



# Consumer Affairs Annual Report 2008/09

## Consumer Affairs Committee Annual Report 2008/09



**the dti**

Department:  
Trade and Industry  
REPUBLIC OF SOUTH AFRICA



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## Abbreviations and Acronyms

ADR	Alternative Dispute Resolution
ASA	Advertising Standards Authority
BASA	Banking Association of South Africa
CAFCOM	Consumer Affairs Committee
CCRD	Consumer and Corporate Regulation Division
CHL	Consumer Help Line
CID	Consumer Investigations Directorate
COMPCOM	Competition Commission
CR	Complaints Resolution
DDG	Deputy Director-General
DMA	Direct Marketing Association of South Africa
DoC	Department of Communications
DoH	Department of Health
DSD	Department of Social Development
FAIS	Financial Advisory Intermediary Services
FETCs	Further Education Training Colleges
FSB	Financial Services Board
FTA	Furniture Trading Association
ICASA	Independent Communications Authority of South Africa
IDA	Independent Dealers Association
LOA	Life Offices Association of South Africa
LSM	Living Standard Measure
MIO	Motor Industry Ombudsman

NAAMSA	National Association of Automobile Manufacturers of South Africa
NCC	National Consumer Commission
NCR	National Credit Regulator
NERSA	National Energy Regulator of South Africa
NGOs	Non-Governmental Organisations
NLB	National Lotteries Board
OB	Outside Broadcast
OBSSA	Ombudsman for Banking Services of South Africa
OCP	Office of Consumer Protection
OLTI	Long-Term Insurance Ombudsman
OSTI	Ombudsman for Short-Term Insurance
PASA	Payments Association of South Africa
PFA	Pension Fund Adjudicator
PASA	Payment Protection Insurance
RMI	Retail Motor Industry
SAAFI	South African Association of Fractional Intermediaries
SAIF	South African Institute of Fundraisers
SAMED	South African Medical Device Industry Association
SANCU	South African National Consumer Union
<b>the dti</b>	Department of Trade and Industry
TISA	Time-Share Institute of South Africa
VOASA	Vacation Ownership Association of South Africa
WASPA	Wireless Application Service Provider Association

# **PART A:**

## *Introduction*

# *Introduction*







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*Prof. T Woker*

## Chairperson's Review

The Consumer Affairs Committee (CAFCOM) is appointed by the Minister of Trade and Industry. CAFCOM has the power to investigate and recommend to the Minister that unfair business practices be declared unlawful. Although the primary purpose of the Consumer Affairs (Unfair Business Practices) Act was originally to investigate get-rich-quick schemes, such as pyramid schemes, the definition of a business practice is extremely wide. It is

any business practice that, directly or indirectly, has or is likely to have the effect of either harming the relations between businesses and consumers, or unreasonably prejudicing any consumer or deceiving a consumer or unfairly affecting any consumer. CAFCOM has, over the years, investigated a wide range of business practices and this continued during the period under review. CAFCOM members met on a regular basis and



consulted with numerous businesses, consumers, industry bodies and associations. While the statistics reflect a small number of investigations having been conducted during the reporting period CAFCOM has, at times, been criticised for the relatively limited number of investigations) these figures are deceptive, as only formal investigations are published in the Government Gazette. CAFCOM prides itself on continually resolving disputes through consultation and negotiation, which might not be quantifiable in terms of reporting requirements but meaningful in resolving consumer complaints.

Two matters dealt with during 2008 clearly highlight CAFCOM's work and the investigating officials of the OCP, namely the drafting of a Code of Conduct for the Motor Industry and reviewing the Code of the Time-share Sector, in order to accommodate fractional ownership. Codes of conduct make an important contribution towards preventing unfair business practices and they provide useful guidelines on what is regarded as acceptable conduct. Although CAFCOM has devised its own consumer codes for certain industries (such as advertising, vehicle recovery services, mail order marketing, credit bureau, debt recovery, franchising and time-sharing), CAFCOM also works together with industries that possess their own codes. In this way, CAFCOM plays a complimentary role in the self regulation of particular industries. The role that such introspective regulation can play in stemming consumer abuse has been recognised in the Consumer Protection Act and it is thus important for industries to develop their own codes and appoint their own ombudspersons.

During 2008, CAFCOM worked closely with stakeholders in the motor industry in order to draft a code of conduct applicable to this sector. Substantial work was done by CAFCOM, stakeholders and the officials of the OCP and it is anticipated that during the next financial year, the code will be finalised.

CAFCOM also became aware of fractional ownership during the period under review. Fractional ownership

is a percentage share of an expensive asset that is sold to individual owners. This form of ownership of immovable property is becoming popular in the vacation market and bears some similarity to timeshare. Legislation that may have an impact on this form of ownership includes the Share Block Control and Property Time-sharing Control Acts but no sector specific legislation is currently in existence. Fractional ownership is essentially unregulated and CAFCOM has identified some areas of concern in this regard. CAFCOM has worked closely with the Time-Share Institute of South Africa over the years and consulted the self regulatory body (now known as the Vacation Ownership Association of South Africa (VOASA)) regarding the issue of fractional ownership. Discussions were also held with the South African Association of Fractional Intermediaries, which is an organisation established to self-regulate the fractional ownership sector. It was agreed that VOASA would self-regulate this sector and at the time of reporting, its code was being amended to incorporate rules relating to fractional ownership. **the dti** was also considering whether relevant legislation should be amended to include this new form of owning holiday ownership.

CAFCOM has continued to work with **the dti** on matters relating to the implementation of the Consumer Protection Act. At the time of going to press, issues for inclusion in the regulations had been identified, as were matters for referral to the Consumer Commission, (once this organisation is established in 2010). In this way, CAFCOM seeks to ensure that there will be a smooth transition between CAFCOM and the Commission.



**Prof. T Woker**

Chairperson

Consumer Affairs Committee (CAFCOM)



*Ms Zodwa Ntuli*

## Deputy Director-General's Foreword

The year under review bore witness to a number of exciting and dynamic developments in the area of consumer protection. Politically, it was also the year during which the then administration of the Department of Trade and Industry (**the dti**) concluded its projects and prepared the way for the new leadership.

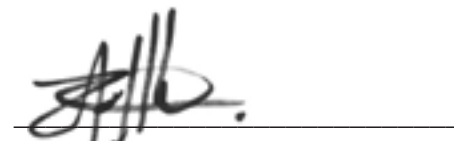
Notwithstanding these changes, **the dti's** Consumer and Corporate Regulation Division (CCRD) continued to develop and implement coherent, transparent and efficient regulations and facilitate access to redress for South Africa's economic citizenry. It also sought to enhance the level of confidence in South Africa's corporate regulatory environment, and promote competitive and socially responsible business dealings. In this regard, the CCRD developed and enforced consumer-oriented legislation, initiated outreach programmes and monitored nine regulatory entities.

In keeping with the CCRD's objectives to increase access to economic opportunities for historically disadvantaged citizens, several pieces of legislation were passed through Parliament. This eased the regulatory burden, enforced consumer protection and curtailed anti-competitive conduct in the market. The most relevant legislation, in terms of the Office of Consumer Protection's (OCP's) mandate, is the revolutionary Consumer Protection Act, No. 68 of 2008.

On 24 April 2009, former President Motlanthe signed the Consumer Protection Act into law. The new law

will take full effect in 2010, 18 months after promulgation. The National Consumer Commission (NCC), established in terms of the Act, is expected to open its doors for business towards the end of October 2010. It has been given extensive powers to deal with and promote consumer protection. All staff presently employed in the OCP will become employees of the NCC, in terms of transitional provisions contained in the Act.

