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GENERAL NOTICES
ALGEMENE KENNISGEWINGS

NOTICE 1349 OF 1997

DEPARTMENT OF TRADE AND INDUSTRY

HARMFULL BUSINESS PRACTICES ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, under 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 No. 427 of 14 March 1997 (*Government Gazette* No. 17885 of 14 March 1997), as set out in the Schedule.

A. ERWIN

Minister of Trade and Industry

KENNISGEWING 1349 VAN 1997

DEPARTEMENT VAN HANDEL EN NYWERHEID

WET OP SKADELIKE SAKEPRAKTYKE, 1988

Ek, Alexander Erwin, Minister 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 No. 472 van 14 Maart 1997 (*Staatskoerant* No. 17885 van 14 Maart 1997), soos in die Bylae uiteengesit.

A. ERWIN

Minister van Handel en Nywerheid

BUSINESS PRACTICES COMMITTEE

REPORT IN TERMS OF SECTION 10(1) OF THE

HARMFUL BUSINESS PRACTICES ACT, 1988 (ACT No. 71 OF 1988)

Report No. 56

NEWPORT BUSINESS CLUB (PTY) LTD AND OTHERS

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1. The Committee

The Business Practices Committee (the Committee) is a statutory body within the Department of Trade and Industry. The Committee administers the Harmful Business Practices Act, No 71 of 1988 (the Act). The purpose of the Act is to provide for the prohibition of harmful business practices. A "harmful business practice" is any business practice that has or is likely to have the effect of harming the relations between businesses and consumers, unreasonably prejudicing any consumer or deceiving any consumer.

2. The enquiry

On 20 February (unless stated otherwise all dates are in 1997) the Committee received an enquiry from the Commercial Branch Unit of the South African Police Services (SAPS) in Cape Town about the activities of Newport LLC. The Unit was concerned that Newport LLC was involved in a pyramid scheme. By then the Committee had already published its intention to investigate the Rainbow Business Club (Rainbow). The notice of the investigation into the business practices of Rainbow was published as Notice No 363 of 1997 in Government Gazette No 17829 dated 28 February.

The Committee was aware of the existence of Newport LLC or the Newport Business Club because of unfavourable press reports about Newport and the fact that the name Newport was mentioned by the promoters of Rainbow during the investigation into this entity. It appeared from reports that the scheme run by Newport was almost identical to that of Rainbow. During the beginning of March the press carried reports that the promoters behind Rainbow had fled the country leaving their members with cold comfort. A representative of Newport later said that "... the promoters of Rainbow were scallywags who ran away". The Committee was also aware of the alleged losses suffered by consumers who joined Sun Multi Serve. For various reasons the Committee did not investigate Sun Multi Serve scheme, mainly on legal technical grounds. Sun Multi Serve was, however, investigated by the South African Reserve Bank (SARB) for possible infringements of the Banks Act, 94 of 1990.

During March the SARB issued a directive to Newport concerning the repayment of funds obtained by it. Newport brought an urgent application to the Court against the Registrar of Banks and others under case number 5360/97 in which they sought an order declaring that the directives were bad in law and of no force and effect. Relief was afforded to the Applicants.

3. Pyramid schemes and the approach of the Committee

It would be appropriate briefly to discuss pyramid schemes and the approach of the Committee to these schemes. Regulation No R.469 of 14 March 1980, published in Government Gazette No 6880, imposed conditions in respect of a "pyramid selling scheme" as defined. The purpose of the Harmful Business Practices Act is to provide for the control or prohibition of harmful business practices.

It had been already said that a harmful business practice is any business practice that has or is likely to have the effect of harming the relations between businesses and consumers, unreasonably prejudicing any consumer or deceiving any consumer. It is not a function of the Committee to police the existence and legality of pyramid schemes, multi-level marketing or network selling. There are obviously differences between pyramid schemes, multi-level marketing or network selling, although many would believe there is no difference and regard these concepts as synonyms.

During previous investigations the Committee not once considered whether a particular entity was involved in a pyramid, multi-level marketing or network selling. The only consideration when the Committee investigated an entity, whether on its own initiative or in reaction to a complaint, was whether a harmful business practice, as defined in the Act, exists or may come into existence. The nature of the entity under investigation was in itself of no concern to the Committee.

The Committee also does not consider the legality or otherwise of an entity. The "unlawfulness" of a particular entity does not necessarily mean that it is engaged in harmful business practices as defined in the Act. Applying the same argument it would mean that an entity that alleges that it is legal could be involved in harmful business practices.

The enquiry by the Commercial Branch Unit of the SAPS was about the possible involvement of Newport LLC in a pyramid scheme. The Committee could have informed the SAPS that it did not know whether Newport LLC was involved in a pyramid and that they (the SAPS) should establish for themselves whether the conditions imposed in Regulation No R.469 of 14 March 1980 were being complied with. In view of the Rainbow investigation, the scheme run by Sun Multi Serve and others and the risk the consumers were subjected to and the losses they allegedly suffered, the Committee decided, on its own initiative, to investigate the business practices of Newport. In the next section a distinction will be drawn between Newport Business Club (Pty) Ltd, Newport Business Club and Newport LLC .

4. Newport

Most of the information in this section was obtained from a letter of the attorney in response to the letter of the Committee dated 3 April (see section 6) and a video presentation of the business of Newport.

4.1 Background

Newport Business Club (Pty) Ltd (Newport) is a wholly owned subsidiary of Newport LLC . Newport LLC is a company incorporated according to the laws of Nevis, West Indies. The administrative offices of Newport LLC are located in Amsterdam, Holland. Newport LLC is in essence a partnership with limited liability. Richard Joseph Peter King (King) is the sole director of Newport. Martin Bradley (Bradley), Steven Sweeney,

Robert Mitchell, Robert Pritchett or Prichard and Els Dijkstra are consultants to Newport. None of these persons are South African citizens.

Newport's head office in South Africa is located in Bedfordview , Johannesburg. King is primarily concerned with matters concerning the control of the financial affairs of Newport. He is not involved in the functions incidental to the recruitment of new members. This function is carried out by a team of "independent" contractors led by Bradley. There were seven branches of Newport, namely two in Johannesburg and one each in Bloemfontein, Cape Town, Durban, Port Elizabeth and Pretoria. These branches are managed by persons called marketing directors.

Mr Michael O'Grady is the manager of Newport LLC and formed Newport LLC. With the assistance of Mr Ben Glas he recruited the personnel required to constitute the management teams used by Newport LLC to start and run its business activities in several countries. Mr Peter Sealey (Sealey), a solicitor from the United Kingdom, acts as consultant to Newport LLC and Newport. He previously acted as a consultant to the Titan Business Club in the United Kingdom. This club will be referred to later in this report.

Newport LLC commenced business operations in South Africa during or about October 1996. It recruited participants to become members of the Newport Business Club. In January it was decided to conduct business in South Africa through a wholly owned subsidiary, Newport Business Club (Pty) Ltd.

Newport carries on business as the disclosed partner in *en commandite* partnerships with several undisclosed partners. This information and that in some other paragraphs are based on information obtained from "Operating Procedures", Newport Business Club (Pty) Ltd. In each case the undisclosed partner makes a single non-refundable payment of R14 000 and the undisclosed partner is not thereafter liable for any further payments or claims. The partnerships are formed for the purpose of establishing the "Club" that shall endure until 31 December 2005. On this date the assets of the "Club" would allegedly stated be liquidated and distributed amongst the members. It was later stated by spokesmen for Newport that the scheme would continue to operate after this date.

Newport LLC has, in terms of a licence agreement, provided Newport with certain confidential intellectual property and confidential information, which Newport uses to operate its business.

In terms of the partnership agreement Newport *inter alia* has the unfettered power to lend money to any person whatsoever on a secured or unsecured basis. It also has unfettered authority to transfer assets to any part of the world subject to certain conditions.

4.2 Becoming a member of the club

Only persons personally invited by existing members of the Newport Business Club are eligible to become members of the Club and to enter into *en commandite* partnerships with Newport. These prospective new members, not more than two at a time per existing member, are invited by existing members to become members and are required to attend meetings throughout the country twice weekly on Saturdays and Sundays in *inter alia* Bloemfontein, Cape Town, Durban, Johannesburg, Port Elizabeth and Pretoria.

At these meetings the marketing directors of the relevant branches, and those persons falling under their authority, explain the scheme to those invited and invite them to apply to become members. The difference between junior partners, senior partners, executive partners, assistant marketing directors, marketing directors and the regional director and their respective roles are set out in section 4.3.

The new members, who have to pay R14 000 each, are apparently told at the meetings that most of the R14 000 is used to pay commissions, in particular, to the junior or senior partners by whom they have been introduced and, by becoming members, they will have the opportunity themselves of earning commission from the introduction by them of further new members.

A total of R5 300 in commission is paid to senior and/or junior partners with the introduction of a new member. The mechanics of the scheme will be discussed under section 4.4.

Besides the R5 300 commissions that could be earned by the junior or senior partners, the following commissions are paid from the R14 000 of each new member: executive partners (R1 700), assistant marketing directors (R500), marketing directors (R1 840) and regional directors (R700); a total of R4 740. These payments are not mentioned during the presentations.

A salient feature of the scheme is that Newport takes cash or cash cheques only. At separate meetings the payments to the members, who caused the introduction of the new members, are made in the presence of the newly recruited members.

4.3 The partners and the management and their roles

After becoming members of Newport, junior partners are required to attend training sessions (held on Wednesdays) where they are trained in respect of the recruitment of new members. Only after attending a training meeting are they entitled to invite potential new members to meetings. They are to identify persons who may be interested in becoming members of Newport. Senior partners too are entitled to invite potential new members to attend meetings.

Successful senior partners may be appointed as executive partners and executive partners could be promoted to the positions of assistant marketing directors and ultimately marketing directors.

Each executive partner has a team of junior and senior partners. The junior and senior partners contact the executive partners each Friday to tell them how many guests (not more than two) they have invited to the meeting to be held on the forthcoming Saturday and Sunday. The executive partners collate this information and furnish it to the marketing director, who is responsible for arranging the meetings. The executive partner is to be the host of the guests at the meeting and is expected to answer any questions that the guests may have.

After the meeting the executive partner is allegedly required to assess the suitability of the guest for membership, including whether the guest could afford to pay the R14 000 required. The executive partner sees to it that a guest who wishes to become a member fills in and signs the partnership application form. He then arranges to meet the prospective member between Sunday and the following Wednesday in order for the prospective member to pay the R14 000.

In this regard it is important to note that no indication is given how a guest's ability to afford the R14 000 is assessed. Newport Business Club (Pty) Ltd claimed that they reserve the right to refuse membership to persons deemed unsuitable. This right is, according to Newport, exercised frequently. The application form makes no provision for any suitable criteria to assess such ability. Annexure A is a copy of the application form. It appears that the only criterion is whether a prospective junior partner has the R14 000 available to enter into a partnership with Newport Business Club (Pty) Ltd. There is evidence to suggest that some "partners" have had to borrow money from friends and relatives to scrape together the required R14 000.

On the appointed date the executive partner has a meeting with the prospect to have the partnership agreement signed and to collect the R14 000. If the prospect no longer wishes to become a member or is unable to pay the R14 000 the application form is torn up. Once the executive partner has received the R14 000, he or she takes this to the venue of the Wednesday evening meeting where the paperwork is checked, the various payments of R14 000 accounted for and all commissions due are paid.

The next level of "management" is the assistant marketing director. They would help the marketing director. The marketing directors run the affairs of the branches. They book suitable venues for the meetings and make, as do the executive partners, presentations at the meetings and train their executive partners. The regional director is responsible for managing and supervising the marketing directors and manage the recruitment function.

