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GENERAL NOTICES

NOTICE 2930 OF 2002

DEPARTMENT OF TRADE AND INDUSTRY

CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, in terms of section 10(3) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), publish the report of the Consumer Affairs Committee on the result of an investigation made by the Committee pursuant to General Notice 1582 of 2001 as published in Government Gazette No.22413 dated 29 June 2001, as set out in the Schedule.

A ERWIN

MINISTER OF TRADE AND INDUSTRY

SCHEDULE

CONSUMER AFFAIRS COMMITTEE

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

Report No 93

ZIBYCOM - A BINARY SCHEME

1. Introduction

On 11 June 2001 a person (Mr X) from New Zealand visited the offices of the Consumer Affairs Committee⁽¹⁾ (the Committee) to discuss a scheme called Zibycom.com (Zibycom) with officials of the Committee. Mr X wanted to know whether the scheme was "acceptable". He presented a number of documents to the officials, such as the "partnership agreement" between ZibyCom and its "partners". According to Mr X, Messrs Stephen Mc Cullough (SMcCullough) and his brother, Richard McCullough (RMcCullough), launched ZibyCom.

SMcCullough featured in the Committee's report on SkyBiz⁽²⁾. Mr David McCullough⁽³⁾ (DMcCullough) informed the Committee on 17 August 2001 that SMcCullough was hired by Skybiz as an independent consultant to travel the world and hold presentations for SkyBiz. It is interesting to note that SkyBiz spelled backwards is Zibyks, and the first four letters of Zibyks is also the first four letters of Zibycom.

It appeared from the discussions with Mr X that Zibycom was based on the Skybiz scheme for the following reasons:

- The "partnership agreement" between ZibyCom and its "partners" is a copy of the "associate agreement" between SkyBiz and its "associates".
- The distribution structure of ZibyCom is the same as that of SkyBiz, namely an unlimited binary matrix.
- The product of ZibyCom and SkyBiz appear to be similar.
- The relationship between the names ZibyCom and SkyBiz as set out above
- The involvement of SMcCullough and RMcCullough with ZibyCom and SkyBiz.

On 12 June 2001 the Director: National Inspectorate⁽⁴⁾ sent an e-mail to Stephanie McCullough. Mr X had informed the Director that she is the sister of the McCulloughs and that she is the person to contact at ZibyCom. The e-mail to Ms McCullough contained a brief summary of the Committee and its functions. She was advised that the ZibyCom scheme appeared to be a SkyBiz clone and that the Director intended to recommend to the Committee at its meeting on 13 June 2001 that the following notice be published in the Government Gazette:

"In terms of the provisions of section 8(4) of the Consumer Affairs (Unfair

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- (1) The Consumer Affairs Committee (the Committee) administers the Consumer Affairs (Unfair Business Practices) Act, 71 of 1988 (the Act). It is a statutory committee, resorts under the Department of Trade and Industry and reports to the Minister of Trade and Industry (the Minister). The purpose of the Act is to provide for the prohibition or control of *inter alia* unfair business practices. An "unfair business practice" is defined in the Act as any business practice which, directly or indirectly, has or is likely to have the effect of harming the relations between businesses and consumers, unreasonably prejudicing any consumer, deceiving any consumer or unfairly affecting any consumer.
- (2) See section 3, Report 90: Skybiz, an internet scheme.
- (3) DMcCullough is the "general counsel" for ZibyCom.
- (4) The Director: National Inspectorate, in the Department of Trade and Industry, is *inter alia* responsible for the management of the Act.

Business Practices) Act, 1988 (Act No 81 of 1988), notice is herewith given that the Consumer Affairs Committee intends undertaking an investigation in terms of section 8(1)(a)⁽⁵⁾ of the said Act into the business practices of:

ZibyCom, and/or Ziby Solutions, an entity or entities conducting business from 6705 East 81st St, Tulsa, Oklahoma 74133 (USA), 2420 Springer Dr, Norman, Oklahoma (USA) and 1602 Galleria Corporate Centre, Edsa Corner, Ortigas Avenue, Quezon City, Philippines, as well as Stephen McCullough and Richard McCullough, who conduct business on the Internet, in the Republic of South Africa.

Any person may within a period of twenty one (21) days from the date of this notice make written representation regarding the above-mentioned investigation to: The Secretary, Consumer Affairs Committee, Private Bag X84, Pretoria, 0001".

Ms McCullough was invited to comment on the Director's proposed recommendation to the Committee and in particular as to reasons why the Committee should not undertake the proposed investigation. She was further requested that her comments should reach the Director on or before 15h00 on 13 June 2001. Surfing the Internet, an official of the Committee found that SMcCullough was scheduled to address meetings to promote ZibyCom in Johannesburg, Cape Town, Port Elizabeth and Durban on 24, 25, 26, and 27 June 2001 respectively.