I would like to take this opportunity to thank the Consumer Affairs Committee (CAFCOM) and the OCP for their advisory expertise and delivery of sterling work over the past years. On behalf of CAFCOM and the OCP, I would also like to recognise the former Minister Mandisi Mpahlwa, Deputy Ministers Thabethe and Davies, as well as the Director-General, Tshediso Matona, for their steadfast support and leadership. In the same vein, I look forward to fulfilling the CCRD mandate, under the expert guidance of Dr Rob Davies, as the incumbent Minister of Trade and Industry, and Deputy Ministers Thandi Tobias-Pokolo and Maria Ntuli.



**Ms Zodwa Ntuli**

Deputy Director-General

Consumer and Corporate Regulation Division  
(CCRD)



*Mr Ebrahim Mohamed*



## Chief Director's Overview

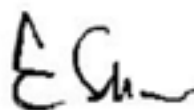
On behalf of the Office of the OCP, it gives me great pleasure to reflect on CAFCOM and the OCP's progress over the past year. I am pleased to say that we have indeed achieved significant milestones. In August 2004, **the dti** released a Consumer Policy, which outlined government's intention to establish consumer rights, promote access to redress, support the consumer voice and accountability with respect to service delivery by the private and public sectors. Public sector accountability and excellence in service delivery was deemed equally important for consumers. The NCC will be responsible for implementing the provisions of the new Consumer Protection Act.

During the reporting financial year, a number of complaints were resolved by way of negotiated settlement, resulting in the recovery of over R901 437.23, on behalf of South African consumers, through Alternative Dispute Resolution (ADR). This process has proved to be a cost-effective way of providing access to redress for consumers and in the process, restoring and maintaining relationships between business and consumers. The OCP continued to establish and strengthen partnerships with industry and other consumer protection agencies to harmonise consumer complaints handling processes.

The OCP successfully continued in its efforts to educate both consumers and business about their rights and responsibilities. To ensure harmonised and effective consumer education nationally, a joint Spending Patterns campaign was rolled out, together with the provinces and

other regulators, over the festive season in 2008. The main objective of the campaign was to raise awareness on spending wisely and educate consumers about their rights and obligations over the festive season. This initiative came as a result of consumer protection offices experiencing an increase in complaints during the month of January.

The effects of the recession were experienced by all consumers, across the board. As a result, an Over-Indebtedness Campaign was jointly undertaken with the National Credit Regulator (NCR) to provide South African consumers with information and useful tips on how to avoid over-indebtedness, as well as mitigate and cancel existing debt problems. Via this, as well as other education and awareness initiatives, CAFCOM and the OCP will continue to demonstrate the highest ideals of public service in helping to protect and promote the interests of consumers.



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**Mr Ebrahim Mohamed**

Chief Director

Office of Consumer Protection (OCP)



# PART B:

CONSUMER AFFAIRS COMMITTEE

# PART A:

CONSUMER AFFAIRS







## CAFCOM Legislative Requirements

Key definitions under the Consumer Affairs (Unfair Business Practices) Act, No. 71 of 1988 include:

### Unfair Business Practice

An unfair business practice refers to any business practice that directly or indirectly has, or is likely to have, the effect of harming the relations between businesses and consumers, unreasonably prejudicing/deceiving or unfairly affecting any consumer. It is important to note that the legislature did not deem it necessary to distinguish between accidental or deliberate unfair business practices.

### Business Practice

A business practice includes any agreement, accord, arrangement, understanding, or undertaking, whether legally enforceable or not, between two or more persons; any scheme, practice or method of trading, including any method of marketing or distribution; any advertising, type of advertising or any other manner of soliciting business; any act or omission on the part of any person, whether acting independently or in concert with any other person; any situation arising from the activities of any person, class, or group of persons.

The Act explicitly prohibits CAFCOM from looking into “a practice regulated by competition and labour law”. Consequently, CAFCOM cannot become involved in a competition or labour dispute between two or more businesses, although this could impact on consumers unfairly. Such matters are referred to the Competition Commission of **the dti**, and appropriate labour authorities, respectively.

### Consumer

The definition of unfair business practices features four references to the word “consumer”. The *raison d’être* of CAFCOM, and of the Act, is to protect consumer rights, and specifically consumers likely to be affected by an unfair business practice.

“Consumer” means any natural person to whom any commodity is offered, supplied or made available, or from whom any investment is solicited, or who supplies or makes available any investment; any other person whom the Minister of Trade and Industry, with the concurrence of CAFCOM, declares to be a consumer by notice in the Government Gazette; and any person regarded as a consumer for the purposes of this Act or in terms of any other law.

### Investigations in Terms of the Act

The Act constitutes enabling, not prescriptive legislation. It confers wide investigative powers on CAFCOM and is empowered to undertake two broad types of investigations, namely particular and general investigations.

Particular investigations can be carried out in two ways. Firstly, an investigation into the business practices of individual entities or businesses, namely “informal” or preliminary Section 4(1)(c) investigations, or “formal” Section 8(1)(a) investigations.

General investigations are carried out in terms of Section 8(1)(b) of the Act. In terms of this section, CAFCOM may undertake investigations into any business practice generally, which is commonly applied within a particular industry to establish or maintain unfair business practices.

### Preliminary 4(1)(c) Investigations

When CAFCOM receives a complaint from a Consumer, it undertakes a Section 4(1)(c) investigation. Such investigations enable CAFCOM to make a preliminary investigation and gather information it deems necessary. It may also confer with any relevant party about an alleged or potentially unfair business practice.

It affords the implicated parties the opportunity to respond to the allegations. Informal investigations are not published in the Government Gazette, as opposed to formal Section 8(1)(a) investigations. The Minister

cannot make any decisions about the discontinuance of a particular unfair business practice on the strength of a section 4(1)(c) investigation. He may, however, do so in terms of a Section 8(1)(a) investigation

Should the investigating officers of CAFCOM, in the course of an investigation, find an existing or potential unfair business practice, they will inform CAFCOM accordingly. CAFCOM may then decide that the unfair business practice must be stopped in terms of Section 9 of the Act. Section 9 provides for the “settlement” of a matter where the offending party gives a written undertaking to discontinue the unfair business practice.

Should this avenue also fail to ensure the discontinuance of the unfair business practice, CAFCOM must inevitably consider undertaking a formal Section 8(1)(a) investigation.

### **Formal 8(1)(a) Investigations**

Notice of a formal investigation in terms of Section 8(1)(a) of the Act is published in the Government Gazette. The Chairperson of CAFCOM also issues a media statement about the intended investigation. Should CAFCOM, upon conducting an investigation, find that an unfair business practice exists, it may recommend corrective action by the Minister to ensure that it is terminated. Ministerial orders inevitably include a prohibition on conduct that might lead to the continued perpetration of the unfair business practice. The powers of the Minister are set out in Section 12 of the Act.

The focal point of a Section 8(1)(a) investigation in terms of the Act is any unfair existing or potential business practice which involves any individual or business entity. The order of the Minister is published in the Government Gazette and will be applicable to the particular individual or business entity involved. Infringement of the order is a criminal offence, punishable by a fine of R200 000 or five year's imprisonment, or both depending on the severity of the case.

## **CAFCOM's Obligation Pursuant to a Section 8(1)(a) Investigation**

In terms of Section 10 of the Act, CAFCOM must report to the Minister the result of any Section 8(1)(a) investigation. If CAFCOM deems that an unfair business practice exists and it is not satisfied that the practice is in the public interest, it is compelled to recommend to the Minister that the relevant unfair business practice be declared unlawful.

### **General Investigations**

The subject of a Section 8(1)(b) investigation is any form of business practice in general, which is commonly applied for the purpose of, or in connection with, the creation or maintenance of unfair business practices. The subsequent orders of the Minister are applicable to all the individuals and entities involved with this particular business practice. The intended order or prohibition of the Minister resulting from a Section 8(1)(b) investigation is first published in the Government Gazette for comment before the actual order is published. As a result, the impact of Section 8(1)(b) Ministerial orders is substantial.