The sources of income of Newport as at 25 March (total payment of R24 080 000) was analysed. This analysis was based on information obtained during a visit of the investigating officers to the offices of Newport (see section 6 of this report). Management contributed R686 000 or three per cent of the total and the members the

remaining R23 394 000 or 97 per cent. In turn, management received R8 152 800 or 34 per cent of the total amount in management commissions while members received only R9 116 000 or 38 per cent.

4.4 The scheme

By paying R14 000 an individual (YOU) enters into a partnership with Newport Business Club (Pty) Ltd, which partnership becomes a member of the Newport Business Club. This Club consists of all these individual partnerships. YOU can earn commission on the introduction of new members by yourself. The scheme could be illustrated by describing various steps. When following the steps one should keep in mind that each new member pays R14 000 and R5 300 of this amount is earmarked by Newport to the recruiting members or partners. The amounts deducted in respect of income tax are ignored because the effect on each member will be different, depending on the marginal tax rate of the member.

Step 1: Another member of the scheme recruits YOU and YOU become a member or partner by paying R14 000. YOU are now a junior partner. R5 300 of the R14 000 paid by YOU will be paid to the junior partner and/or the senior partner who recruited YOU.

Step 2: Should YOU canvass two new members, A and B, YOU would receive R2 000 for each member recruited. YOU then become a senior partner. A and B then fall away from YOUR structure and YOU do not receive any further commissions from them or the people they recruit.

Step 3: Once YOU have become a senior partner YOU would receive R5 300 for each subsequent new member. For example, YOU would receive R10 600 were YOU to recruit members C and D. C and D are now YOUR junior partners. There is no limit on the number of junior partners YOU, as a senior partner, may recruit.

Step 4: Should C, YOUR junior partner, recruit E, C would receive R2 000 and YOU would receive R3 300 out of the R14 000 paid by E. E would now also be YOUR junior partner. The same applies to D should he recruit X.

Step 5: Should C recruit F, C would receive R2 000 and YOU would receive R3 300. F is also now YOUR junior partner. The same applies to D should he recruit Y. For the sake of clarity D and the members recruited by him will be ignored.

Step 6: C has now recruited two members, E and F, and consequently he, that is C, becomes a senior partner. C then falls away from YOUR structure. C would now be in the same position YOU were in step 3. He would then receive R5 300 for each subsequent new member and could probably develop his own structure of junior partners.

Step 7: E and F are YOUR junior partners. Should E canvass G, E would receive R2 000 and YOU would receive R3 300. The same remuneration would apply should E canvass H. E would now become a senior partner and fall away from YOUR structure. YOU, however, now has two more junior partners, namely G and H. The same reasoning applies to F.

YOUR number of junior partners increases, provided they recruit other junior partners, resulting in income being produced without YOU having to recruit new members YOURSELF. Furthermore, the increase in the number of YOUR junior partners grows at an exponential rate. For example, assuming that each junior partner recruits two new members, the number of partners after the ninth level would be $2^8 = 256$.

The scheme allows for each member, provided the member advances to the status of a senior partner, to start his own "pyramid". The business club thus consists of a great number of *en commandite* partnerships and each partnership is characterised by a separate pyramid structure. These structures or pyramids are not the same. For example, member A could canvass ten new members and member B three new members. Each new member thus canvassed by A and B would probably enrol various numbers of other new members. The number of people in each structure will differ between each partnership or pyramid. In general, however, the business club is also characterised by a pyramid structure in the sense that the "independent" contractors find themselves at the top of the pyramid.

Prospective members are told at the meetings held by Newport that an individual could earn up to R153 900 after nine periods, whether the period is weeks, months or years. The amount of commission that a senior partner could receive from the first two individuals recruited and their first two recruits and their first two recruits, is theoretically unlimited.

4.5 The "investment" in L'Abrie

Each member pays R14 000 of which R5 300 (37.85 per cent) is paid to the recruiting members or partners, R4 740 (33.85 percent) is paid directly to the "management" and the remaining R3 960 (28.3 per cent) is available for administrative, operative, legal costs and "investments". The "investments" is the undisclosed partners' capital account. During the meeting between the Committee and Newport on 6 August (see section 9.11), Sealey was unable to indicate the amount of the undisclosed partner's capital account. Newport would be entitled to a further 20 per cent of the proceeds of any "investments". The undisclosed partner (YOU) has no control over what is done with the "investment" portion of the R14 000 paid.

Applerock (Pty) Ltd (Applerock) is the authorised "investment" vehicle of Newport. Applerock acquired a 40 per cent interest in L'Abrie Estates CC (L'Abrie) for a consideration of R2½ million. Newport engaged Applerock for the provision of services relating directly to the "investment" activities of the individual partnerships on the understanding that Applerock acted solely as fiduciary and trustee for Newport and as

a conduit for partnership funds and to provide administrative and other services as may be agreed between it and Newport from time to time. Newport alleged on 9 July that the interest of Applerock in L'Abrie was R15 million. This allegation was not substantiated. The L'Abrie project involved the development of an area known as Schoemanskloof in Mpumalanga province. The area is 20 kilometres southwest of the Ngodwana, the Sappi paper mill. It was suggested that the development would consist of a 71 bedroom hotel leisure resort and a 300 unit time share leisure resort and nature reserve.

An "Overview and Projected Profit and Loss Statements and Projected Cash Flow Statements for the years 1997 - 2001" for the proposed resort was handed in by Sealey. The projected sales for the time share units was R573 750 000 or slightly more than half a billion rand. The assumption was that 300 units would be sold at an average of R37 500 per week for a total of 51 weeks. It was stated that the sales would be spread out as follows:

First phase of 60 units	January 1998 to September 1998
Second phase of 60 units	August 1998 to April 1999
Third phase of 60 units	April 1999 to December 1999
Fourth phase of 60 units	January 2000 to September 2000
Fifth phase of 60 units	September 2000 to May 2001.

A net profit of R227 391 419 as at 31 December 2001 was projected. Applerock's 40 percent share holding of this amount would be R90 956 567. The amount available to Newport members would be 80 per cent of this amount (R72 765 254) plus a further R22 920 000 "principal interest on loan". This gives a total amount of R95 685 254. Assuming 8 000 members at that stage would mean that each would receive R11 960. If there were to be 10 000 members each would receive R9 568. In addition to receiving this payment, it was alleged that the members will continue to own 40 per cent of the resort development.

Sealey said that the underlying reason for the property development was that the people who started Newport sought to create an "investment" fund for the purpose of making profit for themselves as well as the members. The "investment" "... frankly improves the plausibility of the business". Newport wanted to get away from being a pure money circulation scheme and wanted to demonstrate, according to Sealey, that Newport was seeking to protect those who could not recruit as well as those who can.

In terms of the agreement between Applerock and L'Abrie, Applerock is obliged to provide further funding of R20 million by 3 March 1999 for development. Failure to provide this funding will entitle L'Abrie to terminate the agreement and retain the purchase price of R2½ million. The Newport members would therefore forfeit this amount. Forfeiture of the R2½ million would also result if several other occurrences take place. These occurrences are set out in clause 8 of the agreement that reads as follows:

"8. Special Conditions and Covenants

(a) If any one or more of the following events shall occur prior to March 3, 1999 L'Abrie shall have the right to terminate this agreement and retain the Rand 2,500,000 referred to in paragraph 2 herein and demand the return of the beneficial interest and the shares from Applerock.

(i) Default of Covenants. Applerock fails to procure the Rand 20,000,000 in debt financing referred to in paragraph 2 herein or fails to perform any other term, covenant, or condition contained in this agreement to be performed or observed by Applerock;

(ii) Bankruptcy or Insolvency. Applerock (1) generally cannot, is unable to, or admits in writing an inability to pay its debts as they become due; (2) makes an assignment for the benefit of its creditors, petitions or applies to any tribunal for the appointment of a custodian, receiver, or trustee for it or a substantial part of its assets; (3) commences any proceedings under any bankruptcy reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute or any jurisdiction, whether now or hereinafter in effect; (4) suffers any petition or application to be filed or any proceedings to be commenced against it in which an order for relief is entered or adjudicated or appointment is made; or (5) by any act or omission indicated its consent to, approval of, or any acquiescence in any such petition, application, or proceeding or order for relief, or the appointment of a custodian, receiver or trustee for all or any substantial part of its properties.

(iii) Judgement. Any entity obtaining a judgment against Applerock, in an amount exceeding Rand 50,000;

(iv) Change of Management. There is a change in majority of the Board of Directors of Applerock as it exists as of the date of this agreement, without prior written consent of L'Abrie.

(b) L'Abrie shall exercise its right under this Special Condition by notice to Applerock.

(c) In order to secure Applerock's obligations under this paragraph 8, Applerock shall enter into a Secured Pledge Agreement in the form of Schedule 2 hereof in which Applerock pledges to L'Abrie, the beneficial interest acquired pursuant to this agreement".

It was later submitted that these onerous provisions of the failure of Newport and Applerock to put up the money have been satisfied.

5. Notice of the investigation

On 6 March the Committee resolved to undertake a section 8(1)(a) investigation into the business practices of Newport, Newport LLC, Newport Business Club (Pty) Ltd and various individuals. On the same day the Committee appointed three employees of the firm Deloitte and Touche as investigating officers in terms of section 7 of the Act to assist the Committee with the proposed investigation into Newport. The same persons had also been previously appointed on 18 February as *ad hoc* investigating officers for the investigation into the business practices of the Rainbow Business Club.

On 11 March an official of the Committee called the attorney (the attorney) of Newport Business Club (Pty) Ltd and informed him about the notice of the impending section 8(1)(a) investigation. The official faxed a letter to the attorney confirming the telephone conversation. The attorney did not raise any objections about the publication of the notice of the investigation in the Government Gazette.

The following notice appeared as Notice 427 in Government Gazette No 17885 of 14 March (hereafter called the 8(1)(a) notice of 14 March:

> "In terms of the provisions of section 8(4) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), notice is herewith given that the Business Practices Committee intends undertaking an investigation in terms of section 8(1)(a) of the said Act into the business practices of Newport, Newport LLC, Newport Business Club (Pty) Ltd, Martin Bradley, Els Dijkstra, Richard King, Bob Mitchell, Robert Prichard and Steven Sweeney, and any director, promoter, member (as applicable), of the named club and any employee, agent and/or representative of any of the afore-mentioned.
>
> Any person may within a period of fourteen (14) days from the date of this notice make written representations regarding the above-mentioned investigation to: The Secretary, Business Practices Committee, Private Bag X84, PRETORIA, 0001".

The names that were not mentioned as such in Notice 427 but whose involvement has become apparent from information received from the attorney are the marketing directors Paul Farrally, Clancy Connor, Elaine Douglas, Rob Edward and Wayne Bradley.

It should be pointed out that the Committee could undertake two types of investigations in terms of section 8 of the Act. A section 8(1)(a) investigation enables the Committee to undertake such an investigation as it may consider necessary into any harmful business practice which the committee or the Minister, as the case may be, has reason to believe exists or may come into existence. The focus of a section 8(1)(a) investigation is on a specific entity. Section 8(1)(b) investigations empowers the Committee to undertake an investigation into any business practice or type of business practice, in general, which is commonly applied for the purposes of or in connection

with the creation or maintenance of harmful business practices. The focus of a section 8(1)(b) investigation is on the harmful business practices applied generally by entities.

6. Events between 14 March 1997 until 15 April 1997

It had already been said that notice of the section 8(1)(a) investigation was published in the Government Gazette on 14 March. On 17 March an invitation was extended to the attorney that he and his clients attend a meeting of the Committee on 24 March. The attorney replied that he was in litigation on behalf of his clients with the SARB and that he and his clients would not be able to attend this meeting. He did, however, place on record that his clients would appreciate the opportunity to address the Committee.

