clients received small amounts as remuneration for the use of the minibus. Neither they or any other client ever received the income which had been presented to them during the conclusion of the contract.

The business failed to provide proof of alleged agreements with taxi organisations regarding ranking facilities requested and also did not provide copies of agreements with drivers of the minibusses or road transport permits.

4. EVALUATION OF THE BUSINESS PRACTICE

Through deliberate misrepresentation clients were induced to conclude contracts whereby they suffered considerable losses. Promises of "guaranteed" high income and of assistance and guidance in purchasing vehicles and obtaining financing were the bait.

Clients were led to believe that the business would obtain finance for the purchase of trucks and minibusses. This was not done and the business then relied on the contractual terms of rescission ostensibly because of alleged breach of contract by the client. In the case of transactions involving minibusses the income from the transport business was not transferred to clients as agreed.

Although consumers too easily allow themselves to be misled by salestalk the conduct of the parties concerned can not be justified by the argument that the clients should have known better and should have approached contracts with greater circumspection. The conduct of the parties was planned and executed with skill and meticulous attention to details.

The Committee finds no justification for the business practices of the parties by reason of the public interest. The Committee is further convinced that the business practice revealed by its investigation constitutes a harmful business practice for the purpose of section 1 of the Act.

5. RECOMMENDATION

In the light of the above the Committee recommends that in terms of section 12 of the Act—

(a) the Minister declares unlawful the business practices of M. C. Adendorff, J. Hepburn, J. A. (Riaan) Coetzee, A. E. Muller and A. Jacobs whereby agreements are entered into in terms of which a person (the subcontractor) pays remuneration or commission of whatever nature to or on behalf of another person (the broker) in respect of such broker's undertaking to allow the subcontractor to execute transport assignments, excluding agreements in terms of which the above-mentioned payment to or on behalf of the broker is recovered from income generated by the subcontractor in the execution of transport assignments; and

(b) M. C. Adendorff, J. Hepburn, J. A. (Riaan) Coetzee, A. E. Muller and A. Jacobs be directed to—

(i) *refrain from applying the harmful business practice;*

(ii) *cease to have any interest in any business or type of business which applies the harmful business practice or to derive any income therefrom:*

(iii) *refrain from at any time applying the harmful business practice; and*

(iv) *refrain from at any time obtaining any interest in or deriving any income from a business or type of business applying the harmful business practice.*

PROF. LOUISE A. TAGER,
CHAIRMAN: BUSINESS PRACTICES COMMITTEE.

BYLAE

SAKEPRAKTYKEKOMITEE

VERSLAG KRAGTENS ARTIKEL 10 (1) VAN DIE WET OP SKADELIKE SAKEPRAKTYKE, 1988 (WET No. 71 VAN 1988)

Verslag No. 26

M. C. ADENDORFF, J. HEPBURN, J. A. COETZEE, A. E. MULLER EN A. JACOBS

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M. C. ADENDORFF, J. HEPBURN, J. A. COETZEE, A. E. MULLER EN A. JACOBS

1. INLEIDING

Na aanleiding van verskeie klagtes wat die Sakepraktykekomitee (die Komitee) ontvang het oor die sakepraktyke van M. C. Adendorff, J. Hepburn, A. E. Muller en A. Jacobs is op 7 April 1992 besluit om kragtens artikel 4 (1) (c) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 71 van 1988) (die Wet), ondersoek in te stel. Hierdie voorlopige ondersoek is opgevolg deur 'n ondersoek kragtens artikel 8 (1) (a) van die Wet.

Die klagtes het betrekking gehad op 'n sakepraktyk waar voornemende vervoerkontrakteurs deur middel van deurlopende advertensies in die pers genooi is om ooreenkomste te sluit vir die voorsiening van hoogs lonende vervoerkontrakte. Die sakepraktyk word volledig in paragraaf 3 bespreek.

2. DIE PARTYE

By Algemene Kennisgewing 903 in *Staatskoerant* No. 14322 van 9 Oktober 1992 is kennis gegee van die Komitee se voorneme om kragtens artikel 8 (1) (a) van die Wet formeel ondersoek in te stel na die sakepraktyk wat toegepas word deur M. C. Adendorff, J. Hepburn, A. E. Muller, A. Jacobs, Prime Truck Hire, Prima Vragmotorhuur, Five Star Combi Hire, Five Star Taxi's, Check Hire, Ace Hire, Club Hire en enige werknemer of agent van bogenoemde (die onderneming).