### **Negotiations**

In terms of Section 9 of the Act, when the Committee has decided to undertake an investigation in terms of Section 4(1)(c) (preliminary investigation) or Section 8(1)(a) (formal investigation), it may at any time thereafter negotiate with any party to make an arrangement which the Committee deems will ensure the discontinuance of an unfair business practice under investigation. If the Committee enters into such negotiations, it reports the matter to the Minister. Section 9 arrangements are published in the Government Gazette.

### **Secrecy – Non-Disclosure Clause**

The law generally prohibits members of the Committee from disclosing the details of the investigation until a report is published in the Government Gazette. In the case of section 8 investigations, notice of the investigation is published in the Government Gazette and hence the involvement of the Committee becomes public.

## Powers of the Minister, Under the Act

Under Section 12 of the Act, the Minister may declare, after due consideration of the Committee's investigative report, that an unfair business practice deems to exist, that the relevant practice is not in the public interest, or that the relevant unfair business practice is unlawful.

## Powers of the Minister After Investigation by the Committee

The Minister has wide powers to ensure the discontinuance of unfair business practices if he, after considering a Section 8(1)(a) investigation report submitted to him by the Committee, is of the opinion that they exist or may come into existence. These powers are set out in Section 12 of the Act. By notice in the Government Gazette, the Minister may, for example:

- Declare the unfair business practice to be unlawful and direct the person responsible for it to take such action, including steps for the dissolution of any body, as he may consider necessary to ensure the discontinuance or prevention of the unfair business practice;
- Direct any person who is or was a party to an agreement, arrangement or understanding connected with unfair business practice, to terminate or cease to be a party to that agreement, arrangement or understanding;
- Direct any person who uses, or has used, any advertising connected to unfair business practice to refrain from using that type of advertising;
- Direct any person who has applied a scheme, practice or method of trading, including any method of marketing or distribution, which is connected to unfair business practice, to refrain from applying that scheme, practice or method of trading;
- Direct any person involved in an act or situation connected to unfair business practice to cease to commit that act or bring about that situation;
- Direct any person who has, or had, any interest in a business, or type of business, or derives or derived any income from a business or type of business, which in his opinion is connected with unfair

business practice and which may be specified in the notice, to cease to have any interest in that business, or to derive any income from it;

- Direct people involved in unfair business practices to refrain from, at any time, becoming party to any agreement, arrangement or understanding, using any type of advertising, applying any scheme, practice or method of trading, committing any act, or bringing about any situation of a nature specified in the notice, and which in the opinion of the Minister is likely to be used for the purposes of unfair business practice and to refrain from at any time obtaining any interest in, or deriving any income from a business or type of business specified in the notice.

If money were to be accepted from consumers and the Minister deemed it necessary to refund them, a curator may be appointed for this purpose, with the approval of a special court, to dissolve the assets of the person involved in the unfair business practice and distribute these assets between the consumers concerned. The Minister may also instruct the curator to take control and/or manage the whole, or any part of the business of such a person.

## Appeals Against Ministerial Rulings

Persons or entities affected by a notice, direction, measure or ruling of the Minister have the right of appeal to a special court. The President may, by proclamation in the Government Gazette, establish a permanent special court with a permanent registrar, operating on an *ad hoc* basis, with jurisdiction in the area of jurisdiction of a High Court. A Special Court comprises the President, who is a Judge of a High Court, as designated by the Chief Justice, as well as two other members appointed by the President.

There are no pending appeals against the Minister's order arising from any investigations conducted by the Committee.



## Penalties and Fines

The Consumer Affairs (Unfair Business Practices) Act No. 71 of 1998 recommends corrective action to the Minister to ensure the discontinuance of unfair Business practices. If the Minister accepts the recommendation of the Committee, an order is published in the Government Gazette.

An infringement of an order by the Minister is a criminal offence, punishable by a fine of R200 000 or five years' imprisonment, or both, depending on the severity of the case.

# CAFCOM Governance







## Structure

The Consumer Affairs Committee (CAFCOM) is a statutory body established in terms of Section 4(2) of the Consumer Affairs (Unfair Business Practices) Act, No. 71 of 1988. It resides within the Consumer and Corporate

Regulation Division (CCRD), Consumer Investigations, and comprises seven members, appointed by the Minister of Trade and Industry, for their expertise in consumer advocacy, economics, industry, commerce and law.

## Members



**Prof. T Woker**  
Chairperson: CAFCOM



**Prof. BC Dumisa**  
Deputy Chairperson: CAFCOM



**Mr LI Karp**  
General Practitioner  
Financial Advisor



**Ms OS Davids**  
Head, Consumer Education  
Financial Services Board (FSB)



**Ms P Beck-Paxton**  
General Practitioner  
Consumer Protection Expert



**Ms Laura Best**  
General Manager,  
Office of the Director-General  
Eastern Cape Provincial Administration



**Ms Rose Stella Nkosi**  
President of the South African Spaza  
and Tuckshop Owners Association

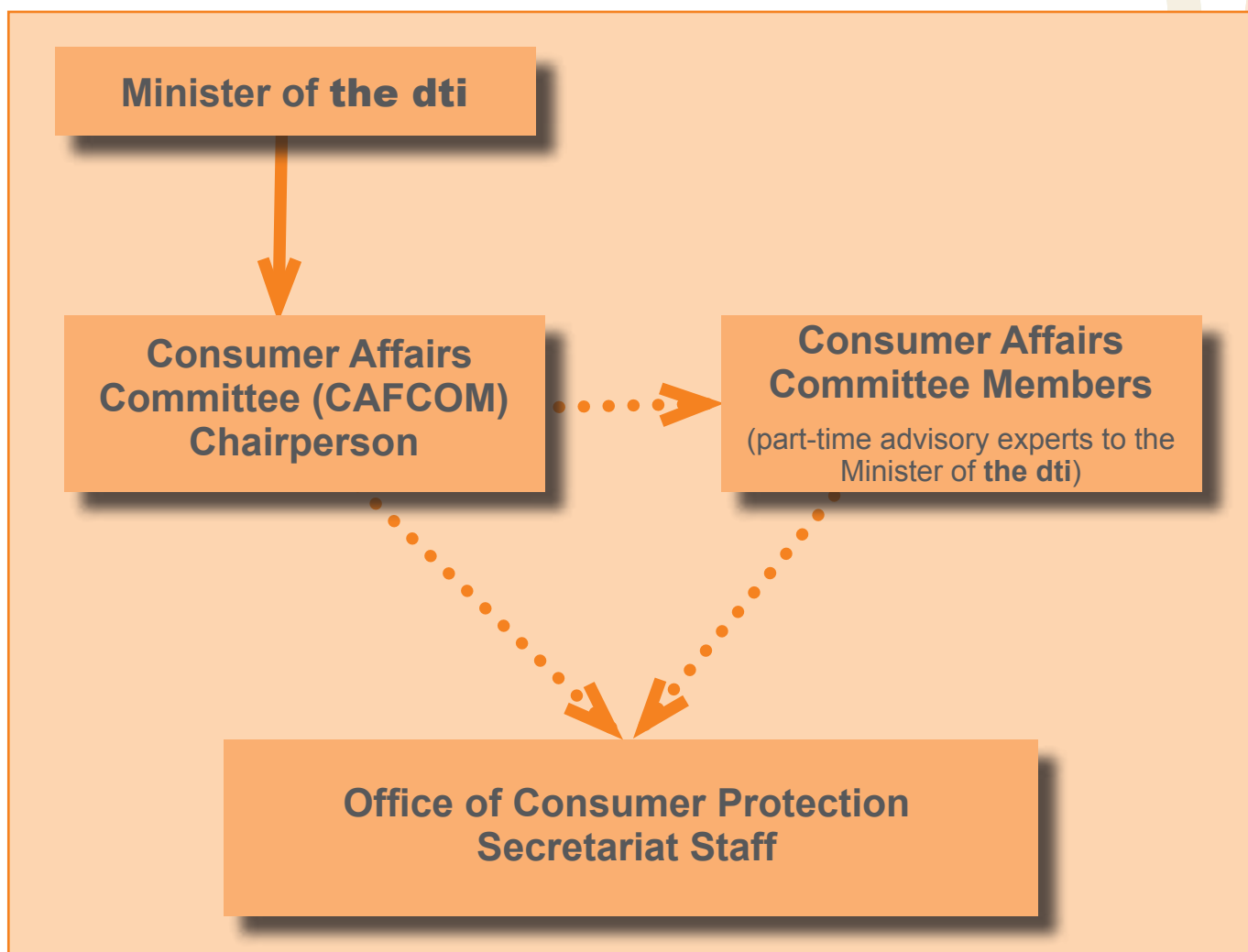


**Ms Magauta Mphahlele**  
• Part-time member of the National Consumer  
Tribunal • Member of the Financial Services Board  
Legislative Committee • Member of the National  
Homebuilders Registration Risk Committee



**Mr Neren Rau**  
Chief Executive Officer  
South African Chamber of Commerce  
and Industry

## CAFCOM–OCP Relationship



As per the above illustration, CAFCOM and the OCP are closely interrelated, with the staff of the OCP providing the necessary administrative and investigative (secretariat)

support to CAFCOM, in order for it to effectively and efficiently deliver on its mandate.