Officials of the Committee, in terms of section 7(3) of the Act, visited the offices of the Newport Business Club (Pty) Ltd in Bedfordview on 25 March. A number of computer files were copied. Sealey, the consultant to Newport Business Club (Pty) Ltd, was present and, after various telephone discussions between the attorney and an official, he handed a number of documents to the officials. He also briefly explained the scheme to the officials.

The attorney objected to the visit by the officials to the Bedfordview office in a fax of 25 March on the grounds that the investigating powers of the officials, as set out in section 7(3) of the Act, were inconsistent with particularly the provisions of section 14 of Chapter 2 of the Constitution of the Republic of South Africa. Despite the alleged unconstitutionality of section 7(3) he said that his client wished to co-operate with the Committee.

On 3 April the Chairman of the Committee wrote a letter (the letter of 3 April) to the attorney, *inter alia*, expressing the Committee's appreciation of the: "... willingness of Newport and your clients to co-operate in respect of the investigation and their willingness to meet the Committee on 15 April 1997". A copy of this letter and its annexure is annexed as "B".

7. The meeting on 15 April 1997

On 15 April the Committee met with the legal representatives of Newport. They were the attorney, counsel and senior counsel for Newport. Despite informing the Committee that Newport would attend the meeting of 15 April, only their legal representatives arrived for the meeting. The Committee expressed its disappointment with the fact that only the legal representatives were present.

The meeting was tape recorded. A transcript of the meeting was annexed as "T" in case 9729 of 1997 in the High Court of South Africa, Transvaal Provincial Division (hereafter called the Court). It is not relevant to copy the transcript in this report and a brief summary of the approaches of the legal team and the Committee would suffice.

The legal representatives wanted to know what reasons the Committee had for believing that the activities of Newport could be prejudicial to the public. The Committee on the other hand contended that the only purpose of the investigation was to establish whether Newport was indeed involved in harmful business practices as defined in the Act. To establish this possibility the Committee required certain information about Newport's business.

At the end of the meeting the legal representatives handed over certain documents to the Committee, such as the CM29 of Newport Business Club (Pty) Ltd, its articles of association, an agreement between Newport LLC and Newport Business Club (Pty) Ltd and a video of a presentation of the business of Newport. They also undertook to let the Committee have a written response to the questions contained in the letter of 3 April. This response was faxed to the Chairman of the Committee on 24 April.

Following the meeting with the legal representatives of Newport and considering the relevant information, the Committee resolved unanimously to recommend to the Minister of Trade and Industry that he, in terms of section 8(5) of the Act, orders the parties named in Notice No 427 to stop the business practice by which members are directly or indirectly canvassed to join Newport Business Club (Pty) Ltd against payment of a cash consideration until 13 September.

8. Events after 15 April 1997

8.1 The first section 8(5) notice

The Minister accepted the recommendation by the Committee and the staying order was published under Government Notice No 762 in Government Gazette 17979 of 2 May (hereafter called the 8(5) notice of 2 May). Notice 762 read as follows:

> "I, Alexander Erwin, Minister of Trade and Industry, herewith declare that I have reason to believe that Newport, Newport LLC, Newport Business Club (Pty) Ltd, Martin Bradley, Els Dijkstra, Richard King, Bob Mitchell, Robert Prichard and Steven Sweeney are applying a harmful business practice, which practice is the subject of an investigation by the Business Practices Committee, and hereby order the parties mentioned herein to stay the business practice whereby members are directly and/or indirectly canvassed to join Newport Business Club (Pty) Ltd against payment of a cash consideration from the date of publication of this notice until 13 September 1997".

A press release about the Notice was issued by the Chairman and a copy of the notice was faxed to several newspapers. These newspapers were informed that a contravention of the Minister's order was a criminal offence.

8.2 6 May 1997

On 6 May an application was launched in the Court (case number 9729/97) for an order declaring the 8(1)(a) notice of 14 March bad in law and void for vagueness. It was allegedly bad in law for not complying with the requirements of section 8(4), read with 8(1) of the Act, by not giving any or sufficient description of the harmful business practices which the Committee intended to investigate. [The Court ruled on 1 September that the section 8(1)(a) notice was valid - see section 10.2].

In essence, the Applicants wanted to oblige the Committee to furnish each of them with a "... sufficient description or definition" of the "harmful business practice". The Applicants further wanted to oblige the Committee to inform each applicant of the reasons, if any, of its belief, at the time the decision to investigate the said business practice of the Applicants was taken.

Before the matter could be heard, a further application was launched by the Applicants in the Court in which the Applicants sought a declaratory order that the 8(5) notice of 2 May was "... bad in law and of no force or effect" (see case number 10288/97).

8.3 16 May 1997

The 8(5) notice came before Mr Justice Hartzenberg on 16 May. By consent the said application was postponed for hearing until 17 June and dates were fixed for the filing of further affidavits. Further by consent the court ordered that the applications concerning the 8(1)(a) notice of 14 March and the 8(5) notice of 2 May be consolidated.

8.4 21 May 1997

The result of the investigation as at 21 May was put at the disposal of Newport by way of a draft report (the draft report). The status of this draft was that it was obviously not in its final form and it could be described as a working document. Until the Committee submitted any report to the Minister a draft report is nothing more.

8.5 28 May 1997

On 28 May another urgent application was instituted in the Court (see case number 11500/97). In this application, the Applicants intended to interdict and restrain the Committee from:

(a) considering the draft report on Newport Business Club (Pty) Ltd at a meeting of the Committee scheduled for 29 May;

(b) taking any further steps with a view to preparing a report in terms of section 10 of the Act; and

(c) taking any further steps in regard to its investigations into the business practices of the Applicants.

Alternatively, to interdict and restrain the Committee from preparing and/or submitting any report as contemplated in terms of section 10(1) of the Act to the Minister pending:

(a) the furnishing by the Committee of all such information and/or documents to which the Applicants claim to be entitled and which have not as yet been provided and

(b) affording the Applicants an opportunity by the Committee to present evidence, arguments and submissions as they may reasonably wish to present, provided such opportunity shall be given on dates not less than two weeks after receiving certain information.

8.6 29 May 1997

On 29 May the Court handed down the following ruling regarding the possible acts which could be performed by the Committee. It could:

(a) consider the draft report,

(b) make a recommendation to the Minister to withdraw the present restriction order,

(c) make a recommendation to the Minister to issue a fresh restriction order, and

(d) submit the present report to the Minister. However, the Committee was not to make a recommendation to the Minister for a final order.

In a verbatim transcription of case 11500/97 van der Merwe, J *inter alia* said:

> "It appears to me that the business practice the committee is at present investigating, may indeed be found to be a harmful business practice" and "From all the papers before me, although the contrary was argued with great conviction, it appears that the Applicants are applying delaying tactics, something that cannot be tolerated. To now place a restriction on the committee's powers and duties bestowed upon them in terms of the Act, may amount to a possible sanctioning of a harmful business practice, as well as the employing of delaying tactics".

It was already stated that the 8(5) notice came before Mr Justice Hartzenberg on 16 May. The said application was postponed for hearing until 17 June. On this date, however, the hearing was crowded out.

9. Meetings between Newport and the Committee

9.1 Introduction

Pursuant to one of the court applications the Committee met and resolved that Newport again be given an opportunity to make representations as to why the Minister should not issue a fresh section 8(5) notice. The Committee consequently again held discussions with the management and legal representatives of Newport on 24 June, 26 June and on three consecutive days starting on 8 July. Further meetings were held on 17 July, 24 July, 31 July, 5 August and 6 August.

The discussions between the Committee and Newport were often postponed because representatives of Newport raised legal issues with the result that the Committee had to seek legal advice. Invariably the discussions revolved round legal issues and not whether Newport was involved with harmful business practices as defined in the Act.

9.2 24 June 1997

The members convened to attend the 43rd meeting of the Committee. An invitation was extended to the representatives of Newport to attend the meeting to assist the Committee in its investigation into the business practices of Newport. Counsel for Newport advised the Committee that he had prepared a written submission as to why the meeting should be postponed. It was agreed that the meeting would reconvene on 26 June.

9.3 26 June 1997

Representatives of Newport presented the Committee with a document setting out a "stakeholder cession". The Committee resolved that the document was unacceptable and the proposals contained in the document were rejected. The Committee agreed in principle that a hearing be arranged for 8 July.

9.4 8 July 1997

A formal hearing was convened by the Committee on 8 July to give Newport the opportunity to answer and respond to the draft report and also to show cause why the Committee should not proceed with a section 8(5) notice. Apart from the Committee those present included two senior counsel, two junior counsel, three attorneys and other representatives of Newport. Newport and some 150 members or partners of Newport were represented by different attorneys and lawyers.

Counsel for Newport placed on record the misgivings of his client concerning the inquiry, and in particular the concern that Newport would not be afforded a fair and impartial hearing. Counsel said that Newport's concern stemmed from the conduct and

the attitude adopted by certain members of the Committee in the proceedings up to that date. The allegation was that the case was concerned not with actual bias, but with the outward appearance of bias.

Counsel for Newport moved for the recusal of the Chairman and Mr RV Ridgway, a member of the Committee. Counsel for the partners indicated that he would apply for the recusal of the Committee itself. The meeting was then adjourned to the following day.

9.5 9 July 1997

At the meeting on 9 July the Committee informed counsel that it would respond at the end of the investigation to the allegations referred to when counsel moved for the recusal of one or more members of the Committee.

Newport then placed on record their view that if the formal hearing should continue, it continued irregularly. The grounds were that they believed that various sections of the Act were unconstitutional and that there was a serious problem with regard to delegation powers. They also submitted that it was irregular to continue with the hearing at that stage in view of the Court applications that were still pending.

9.6 10 July 1997

Mr Paul Kennedy (Kennedy), an actuary and barrister from the United Kingdom, was called in by Newport as an expert witness. Kennedy indicated that he wished to address a number of concerns the Committee might have had emanating from the draft report. His first argument was that the number of possible future recruits to the Newport scheme was not finite. He also wished to address the Committee on the notion that the continued existence of the Newport scheme required an excessively rapid exponential growth. He also wished to discuss the saturate issue. Obviously, if the market was not finite and the scheme did not require exponential growth to continue, saturation would not occur. Another issue was that many members would inevitably not recoup their payments through recruitment alone.

Regarding finity of the market Kennedy contended that it was misleading to think in terms of a single target population, for example, the target population need not be restricted to South African residents alone. The population with persons in access of R14 000.00 was also not homogenous. There would be a wide spectrum of enthusiasm within that population. At the core of this population there was likely to be a small group of enthusiasts, many of whom would already have been familiar with network marketing techniques and presumably confident in their own ability to succeed. Newport could expect rapid penetration of that group.

Outside the core group there would be larger numbers of individuals with varying degrees of enthusiasm. The different groups could be regarded as a set of concentric shells. In these groups Newport could expect moderate penetration with a much slower rate of growth than was exhibited in the core group. As the scheme extends to the larger outer sectors, the rate of growth and the level of penetration will become progressively lower.

None of these populations, whether the target population or the total population of South Africa, could be regarded as static. Although the various populations are finite on a snapshot basis, this does not limit the number of members that can potentially be recruited in future. Kennedy postulated that what would happen is that Newport would have an exponential growth to begin with. The reaction would peak and it would die away. There would not be a continued exponential growth and then a crash when suddenly everything ran out. It would be a gradual process.

Kennedy then quoted from census figures. The argument was that as younger people grow older and earn incomes, one could look at more than half a million potential members every year. This did not take into consideration the nett growth in the population. It was pointed out by the Committee that the assumption was that people have jobs. Unfortunately South Africa had a declining economy and a growing unemployment rate. Kennedy said that he was dealing with concepts.