2. Resolution taken at the meeting of the Committee on 13/14 June 2001 and subsequent events

At its meeting held on 13/14 June 2001 the Committee resolved to undertake a section 8(1)(a) investigation into the business practices of ZibyCom, and/or Ziby Solutions, an entity or entities conducting business from 6705 East 81st St, Tulsa, Oklahoma 74133 (USA), 2420 Springer Dr, Norman, Oklahoma (USA) and 1602 Galleria Corporate Centre, Edsa Corner, Ortigas Avenue, Quezon City, Philippines, as well as Stephen McCullough and Richard McCullough,

(5) The Committee has wide investigative powers in terms of the Act. The Committee could undertake two types of investigations, namely formal and informal investigations. Informal investigations and formal investigations are undertaken in terms of sections 4(1)(c) and section 8(1)(a) of the Act respectively. The Committee is not obliged to undertake a section 4(1)(c) investigation into the business practices of a particular entity or individuals before it embarks on a section 8(1)(a) investigation. This route is followed when the Committee has reason to believe that it has sufficient information at its disposal to forego the section 4(1)(c) investigation. Notice of a formal investigation in terms of the Act [section 8(1)(a)] is published in the Government Gazette. Should the Committee, after an investigation, find that an unfair business practice exists, it recommends corrective action by the Minister to ensure the discontinuance of the unfair business practice. The powers of the Minister are set out in section 12 of the Act. Orders of the Minister are published in the Government Gazette. A contravention of an order by the Minister is a criminal offence, punishable by a fine of R200 000 or five years imprisonment or both the fine and the imprisonment.

Subsequent events

- On 26 June 2001, Mr D Erasmus (Erasmus), a South African ZibyCom partner, faxed a letter of his appointment by ZibyCom, to the Committee. The letter was signed by William D McCullough, Director, and Mona Wall McCullough, Secretary. It stated *inter alia*:

"This is to certify that on the 27th day of March, 2001, the Board of Directors for ZibyCom.com met in a duly convened special session and approved the foregoing resolution by a vote of 4 in favor, 0 opposed and no abstentions".

The resolution taken was:

"Resolution appointing Derek Erasmus as the local agent for ZibyCom.com and authorizing Derek Erasmus to accept all service of process and perform all duties required of him as local agent for ZibyCom.com".

- Included in Erasmus' fax dated 26 June 2001 was a CK2⁽⁶⁾ form from the Registrar of Close Corporations. In terms of this CK2 the name of Life Blood Traders CC was amended to Zibycom CC (CK2000/059763/23). Life Blood Traders was incorporated on "04/10/2000".
- Notice of the investigation into the business practices of ZibyCom was published under Notice 1582 in Government Gazette 22413 dated 29 June 2001.
- Also on 29 June 2001 officials met with Erasmus. He enquired about the procedure following the publication of the notice in the Government Gazette. During the discussions he informed the officials that SMcCullough's proposed meetings in South Africa during the last week of June 2001 were canceled because of the Committee's investigation into ZibyCom.
- On 10 July 2001 Erasmus faxed a copy of a letter to him, from DMcCullough, to the Committee. In the letter Erasmus was requested to arrange a meeting between DMcCullough and the Committee. DMcCullough *inter alia* wrote "As we have discussed, ZibyCom.com is a relatively young company having been formulated only four months ago. It is still in its evolutionary stage. The company is currently revisiting its initial policy and procedures. These changes will be instituted over the next few weeks. On 12 July 2001 in an e-mail to DMcCullough the Director stated: "I find it rather peculiar that ZibyCom is '... in its evolutionary stage' yet it already marketed the product to 'partners' in South Africa". ZibyCom or DMcCullough have yet to respond to this statement.

(6) Amended Founding Statement.

- After the exchange of various e-mails between the Committee and Zibycom, it was arranged that Mr David McCullough (DMcCullough) would address the Committee at its meeting which was to be held on 17 August 2001.
- On 13 August 2001 the office of the Committee received a submission, via Erasmus, from DMcCullough. This submission was immediately photocopied and forwarded by courier to the members of the Committee.

3. The ZibyCom submission

This section is based on the ZibyCom submission prepared by DMcCullough. The statements contained herein have not been verified by investigating officials of the Committee, and to make for easier reading, words such as "they said", "alleged" and other words with similar meanings are not used. In many cases the text in this section is quoted from the submission.

3.1 Various entities involved

Direct Approach Inc (DA) is an Oklahoma company involved in computer education and software development. In 1998, DA was introduced to a network marketing company, World Services Corp, an affiliate of SkyBiz. In the same year, DA entered into a three year licensing agreement, which was set to expire in November 2001, wherein it licensed its education and website development program to SkyBiz. DA received a payment for each sale of the package by SkyBiz. In January 2001, both parties notified each other that there was no desire to continue the relationship. In February 2001, the parties began negotiating a buyout of the remainder of the licensing agreement, and SkyBiz bought out the remainder of the contract. Later, SkyBiz filed suit against DA, alleging it breached the buyout agreement by launching its own company, namely ZibyCom. The suit is pending.