Die indruk is by kliënte geskep is dat bogenoemde ondernemings afsonderlike regspersone was. Die name Prime Truck Hire, Prima Vragmotorhuur, Five Star Combi Hire, Five Star Taxi's, Check Hire, Ace Hire en Club Hire is blote handelsname.

In reaksie op bogenoemde kennisgewing in die *Staatskoerant* het die Komitee verskeie beëdigde verklarings van kliënte van die betrokkenes ontvang waaruit dit geblyk het dat J. A. (Riaan) Coetzee by sekere transaksies as onderhandelaar namens bogenoemde ondernemings opgetree het. Coetzee het nie van die uitnodiging gebruik gemaak om sy betrokkenheid by die ondernemings aan die Komitee te verduidelik nie en daar is besluit om kragtens artikel 8 (1) (a) van die Wet ook ondersoek in te stel na die sakepraktyk van Coetzee. Kennis van die voorgenome ondersoek is by Algemene Kennisgewing 1052 in *Staatskoerant* No. 14407 van 20 November 1992 gegee.

3. DIE SAKEPRAKTYK

Die sakepraktyke, soos toegepas deur die betrokke partye, kan in twee kategorieë verdeel word:

3.1 *Vervoerkontrakte ten opsigte van vragmotors*

Advertensies het gereeld in die *Beeld* en *Rapport* verskyn waarin die publiek genooi is om ooreenkomste met Prima Vragmotorhuur, Prime Truck Hire en Ace Hire aan te gaan. Die advertensies het, onder andere, klem gelê op "prima verdienste en hoë lopende winste". Volgens die ooreenkomste sou kliënte deur bemiddeling van bogenoemde ondernemings aanstellings kry om as subkontrakteurs vervoeropdragte namens opdraggewers uit te voer. Onderhoude is met voornemende kliënte gereël en 'n imposante maar valse skyn van 'n gevestigde en vooruitstrewende onderneming is aan hulle voorgehou. Inkomsteprojeksies met 'n gewaarborgde minimum inkomste is voorgehou. Beloftes van waarskynlike maandelikse winste tussen R10 000 en R12 000 is aan voornemende kliënte gemaak. Versoeke deur kliënte om bewys van konstruksiebedrywighede te sien is ontwyk of gerusstellend beantwoord.

Kragtens die ooreenkoms tussen die partye, handelend onder die genoemde handelsname, en die subkontrakteurs, moes laasgenoemde 'n vragmotor aankoop. Voornemende kliënte is verseker dat die verkryging van finansiering vir die aankoop van die vragmotor nie 'n probleem sou wees nie en dat hulp daarmee verleen sou word. Die voorstelling is aan voornemende kliënte gemaak dat die partye reeds vervoerkontrakte beskikbaar gehad het vir onmiddellike uitvoering.

Kliënte moes by ondertekening van die kontrak 'n bedrag vir klandisiewaarde van tussen R30 000 en R60 000 per vragmotor in kontant of per bankgewaarborgde tjek aan die partye (die "onderneming") betaal. Hierdie bedrag het nie enige betaling ten opsigte van die aankoopprys van 'n vragmotor ingesluit nie.

Na ondertekening van die kontrakte is kliënte meegedeel dat hulle in kennis gestel sou word sodra die finansiering beskikbaar word. Kliënte is meegedeel dat dit nie nodig was dat hulle self stappe moes neem om finansiering te bekom nie en dat dit aan die onderneming oorgelaat kon word. Die meeste van hulle het inderdaad nie self stappe geneem om finansiering te bekom nie. Diegene wat wel self reëlings in hierdie verband probeer tref het, is deur finansiële instellings meegedeel dat finansiering ten opsigte van die betrokke voertuie nie beskikbaar is nie vanweë hoë risiko.

