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GENERAL NOTICE

NOTICE 305 OF 2005

NOTICE IN TERMS OF SECTION 12(6) OF THE CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Mandisi Mpahlwa, Minister of Trade and Industry, by virtue of the powers vested in me by section 12(6) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No 71 of 1988), and after having considered a report by the Consumer Affairs Committee in relation to an investigation of which notice was given in Notice 2136 of 2004 published in Government Gazette No 26832 dated 23 September 2004, which report was published in Notice 2971 in Government Gazette No 27127 of 20 December 2004, and being of the opinion that an unfair business practice exists which is not in the public interest, promulgate the notice in the Schedule.

SCHEDULE

In this notice, unless the context indicates otherwise -

1. "Unfair business practice" means the business practice of offering and selling speculative software to consumers **unless** the following conditions apply. The following statements must be included, without alteration, in an agreement entered between a buyer and a seller:
 - (a) "I, (initials and surname of the buyer) understand that I am entitled to cancel this contract within five days of the date on which I signed this contract, excluding the day of signature as well as Saturdays, Sundays and public holidays. This cancellation must be conveyed in writing by me and must be received by the seller or any employee of the seller, within the five-day period, at the physical address of the seller. "In writing" includes the use of any electronic means to transmit messages, provided a hard copy of the message can be reproduced without alteration by the seller.
 - (b) (i) I prefer to pay the purchase price in a once-off payment, whether by cash, cheque or a debit on my credit card.

I understand that should I select this option, the seller will be credited with the full purchase price, and that I will have to make monthly repayments, including interest at the prevailing interest rates, to the bank.

(delete the option which is not applicable)

- (c) The terms, conditions and costs involved for both options were explained to me and a copy of the contract, which include the statements above as well as the signed statement by the seller that I will be refunded the money paid by me should I cancel this contract within five days, was handed to me.

.....
(Signature of the buyer)

I have not made any verbal promises to the buyer which are not printed in any official literature of the firm. Upon termination of the contract by the buyer as set out above, I shall, within five days as defined above, refund all payments made by the buyer or reverse any credit transaction.

.....
(Signature of the seller or authorised agent)"

2. **"Speculative software"** means software which claim to assist consumers to understand securities and exchanges and to trade profitably in securities on exchanges and/or software which claims to predict the outcome of horse races. This software is available on stiffies (3½-inch floppy disks), CD ROM disks (compact disks: read only memory) or via the internet through paystations.
3. **"Sellers"** include agents, distributors, individuals, retailers and/or wholesalers, but exclude the Johannesburg Securities Exchange.
4. **"Consumer"** means any natural person to whom speculative software is

offered, supplied or made available.

5. This notice shall come into operation upon the date of the publication hereof.
6. On the recommendation of the Consumer Affairs Committee I may, in a particular case, in terms of section 12(6)(c) of the Act, grant exemption from a condition or requirement contemplated in this notice to such extent and for such period and subject to such conditions as may be specified in the exception. Such applications for exemption must be directed to: The Director, Consumer Affairs Committee, Private Bag X84, PRETORIA 0001 [For attention: Ms D Dube, (T) 012-394-1543, (F) 012-394-2543, e-mail: dinki@thedti.gov.za]



M MPAHLWA

MINISTER OF TRADE AND INDUSTRY

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