Prior to 2001 DA was owned by 15 members of the McCullough family and in 2001 it was bought by the The McCullough Partnership. This partnership consists of a father, William D McCullough and four sons, namely DMcCullough, RMcCullough, SMcCullough and Jerry Dean McCullough.

ZibyCom, whose goal and mission is to teach the world to use the computer and the Internet, is a marketing entity. Another company, Ziby Solutions, conducts the business and customer services operations. Ziby Solutions has offices in Norman and Tulsa, Oklahoma and a server farm in Seattle, Washington. According to DMcCullough, DA, ZibyCom.com and Ziby Solutions could be regarded as a single entity. The expertise behind ZibyCom and Ziby Solutions is DA.

SMcCullough and RMcCullough, through The McCullough Partnership, are principals of ZibyCom and Ziby Solutions.

While DA licensed the software to SkyBiz, it continued to enhance the education software, evolving it several generations past the software being used by SkyBiz.

Because of the licensing agreement with SkyBiz, it did not seek to place the new software on the market. After SkyBiz bought out the DA contract, DA began to explore the market opportunities for its new education software. This led to the creation of ZibyCom and the concept now used to promote the sale of the online computer education programs.

3.2 SMcCullough's and RMcCullough's relationship with SkyBiz

SMcCullough was a contractor for SkyBiz. His duties included traveling and promoting the sale of the SkyBiz product but he ceased his relationship with SkyBiz in March 2001. RMcCullough was a contractor for SkyBiz when it began operations in 1998. As the creator of the education and website development software, he was engaged to assist in the upgrade and maintenance of the website development software and for purposes of upgrading the education programs. Early in the process, RMcCullough and DA had a difference of opinion with SkyBiz over the ownership of any upgrades and enhancements to the education and website development software. The result was that RMcCullough, by mid 1999, was no longer engaged by SkyBiz to enhance the software. From then until the launching of ZibyCom, he devoted his time to developing education programs designed to teach on the uses of computer and Internet programs.

Neither SMcCullough and RMcCullough nor DA and ZibyCom have any relationship with SkyBiz. At no time did any of these persons or entities have any decision making authority in SkyBiz. SkyBiz early on in its life lost the vision that DA had developed. ZibyCom was created to follow through on that vision.

3.3 The Zibycom product

ZibyCom delivers online computer and Internet education programs and a website developer over the Internet. The package sells for \$100 plus a \$35 dollar processing fee. The online education program currently consists of 18 mini-lessons, five e-simulators and four tutorials. All these programs are provided in a text format and in future all will be in video and audio-video format. The list of programs available are being expanded as they become available. The education lessons are currently available, partly or wholly, in 18 languages.

Besides the education, the package also includes a Z-Builder which allows a person to have up to five websites utilizing up to 35 megabytes of web space, which is hosted for one year. The server farm serves not only as the host for the websites but also for the continued education and other development being contemplated by ZibyCom.

3.4 Other aspects

Clients are afforded a five day **cooling off period**. This time is extended depending upon the requirements in the various countries around the world where the package is sold. ZibyCom has been lenient in its refund policies and at present refunds virtually

all requests made within 30 days of purchase.

Any person can sign up to be a ZibyCom "**partner**". A partner is allowed to market the product to others. If individuals elect to become partners after purchasing the package, **then they can market the product from their own websites**. If the persons elect to become partners without purchasing the package, **then they can market the package through any other means they desire**. In either event, the opportunity to market the package is free in both cases. **There is a \$35 dollar processing fee in each case**. There is, however, a restriction applicable to the partners who do not purchase the package. They do not receive their own on line ZibyCom site that could be used to canvass new partners and to keep track of their various genealogies.

Partners are bound by the Partner's Agreement to purchase and/or sell **one product only** to another person. However, whether or not partners have purchased the packages, they are **required to make two sales** of the package to two different people to qualify for commissions. Also in terms of the agreement, partners are prohibited from discussing with individuals the amount of money others are making or the potential for income.

3.5 Why ZibyCom is not a pyramid⁽⁷⁾

In the submission DMcCullough advanced several arguments as to why ZibyCom is a multi-level marketing entity and not a pyramid. The Committee's comments on the various arguments follow each of the arguments and are in brackets and a different letter type, thus (a bc def ghij klmno pqrst uvw xy z)

- (i) Multilevel marketing entities seek to grow the business of both the entity and the distributors by providing products that will generate repeat sales. In pyramid schemes there are usually no repeat sales. ZibyCom is a four-month-old company and is making the financial commitment to grow a company and to allow distributors to grow with it. This commitment is found in (a) the ever-expanding number of languages the package is offered in, (b) the expanding number of education programs which have already been added and which will be added and (c) the expansion from education to games and other areas that will be added over the next year. All this is being done to ensure repeat sales in the years to come. But even if no repeat sales are made, the product offered by ZibyCom is a consumable product. (The argument about the ever expanding number of languages does not hold water. An English speaking partner would probably not buy a German version of the product if it is made available. The same applies to the "expanding number of education

(7) In terms of Notice 1135 published in Government Gazette 20169 dated 9 June 1999 it is unlawful to directly or indirectly, operate, conduct, promote or cause to operate or participate in a pyramid promotional scheme. A "pyramid promotional scheme" means any plan or operation by which a participant gives consideration for the opportunity to receive compensation which is derived primarily from the person's introduction of other persons into a plan or operation rather than from the sale of products by the participant or other persons introduced into the plan or operation.

programs" and new games. Partners will in any case receive the new programs and games when they renew their memberships).