Die onderneming het in gebreke gebly om enige finansiering vir die kliënte te bewerkstellig. Kragtens 'n bepaling in die kontrak moes die kliënt die vragmotor binne 'n periode van drie maande na kontraksluiting vir vervoer aan die onderneming beskikbaar te stel. Versuim om hierdie bepaling stiptelik na te kom sou kontrakbreuk daarstel waarna die onderneming die kontrak kon kanselleer en die kliënt alle gelde wat reeds betaal is, sou verbeur. Na verstryking van die drie maande periode is kliënte in kennis gestel dat aangesien hulle versuim om die vragmotor soos ooreengekom beskikbaar stel, dit op kontrakbreuk neerkom en dat die voorafbetaling verbeur word. Die Komitee is bewus van minstens sewe kliënte wat hulle voorafbetalings op hierdie wyse verbeur het.

Die sakepraktyk soos hierbo beskryf stem grootliks ooreen met die sakepraktyk van J.A. (Riaan) Coetzee wat deur die Minister in *Staatskoerant* No. 13715 van 10 Januarie 1992 onwettig verklaar is. Die sakepraktyk wat die onderwerp van die huidige ondersoek is, is vanaf dieselfde perseel bedryf as waar Riaan Coetzee sy besigheid onder die naam Truckkor bedryf het.

3.2 *Minibusse vir gebruik as taxi's*

In die *Beeld* en *Rapport* het weekliks advertensies verskyn waarin die publiek genooi is om deel te neem aan 'n "resessiebestande besigheid wat gesonde winste oplewer". In reaksie op navrae deur die publiek is voornemende kliënte na die onderneming se perseel genooi vir 'n persoonlike onderhoud. By hierdie onderhoud is gepoog om die navraers te oorreed om 'n kontrak met die onderneming te sluit. Die onderneming, verteenwoordig deur een van die partye hierbo genoem, het voorgegee dat dit beheer het of kon verkry, oor sekere openbare padvervoerpermitte wat uitgereik is kragtens die Wet op Padvervoer, 1977 (Wet No. 74 van 1977), en dus geregtig was om passasiers op verskeie roetes in die Republiek van Suid-Afrika, in die Nasionale State en selfregerende gebiede te laat vervoer.

Voornemende kliënte moet op eie koste en in hulle eie naam 'n minibus aankoop en beskikbaar stel aan die aannemer om op 'n sekere datum (effektiewe datum) in gebruik geneem te word. Kliënte is verseker van die onderneming se bystand met die verkryging van finansiering. Die kliënte het onderneem om die minibus slegs van 'n spesifieke leweransier aan te koop. Indien van 'n ander leweransier gebruik gemaak sou word, moes die toestemming van die onderneming eers verkry word. Die kliënte het verder onderneem om vir die duur van die ooreenkoms die onderhoudskoste van die bussie te dra.

Kragtens die kontrak sou die kliënt in verstek wees met die uitvoering van sy verpligtinge indien 'n bussie nie binne 180 dae vanaf die effektiewe datum aan die aannemer gelewer word nie.

Daar is ooreengekom dat die onderneming bestuurders sou werf om die bussies te bestuur en ook sou kontroleer dat die bestuurders se bestuurderslisensies nie geëndosseer is ten opsigte van enige oortreding van die Padverkeerswet nie.

Kliënte se vergoeding vir die beskikbaarstelling van die bussie sou R1,15 per kilometer beloop. Die voertuig se bestuurder sou weekliks die verdienste deur gebruik van die bussie verkry in die bankrekening van die kliënt inbetaal. Winste van tussen R10 000 en R12 000 per maand is in die vooruitsig gestel deur die onderneming. Die subkontrakteur sou op die sewende dag van elke maand die kliënt voorsien van 'n staat van inkomste wat hy van die bestuurder van die bussie ontvang het. Die kliënt moes 'n administrasiefooi van 5 persent van inkomste op die sewende dag van elke maand aan die onderneming betaal. Die onderneming het kontraktueel geen verantwoordelikheid aanvaar vir versuim deur die bestuurder om betalings aan die kliënt te maak nie.

Kragtens die kontrak verklaar die kliënt dat hy bewus is van die feit dat die Swart taxibedryf geslote is en dat dit moeilik is vir 'n individu om toegang tot die bedryf te bekom. Verder onderneem hy om vir die regte wat hy kragtens die ooreenkoms bekom 'n bedrag van R30 000 per bussie as klandisiewaarde aan die aannemer te betaal. Volgens verteenwoordigers van die onderneming kon voornemende kliënte die klandisiewaarde by wyse van twee of meer paaiemente betaal. Sommige kliënte het inderdaad slegs 'n gedeelte van die klandisiewaarde aan die onderneming betaal.