## Mandate

CAFCOM's mandate is in terms of the Consumer Affairs (Unfair Business Practices) Act, No. 71 of 1988. CAFCOM is tasked with creating public awareness of policies of certain business practices in general, and unfair business practices in particular. CAFCOM is required to initiate and complete extensive investigative processes in terms of the Act, and advises the Minister accordingly on appropriate action to be taken. CAFCOM receives and disposes of

representations dealt with in the Consumer Affairs Act, and may be tasked with conducting preliminary investigations, as necessary, or liaise with any interested parties on matters interpreted as being potential or existing unfair business practices. CAFCOM submits recommendations to the Minister by notice in government gazettes, and reports to the Minister on the outcomes of any investigative work conducted.

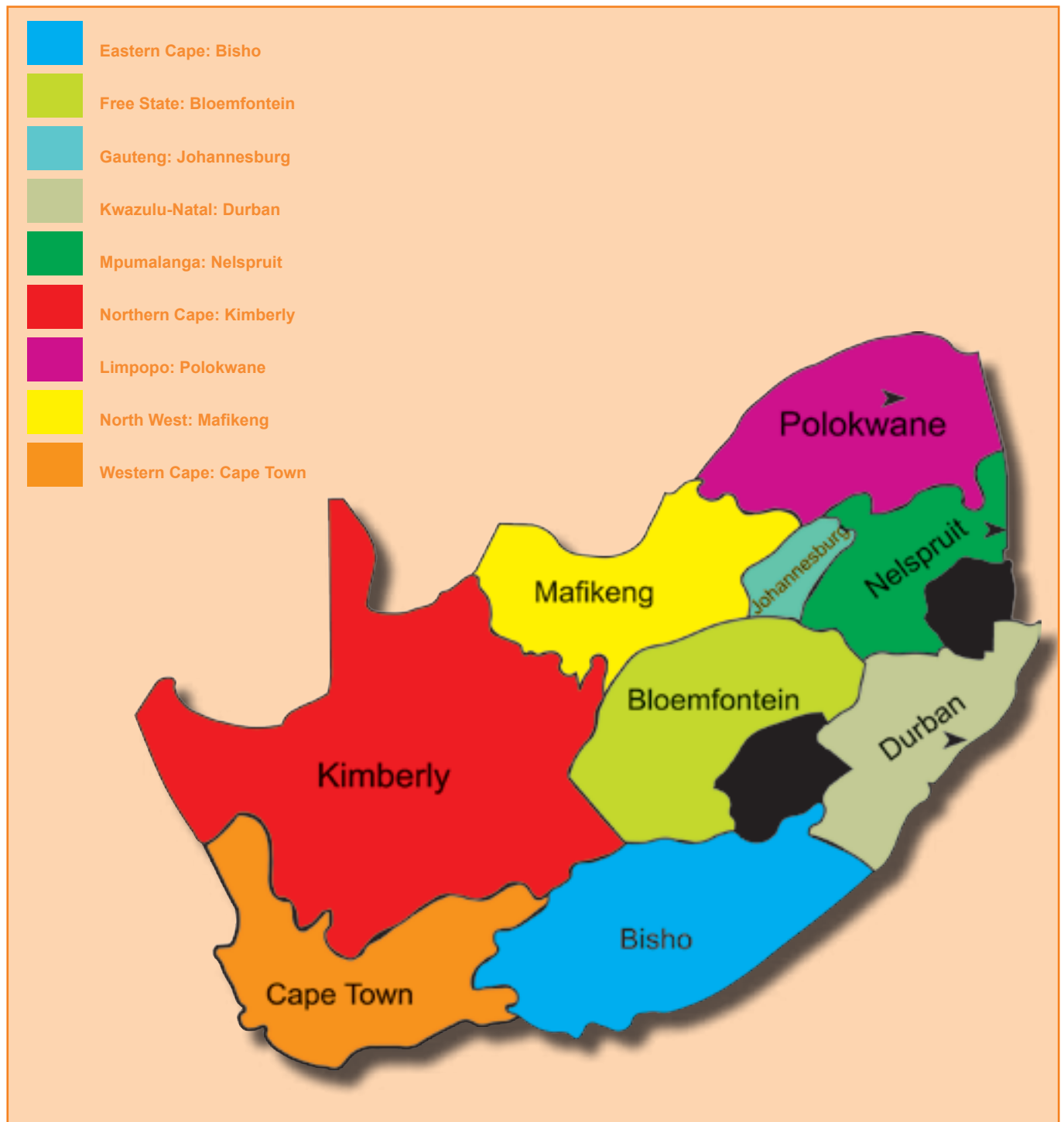
## Provincial Representation

In terms of Section 2 of the Act, and in order to ensure effective co-operation between CAFCOM and the provincial offices, the Heads of Consumer Affairs Offices from each

province are invited to participate in all meetings of CAFCOM, but do not enjoy voting powers.



## Nine Provincial Consumer Affairs Offices



## CAFCOM Meetings 2008/09

CAFCOM members attend regular meetings to discuss crucial issues relating to unfair business practices. Eight (8) meetings and one (1) special meeting took place during the period under review. Investigating officials of the OCP delivered presentations to CAFCOM on new complaints of unfair business practices, and also provided progress reports on ongoing cases.

### Schedule of Meetings

- 10 April 2008; 15 May 2008;
- 10 July 2008; 28 August 2008;
- 1 October 2008; 14 November 2008;
- 29 January 2009; and 5 March 2009.

## Special Committee Meetings, 2008/09

### Motor Industry Task Team

A Motor Industry Task Team, comprising representatives from the CAFCOM and motor industry sector, was appointed in March 2008 with the objective to develop a regulatory code for the motor industry. Over the past year, CAFCOM has worked very closely with industry stakeholders, including the Retail Motor Industry (RMI) and the Motor Industry Ombudsman (MIO). A code was drafted and submitted to industry stakeholders for comment. Submissions were received from the Independent Dealers Association (IDA), Motor Industry Ombudsman (MIO) and the National Association of Automobile Manufacturers of South Africa (NAAMSA). In addition, CAFCOM's comments and proposals

were incorporated into the draft Code and a copy was forwarded to members of the motor industry for its input.

Members of the Motor Industry Steering Committee canvassed the view of automotive companies, vehicle manufacturers, as well as importers and distributors of motor vehicles in South Africa on the proposed version of the code. The industry thereafter proposed a new process for consideration, namely, the appointment of a task team that could use the principles in the afore-said Code of Practice and where necessary, adapt the Code to take into account the Consumer Protection Act. The motor industry will meet with CAFCOM to debate and finalise the industry's version of the Code in the next financial year.