- (ii) No entry fee is required for an individual to market ZibyCom's product. There is a \$35 dollar processing fee whether or not the person purchases the package. There is no requirement of a purchase of any other items. There is no inventory to maintain. An individual electing to market the ZibyCom package is compensated solely on the number of packages sold by that person and his team. (The partners, whether they acquire the package or not, are, in fact, required to pay \$35 {give consideration} for "... the opportunity to receive compensation").
- (iii) Every sale of a ZibyCom package is made to a final consumer. Once the sale is consummated, the individual receives the product. (There is no evidence that the product will be consumed (the online computer and Internet education programs being used or website being built).
- (iv) No participant gives consideration for the opportunity to receive compensation. The package is sold for \$100 plus a \$35 processing fee. (See comments under 3.5(ii) above).
- (v) A person may become a partner without purchasing the package. There is a \$35 processing fee. No consideration is paid for the opportunity to receive compensation. ZibyCom contends its decision to allow a person to purchase only one package⁽⁸⁾ also emphasizes that no consideration is paid for the opportunity to receive compensation. (See comments under 3.5(ii) above).

The emphasis in the ZibyCom submission on whether it is a pyramid or a legitimate multi-level marketing entity misses the point. The Committee is of the opinion that ZibyCom is a pyramid, in terms of Notice 1035⁽⁹⁾, but only a court of law could come to such a conclusion. The question whether a particular entity is a pyramid or not is not, in the final analysis, what the Committee has to consider. The Committee has to consider whether the business practices of a particular entity constitute unfair business practices as defined in the Act, and if so, whether these business practices are in the public interest.

4. The meeting of the Committee held on 17 August 2001

A ZibyCom delegation addressed the Committee at its meeting held on 17 August 2001. The delegation was led by DMcCullough, and he was accompanied by Erasmus, Ms L Tshofen and Mr F du Plessis. Erasmus, Tshofen and Du Plessis were former SkyBiz associates.

From 1 April 2001 approximately 25 000 people became ZibyCom partners, 80 per cent

(8) SkyBiz allowed the sales of more than one website. Many "associates" bought three websites.

(9) See footnote 7.

of whom reside in the United States of America. Of these 25 000 partners, 200 or 0.08 per cent became partners without buying the ZibyCom product.

The distribution and remuneration system: To receive commission, it is required of a partner to sell a package to two different persons. These two persons are assigned to two downlines or legs, labeled *left* and *right*. Any additional packages sold by a partner, are assigned below the partner's left or right leg. One cannot place them anywhere other than on the outer sides of the tree, in other words, no matter how many packages the partner sells, if none of the partner's downline sells any packages, the tree (or genealogy) will only have two branches. To add more nodes, people in the partner's downline must sell packages.

ZibyCom calls its commission structure or "compensation plan" a "binary unlimited matrix". The binary refers to the two legs and the "unlimited" means that there is no limit to how deep the downline is. Partners receive commission for all sales, no matter how many levels there are in their downlines. The commission structure is based on groups of nine sales, thus:

1 st step	1 st nine sales (total 9 sales)	\$75
2 nd step	2 nd nine sales (total 18 sales)	\$75, a total of \$150
3 rd step	3 rd nine sales (total 27 sales)	\$75, a total of \$215
4 th step	4 th nine sales (total 36 sales)	\$75, a total of \$300
5 th step	5 th nine sales (total 45 sales)	\$75, a total of \$375
6 th step	6 th nine sales (total 54 sales)	\$75, a total of \$450
7 th step	7 th nine sales (total 63 sales)	\$75, a total of \$525
n^{th} step	n^{th} nine sales (total $[n \times 9]$ sales)	\$75 times n , a total of $\$75n$.

Therefore, if $n=8$ and $n=100$ respectively, the total commission earned will be \$600 (8 times \$75) and \$7 500 (100 times \$75) respectively. The total number of sales will be 72 and 900 respectively.

The payment of commissions is dependent on ZibyCom's " $\frac{1}{3}$ rule". The " $\frac{1}{3}$ rule" requires that in order to receive commission for each batch of nine sales, at least $\frac{1}{3}$ of the sales credited to a partner's downline must come from one of the two legs. The commission payable is limited to a maximum of \$25 000 per week to any one partner.

5. ZibyCom clients or investors in ZibyCom?

DMcCullough was adamant that ZibyCom partners did not "invest" in the package to "buy" the business opportunity, that is, to earn commissions. He emphasized that they bought the product to have access to the online computer and Internet education programs and the website developer over the Internet. He contended that people could become partners by paying the \$35 dollar processing fee only. The Committee was not convinced that the buyers of the ZibyCom package bought the product for its educational value only. The following are reasons for the Committee's opinion:

- ZibyCom calls their clients **partners**. This implies that they are involved in a business opportunity.