The Committee put it to Kennedy that they had a problem with the method he used to extrapolate his assumptions and that it would have been helpful if the Committee could have had a look at the business plan of Newport to see how the concepts were translated into the actual business strategy. Sealey said that the business plan was never written down but that he would see whether he could put it together for the Committee. A member of the Committee remarked that if Newport had a business plan to recruit a certain number of people per week, per month or whatever and that was an enormous number of people, then regardless of snapshots or anything else, within one year if their plan was so big, a point would be reached where there was no one left. A business plan was germane to the whole scheme.

During the presentation by Kennedy it was conceded by Sealey that a point would be reached when the number of recruits levelled out, and that the turnover would become static. Sealey said that static growth would be when the number of recruits was the same each week. This would imply that it would take longer for members to recoup their money and to make a profit.

Kennedy explained the natural equilibrium level of the scheme. Equilibrium is balance and there are two possibilities for equilibrium. One is a no-growth equilibrium, that is, the rate of recruitment where the number of recruits each week fluctuate about a constant. Obviously there would be fluctuations resulting in a dynamic equilibrium. Equilibrium implies a balance of forces in each direction, a balance of the tendency to grow and a balance of the tendency to contract. Answering to a question on how the natural equilibrium level could be found, Kennedy said that it would be an extremely

difficult task. He also made the remark that neither actuaries nor economists usually research money circulation schemes.

Kennedy resumed his submission at the meeting on 24 July. He prepared mathematical calculations and presented the Committee with a number of graphs. In answer to a question he said that it would be difficult to predict how the equilibrium position would be reached.

During the meeting between the Committee and Newport on 10 July it was put to Kennedy that many people would not recoup their monies. Kennedy conceded that this was the case. The fact that many people would not recoup their payments was also conceded by Sealey and senior counsel during the meeting held on 6 August.

9.7 17 July 1997

On 17 July senior counsel for Newport submitted a supplementary submission about the constitutional issues and jurisdictional issues about the delegation of powers. The meeting was then adjourned until 24 July.

9.8 24 July 1997

Kennedy concluded his submission during this meeting. Sealey elucidated aspects of the Applerock "investment" in L'Abrie. Aspects of this "investment" was discussed in section 4.5 and would receive further attention in section 11.5 of this report.

9.9 31 July 1997

The parties agreed that the hearing be postponed to 5 August and 6 August.

9.10 5 August 1997

Senior counsel again moved a further application for the recusal of the Committee based on bias and handed in an affidavit in this regard. The deponent of the affidavit was Sealey. Sealey placed on record his concern about events which have transpired since 9 July. In particular his concern was that the Newport was not and would not be afforded a fair and impartial hearing. This concern apparently stemmed from the conduct and attitude adopted by certain members of the Committee prior to 9 July and also thereafter. The Chairman of the Committee told Newport that the reasons for the members of the Committee not to recuse themselves would be given at the end of the investigation.

Mr Leon Louw (Louw), part-time executive director of the of the Free Market Foundation and of the Law Review Project, had tabled a submission and spoke on some of the

issues raised in his submission to the Committee. The submission by Louw was made in his personal capacity and it did not present the views of the Free Market Foundation, the Law Review Project, or of any other organisation, or any member of any organisation with which he is connected.

Louw addressed the Committee on the economic aspects of Newport and "pyramid" schemes in general. He qualified his submission by stating that he had neither researched nor concerned himself with the specific methods by which the Newport scheme was presented and/or the administration and management of the scheme, or of the funds and "investments" it administers.

His summarised views were that:

there is nothing inherent in the Newport scheme that renders it likely to be a harmful business practice as defined in the Act,

the Committee and the Minister do not, in any event, have jurisdiction under the Act in respect of the scheme because participants in the scheme are not "consumers" as popularly understood, but, in the recognised socio-economic sense and in the etymological sense of the word, entrepreneurs or independent contractors,

participation constitutes the exploitation by participants of an entrepreneurial opportunity, which is not a "commodity" as required for the Act to be applicable,

what is envisaged by participants, apart from a share in a payment component, training and other comparatively minor benefits, is the prospect of profits earned in return for their payment of time, effort and money,

there was no need for all, most or even many participants to enjoy net (pecuniary) profits from the scheme to legitimise it,

the prospect that, at any given time (that is, at the time of a static snapshot of a dynamic process), the majority of participants will have invested more cash than they will have received, is no basis for curtailing the scheme,

for the same reason as in the previous paragraph, it is not considered a flaw in many other contexts where many, most or all participants might be in a net "loss" position, such as insurance schemes, savings schemes at negative real interest rates, social security schemes, pension schemes, medical aid schemes, churches, invention, gambling and gaming, franchising, or savings and loan clubs,

for "prejudice" to be of relevance under the Act, it must be "unreasonable", as opposed to merely inevitable or undoubted and that, whatever "prejudice" there might be for Newport participants, there is nothing inherent in the scheme that would render it "unreasonable",

in any event, even if participants receive less than they contribute, they cannot said to have been "prejudiced" (unreasonably or at all), if they get what they contracted for deliberately, and

consenting adult participants in the scheme receive in their view, real value for money, they get what they paid for, whether or not they make a net cash profit.

Louw also made the following statement: "If participants in the Newport scheme are consenting adults, whatever harm they might suffer must be seen to be self-assumed rather than caused by a 'business practice', whether 'harmful' or otherwise. Self-inflicted harm is, of course, commonplace, inevitable and an integral part of risky behaviour undertaken freely and routinely by free people".

The submission by Louw was strictly speaking not relevant since, by his own admission he had neither researched nor concerned himself with the specific methods by which the Newport scheme was presented and/or the administration and management of the scheme, or of the funds and "investments" it administers.

In a supplementary submission Louw said that he and Kennedy tried to estimate the static and dynamic size of Newport's target market. Their informed "guestimate" was that the static market was in the order of 500 000 people. The "guestimate" was based on their "... understanding of South Africa's demographic, sociological and economic configuration". The dynamic size of the market could obviously not be quantified. Louw did not indicate or discuss the underlying assumptions made to arrive at a figure of 500 000. He did, however, state that the target market for any product or service was a hypothetical concept that depended *inter alia* on the development of the market by the entity involved.

Louw made a plea for free enterprise and pointed at the similarity of Newport to businesses such as insurers. He omitted to state that the businesses he referred to add to the wealth of the country. Newport merely distributes wealth. And the business operations to which he refered were subject to regulation.

Advocate AB Mahomed, a member of the Committee, asked Louw whether a scheme could operate indefinitely. Louw answered by saying that he did not know what would happen in two, three or four hundred years time, but "... that a scheme of this nature could last that full distance". On a question about the finiteness of such a scheme Louw said that "... It is finite to the extent that the human population is finite, but who knows maybe people will spread onto other planets throughout the galaxy". Louw also said that to the extent participants may experience harm it would seem to be inherent in all entrepreneurial activities.

9.11 6 August 1997

At this meeting counsel for Newport argued that the business practices of Newport did not constitute harmful business practices as defined in the Act. He argued that the

Newport members did not constitute consumers but that they were entrepreneurs. The Committee's point of view in this regard is set out in section 11.1. Counsel also argued that the Newport scheme might be prejudicial to some members, but the question was whether this constituted unreasonable prejudice in terms of the Act.

Sealey again conceded that some people would lose money. Sealy also explained why Newport conducted its business on a cash basis. He said that it was the best way of avoiding fraud.

9.12 The working group

A working group, on a without prejudice basis and consisting of representatives of Newport and the Committee, held discussions in Johannesburg on 14 July and 22 July and in Pretoria on 15 July and 31 July. The working group ran parallel to the hearing to deal with not only Newport, but perhaps for any type of money circulation scheme if it was going to result in a form of regulation. The group again met in Johannesburg on 11 August. The working group agreed on the wording of a warning, but did not consider whether Newport was involved with harmful business practices.

The working group agreed that the following should be contained in the warning:

> "This is a high risk investment.
>
> You must recruit four new members to make a profit.
>
> Your ability to recruit is determined by various factors, including the size of the potential market and the number of members who have already joined the club. As more members join the club it is likely to become more difficult for you to find further potential members.
>
> There is no guarantee that you will recover your investment or make any profits. If you do not recruit any new members, you will forfeit your full investment, apart from your investment portion. You must satisfy yourself that you can afford to lose the full investment".

During the meeting of the working group on 11 August it was agreed in principle that further specific points should be disclosed to potential members. The attorney had to refer these points to his client for approval. The attorney also undertook to furnish the working group with certain documents at its next meeting. The next scheduled meeting did not take place. On 15 August the Committee was informed by the attorney that his client "... instructed us not to furnish you with these documents at this stage in view of what it perceives to be the gross bad faith "... evidenced by the publication of Government Notice 1211, seen against the events that preceded it". The Government Notice referred to is discussed in the next section.

10. The fresh section 8(5) notice and subsequent events

10.1 The fresh section 8(5) notice

At a meeting of the full Committee on 13 August the Committee resolved to recommend to the Minister that he issue a fresh notice in terms of section 8(5) of the Act. Notice 1211 was published in Government Gazette 18216 dated 15 August and read as follows:

> "I, Alexander Erwin, Minister of Trade and Industry herewith withdraw general notice no. 762 of 1997 that was published in Government Gazette 17979 on 2 May 1997 and issue the following new notice:
>
> > I, Alexander Erwin, Minister of Trade and Industry herewith declare that I have reason to believe that Newport LLC, Newport Business Club (Pty) Ltd, Newport Business Club, Martin Bradley, Wayne Bradley, Clancy Connor, Els Dijkstra, Elaine Douglas, Rob Edward, Paul Farrally, Ben Glas, Richard King, Bob Mitchell, Robert Prichard, Peter Sealey and Steven Sweeney and/or any member, partner, agent, representative, employee or any other person on their behalf (hereafter referred to as "the aforesaid person"), are applying a harmful business practice, which practice is the subject of an investigation by the Business Practices Committee. I hereby order the parties mentioned herein from the date of publication of this notice until 13 September 1997 to stay or prevent the business practice whereby any person, in the course of the business of any of the aforesaid persons, directly and/or indirectly:
> >
> > (a) invites, procures the attendance or attempts to invite or to procure the attendance of any person to a meeting held by or on behalf of any of the aforesaid persons at which meeting such person (hereinafter referred to as the "participating person") is invited, encouraged or in any way enticed to enter into any arrangement with any of the aforesaid persons the terms whereof include any provision which has the following effect:
> >
> > > (i) the parties to the agreement enter into an *en commandite* partnership
> > >
> > > (ii) the participating person is obligated to make a payment of a financial consideration with the prospect of such participating person receiving payment or other money-related benefits, directly or indirectly, from his/her participation in the recruitment of other persons to enter into similar arrangements with any of the aforesaid persons;
> >
> > (b) enters into any arrangement with any person the terms whereof includes any provision which has the following effect:

(i) the parties to the agreement enter into an *en commandite* partnership

(ii) the participating person is obligated to make a payment of a financial consideration with the prospect of such participating person receiving payment or other money-related benefits, directly or indirectly, from his/her participation in the recruitment of other persons to enter into similar arrangements with any of the aforesaid persons;

(c) accepts any financial consideration from any person in terms of any arrangement which financial consideration is used in part or in full to fulfil the obligations of either party to make payment to a third party who has entered into a similar arrangement with any of the aforesaid persons; and

(d) makes any payment of any financial consideration or gives any money-related benefit, directly or indirectly, to any person in terms of any arrangement as prohibited in terms of paragraph (b) or (c) above".

The Committee faxed a document to Newport setting out its response about the recusal , delegation and constitutional issues raised by counsel.