### Representations Before CAFCOM

As part of its efforts to consult relevant stakeholders in relation to investigations that should be carried out in terms of the Act, CAFCOM extended regular invitations to business, consumers, industry bodies and associations for their participation and inputs, particularly where specialised or industry-specific knowledge was sought. The following entities were invited to address CAFCOM during the 2008/09 financial year:

- Department of Communications (DoC);
- Department of Social Development (DSD);
- Department of Health (DoH);
- South African Medical Device Industry Association (SAMEDI);
- National Lotteries Board (NLB);
- Independent Communications Authority of South Africa (ICASA);
- Wireless Application Service Providers' Association (WASPA);
- Vacation Ownership Association of South Africa (VOASA);
- South African Institute of Fundraisers (SAIF);
- Incentive Leisure Group;
- National Credit Regulator (NCR);
- Banking Association of South Africa (BASA);
- Ombudsman for Banking Services of South Africa (OBSSA);
- Life Offices Association of South Africa (LOA);
- Payments Association of South Africa (PASA);
- Direct Marketing Association of South Africa (DMA);
- South African Association of Fractional Intermediaries (SAAFI).

### Statistical Representation of Cases: 2008/09 Financial Year

Section	Pro-Active Cases	Reactive Cases	4(1)(c)	8(1)(a)	8(1)(b)	Total Cases
Carried over to 2007/08	4	34	7	1	4	50
New matters in 2008/09	32	41	12	-	-	86
Finalised in 2008/09	23	36	11	-	2	72
Carried over to 2009/10	9	45	8	1	2	66

## Proactive Cases

In addition to attending to complaints brought forward by consumers, regarding unscrupulous business practices and contraventions of the Consumer Affairs (Unfair Business Practices) Act, CAFCOM also proactively sources current and newsworthy consumer issues by scanning national and international communication platforms, including print and electronic media. Where contraventions of existing consumer regulations are found, information is collated and referred for criminal investigation in terms of the Act. Consumer concerns that fall outside the jurisdiction of CAFCOM are referred to relevant regulators and followed-up throughout the reporting year.

For example, concerns in relation to the disposal of micro-insurance products by clothing retailers have been referred to the FSB and NCR. Matters relating to the banking industry are referred to the banking ombudsman. Likewise, sound relationships exist with self-regulators like the Advertising Standards Authority of South Africa.

## Reactive Cases

A total of 41 new reactive matters were received and finalised during the period under review. Matters carried over from the 2008/09 financial year amounted to 34, the majority being once-off complaints by consumers against individual businesses. Fortunately, these matters were amicably resolved and in certain instances, referred to relevant industry regulators. CAFCOM successfully closed 36 cases, with a further 45 being carried over to the 2009/10 financial year.

### Section 4(1)(c) Cases

Some of the Section 4(1)(c) complaints investigated by CAFCOM during 2008/09 included the following:

#### Major Clothing Retailers

CAFCOM received a number of complaints about the manner in which major clothing retailers market their

Matters which, at face value, appear to constitute an unfair business practice, are considered for investigation, particularly if they affect a large number of consumers or impact negatively on business conduct towards consumers.

Direct marketers, large clothing stores, banks and insurance companies are generally targeted for proactive investigations, given large consumer base of these business entities and the impact on the consumer.

CAFCOM's Consumer Investigations Directorate (CID) identified thirty-two (32) new proactive cases during 2008/09. In total, 27 proactive investigations were conducted, with seven (7) matters having been carried over from the 2007/08 financial year. The CID concluded 23 of these investigations, with nine (9) being carried over to the 2008/09 financial year.

micro insurance products, such as credit protection insurance, funeral cover and insurance for airtime. An investigation was conducted into these business practices but focused on the manner in which the retailers marketed and distributed their micro insurance products, called Payment Protection Insurance (PPI), to consumers.

CAFCOM's major concern has been the disposal of PPI to consumers, without the unequivocal consent of consumers. CAFCOM authorised a preliminary investigation and recommended consultations with other regulators such as the NCR and the FSB. Preliminary research revealed that the respondents might be engaging in inertia selling, as micro-insurance products were seemingly being imposed on consumers without their unequivocal authorisation and consent.

PPI is sold to consumers with the sole purpose that credit repayments be covered in the event that personal and financial circumstances worsen. It was reported that very low claim rates are synonymous with this category of insurance. Whatever the reasons, this could only be of immense benefit to other parties to the transaction, and not the consumers.

In a report compiled for the Life Offices Association of South Africa (LOA), the panel concluded that “credit insurance fulfils a definite insurance need for consumers but at the same time there are potential deficiencies in the system lending themselves to the exploitation of consumers by practitioners more intent on profit than service.”

The matter was tabled before CAFCOM in August 2008 and a Section 4(1)(c) investigation was authorised into the business practice of retailers regarding disclosure when selling these insurance products.

## Considerations by CAFCOM

The fact that fractional ownership, in relation to immovable property is a concept that was recently introduced in South Africa, no sector-specific regulations are currently in existence. However, the concept may already fall within the ambit of existing legislation, in part or otherwise, for example within the Share Blocks Control Act and Property Time-Sharing Control Act. On the other hand, such legislation could be amended to formally and specifically regulate fractional ownership.

The TISA, now called the Vacation Ownership Association of South Africa (VOASA), is an established and recognised self-regulatory body, which mainly deals with issues arising from the Share Blocks Control Act and the Property Time-Sharing Control Act. Following CAFCOM's discussions with VOASA, it became apparent that it had always been the intention of his institution to self-regulate fractional ownership interests.

The South African Association of Fractional Intermediaries (SAAFI) also made representations to CAFCOM to be recognised as the key self-regulator of the fractional ownership sector. Having promoted discussions between SAAFI and VOASA, it was agreed between these

## Fractional Ownership

CAFCOM brought to the attention of Time-Share Institute of South Africa (TISA) the non-regulation of fractional ownership. Fractional ownership is a percentage share of an expensive asset that is sold to individual owners. A fractional owner enjoys priorities and privileges, such as reduced rates, priority access on holidays and income sharing.

A company manages the asset on behalf of the owners, who pay monthly/annual fees for the management plus variable (e.g. per-hour, per-day) use fees. For rapidly-depreciating assets, the management company may sell the asset and distribute the proceeds back to the owners, who can then claim a capital loss and optionally purchase a fraction of a new asset.

two bodies that VOASA would also regulate this sector and that VOASA would amend its Code to incorporate rules for the fractional industry.

CAFCOM resolved that it would assist VOASA and make inputs in developing and including fractional ownership in its Code. However, in the medium-term, it was suggested that **the dti** consider the amendment of existing legislation to factor in new business practices surrounding fractional and other similar types of practices.

## Time-Share Groups

CAFCOM received complaints against a time-share group, following allegations of the company's refusal to cancel membership agreements within the cooling-off period and for issuing misleading advertisements.

The complaints involved advertisements to consumers, the latter of whom had entered into time-share or points membership agreements with vacation entities and/or holiday clubs, but were routed via a single time-share group.

## Current Status

At the time of reporting, discussions and consultations were underway with VOASA to establish whether this

practice could be regulated in terms of the Timeline Code of Practice.

## Section 8(1)(a) Cases Zhauns Group of Companies

**Published in Government Gazette No. 31140, dated 13 June 2008**

CAFCOM received complaints against the Zhauns Group of Companies, related to the continuous malfunctioning of the nappy/diaper, soap, chocolate and candle-making machines, and lack of after-sales services supplied by the company.

Notice of a specific investigation into allegations of unfair business practices in the affairs of the Zhauns Group of Companies was published as Notice No. 746 of 2008, in the Government Gazette No. 31140, dated 13 June 2008, for comment. The investigation was set to continue into the next financial year.

## Outstanding General Investigations

### Reverse Mortgages Overview

Following numerous complaints, as well as a media enquiry on the subject, CAFCOM pursued an investigation into the issue of reverse mortgages. A reverse mortgage is a loan extended as a lump sum or multiple payments to borrowers aged 65 and above. Reverse mortgages assume that consumers already own their homes, and have repaid their home loans in full. Reverse mortgages allow consumers to borrow against the value of their family homes. The loans provide consumers with cash, either in a lump sum or via periodic payments, and are secured against their homes. Reverse mortgages are typically marketed to retirees or pensioners who own their own homes but who are on a low or fixed income.