- There is no doubt that former SkyBiz associates switched to being ZibyCom partners. It was mentioned⁽¹⁰⁾ that the three persons who accompanied DMcCullough to the meeting of the Committee were or are also SkyBiz associates⁽¹¹⁾. If they bought the SkyBiz product for its educational value they would have been versed in building websites and the intricacies of the Internet and would not need the to buy a similar product⁽¹²⁾ unless the intention is to earn commissions by on-selling the package. The Committee is of the view that they have joined ZibyCom in order to earn commission by on-selling the package.
- DMcCullough and existing ZibyCom partners would advance the argument that the package and the opportunity to earn commissions costs \$135, while the opportunity to earn an income costs the \$35 dollar processing fee only. The fact is, however, that it is difficult to sell a product if one is ignorant of its features. It is also advantageous for sellers, in their sales pitches, to tell prospective buyers that they themselves (the sellers) have purchased the product. In view of the "1/3-rule" and the consequent necessity for partners to monitor their downlines for the requisite balance, not having one's own ZibyCom site could prove to be a serious impediment in pursuing the business opportunity.
- It was stated in Committee's report on SkyBiz⁽¹³⁾ that about 85 per cent of SkyBiz associates identified in a certain experiment did not use their personal web sites. Yet, SkyBiz associates also were afforded the opportunity to become associates without buying the product. There is no reason to believe that the situation would be different in the case of ZibyCom.

The Committee is therefore of the opinion that the greatest majority of ZibyCom partners will join the scheme to utilise the business opportunities.

6. The probability that partners will earn commissions

The table below illustrates the probability that ZibyCom partners will earn commissions. It is assumed that each partner sells one package to each of two different persons. The result is a perfect symmetrical structure with the left and right legs in complete balance. Each leg contains 50 percent of a partner's total downline and the "1/3-rule" is therefore complied with. The figures in the table present **the best possible scenario**. In reality there will always be gaps and the "1/3-rule" would not always be achieved.

Table to illustrate the percentage of ZibyCom partners who will not earn commissions.

(10) See section 4.

(11) One of these persons admitted that he did not make much money being a SkyBiz associate because he experienced problems with the "1/3-rule".

(12) Both developed by RMcCullough.

(13) See section 8, Report 90: Skybiz, an internet scheme.

(a) Enrol- ment level (n) beneath Partner 1	(b) Partici- pants residing at level n	(c) total number of parti- cipants in matrix	(d) Batches of 9 sales each (integers only) Column (c), from last row up, divided by 9	(e) Amounts received by agents in column (b)
(n=0)	Partner 1	1	$2\ 047 \div 9 = 227$	$1(227 \times \$75) = \$17\ 025$
1	2	3	$1\ 023 \div 9 = 113$	$2(113 \times \$75) = \$16\ 950$
2	4	7	$511 \div 9 = 56$	$4(56 \times \$75) = \$16\ 800$
3	8	15	$255 \div 9 = 28$	$8(28 \times \$75) = \$16\ 800$
4	16	31	$127 \div 9 = 14$	$16(14 \times \$75) = \$16\ 800$
5	32	63	$63 \div 9 = 7$	$32(7 \times \$75) = \$16\ 800$
6	64	127	$31 \div 9 = 3$	$64(3 \times \$75) = \$14\ 400$
7	128	255	$15 \div 9 = 1$	$128(1 \times \$75) = \$9\ 600$
8	256	511	$7 \div 9 = 0$	$256(0 \times \$75) = \0
9	512	1 023	$3 \div 9 = 0$	$512(0 \times \$75) = \0
10	1 024	2 047	$0 \div 9 = 0$	$1\ 024(0 \times \$75) = \0

* It is assumed that "Partner 1" receives commission on his own purchase. This assumption has no influence on the conclusion reached

In the table there are 2 047 partners on all 10 levels, including "Partner 1", in the pure symmetrical structure which resembles a pyramid.

- This means that "Partner 1" would receive \$75 times $(2\ 047 \div 9^{(14)}) = \$17\ 025$.
- The two partners on the first level will each have 1 023 partners in their downlines. They will each receive R75 times $(1\ 023 \div 9) = \$8\ 475$ or a total of \$16 950.
- The four partners on level 2 will each have 511 persons in their downlines. The partners will each receive R75 times $(511 \div 9) = \$4\ 200$ or a total of \$16 800.
- The eight partners on level 3 will each have 255 persons in their downlines. They will each receive \$75 times $(255 \div 9) = \$2\ 100$ or a total of \$16 800.
- The 16 partners on level 4 will each have 127 people in their downlines. They will each receive \$75 times $(127 \div 9) = \$1\ 050$ or a total of \$16 800.
- The 32 partners on level 5 will each have 63 persons in their downlines. They will each receive \$75 times $(63 \div 9) = \$525$ or a total of \$16 800.