10.2 Subsequent events

An urgent application to the Court was made on 27 August by Mario Evangelos Vanderlis (Vanderlis), a member of Newport, to be heard on 28 August. On this date the judge ruled that he would give judgment on 2 September. Vanderlis sought urgent relief to the effect that the lodging of an appeal in terms of the Act suspended the section 8(5) notice that was published in the Government Gazette on 15 August and which was appealed against.

Also on 27 August Newport lodged an urgent application to be heard on 4 September. In this application Newport sought the same relief as set out in the preceding paragraph. An attack was also made on the section 8(5) notice of 15 August. The basis for this attack was to be found in previous meetings between the Committee and Newport and focused on the recusal, delegation and constitutional issues raised by counsel for Newport during these meetings.

On 1 September the Court ruled that the Notice of the section 8(1)(a) investigation, which appeared as Notice 427 in Government Gazette 17885 of 14 March (see section 5) was valid. One of the effects of the judgement was that the restriction placed on the Committee by van der Merwe, J, to issue a final order (see section 8.6) in terms of section 12 of the Act had been lifted. Also on 1 September the attorney sought an undertaking from the Committee that his client will "... be afforded the right to present

such further evidence and submissions as may reasonably be required before a final report is completed and submitted to the Minister".

In the Vanderlis case the Court ruled on 2 September that in common law the lodging of an appeal suspends the working of the ruling against which was appealed. This, however, does not apply to administrative decisions taken by an organ of the State. The applicability of the section 8(5) notice was thus not suspended pending the outcome of the appeal by the applicant.

On 2 September the attorney requested the Minister that when he receives a report from the Committee in terms of section 12 of the Act that he will "... notify us of this fact; furnish us with a copy of both the report and the recommendation; and afford our clients a hearing prior to taking any decision as to whether to issue any order in terms of section 12(1) that might adversely effect our clients or any of them". The attorney also requested, by fax at 21h21, all "... written documents furnished by TISA" (see section 11.5) about the L'Abrie development. The document was faxed to the attorney at 08h08 on 5 September due to the unavailability of the necessary personnel on 3 and 4 September.

Due to the state of the Court roll on 4 September the application by Newport against the fresh section 8(5) notice was "crowded out" and the judge advised them to make representations to the Deputy Judge President to urgently allocate a judge to hear the application. This proposed urgent application was not yet heard by the Court as at 8 September.

The secretary of the Committee informed the attorney of Newport and the other attorney representing a number of Newport members on 4 September that whether an oral hearing was justified was a question only the Committee could decide once it has been appraised of precisely what their clients required to adduce further evidence about. It was suggested to them that they indicate the nature and extent of any further submissions to be made to the Committee, together with representations as to why an oral hearing is required. These representations had to submitted to the Committee as soon as possible so that the Committee may decide on the issue at its scheduled meeting on 8 September.

During the afternoon on the same day, 4 September, Newport launched yet a further urgent application to the Court. Newport sought a court order compelling the Committee to allow Newport to make verbal representations to the Committee in terms of section 12 of the Act instead of limited to written submissions.

In a letter dated 5 September the secretary of the Committee advised the attorney of Newport that he should have the legal representatives available at the next meeting of the Committee in the eventuality that the Committee might possibly allow oral argument. The same held true for any witnesses which Newport wanted to give evidence. The meeting was scheduled for 16h45 on 8 September at the Johannesburg International Airport. The letter was faxed to the attorney at 09h30.

During the afternoon of 5 September the judge held that Newport were entitled to make oral submissions and lead oral evidence in regard to the final meeting to consider the section 10 report to the Minister. The order was subject to and limited by such rulings of the Chairperson to regulate the procedure of the meeting, particularly as to:

(a) unnecessary or unreasonable extensions or delays of the meeting;

(b) the prevention of repetition;

(c) limiting evidence and submissions to what is admissible, relevant and necessary; and

(d) maintaining the good order of the meeting.

During the course of the judgment the judge indicated that it was advisable for Newport to submit written submissions as requested by the Committee. The basis of the judgment was that Newport was entitled to "fair administrative treatment" and that a final meeting was important.

The Committee again had meetings with representatives of Newport on 8 September and 9 September where Newport was afforded a further and final opportunity to make further submissions.

11. Conclusion

The Committee considered inter alia the following submissions during the course of the investigation.

(a) Affidavit by Sealey in the enquiry proceeding before the Business Practices Committee.

(b) Affidavit by King and annexures in the inquiry proceedings before the Business Practices Committee.

(c) "Business Plan" for Newport, drawn up by Leon Louw and handed to the Committee on 9 September.

(c) Comments by Leon Louw on core issues of the new draft report (2 September 1997) of the Business Practices Committee on whether Newport Business Club is a harmful business practice.

(d) Comments on draft final report, handed in by Sealey on 8 September 1997.

(e) Draft joint venture agreement between L'Abrie Estates (Pty) Ltd and PDC Construction International Ltd.

(f) Further skeletal submissions on indexation by Paul Kennedy.

(g) L'Abrie Estates Development at Schoemanskloof. Overview and projected profit and loss statement and projected cash flow statements for the years 1997-2001.

(h) Legal submissions as to why the Committee should not recommend a new section 8(5) notice against Newport.

(i) Letters of support by approximately 100 members of Newport. These letters were received between 14 March and 18 March.

(j) Memorandum of agreement between L'Abrie Estates CC and Applerock Investments (Pty) Ltd, 3 March 1997.

(k) Memorandum of agreement between Newport Business Club (Pty) Ltd and Applerock Investments (Pty) Ltd, 24 February 1997.

(l) Motivating memorandum in support of the application to establish a public resort on the farm Bruintjieslaagte No 465-JT by a firm of town and regional planners, June 1997.

(m) Response by Newport Business Club (Pty) Ltd on the "Tisa report".

(n) Skeletal submission on behalf of Newport Business Club (Pty) Ltd on the issues of "bound to fail" and "saturation" by Paul Kennedy.

(o) Submission by Leon Louw on whether "schemes" such as the Newport Business Club (Pty) Ltd multi-level scheme are a harmful business practice.

(p) Submission on behalf of the "en commandite" partners ("The Partners") of Newport Business Club (Pty) Ltd presented by the attorney for a number of investors.

(q) Submissions and supplementary submissions on behalf of Newport Business Club (Pty) Ltd & Others re the constitutionality of various aspects of the Act and the powers conferred upon the Minister, by Senior Counsel for Newport.

(r) Supplementary submission by Leon Louw on the Newport Business Club (Pty) Ltd multi-level business scheme, August.

(s) Taming the tiger? Designing stable network marketing schemes by P Minford.

(t) The draft report of the Business Practices Committee ("The BPC"): Submission on behalf of investors", by the attorney for a number of investors.

(u) Three preliminary issues raised at the Newport hearing of the Harmful Business Practices Committee in terms of the Harmful Business Practices Act, (Act 71 of 1988).

Some of the these submissions were more of a general overview and had limited relevance as to whether or not Newport was engaged in harmful business practices as defined in the Act . The Committee reached its conclusions after considering all the oral and written submissions and not one of these submissions contained persuasive evidence to influence the final decision of the Committee.

11.1 The product

Newport's only product is money. In the video presentation referred to, the presenter told the audience: "We (Newport Business Club) have a product that everybody wants, that everybody needs and a product that I know is positively addictive". Obviously only consumers buy products. This product is later identified with enthusiasm as ... MONEY! The only self admitted product of Newport is money and the scheme's continued existence relies totally on the ever increasing numbers of new members. In a narrow sense the only product of a traditional bank was also money, but its continued existence did not solely depend on additional account holders. A business providing goods or services has at least something of intrinsic value underlying the business that can be relied upon to continue even in the event that no new members can be recruited.

The success of Newport is dependent on the money received from its members and new members *on a continuous basis*. This was implicitly conceded by Newport. In the matter between Newport Business Club (Pty) Ltd and others vs The Registrar of Banks N O and others, King, referring to the threat even of a temporary closure of their business, states:

> "There is substantial risk that the first applicant in particular will suffer very considerable losses, which will be practically impossible to quantify. The same will apply to a considerable number of members whose opportunity to benefit by introducing new members will be irreparably prejudiced". (See paragraph 17.1, page 28. High Court of South Africa [Transvaal Provincial Division]. Newport Business Club (Pty) Ltd, Richard Joseph Peter King, Martin Bradley, Steven Sweeney, Robert Mitchell, Robert Prichard, Els Dijkstra and Newport LLC [Applicants] versus The Registrar of Banks N O, Robert Edgar Cameron-Ellis N O, Cornelius Christiaan Oberholzer N O, Arend Jan van den Berg N O and C J Swardt N O [Respondents]).

After the deduction of the commissions of R5 300 and R4 740 from R14 000 the remaining R3 960 is retained by Newport. Part of this is expended on administrative, operating and other reasonable costs of the partnership business. The remainder is the undisclosed partner's capital account, which Newport would, under the operating agreement with the undisclosed partners, then invest. As at 6 August Newport could

not furnish the Committee with the total amount of the undisclosed partners' capital account.

Newport contended that it sold "business opportunities" to the *en commandite* partners. It was stated above that consumers buy products. Various representatives argued that the *en commandite* partners were entrepreneurs and not consumers. Mr Louw, for example, argued that "... the participants in the scheme are not "consumers" as popularly understood, but, in the recognised socio-economic sense and in the etymological sense of the word, entrepreneurs or independent contractors". The Committee, however, did not consider whether the members of Newport were consumers in an socio-economic sense. The Committee had to consider whether the Newport members were consumers as defined in the Act.

Section 1 of the Act defines a "consumer" as a person to whom any commodity if offered, supplied or made available. A commodity again, is also defined in Section 1 as "... any property, whether corporeal or incorporeal and whether movable or immovable, and also any make or brand of any commodity and any service, whether personal, professional or otherwise, including any storage, transportation, insurance or banking service". The Committee had no doubt whatever, in view of the definitions of "consumer" and "commodity" in the Act, that the Newport members and prospective members are consumers as defined in the Act.

11.2 The purported benefit of the scheme to members

The potential advantage to a consumer who becomes a partner or member lies in the right to recruit and introduce new members. A considerable part (71.71 per cent) of the new members' payment serves to fund the recruitment costs, that is, the commissions payable to existing members who have recruited the new members and also the management of the scheme. The incentive to new members to recoup their initial cash payment lies in *the introduction of further new members on which this scheme is dependent*. The greater the number of new members introduced, the sooner the recoupment of the original cash payment.

11.3 The required growth to achieve the purported benefits

The explanation of the scheme shows that a new member needs to recruit a number of other members to recoup his or her payment of R14 000 and make a slight profit.

> A total of five persons, three new members directly (2 x R2 000 and 1 x R5 300) and two members indirectly. This would apply should the third person, the senior partner, canvass two members (2 x R3 000). This would give a total of R15 900 or R1 900 more than the original payment.
>
> Four new members directly (2 x R2 000 and 2 x R5 300) that would give a total of R14 600, or R600 more than the R14 000 payment.

In practice more than four members directly and five persons directly and indirectly need to be canvassed because the effect of income tax was ignored in the examples above. Assume however, that an existing member must recruit at least four new members to recoup his R14 000. These four new members must recruit at least 16 other members to recoup their payments. Assume further that the scheme starts with 10 people. These 10 people would need to recruit at least 40 new members to recoup their payments. The scheme now has 50 members of whom only 10 recouped their payments. To recoup their payments the 40 "out-of-pocket" members need to recruit at least 160 new members. The scheme now has 210 members of whom 50 recouped their payments while the remaining 160 members need to recruit at least 640 new members to recoup their payments. The cumulative figures are set out in the next table.

The figures in column A reflect the number of new members required to enable previous members to recoup their payments. For example, the 40 new members would need to canvass 160 new members to recoup their payments, and the 10 240 members need to recruit 40 960 new members to recover their payments.