The investigative report into Reverse Mortgages has been submitted to CAFCOM. Recommendations derived from the report are expected to be finalised in 2009/10 financial year.

### Transport Contracts and Mail Order Marketing

In light of the promulgation of the Consumer Protection Act, CAFCOM resolved that further investigations into Transport Contracts and Mail Orders should be dealt with in terms of regulations, if these practices are found not to be adequately dealt with in terms of said Act.

### Negotiations

In terms of Section 9 of the Act, CAFCOM may, after undertaking an investigation in terms of either Section 4(1)(c) or Section 8(1)(a) of the Act, at any time thereafter, negotiate with any party an arrangement that CAFCOM deems necessary to ensure the discontinuance of an unfair business practice under investigation, which exists or may come into existence. If CAFCOM enters into such negotiations, it is required to report the matter to the Minister, and publish these arrangements in the Government Gazette.



During the 2008/09 financial year, CAFCOM authorised and entered into Section 9 arrangements with two respondents:

- Webmail (Pty) Ltd.; and
- Amazing Vouchers.

### **Webmail (Pty) Ltd**

A complaint was brought before CAFCOM, wherein Webmail (Pty) Ltd refused to cancel membership within the cooling-off period. According to Webmail's terms and conditions, consumers are not allowed to cancel any contract with the company after signature of the contract. The Direct Selling Code provides that direct sellers ensure that any order form contains a cooling-off clause permitting the customer to add, reduce or withdraw from the order within a specified period of time, which shall be no less than five (5) working days from receipt of the product and obtain reimbursement of any payment. On 15 August 2008, a Section 9 arrangement was signed by Webmail and publication thereof will take place in the next financial year.

### **Amazing Vouchers**

A complaint was brought before CAFCOM, wherein Amazing Vouchers refused to cancel a consumer's membership and refund her after she was unsatisfied with the terms and conditions on their website.

Amazing Vouchers is a business enterprise involved in direct selling of vouchers through telemarketing, and is not a member of the Direct Selling Association of South Africa.

CAFCOM had previously received three complaints regarding Amazing Vouchers and successfully negotiated an amicable settlement on behalf of consumers. A Section 9 arrangement was negotiated and finalised on 18 September 2008. Publication thereof will take place in the next financial year.

# PART C:

## OFFICE OF CONSUMER PROTECTION



PART B:  
OFFICE OF CONSUMER  
PROTECTION

PART B:



# An Overview of the OCP

## Operating Framework

The Office of Consumer Protection (OCP) is committed to protecting consumers against unfair business practices through complaint resolutions, investigations, prosecutions, education, and voluntary compliance programmes.

It does this by:

- Promoting the spirit of fair trade between consumers and service providers;
- Educating consumers about their rights and duties;
- Providing quick and fast resolution of complaints through negotiated settlements;
- Investigating and resolving matters relating to unfair business practices; and
- Prosecuting offenders.

The OCP comprises the Office of the Chief Director and the following functional directorates:

- Complaints Resolution;
- Consumer Investigations;
- Education, Compliance and Capacity-Building;
- Legal Support; and
- Prosecution.

## Mandate

The OCP's core responsibility is to enforce the consumer protection laws administered by the CCRD.

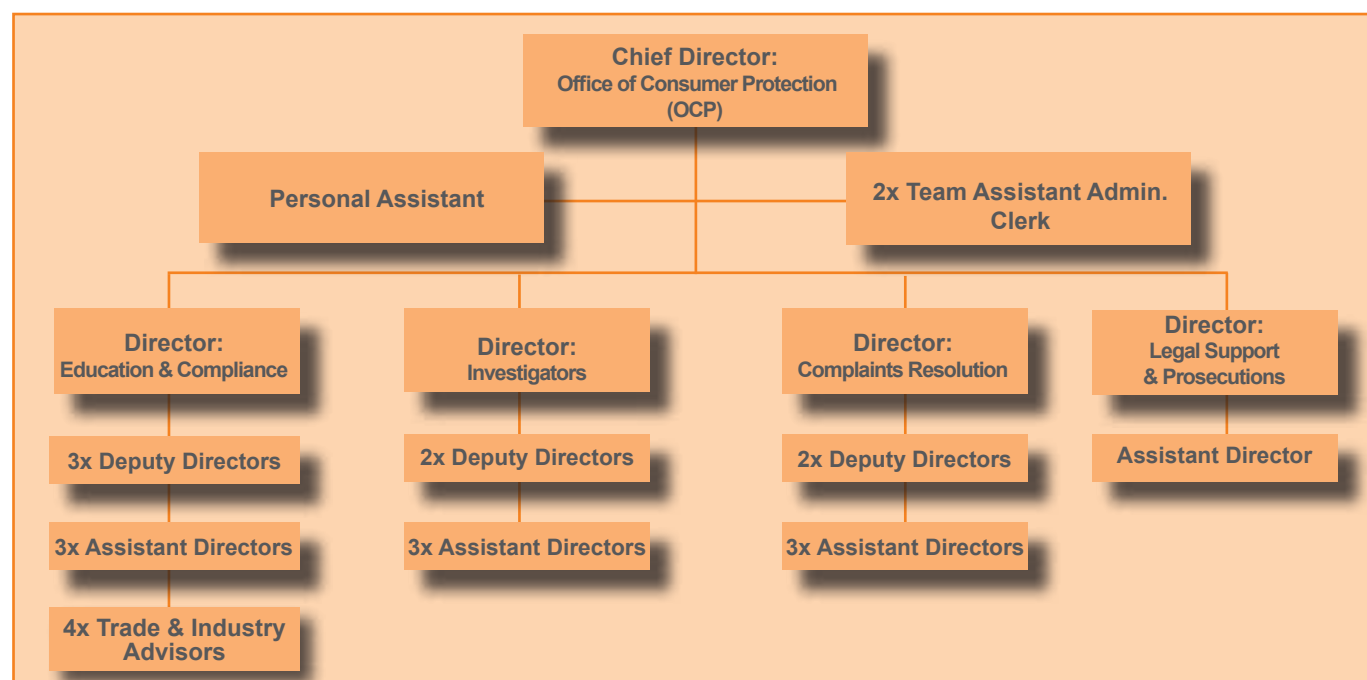
The OCP provides the following services to the South African economic citizenry:

- Information and self-help advice;
- Efficient referral systems;
- Amicable resolution of consumer complaints;
- Conducting of investigations;
- Prohibition of unfair business practices;
- Prosecution of contraventions;
- Education and creation of awareness on consumer protection;
- Enhancing capacity-building; and
- Promotion of voluntary compliance.

## Role and Function

The OCP's main objective is that of providing easy and efficient access to redress for consumers, in keeping with **the dti's** and CCRD's aim of ensuring a level playing field for all economic citizens, and the equitable restoration of consumer dignity.

## OCP Organisational Structure, 2008/09





## Enquiries: Consumer Help-Line

Providing quick and easy access to redress and self-help advice for consumers is of primary importance to the OCP. Consumers are advised and informed about their rights and responsibilities when contacting the OCP. Consumers who are dissatisfied with the conduct of certain businesses are encouraged to first try to resolve the problem themselves by contacting and negotiating with the service provider. Should this prove unsuccessful, the OCP advises consumers to lodge a complaint with the OCP or other relevant consumer protection entity.

A total of 763 complaints were communicated through the OCP's Consumer Help-Line (CHL) for initial assessment and categorisation during 2008/09. Complaints that could not be resolved by means of the CHL were then escalated within 24 hours to the Complaints Resolution

(CR) unit and or Consumer Investigation (CI) unit. As consumer protection is a shared competency, the OCP fits within a national concurrent jurisdiction framework with the provinces. Joint partnerships with other consumer protection agencies were established to ensure harmonised and effective consumer protection nationally.