Indien die kliënt versuim of nalaat om enige van die bepalings van die kontrak na te kom het die onderneming die reg om die kontrak na redelike kennisgewing te kanselleer. In geval van sodanige kansellasie sou die onderneming geregtig wees om die gelde wat reeds deur die kliënt ten aansien van klandisiewaarde of administrasiefooi betaal is, te behou as gedeeltelike skadevergoeding.

Die Komitee het klagtes van meer as 30 persone ontvang wat hulle voorafbetaling, soos hierbo beskryf, verbeur het. Klaarblyklik was die vernaamste rede vir sodanige verbeuring die nie-lewering van die bussies soos ooreengekom tussen die partye. Ook in hierdie gevalle het die onderneming nie aan kliënte hulp verleen met die verkryging van finansiering nie. Uit die klagtes wat ontvang is, is bereken dat ongeveer R1 miljoen as klandisiewaarde aan die onderneming betaal is.

Een of twee kliënte het enkele klein bedrae as vergoeding vir die gebruik van die bussie ontvang. Nie hulle of enige ander kliënt het egter die inkomste ontvang wat met die sluiting van die ooreenkoms aan hulle voorgehou was nie.

Die partye het versuim om stawing te verskaf oor beweerde reëlings met taxi-organisasies met betrekking tot staanplekfasiliteite aangevra, en het ook in gebreke gebly om afskrifte van ooreenkomste met bestuurders van die bussies of van vervoerpermitte te verskaf.

4. EVALUERING VAN DIE SAKEPRAKTYK

Kliënte is deur opsetlike wanvoorstelling beweeg om kontrakte te sluit waardeur hulle aansienlike nadeel gely het. Belofes van "gewaarborgde" hoë inkomste en van bystand en leiding met die koop en finansiering van voertuie was die lokaas.

Kliënte is onder die indruk gebring dat die partye finansiering sou reël vir die aankoop van vragmotors en minibusse. Dit is egter nie gedoen nie en die partye het hulle dan later op 'n kontraktuele terugtredingsbepaling beroep, kwansuis weens die kliënt se beweerde kontrakbreuk. In die geval van minibustransaksies is die inkomste uit vervoerbesigheid ook nie aan die kliënt oorgedra soos ooreengekom nie.

Alhoewel verbruikers hulle te maklik deur verkooppraatjies laat mislei kan die betrokke partye se optrede nie geregverdig word deur die argument dat kliënte van beter moes weet en kontrakte met groter omsigtigheid moes benader het nie. Die partye se optrede is beplan en met vaardigheid en nougesette aandag aan besonderhede uitgevoer.

Die Komitee vind geen regverdiging vir die persone se sakepraktyke op grond van die openbare belang nie. Verder is die Komitee van mening dat die sakepraktyke wat deur sy ondersoek aan die lig gebring is 'n skadelike sakepraktyk daarstel vir doeleindes van artikel 1 van die Wet.

5. AANBEVELING

Uit hoofde van die voorgaande beveel die Komitee aan dat kragtens artikel 12 van die Wet—

(a) die Minister die sakepraktyk van M. C. Adendorff, J. Hepburn A. E. Muller A. Jacobs en J. A. (Riaan) Coetzee onwettig verklaar waarby ooreenkomste aangegaan word waarkragtens 'n persoon (die subkontrakteur) vergoeding of kommissie van watter aard ook al betaal aan of ten behoewe van 'n ander persoon (die makelaar) ten opsigte van sodanige makelaar se onderneming om vervoeropdragte deur die subkontrakteur te laat uitvoer, met die uitsluiting van ooreenkomste in terme waarvan voormelde betaling aan of namens die makelaar gemaak word wat betaling is wat verhaal word uit die inkomste wat die subkontrakteur uit die uitvoering van die vervoerkontrakte verdien; en

(b) M. C. Adendorff, J. Hepburn, A. E. Muller, A. Jacobs en J. A. (Riaan) Coetzee gelas word om—

(i) *af te sien van die toepassing van die skadelike sakepraktyk;*

(ii) *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;*

(iii) *te gener tyd die skadelike sakepraktyk te bedryf nie; en*

(iv) *te gener tyd enige belang in 'n besigheid of 'n tipe besigheid wat die skadelike sakepraktyk bedryf te bekom nie, of om enige inkomste daaruit te verkry nie.*

PROF. LOUISE A. TAGER,
VOORSITTER: SAKEPRAKTYKEKOMITEE.