New members (A)	Total members (B)	A as a % of B
40	50	80.0000
160	210	76.1905
640	850	75.2941
2 560	3 410	75.0733
10 240	13 650	75.0183
40 960	54 610	75.0046
163 840	218 450	75.0011
655 360	873 810	75.0003
1 621 440	3 495 250	75.0001
10 485 760	13 981 010	75.0000

The figures in column B shows the numbers of members necessary to enable the previous members to break even. For example, 850 people must have had to become members or partners of the scheme to enable the previous 210 members to recoup their payments.

The last column in the table shows the percentage of members that have not yet recouped their payments. Given the assumptions underlying the figures in the table, it is clear that the percentage of members that would not recover their payments would never be smaller than 75 per cent. This would apply to the total number of members, irrespective of at what stage they joined the scheme.

The assumption above is that each member recruits at least four new members to recover his payment. Assume, however, the first scenario where three new members are recruited directly and two members are recruited indirectly. Then, in the long term, a number of slightly less than five members will be required to break even.

11.4 The saturation argument - theory and practice

11.4.1 Introduction

The proponents of schemes such as Newport argue vehemently that no saturation point could be reached. Theoretically and mathematically this might be the case, depending on the underlying assumptions. The extent of a new member's possible earnings is clearly limited by the extent of the market. And the market is limited. There are, at any time, a finite number of people with the buying power to part with R14 000 to become members of a club and not all people that could afford the "membership" fee would prefer, for practical reasons, to become members of such a club. The population growth rate does not match the exponential rate required to make the scheme viable for all participants over a relatively short period. Most of the people that part with their R14 000 probably join Newport with the expectation to make a handsome profit in a few months and not over a period of say 9 years. In section 4.4 it was pointed out that prospective members are allegedly told at the meetings held by Newport that an individual could earn up to R153 900 after nine periods, whether the period is weeks, months or years. What attracts members to the scheme is the possibility to make hugh amounts of money in weeks if not months, but certainly not years.

The scheme can never reach a stage where everybody has recovered their payments. Those that have not canvassed any new members at all the levels of each separate pyramid structure will lose their R14 000. The "independent" contractors, management and those at the top of every successful individual pyramid with many layers stand to earn substantial amounts. Those that have not canvassed their four members directly or five members directly or indirectly will be severely and unreasonably prejudiced. Again this will apply to all members, irrespective of when they became members of Newport.

It would then become increasingly difficult for any member to find further potential members the longer the scheme operates. Only a growth in the target market would provide potential members. The growth in the target market would also have to be equal or higher than the exponential rate required for everyone to recoup their payments within a reasonable period of time.

11.4.2 Theory

(a) The Minford model

On 29 May the Committee received a letter from the attorney. It was *inter alia* stated:

> "1.2 for reasons to be advanced and explained by expert witnesses, our client denies that a "Saturation point" will necessarily be reached;
>
> 1.3 denies that any financial loss to those who participate in its scheme is a "mathematical certainty" (as suggested in the draft section 10(1) report);

1.9 in respect of the general thrust of some of the expert evidence that our clients wish to present in due course, we annex hereto a report prepared by Professor Patrick Minford in respect of a different scheme which bears certain significant similarities to our clients' scheme;

1.10 although there are similarities between our clients' scheme and the Titan scheme we impress upon the Committee that there are material differences".

The report by Professor Patrick Minford (Minford) was commissioned by Senator Hanseatische Verwaltungsgesellschaft (SHV), the Hamburg-based company that ran the Titan schemes in a number of European countries. The report is dated 26 November 1996 and has the title "Taming the tiger? Designing stable network marketing schemes".

Minford concludes that,

"... if managed with prudence, pyramid selling need face no problem of saturation or collapse, even in money circulation schemes; that recruiting incentives apply throughout the network marketing industry, and directly or indirectly often dominate direct sales commission; and that regulation, besides ensuring transparency of information, lack of fraud, etc, should focus on the appropriateness of the management controls in place and not attempt to discriminate according to the types of incentives offered by pyramid schemes".

Not all the members of Newport would agree that there was "... transparency of information". This is clear form the video of a Newport presentation.

The Committee is aware of another mathematical model which projects that almost 90 per cent of the total membership of similar pyramid type of schemes will lose money. This model is briefly explained next.

(b) The Van der Nat model

The following is an extract from a letter dated 20 March from the Federal Trade Commission (FTC) in the United States of America to the Office for Serious Economic Offences (South Africa):

"As you know, pyramid schemes usually promise consumers that they can make extraordinary amounts of money. However, making such amounts is impossible for the vast majority of the participating consumers. In fact, the vast majority lose money because, by their very nature, pyramid schemes are destined to collapse. Only a finite number of people will be willing to pay to participate in such a program and thus, when the recruiting of new members inevitably ends, the pyramid collapses and those at the bottom of the pyramid are left with nothing. These concepts are better explained by economists and thus I have attached the declaration of an FTC economist which was used as evidence in

support of our motion for a temporary restraining order against a pyramid scheme".

The FTC economist is Peter J Vander Nat, who obtained his doctoral degree in economics from the University of Notre Dame. Vander Nat developed a mathematical model which can be verbally summarised as follows: The amount of monetary loss depends on the size of the membership of the scheme. These schemes grow by adding progressive "levels" of new members. Assume that each level to be three times the size of the prior level. How long a scheme may expand in this manner is unclear; however, it will exhaust its growth at some future point due to inevitable limitations on recruitment. When growth stops, the scheme will collapse and most of the participants will lose money. Specifically, the ones who lose money are the members at the bottom two levels of the organization, and these participants comprise almost 90 per cent of the total membership. The declaration of Vander Nat, dated 24 October 1996 was based on his mathematical model.

(c) Theory and models

The models developed by Minford and Vander Nat were obviously based on schemes that were similar but not identical to the Newport scheme. In a model of a scheme such as Newport it would seem logical that a stable growth rate would eventually result. But this stable growth rate does not attract members to the scheme. When a stable growth rate is achieved it could take many years before the number of participants doubles itself. The only factor that really attracts members is the phase of rapid growth where fortunes could, and have been made, within months, if not weeks. During the slower growth phase interest in the scheme declines. It would seem that this decline in interest is an exogenous "switch off" of the scheme. A "switch off" of the scheme would lead to the collapse thereof.

The Committee took note of the theoretical model of Minford and of the presentations by Kennedy. All models, whether mathematical or computer based, are oversimplifications of reality. They do not reflect the real world, and for this very reason they are called models. The Committee is faced with the reality of Newport and has to consider if the business practices of Newport could, directly or indirectly, have or are likely to have the effect of unreasonably prejudicing consumers. The Committee is of the opinion that a debate of the validity of the underlying assumptions of the Minford model would not be a solution to the problem. There could probably be just as many theoretical models on the saturation issue as the number of econometricians. The outcome of each model will depend on the underlying assumptions.

11.4.3 Practice

In the case of Newport there is no question of a pure symmetrical pyramid and there are many deviations. Some members in the Newport scheme, for example, would recruit only one other member directly and others would recruit many new members, whether directly or indirectly.

During the visit of the officials of the Committee to the offices of the Newport Business Club (Pty) Ltd on 25 March a list of members and commissions was obtained. A cursory analysis of the 1 671 members on the list *inter alia* revealed the following member commissions received

Commission received (R)	Number of members	% of total members
0	1 016	61
1 to 14 000	508	30
14 001 to 50 000	112	7
50 001 to 300 000	34	2
>300 000	1	<1

The empirical results clearly support the argument advanced in section 11.3. of this report, namely that at least 75 per cent of the total members would not recoup their payments. The table shows that 61 per cent of the members have not recovered one cent of their payments and another 30 per cent recovered less than their payment of R14 000. Thus, 91 per cent have not recouped their payments, compared with only 9 per cent who have done so. Sealey, for Newport, argued that this high percentage was attributed to the fact that the scheme was in its rapid growth stage and that the percentages were to be expected. This does not detract from the argument raised above, namely, that eventually, at whatever stage, close to 75 per cent of all members would not have recouped their payments.

These percentages were almost identical to those calculated during the investigation into the Rainbow Business Club and may be indicative of the trend in these types of schemes.

On 23 July the Committee received a new list of Newport members and the commissions earned by these members. An analysis of the 6 354 members on the list *inter alia* revealed the following: Again 61 per cent of the members had not recouped any of their monies and another 30 per cent recouped some monies, but less than R14 000. Only 9 per cent earned more than R14000. These percentages were identical to those calculated on 25 March, even though the number of members increased from 1 671 to 6 354 on 23 July. By 23 July Martin Bradley, Wayne Bradley and Ben Glas received R10 954 820, R2 109 200 and R4 036 680 respectively. These amounts include management commissions. The top 30 earners as at 23 July each received more than R226 700. These rewards were financed by those 91 per cent who had not recouped their payments of R14 000.

The Committee thus concludes that, at any particular moment during the life cycle of Newport, a very high percentage of the participants will not recoup the R14 000 paid by them. This constitutes, in the opinion of the Committee, a harmful business practice, because the scheme will undoubtedly unreasonably prejudice many members. The longer the scheme is allowed to continue the greater the number of people who will inevitably suffer a loss. The percentage of people who would not recoup their payments would decline gradually, but would probably never be less than 75 per cent of the members.

11.5 L'Abrie

If one assumes that the administrative and legal costs comprise 20 per cent of the total income, then only 8.3 per cent (or R1 162) of a member 's initial payment can be invested. It was said that in terms of the agreement between Applerock and L'Abrie, Applerock is obliged to provide further funding of R20 million for development. Assuming that the "investment" portion of the R14 000 is R1 162, it would mean that Newport would have to recruit at least another 17 200 members (R20 million divided by R1 162) by 3 March 1999. Since Newport started doing business in South Africa since October 1996 to 23 July it recruited 6 345 members.

During the next two years Newport needs to recruit at another 10 855 members. Failure would result in a loss of R2½ million to members. This loss would also result if any of the other events in clause 8 of the agreement occurs. These events are totally beyond the control of the members. As was stated in section 4.5, Newport alleged that the requirement to put up the money had been met.

Should they succeed in recruiting a total of 17 200 members, it would mean that R240 800 000 (17 200 times R14 000) would have been paid. Remember that no bank account is used and that an estimated 91 per cent of these people will not recoup their payments should current trends continue.

The Committee made available the projected profit and loss statements and projected cash flow statements (the statements) to the Timeshare Institute of South Africa (TISA). TISA was asked to compare the projections and plans with the industry norms and practices. The following are aspects of the development which are, in the Committee's view, relevant.

Size:

The statements outlined a development which in terms of accommodation-unit numbers would rank amongst the three largest timeshare developments in South Africa. The sales projections amount to 60 percent of the entire current industry sales. This could perhaps be ascribed to the fact that the average projected sale price of R37 500 per unit is approximately three times higher than the current industry average of R10 000 for timeshare purchases and R7 500 for points purchases.

Location:

The proposed development is situated in an apparently isolated area off the main thoroughfares and a considerable distance away from the popular tourist attractions.

Prices:

It has already been said that the average projected sale price per unit is approximately three times higher than the current industry average. No allowance is made in the sales price for seasonal preferences and no variances in sales performance is budgeted for as a result of seasonal sales fluctuations.

The industry apparently has a variance of up to four between weeks in peak season times as against those in seasons with a smaller demand. The assumption of a fixed price for all weeks irrespective of season seems unrealistic.

Sales:

The statements suggest that 100 per cent cash will be generated from sales. The industry generally relies on approximately 30 to 40 per cent of its sales being in cash or through credit cards, and the balance of the sales is mostly financed by the developers for a period of up to 60 months. A very small percentage of timeshare sales enjoy funding from banking institutions. Sales projections overlap on subsequent phases, and appear to be optimistic. Constant sales of R12.75 million are projected, irrespective of season. The current total industry sales are approximately R20 million per month.