### Summary of Consumer Enquiries Received During 2007/08 and 2008/09

Table 2 is a summary of the complaints received during the 2007/08 and 2008/09 financial years.

The OCP witnessed a decrease in general enquiries, which can be attributed to co-operation and collaboration between consumers and other consumer protection entities.

**Table 2: Consumer Enquiries, 2007/08 and 2008/09**

Case Type		2007/08	2008/09
Consumer Helpline	Complaints received (CHL)	1485	763
	Complaints escalated to Alternative Dispute Resolution (ADR) and investigations	672	652
	Self-help advice	741	111
	Referrals	72	00
	Telephonic	446	163
	Walk-ins	138	85
	Written	901	515
Turn-Around Times		1 day	1 day
No. of CHL Agents		4	2

## Complaints Resolution

The Consumer Affairs (Unfair Business Practices) Act, No. 71 of 1988 makes provision for ADR under Section 9. The CR Directorate is responsible for the amicable resolution of complaints by applying ADR mechanisms, which offer consumers immediate benefits, as opposed to traditional enforcement approaches that are punitive and involve lengthy investigations. ADR is an important aspect of making justice and redress available to consumers and it is generally quicker, more cost-

effective and less intimidating. It provides consumers and business with an opportunity to negotiate and conciliate in a co-operative manner. This is a cost-effective way of giving access to redress for consumers and, in the process, restoring and maintaining relationship between business and consumers. In the 2008/09 financial year 97% (652 cases) of the cases received were finalised, and a total of R901 437.23 recovered for consumers through ADR.



Upon receipt of the complaint, the Complaints Resolution Directorate assesses the grievance to determine the relevant jurisdiction, validity of the complaint, and appropriate method to facilitate its resolution. Complaints that do not fall within the jurisdiction of the OCP are referred to the relevant institutions or industry association for investigation.

The following factors determine the appropriate mediation method, whether that is telephonic, written or by mediation conference:

- Nature and gravity of the practice;
- Amount of money involved;
- Extent of impact on consumers; and
- Language, geographical spread, Living Standard Measure (LSM), industry profile, etc.

The turn-around time for the resolution of consumer complaints is 20 days. In the event that a settlement is not reached, consumers are advised to seek alternative legal or civil remedies. Should the problematic business practice persist, the matter will be escalated for formal investigation.

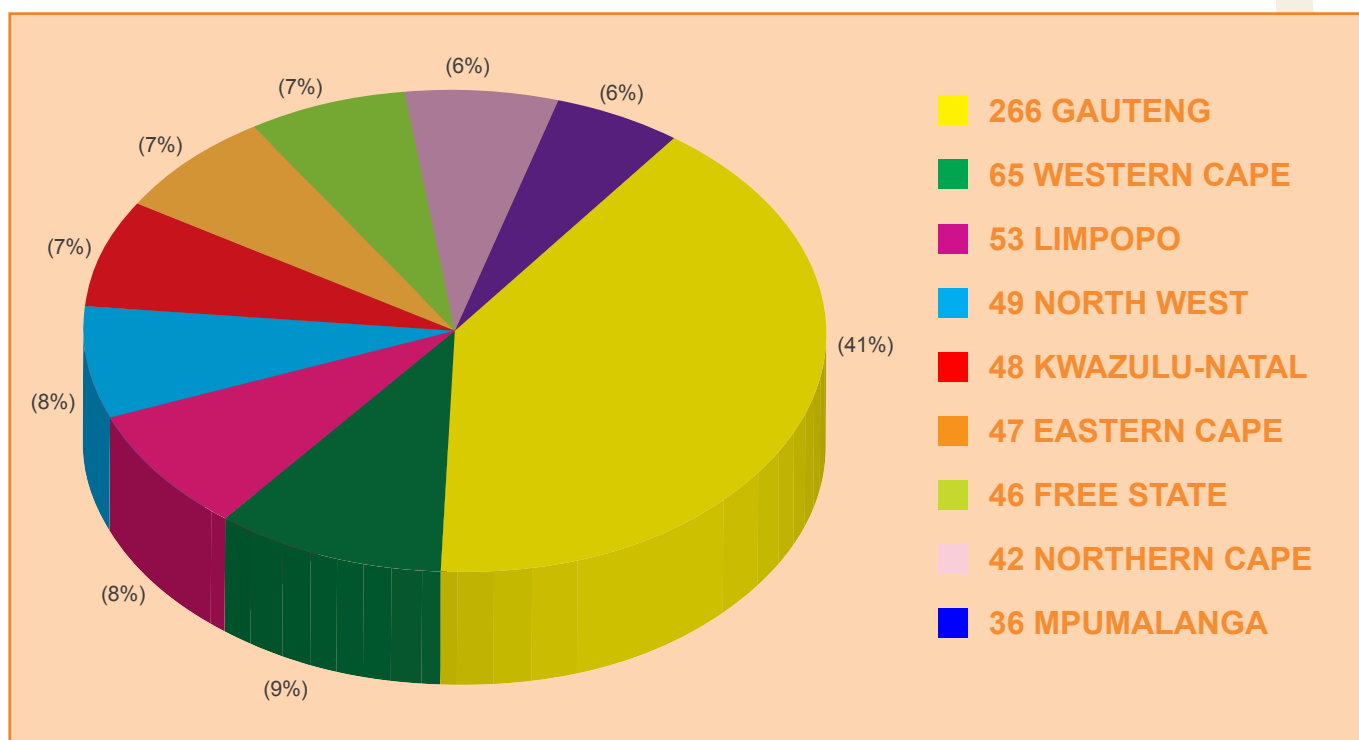
## Trends Analysis

The OCP is responsible for monitoring statistical data and conducting systemic trend analyses on areas relevant to consumer matters received. The following factors are considered when monitoring these trends:

- Nature and gravity of the offence;
- Number of consumers who have been affected by the unfair conduct; and
- Non-compliance, and conduct of the business concerned (for example, whether first time or repeat offender).

Case Classification	No. of Cases Received	Case Classification	No. of Cases Received
Banking	15	Loans	31
Cell phones Industry	38	Misleading Advertising	17
Debt collection	49	Motor Industry	46
Direct Selling	8	Product Quality	87
Fitness Centres	22	Public Telephones	14
Furniture Industry	27	Service Levels	198
Franchise	5	Speculative Software	4
Garnishee Orders	4	Transport Contracts	2
Insurance	27	Vacation Clubs	51
Investments	7	<b>Total</b>	<b>652</b>

## Geographic Spread



## Consumer Education, Capacity-Building and Business Compliance

### Reaching Consumers

The Education and Compliance Directorate formulates strategies to raise awareness among consumers about their rights and responsibilities, and how to access

and exercise these rights. These strategies are also designed to inform business about their responsibilities in various ongoing and emerging consumer regulations, with which they are required to comply.

## Consumer Campaigns and Programmes

### Spending Patterns Campaign

The Consumer Education Committee, comprising **the dti**, nine Provincial Consumer Affairs Offices, the FSB, NCR, Medical Schemes Council (CMS), Independent Communications Authority of South Africa (ICASA) and National Energy Regulator of South Africa (NERSA) jointly co-ordinated efforts and reached out to consumers as part of their 'Don't Compromise – be Money-Wise' national drive to alert consumers about responsible spending, the importance of saving and debt avoidance. The campaign commenced on 24 November and ended on 12 December 2008. Over 150 activities were conducted

nationally, including roadshows, workshops, exhibitions, mall activations, and radio and television interviews. Media releases were also published in mainstream and community newspapers. Season's greetings cards, featuring key shopping and prudent spending tips, were distributed to over 100 000 consumers nationally. Officials encouraged consumers to take caution during the festive season and spend responsibly. Approximately 100 000 information leaflets were also distributed nationally, to further expand the campaign's reach.