NOTICE 493 OF 1993

DEPARTMENT OF TRADE AND INDUSTRY

HARMFUL BUSINESS PRACTICES ACT, 1988

I, David de Villiers Graaff, Deputy Minister of Trade and Industry, acting on behalf of the Minister of Finance and of Trade and Industry, after having considered a report by the Business Practices Committee in relation to an investigation of which notice was given in General Notice 903 in *Government Gazette* No. 14322 of 9 October 1992 and General Notice 1052 in *Government Gazette* No. 14407 of 20 November 1992, which report was published in General Notice 492 in *Government Gazette* No. 14862 of 9 June 1993, 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 (Act No. 71 of 1988), as set out in the Schedule.

D. DE V. GRAAFF,
Deputy Minister of Trade and Industry.

KENNISGEWING 493 VAN 1993

DEPARTEMENT VAN HANDEL EN NYWERHEID

WET OP SKADELIKE SAKEPRAKTYKE, 1988

Ek, David de Villiers Graaff, Adjunkminister van Handel en Nywerheid, handelend namens die Minister van Finansies en van Handel en Nywerheid, na oorweging van 'n verslag deur die Sakepraktykekomitee met betrekking tot 'n ondersoek waarvan in Algemene Kennisgewing 903 in *Staatskoerant* No. 14322 van 9 Oktober 1992 en Algemene Kennisgewing 1052 in *Staatskoerant* No. 14407 van 20 November 1992 kennis gegee is, welke verslag gepubliseer is by Algemene Kennisgewing 492 in *Staatskoerant* No. 14862 van 9 Junie 1993, is van oordeel dat 'n skadelike sakepraktyk bestaan wat nie in die openbare belang geregverdig is nie, en oefen hiermee my bevoegdheid 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.

SCHEDULE

In this notice, unless the context indicates otherwise—

"harmful business practice" means—

agreements in terms of which a person (the subcontractor) pays remuneration or commission of whatever nature to or on behalf of another person (the broker) in respect of such broker's undertaking to allow the subcontractor to execute transport assignments, excluding agreements in terms of which the above-mentioned payment to or on behalf of the broker is recovered from income generated by the subcontractor in the execution of transport assignments.

"the parties" means M. C. ADENDORFF, J. HEPBURN, J. A. (Riaan) COETZEE, A. E. MULLER and A. JACOBS.

1. The harmful business practice is hereby declared unlawful.

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; and*

(d) *refrain from at 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.

BYLAE

In hierdie kennisgewing, tensy uit die samehang anders blyk, beteken—

"skadelike sakepraktyk"—

ooreenkomste waarkragtens 'n persoon (die subkontrakteur) vergoeding of kommissie van watter aard ook al betaal aan of ten behoewe van 'n ander persoon (die makelaar) ten opsigte van sodanige makelaar se onderneming om vervoeropdragte deur die subkontrakteur te laat uitvoer, met die uitsluiting van ooreenkomste in terme waarvan voormelde betaling aan of namens die makelaar gemaak word wat betaling is wat verhaal word uit die inkomste wat die subkontrakteur uit die uitvoering van die vervoerkontrakte verdien.

"die partye" M. C. ADENDORFF, J. HEPBURN, J. A. (Riaan) COETZEE, A. E. MULLER en A. JACOBS.

1. Die skadelike sakepraktyk word hiermee onwettig verklaar.

2. Die partye word hiermee gelas om—

(a) *af te sien van die toepassing van die skadelike sakepraktyk;*

(b) *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) *te gener tyd die skadelike sakepraktyk te bedryf nie; en*

(d) *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. Die kennisgewing tree in werking op die datum van publikasie hiervan.

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INHOUD

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