The development phases overlap in various months and the sales are then doubled. The practicality of this target and the expectation of it happening is unrealistic. The effect on the cash-flow projections are apparent. The entire 300 units are targeted to be completed by May 2001. This would imply that just more than seven units have to be completed each month. Most developers plan completion of their units based on sales. They do this because of the need to keep their levy exposure on unsold stock to a minimum.

11.6 The "cash only" policy

Given the "cash only" policy of Newport, the management possess, at any given moment, huge amounts of cash. Much of this cash is being held without security on behalf of those members due to receive their incentives for recruiting members. This could likely have the effect of prejudicing these members. Although Newport initially deposited the cash into a bank account this is no longer done since the attempt of the SARB to freeze their funds. The Committee is unaware of where the cash is now kept.

11.7 Recent developments in the United Kingdom

The Committee also took note of a recent developments in the United Kingdom (UK) regarding money making schemes. A recent effort of the UK Department of Trade and Industry focused on a controversial money-making scheme mentioned earlier in this report, namely, the Titan Business Club. This scheme involved no product or service.

On 24 July 1996 the UK Court of Appeal dismissed an appeal against the decision of the High Court in the Titan case. The Court ruled that the reality of the matter was undoubtedly that those persuaded to join the scheme paid their money in the hope of the rewards that would result from those afterwards joining their particular "family tree". The fact that the scheme was bound to come to an end eventually with resultant

financial loss to its members, was emphasised as ".. not merely likely but a mathematical certainty".

A number of persons who are presently associated with Newport in the capacity of marketing director and/or consultants were formerly members of the Titan Business Club in the United Kingdom, for example Mr Ben Glas and Sealey. Kennedy also acted as counsel for Titan.

11.9 Unreasonable prejudice

In section 11.4.3 the Committee expressed the opinion that Newport members would be unreasonably prejudiced. The following are the reasons for this standpoint:

> At any time at least 75 per cent and possibly more of the members are at risk. The relations between those consumers who have not recouped their payments and the business, Newport, will be harmed. In terms of the Act this by itself would constitute a harmful business practice.
>
> The argument that saturation will never be reached relies on the proposition that growth in the target market will exceed the growth in the scheme. No convincing evidence has been led on this issue.
>
> Leaving aside the question of collapse due to saturation the fact is that no business is immortal. At some point in time all businesses encounter changed conditions, cease growing and either collapse or wind up voluntarily. There is overwhelming evidence in this direction. The Committee is not aware of evidence to the contrary.
>
> The operating agreement at present states that "Dissolution shall occur on December 31, 2005". Sealey had stated that the business would be re-activated, but this requires a resolution by the partners and cannot be regarded as a foregone conclusion. When the business is dissolved at the end of 2005 the bulk of the *en commandite* partners will be severely and unreasonably prejudiced.
>
> About 34 per cent of each payment is paid to the management. They have fully recovered their own payments, which were relatively low, and their only prejudice is the lack of future income from new members.

Regarding unreasonable prejudice, advocate A B Mahomed, remarked that the submissions of Louw were of limited relevance to the investigation because Louw conceded that he had no knowledge of the actual methods, administration and operational practices adopted by Newport. The principles of a free market economy espoused by him were not absolute but relative. For example, the right of an individual to free market activity is counterbalanced by the right of an equally free society to curb its excesses. Louw contended that where informed individuals engage in a business

entity in which a substantial number of such individuals will lose their money, such loss is not unreasonably prejudicial because it was a free and informed decision. The essential flaw in this contention is that the reasonableness or unreasonableness of the prejudice inherent in the practice of a business entity likely to be suffered by a substantial number is not the purview of the free individual but of the free society. What is reasonable in the perspective of the free individual is likely to be unreasonable in the perspective of free society when substantial numbers are involved. The standards of reasonableness will also depend upon the facts of each particular case, regard being had to the operational methods and controls of the business practice, the extent of disclosures in the absence of regulatory mechanisms and the accountability of its office bearers.

The Committee is of the opinion, because of the reasons advanced, that the activities of Newport constitute harmful business practices as defined in the Act. The Committee is further of the opinion that the harmful business practice is not justified in the public interest and that the Minister should take steps in terms of Section 12(b) and (c) of the Act to prevent the parties involved to continue the harmful business practice.

12. Recommendation

The business practices of Newport constitute harmful business practices. There are no grounds justifying these practices in the public interest. It is accordingly recommended that the Minister declares the harmful business practices unlawful in terms of Section 12(1)(b) of the Act which practices are the subject of the investigation whereby anyone or more of the following persons, to wit:

> Newport LLC, Newport Business Club (Pty) Ltd, Newport Business Club, Martin Bradley, Wayne Bradley, Clancy Connor, Els Dijkstra, Elaine Douglas, Rob Edward, Paul Farrally, Ben Glas, Richard King, Bob Mitchell, Robert Prichard, Peter Sealey and Steven Sweeney and/or any member, partner, agent, representative, employee or any other person on their behalf (hereafter referred to as "the aforesaid persons"), in the course of the business of any of the aforesaid persons, directly or indirectly -
>
> > (a) invites, procures the attendance or attempts to invite or to procure the attendance of any person to a meeting held by or on behalf of any of the aforesaid persons at which meeting such person (hereinafter referred to as the "participating person") is invited, encouraged or in any way enticed to enter into any arrangement with any of the aforesaid persons the terms whereof include any provision which have the following effect:
> >
> > > (i) the parties to the agreement enter into an *en commandite* partnership
> > >
> > > (ii) the participating person is obligated to make a payment of a financial consideration with the prospect of such participating

person receiving payment or other money-related benefits, directly or indirectly, from his/her participation in the recruitment of other persons to enter into similar arrangements with any of the aforesaid persons;

(b) enters into any arrangement with any person the terms whereof includes any provision which has the following effect:

(i) the parties to the agreement enter into an *en commandite* partnership

(ii) the participating person is obligated to make a payment of a financial consideration with the prospect of such participating person receiving payment or other money-related benefits, directly or indirectly, from his/her participation in the recruitment of other persons to enter into similar arrangements with any of the aforesaid persons.

(c) accept any financial consideration from any person in terms of any arrangement which financial consideration is used in part or in full to fulfil the obligations of either party to make payment to a third party who has entered into a similar arrangement with any of the aforesaid persons; and

(d) make any payment of any financial consideration or give any money-related benefit, directly or indirectly, to any person in terms of any arrangement as prohibited in terms of paragraph (b) or (c) above.

It is further recommended that the Minister direct the aforesaid persons in terms of Section 12(1)(c) of the Act to terminate or to cease to be a party to the agreement(s)/arrangement(s) mentioned above.

Louise A Tager

LOUISE A TAGER
CHAIRMAN: BUSINESS PRACTICES COMMITTEE

Signed on this the 12 day of September 1997

NEWPORT

Business Club (Pty) Limited

Annexure "A"

Partnership Application Form

Details of Applicant (in block capital letters)

First Name:/Naam:	Middle Initials:/ Middelvoorletters:	Last Name:/Van:
Address:		Date of Birth: / /
Telephone Number:	Occupation:	Life Partner:

The concepts of the organisation of Newport Business Club (Pty) Ltd and the proposed partnership have been clearly explained to me. I have also read the attached operating agreement. I wish to enter into the partnership. I declare that I have not been offered to purchase any securities, stocks, bonds or any other financial instruments by Newport L.L.C. or Newport Business Club (Pty) Ltd. or any of its Members, Agents, Associates or others.

Accordingly I hereby apply to enter in a partnership with Newport Business Club (Pty) Ltd. in the terms set out in the attached operating agreement this ____ day of _____ 97 and agree to pay a fixed cash contribution of _____ (non-refundable) and it is explained to me what payments and disbursements will be made from my said contribution.

JP No.	

Applicants Signature: _____

Date of Application: _____

Date of Acceptance: _____

Approved by: _____
Executive Partner

For Internal Use Only.

Detail	Name	Number
A1		
A2		
A3		
A4		
A5		

Newport Business Club (Pty) Limited
NORWICH LIFE HOUSE
3 CAMBRIDGE PLACE,
CNR OXFORD & KIRKBY ROADS,
BEDFORDVIEW 2007

Annexure "B"

3 April 1997
Dear Attorney

NEWPORT BUSINESS CLUB (PTY) LTD AND OTHERS

I refer to your fax dated 27 March 1997 and to previous discussions and correspondence with you. Your fax was received at 15h03 on 27 March 1997 and your request for a response before 28 March 1997 could hardly be met, that day being a public holiday. I will reply seriatim to the paragraphs in your letter.

2. The Business Practices Committee (the Committee) appreciates the willingness of Newport and your clients to cooperate in respect of the investigation and their willingness to meet the Committee on 15 April 1997.

3.1 The procedures that are to be followed during the investigation are adequately set out in the Harmful Business Practices Act, No 71 of 1988 (the Act).

3.2 Your clients are not expected to make written representations within a period of 14 days from the date of the notice. The notice merely says that any person may make written representations. One should, however, expect that an entity that is under investigation would take the opportunity to submit written representations.

4. Your fax dated 19 March 1997 consisted of one page, ending with point five in which you request a date for a meeting with the Committee. There was no response to your fax because by then Ms Kebble , my secretary, had already called your office to arrange such a meeting. In your fax of 27 March 1997 you again refer to the fax dated 19 March 1997 and I quote: "A copy of which is enclosed". This copy was not enclosed. An official of the Committee called your office on 1 April 1997 requesting a copy of that fax. The full copy was received at 09h58 on the same day. It would appear that the issues raised on the second page of the 19 March 1997 fax would be adequately dealt with in this letter.

5. In terms of section 8(1) of the Act the Committee may on its own initiative undertake such investigation as it may consider necessary into any harmful business practice which it has reason to believe exists or may come into existence. In such a case there are no specific allegations, but the Committee has reason to believe that a harmful business practice exists or may come into existence.

Assume, however, that the Committee did receive a complaint. Then section 14(1) of the Act applies. This section says that no person shall, except for the purposes of the performance of his functions in terms of the Act or for the purposes of legal proceedings under the Act or when required to do so by a court of law or under a law, disclose to any other person any information acquired by him in the performance of his functions in terms of the Act and relating to the business or affairs of any other person.

6. The Committee administers Act No 71 of 1988. The purpose of the Act is to provide for the prohibition of harmful business practices. A "harmful business practice" as defined in section 1 of the Act, is any business practice that has or is likely to have the effect of harming the relations between businesses and consumers, unreasonably prejudicing any consumer or deceiving any consumer.

The only consideration when the Committee investigates a complaint is whether a harmful business practice exists or may come into existence. The structure of the entity under investigation is of no concern to the Committee. Thus, whether a particular entity is a pyramid or is involved in multi-level marketing will not necessarily be the thrust of an investigation.

The Committee would also not consider the legality or otherwise of an entity. The fact that an entity contravenes one or other statute is not necessarily a harmful business practice. Allegations of entities contravening specific statutes should be reported to those responsible for administering the relevant statutes. The "unlawfulness" of a particular entity does not necessarily mean that it is engaged in harmful business practices as defined in the Act. Applying the same argument it would mean that an entity which alleges that it is lawful could be involved in harmful business practices.

7. It is for you and your clients to decide what expert testimony, if any, the Committee should hear. I wish to reiterate that the only concern of the Committee is whether the members or partners of Newport are subjected to harmful business practices as defined in the Act.