(14) In this and the other examples below, only the integers of the results are used because commissions are paid on each batch of 9 sales.

- The 64 partners on level 6 will each have 31 persons in their downlines. They will each receive \$75 times $(31+9) = \$225$ or a total of \$14 400.
- The 128 partners on level 7 will each have 15 partners in their downlines. They will each receive \$75 times $(15+9) = \$75$ or a total of \$9 600.
- The persons on levels 9, 10 and 11, that is 256 and 512 and 1 024 respectively, or a total of 1 792, will receive no payments because none of them sold at least 9 packages. They comprise 87.54 per cent of 2 047, the total number of participants in the symmetrical matrix.

One can therefore conclude that, under the best of circumstances, at least 87.54 per cent of the ZibyCom partners will receive no commission. These 87.54 percent of the partners will have contributed towards the money made by the remaining 12.46 of the partners. ***This is clearly unfair and not in the public interest.*** The Peters in the scheme are robbed to pay the participating Pauls. If the Peters were aware what the probabilities would be of them earning commissions, they would probably not buy the package.

Assume the unrealistic scenario where only those partners who paid the processing fee of \$35 should be regarded as investors. The same percentages in the preceding paragraph will apply to them. At least 87.54 per cent of these partners will not recoup their investments of \$35 each. It is realistic to assume that 100 per cent of them would join ZibyCom to earn commissions, but only 12.46 per cent would do so. They would have been misled and even if this was not intentional it remains an unfair business practice.

On 4 July 2001 the Committee received a copy of the Temporary Receiver's Report from the FTC. It appears from this report that the sales of SkyBiz were discontinued immediately when the Temporary Receiver took over the affairs of SkyBiz on 7 June 2001. The report stated that 1 801 830 (92.56 per cent) out of 1 946 630 SkyBiz participants received ***no compensation*** and that ***228 individuals received 23 per cent*** of all the commissions paid. These figures confirm that the overwhelming number of ZibyCom partners will receive no commission.

7. Consideration

The business practices of ZibyCom constitute unfair business practices. There are no grounds justifying these practices in the public interest. The following are the reasons for this standpoint:

- The Rainbow, Newport, Dunamus and Itereleng schemes (See Report 55: Rainbow Business Club and Others published under Notice 1958 dated 12 December 1997; Report 56: Newport Business Club (Pty) Ltd and Others, published under Notice 1349 dated 17 September 1997; Report 60: Dunamus Marketing CC and Others, published under Notice 963 dated 12 June 1998; and Report 62 AJ van Rensburg & Associates CC, also known as JVR & Associates CC, trading as Itereleng published under Notice 2797 dated 20 November 1998 respectively) were all closed down by the Minister because in all four reports the former Business

Practices Committee (BPC) expressed the opinion that their members would be unreasonably prejudiced. The most important reason for this point of view was that at any time the overwhelming majority of its members were at risk. For example, in the Newport case, the BPC theorised that at least 75 per cent of the Newport *en commandite* partners would not recoup their investments. In fact, 61 per cent of the partner did not recoup any of their payments and another 30 per cent recovered less than their investment. Thus, 91 per cent did not recoup their payments, compared with only 9 per cent who have done so.

- Also in the case of ZibyCom there is evidence to show that most of its members (partners) are at risk and will suffer loss. These partners and future ZibyCom partners would be ***unreasonably prejudiced. This is not in the public interest.***

8. Recommendation

It is accordingly recommended that the Minister declares the unfair business practice unlawful in terms of Section 12(1)(b) of the Act whereby any juristic or legal person:

- (a) invites, procures the attendance or attempts to invite or to procure the attendance of any person to a meeting at which meeting such persons are invited or encouraged in any way, directly and indirectly, to partake in or become members of ZibyCom.
- (b) directly or indirectly, operates, conducts or promotes participation in or membership of ZibyCom.
- (c) transmits in any way whatsoever, money to any account, whether in the Republic of South Africa or abroad, destined for the credit of ZibyCom.

PROF T A WOKER

VICE-CHAIRPERSON: CONSUMERS AFFAIRS COMMITTEE

NOTICE 2931 OF 2002

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

I, Alexander Erwin, Minister of Trade and Industry, after having considered a report by the Consumer Affairs Committee in relation to an investigation of which notice was given in Notice 1582 of 2001 published in Government Gazette No. 22413 of 29 June 2001, which report was published in Notice No. 2930 in Government Gazette No. 24054 of 8 November 2002, and being of the opinion that an unfair business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12(l)(b) of the Consumer Affairs (Unfair 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 -

"unfair business practice" means the business practice whereby any juristic or legal person:

- (a) invites, procures the attendance or attempts to invite or to procure the attendance of any person to a meeting at which meeting such persons are invited or encouraged in any way, directly and indirectly, to partake in or become members of ZibyCom.
- (b) directly or indirectly, operates, conducts or promotes participation in or membership of ZibyCom.

(c) transmits in any way whatsoever, money to any account, whether in the Republic of South Africa or abroad, destined for the credit of ZibyCom.