## Over-Indebtedness Campaign

the dti, in conjunction with the NCR, embarked on a campaign to assist consumers with information and tips on how to avoid being over-indebted and what to do when already in such circumstances. The campaign was aimed at reaching as many consumers as possible via radio interviews, using approved informative and easy-to-follow radio scripts, media releases distributed to the national press and over-indebtedness focused Outside Broadcasts (OBs). The overall message of the campaign was envisaged to run for the rest of the year, as a result of the economic down-turn, which had continued to impact negatively on the debt burdens of ordinary consumers.



## Community Education Programmes

The OCP conducted Community Education Programmes to raise awareness about its services, particularly to vulnerable and disadvantaged consumers. Consumers were reached through face-to-face interactions in shopping complexes (malls) and taxi ranks around Gauteng. Presentations were conducted in townships in and around Gauteng. An information dissemination exhibition was organised in the Mpumalanga province, Dennilton-Moteti, in partnership with the provincial office and regulators. Information was made available online to facilitate access to consumers and business. The OCP also took part in the Ministerial *Imbizo*, 'Taking the dti to the People' campaign, targeted at rural and semi-urban communities in South Africa.

To ensure harmonised and effective consumer education nationally, the Consumer Education Committee held three meetings to raise and discuss issues of common interest, plan and initiate best practices and share resources, in an efficient and effective manner, for use in education programmes.

## Education and Information Outputs

- Two (2) Campaigns;
- Six (6) Presentations/Workshops;
- Five (5) 'Taking the dti to the People' *Izimbizo*;
- Twenty-one (21) Industrial Theatre Roadshows;
- Five (5) Exhibitions;
- Five (5) Outside Broadcasts;
- Twelve (12) Radio Interviews;
- Two (2) Television Interviews;
- Five (5) Media Releases; and
- Six (6) Consumer Alerts.

## Capacity-Building

The OCP's Capacity-Building Unit is responsible for incrementally building the capacity of non-profit consumer organisations, public and private sector customer responsiveness, and ultimately enabling South African industries to increase their competitiveness in global consumer markets. It aims to further develop strategies to ensure that capacity-building of consumer protection stakeholders, Non-Governmental Organisations (NGOs), sector regulators and government consumer protection offices, amongst others, are targeted.

The OCP has established a beneficial relationship with the US Federal Trade Commission (FTC). This relationship has seen two workshops being conducted by the FTC, specifically aimed at building the capacities of both national and provincial consumer affairs offices. Also in attendance were national regulators and NGOs. The workshops were used to benchmark South Africa against the US, with a view to adopting best practice in the area of consumer protection. The interaction proved very fruitful as preparations were underway for the OCP to be replaced with the National Consumer Commission, following the promulgation of the Consumer Protection Bill.

## Compliance

The Compliance Unit promotes and encourages voluntary compliance by business with the provisions of the Consumer Affairs (Unfair Business Practices) Act, and all legislation and regulation administered by the OCP. This is done through presentations, meetings, advisory opinions, clarifications, information circulars, workshops, and conferences.

The rationale for this proposed voluntary compliance approach is one that seeks to balance enforcement processes with compliance from stakeholders with legislations and regulations within the CCRD. The challenge is to package and sell the benefits of compliance in a manner that is understandable and acceptable to stakeholders.

The OCP further undertook workshops in the provincial consumer offices. These were used as a platform to allow both the provincial and national offices to interact with a view to establish national norms and standards on consumer protection. Eight (8) out of nine (9) provinces participated in these events, with a total of 153 staff members in attendance.

The OCP further entered into a partnership with Finmark Trust, African Bank and the Credit Information Ombudsman, for purposes of piloting a money/consumer advice office in South Africa. If successful, this office will be used as a benchmark for other non-governmental organisations in the area of consumer protection. An association was established and a council appointed to manage the project.

### Capacity-Building Outputs

- Eight (8) provincial capacity-building workshops;
- One (1) FTC workshop.

### Compliance Outputs

- Twenty-two (22) advisory opinions;
- Fourteen (14) clarifications;
- Two (2) information circulars;
- Six (6) media releases;
- Five (5) articles;
- Seven (7) article;
- seven (7) radio interviews;
- One-hundred and sixty (160) compliance letters; and
- Three (3) workshops.

## Legal Support and Prosecutions

The Legal Support and Prosecutions Unit provides legal support to the OCP, and ensures that all the contraventions of legislation are successfully prosecuted by the OCP. During 2008/09, the unit established good working relations with law enforcement agencies such as the Directorate of Special Operations (Scorpions) and the South African Police Service (Commercial Crimes Unit) to ensure successful prosecutions of contraventions of all pieces of legislation administered by the OCP. The unit worked closely with the State Attorney in two litigation matters against the Minister of Trade and Industry. At the conclusion of both matters, no wrong-doing was found on the part of the Minister.

The Unit was inundated with complaints on contraventions generally, which were all referred to the OCP's law enforcement partners for their further action. However, complaints on Parallel Imports (Notice No. 586 of 2007) were dealt with in terms of the OCP's compliance-driven approach to enforcement. Once a complaint was received, the Unit would conduct an impromptu inspection on the premises of the alleged perpetrator, and confirm non-compliance. A discussion would thereafter take place with the person in control, wherein certain undertakings would be made on how they planned to comply with the law. A few months later, another impromptu inspection would be done, and if non-compliance continued, the matter would thereafter be reported to the relevant law enforcement agency for its further action.

The Legal Support and Prosecutions Unit continues to use the compliance-driven approach to enforcement. Once a complaint was received, the Unit would conduct an impromptu inspection on the premises of the alleged perpetrator and confirm non compliance. A discussion would thereafter take place with the person in control, wherein certain undertakings would be made on future compliance with the law. Follow-up would be made, and if non-compliance continued, the matter would be reported to the relevant law enforcement agency for further investigation and prosecution. In this financial year, seven (7) inspections were conducted, two cases had to be reported to the South African Police Service because businesses concerned failed to comply even after being advised and given an opportunity to do so.

### Legal Support Outputs

- Sixty-four (64) applications of SARS detention notices, in terms of Merchandise Marks Act, processed;
- Twenty-four (24) cases reported to Law enforcement agencies for investigation and prosecution;
- Seven (7) inspections conducted in terms of Parallel/ Grey Goods Notice;
- One (1) litigation matter settled out of court;
- One (1) exemption declined by the Minister of Trade and Industry on the recommendation of the Consumer Affairs Committee.

## Harmonisation with Consumer Protection Agencies

The directorate established referral partnerships to harmonise consumer complaints, and handling processes with other consumer protection agencies. The OCP identified referral partnerships and protocols during the reporting year, which would be used as vehicles to balance the statistics on complaints received from all provinces.

The OCP also facilitates the harmonisation of consumer complaints handling, in conjunction with

the Provincial Consumer Affairs Offices. As a result, the Complaints Resolution Directorate facilitated the establishment of the Compliance Committee and was elected at as the convenors and secretariat for the past financial year. The Compliance Committee comprises of all the representatives from the Provincial offices as well as other Consumer Regulators and reports to the Consumer Protection Forum. The Directorate has also been responsible for consolidating and producing the trends analysis report for the Compliance Committee.



The OCP continued to strengthen the relationships with strategic partners and developed referral protocols. The focus was also on establishing if the identified partners had complaints handling processes and systems to assist consumers when matters

are referred. Relationships were strengthened in this financial year with the MIO, RMI, NCR, OSTI, FSB, FAIS Ombudsman and Long-Term Insurance Ombudsman, Banking Ombudsman and the National Consumer Forum (NCF), the latter of which is an NGO.

## The Way Forward

CAFCOM and the OCP enjoyed another challenging year with substantial progress in the investigation and mitigation of unfair business practices. CAFCOM and the OCP will continue with its work of ensuring that

South African consumers are protected, and business will continually be encouraged to voluntarily comply, in preparation of the implementation of new consumer legislation.

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