8. You are welcome to furnish the Committee with summaries of your comments either before or during the meeting. You are obviously at liberty to bring along your experts on multi-level schemes and pyramids. The Committee would, however, endeavour to establish whether your client was involved with harmful business practices and will not debate the question whether Newport has a pyramid or multi-level marketing structure.

9. The meetings of the Committee are informal in the sense that it does not conduct its meetings similar to the hearings in a court of law. The Committee wishes to determine whether Newport and your clients are involved in harmful business practices as defined in the Act. The purpose and scope of the proposed meeting would be to enable the Committee to decide whether your clients are involved in harmful business practices. The secretary of the Committee draws up an agenda about the cases to be discussed, but not an one that sets out the questions that will be put to clients in a particular case. The questions are usually of a general nature and the questions in the annexure would *inter alia* be put to your client. The list should serve as a guide only because the members of the Committee are free to ask the questions and explanations they think are relevant.

10.1 Please see the comments on your paragraphs 4 and 9.

10.2 The Committee believes the required information is or should be readily available. The names of shareholders, the names of branches and their managements, the relevant founding documents, a detailed explanation of the scheme, a copy of the video, the role of management and the required financial information are or should be readily accessible.

10.3 This question can be answered positively. Please also see paragraph 3.2.

10.4 The Committee has no hidden agenda. You have already indicated your clients' willingness to attend the meeting on 15 April 1997 and I have already indicated the purpose and thrust of such a meeting.

11. The Committee would welcome written representations or summaries, but the final decision in this regard should rest with your clients. Should the Committee require further representations after the meeting on 15 April 1997 you would be given a reasonable opportunity in which to prepare them.

12. Please see the first paragraph of my letter.

Yours faithfully

PROF LOUISE A TAGER
CHAIRMAN: BUSINESS PRACTICES COMMITTEE

ANNEXURE: REQUIRED INFORMATION AND DOCUMENTS

1. The purpose of the first questions usually asked by the Committee is to obtain some understanding about whom it is dealing with.

1.1 The Committee would want to know who the shareholders and directors of Newport Business Club (Pty) Ltd (Newport) are and the relationship between Newport and Newport LLC.

1.2 It would ask questions about the management of Newport and the existence of branches and their managements.

1.3 It would be useful if you could furnish the Committee with copies of the relevant founding documents and the memorandum and articles of association of Newport.

1.4 The connection between Newport, the Glas brothers, SHV Senator in Germany, Titan in the United Kingdom and Kirsten Ellmers ? It would appear from Newport's list of members/partners that a Mr Glas is involved with Newport. Other documents at the disposal of the Committee suggest that a Mr Glas was also involved with Titan. An official of the Committee understood from Mr Sealey on 25 March 1997, at the offices of Newport, that he (Mr Sealey) also acted as consultant to Titan.

2. The Act defines a "business practice" *inter alia* as any scheme, practice or method of trading, including any method of marketing or distribution.

2.1 The Committee would therefore require a detailed explanation of the scheme run by Newport. The mechanics of the scheme, such as the recruitment of members, their remuneration and their promotion from junior to senior partners would be informative.

2.2 It is believed that meetings are arranged throughout the country twice weekly on Saturdays and Sundays, at different venues. The Committee believes that the scheme is based upon personal invitations by members to others to become members of Newport. The Committee also believes that one of these presentations was recorded on video tape. The Committee would require a copy of this recording.

2.3 An explanation of the role of executive partners, assistant marketing directors, marketing directors and regional directors would facilitate an understanding of Newport's business.

2.4 It has come to the attention of the Committee that at a recent Newport meeting on 30 March 1997 in the Port Elizabeth area, prospective members were not informed about the investigation by the Committee. The Committee would want to know the reasons why this information was withheld from those present at the meeting.

3. Newport carries on business as the disclosed partner in *en commandite* partnerships with several undisclosed partners.

3.1 What is the relationship between Newport, the *en commandite* partners and the club?

3.1 What powers does Newport have to lend money of the club to any person at all on a secured or unsecured basis?

3.2 Newport has the authority to transfer assets of the club to any part of the world. What are the conditions?

4. The general questions of the Committee are usually followed by questions of an administrative and financial nature.

4.1 The Committee always requests a copy of the latest financial statements.

4.2 The Committee obtained a membership list or list of Newport partners on 25 March 1997 but the Committee would require an updated list. The list should include the full addresses of members, the dates of their enrolment as members, amounts paid by members and the dates of such payments, amounts received by members and the dates of such receipts. The Committee would require an explanation of the "calculated commissions" and the "loaded commissions".

4.3 The Committee would not require you to bring along Newport's books of accounting. It would, however, be necessary for officials of the Committee to visit your auditors to inspect *inter alia* the cash book, the general ledgers, journals, the fixed assets register, bank statements, cheque counterfoils, returned cheques, bank statements, deposit books and the bank reconciliations.

4.4 A statement of funds transferred abroad to any entity and especially Newport LLC, in terms of the licence agreement about certain intellectual property, which Newport uses to operate its business.

4.5 Full details of the property transaction involving Newport, L'Abri Estates CC and Apple Rock (Pty) Ltd and the names of the members and/or shareholders of L'Abri and Apple Rock.

NOTICE 1350 OF 1997

DEPARTMENT OF TRADE AND INDUSTRY

HARMFULL BUSINESS PRACTICES ACT, 1988

Whereas I, Alexander Erwin, Minister of Trade and Industry, after consideration of a report by the Business Practices Committee in relation to an investigation of which notice was given in Notice 427 of 1997 (*Government Gazette* No. 17885 of 1997) am and which report was published by General Notice 1349 (*Government Gazette* No. 18292 of 17 September 1997) of the opinion that a harmful business practice exists which is not justified in the public interest, I do hereby exercise my powers under section 12 (1) (b) and (c) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), as set out in the Schedule.

A. ERWIN

Minister of Trade and Industry

SCHEDULE

In this notice, unless the context indicates otherwise—

"harmful business practice" means whereby any person, in the course of the business of any of the persons identified under "parties", directly and/or indirectly—

(a) invites, procures the attendance or attempts to invite or to procure the attendance of any person identified under "parties" to a meeting held by or on behalf of any of the persons at which meeting such person (hereinafter referred to as the "participating person") is invited, encouraged or in any way enticed to enter into any arrangement with any of the persons identified under "parties" the terms whereof include any provision which has the following effect:

(i) The parties to the agreement enter into an *en commandite* partnership;

(ii) the participating person is obligated to make a payment of a financial consideration with the prospect of such participating person receiving payment or other money-related benefits, directly or indirectly, from his/her participation in the recruitment of other persons to enter into similar arrangements with any of the persons identified under "parties";

(b) enters into any arrangement with any person the terms whereof includes any provision which has the following effect:

(i) The parties to the agreement enter into an *en commandite* partnership;

(ii) the participating person is obligated to make a payment of a financial consideration with the prospect of such participating person receiving payment or other money-related benefits, directly or indirectly, from his/her participation in the recruitment of other persons to enter into similar arrangements with any of the persons identified under "parties";

(c) accepts any financial consideration from any person in terms of any arrangement which financial consideration is used in part or in full to fulfil the obligations of either party to make payment to a third party who has entered into a similar arrangement with any of the persons identified under "parties"; and

(d) makes any payment of any financial consideration or gives any money-related benefit, directly or indirectly, to any person in terms of any arrangement as prohibited in terms of paragraph (b) or (c) above.

"the parties" mean Newport LLC, Newport Business Club (Pty) Ltd, Newport Business Club, Martin Bradley, Wayne Bradley, Clancy Connor, Els Dijkstra, Elaine Douglas, Rob Edward, Paul Farrally, Ben Glas, Richard King, Bob Mitchell, Robert Pritchard, Peter Sealey and Steven Sweeney and/or any member, partner, agent, representative, employee or any other person on their behalf.

1. The harmful business practice is hereby declared unlawful in respect of the parties.

2. The parties are hereby directed to—

(a) refrain from applying the harmful business practice;

(b) cease to have an interest in a business or type of business which applies the harmful business practice or to derive any income thereof;

(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 on date of publication.

KENNISGEWING 1350 VAN 1997

DEPARTEMENT VAN HANDEL EN NYWERHEID

WET OP SKADELIKE SAKEPRAKTYKE, 1988

Aangesien ek, Alexander Erwin, Minister van Handel en Nywerheid, na oorweging van 'n verslag deur die Sakepraktykekomitee met betrekking tot 'n ondersoek waarvan kennis gegee is by Kennisgewing 427 van 1997 (*Staatskoerant* No. 17885 van 1997), en welke verslag gepubliseer is by Algemene Kennisgewing 1349 van (*Staatskoerant* No. 18292 van 17 September 1997), van oordeel is dat 'n skadelike sakepraktyk bestaan wat nie in die openbare belang geregverdig is nie, oefen ek hierby 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.

A. ERWIN

Minister van Handel en Nywerheid.

BYLAE

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

"die partye" Newport LLC, Newport Business Club (Edms.) Bpk., Newport Business Club, Martin Bradley, Wayne Bradley, Clancy Connor, Els Dijkstra, Elaine Douglas, Rob Edward, Paul Farrally, Ben Glas, Richard King, Bob Mitchell, Robert Pritchard, Peter Sealey en Steven Sweeney en/of enige lid, vennoot, agent, verteenwoordiger, werknemer of enige ander persoon namens hulle;

"skadelike sakepraktyk" die sakepraktyk waarvolgens enige persoon, in die loop van die besigheid van enige van die persone geïdentifiseer as "die partye", direk en/of indirek—

(a) bywoning van enige persoon uitnooi, bewerk of poog om uit te nooi of te bewerk na 'n vergadering wat gehou word deur of namens enige van die voorgenoemde persone waartydens sodanige persoon (hierna verwys as die "deelnemende persoon") uitgenooi, aangemoedig of op enige wyse in versoeking bring om in enige ooreenkoms met die persone geïdentifiseer as "die partye" te tree waarvan die terme enige voorsiening insluit wat die volgende effek het:

(i) Die partye tot die ooreenkoms tree in 'n *en commandite*-vennootskap;

(ii) die deelnemende persoon verplig is om 'n betaling van 'n finansiële teenprestasie te maak met die voorneme dat sodanige deelnemende persoon betaling of enige ander finansiële verwante voordele, direk of indirek, van sy/haar deelname in die werwing van ander persone om in soortgelyke reëlings te tree met enige van die persone geïdentifiseer as "die patye", ontvang;

(b) in enige reëling met enige persoon te tree waarvan die terme enige voorsiening insluit wat die volgende effek het:

(i) Die partye tot die ooreenkoms tree in 'n *en commandite*-vennootskap;

(ii) die deelnemende persoon verplig is om 'n betaling van 'n finansiële teenprestasie te maak met die voorneme dat sodanige deelnemende persoon betaling of enige ander finansiële verwante voordele, direk of indirek, van sy/haar deelname in die werwing van ander persone om in soortgelyke reëlings te tree met enige van die persone geïdentifiseer as "die partye", ontvang;

(c) enige finansiële teenprestasie aanvaar van enige persoon in terme van enige reëling welke finansiële teenprestasie gedeeltelik of in totaal gebruik word om die verpligtinge van enige party om betaling aan 'n derde party wat in 'n soortgelyke reëling met die persone geïdentifiseer as "die partye" ingetree het, na te kom; en

(d) enige betaling maak van enige finansiële teenprestasie of enige finansiële verwante voordele gee, direk of indirek, aan enige persoon in terme van enige reëling soos verbied in terme van paragraaf (b) of (c) hierbo.

1. Die skadelike sakepraktyk word hiermee ten opsigte van die partye 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 toepas, of om enige inkomste daaruit te verkry;

(c) te gener tyd die sakepraktyk toe te pas nie; en

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

3. Hierdie kennisgewing tree in werking op die datum van publikasie.

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INHOUD

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