1. The unfair business practice is hereby declared unlawful.
 2. This notice shall come into operation upon the date of publication hereof.
-

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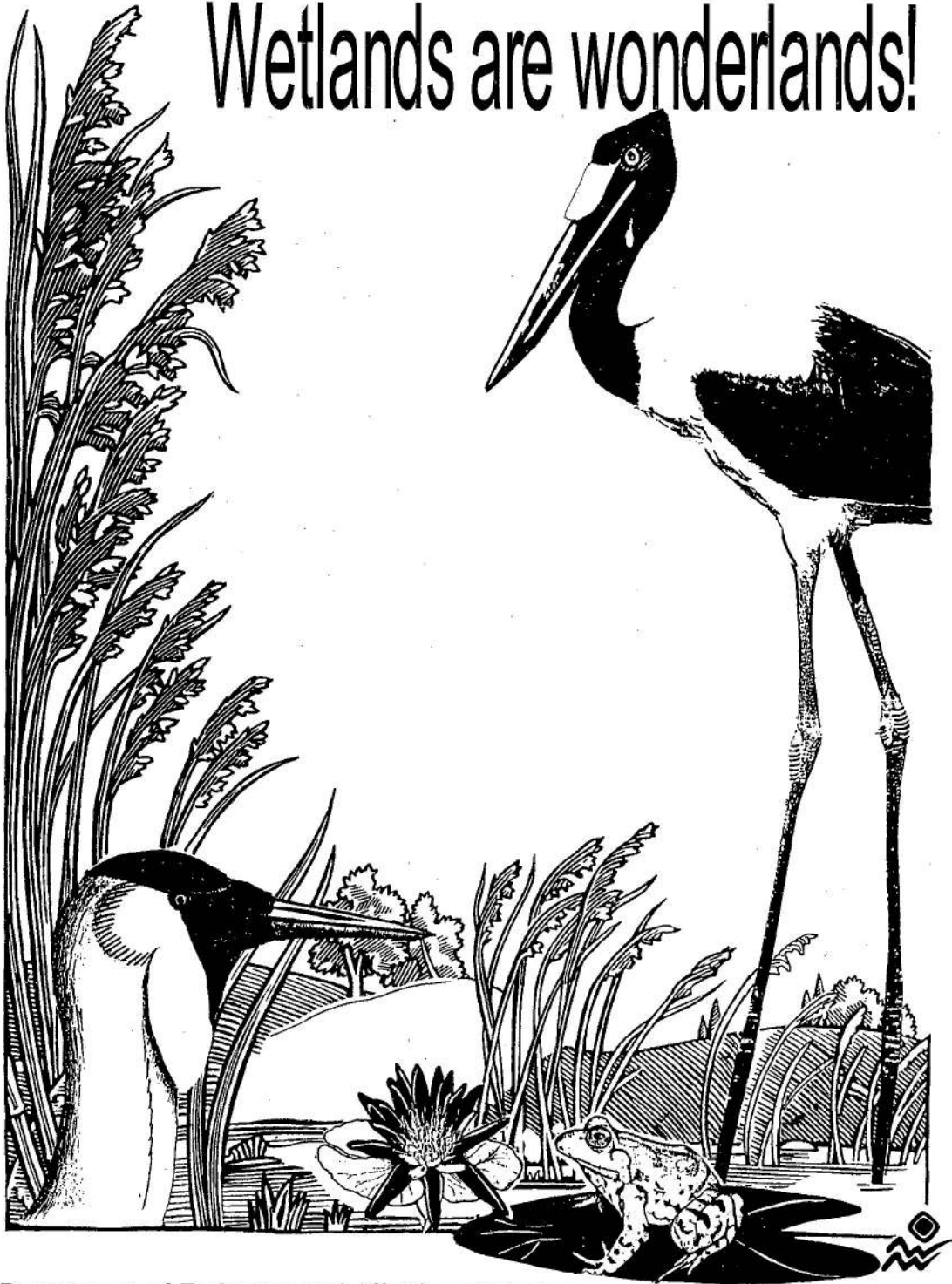
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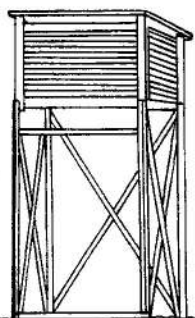
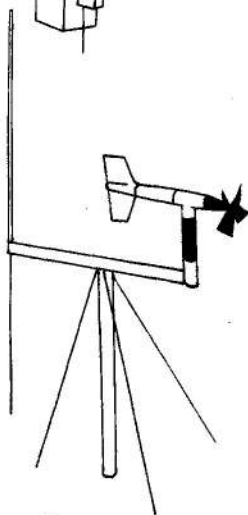
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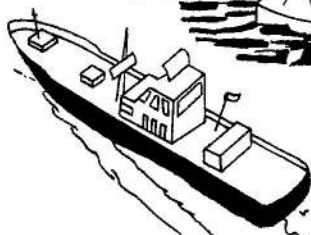
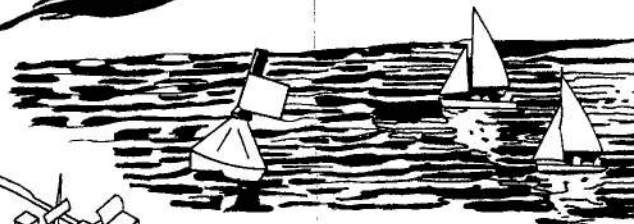
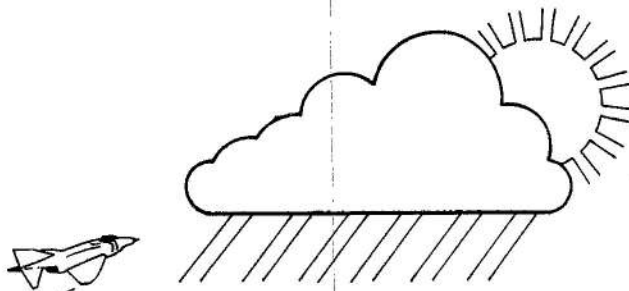


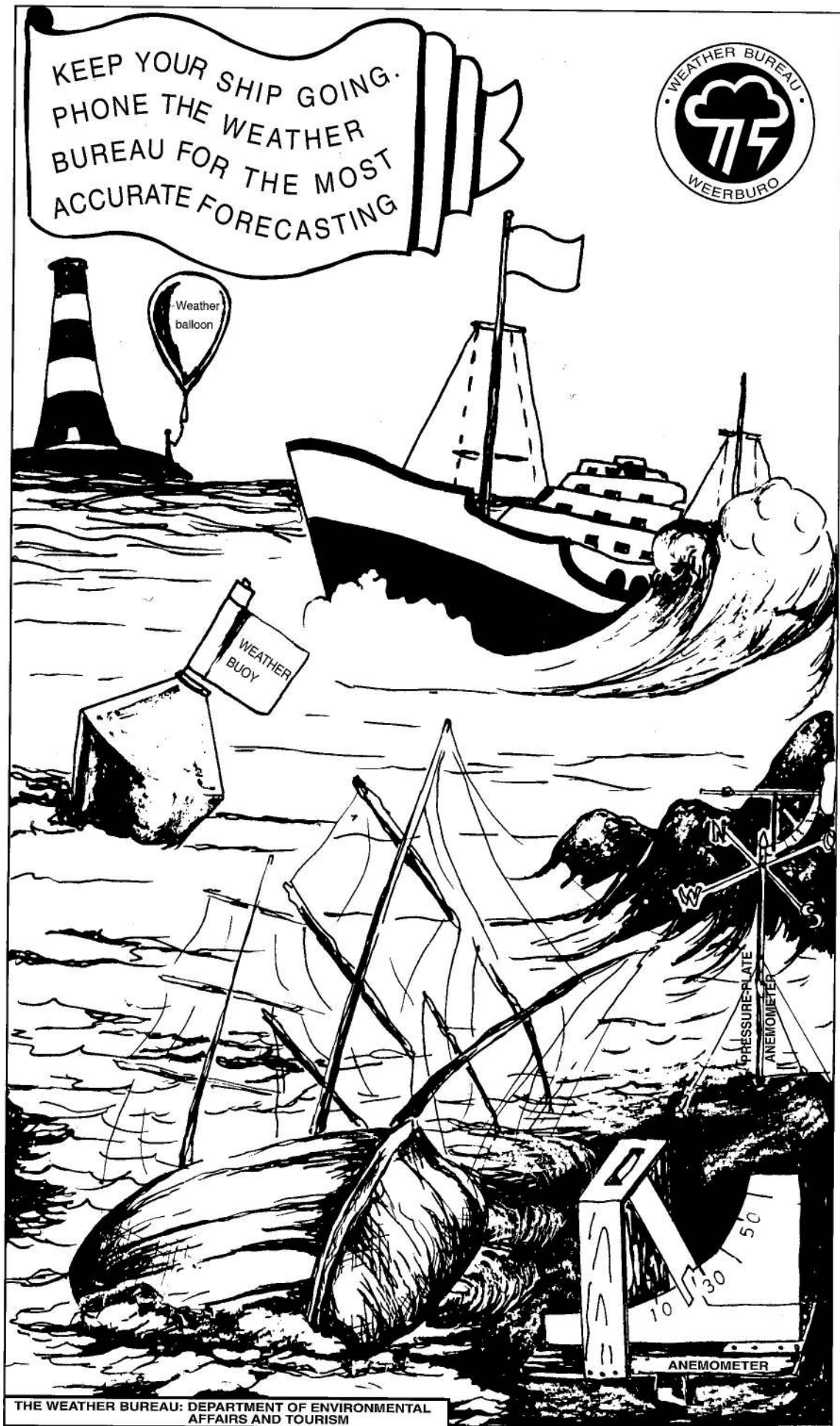
Department of Environmental Affairs and Tourism

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