



**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case No: CR082Aug16/SA249Dec17**

In the matter between:

The Competition Commission

**Applicant**

And

Secret River Trading CC t/a Caffeluxe

**Respondent**

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Panel : AW Wessels (Presiding Member)  
M Mazwai (Tribunal Member)  
A Ndoni (Tribunal Member)

Heard on : 21 February 2018  
Last submission filed : 16 March 2018  
Decided on : 20 March 2018

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**Consent Agreement**

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The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Secret River Trading CC t/a Caffeluxe annexed hereto marked "A" read with the addendum marked "B".

  
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**Presiding Member  
Mr Andreas Wessels**

**20 March 2018**  
**Date**

**Concurring: Ms Mondo Mazwai and Ms Andiswa Ndoni**

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: CR082AUG16/SA249Dec17  
CC CASE NO: 2015JUL0443

In the matter between:

COMPETITION COMMISSION OF SA

Applicant

And

SECRET RIVER TRADING CC T/A CAFFELUXE

Respondent

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CONSENT AGREEMENT IN TERMS OF SECTION 49D READ WITH SECTION 58(1) (b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND SECRET RIVER TRADING CC T/A CAFFELUXE, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION ACT 89 OF 1998

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Preamble

The Competition Commission ("Commission") and Secret River Trading CC t/a Caffeluxe, ("Caffeluxe") hereby agree that an application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act no. 89 of 1998,

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as amended, in respect of a contravention of section 4(1)(b)(i) of the Act.

## 1. DEFINITIONS

For the purposes of this consent agreement the following definitions shall apply

- 1.1 "Act" means the Competition Act No. 89 of 1998, as amended;
- 1.2 "Caffeluxe" means Secret River Trading CC t/a Caffeluxe, a close corporation duly incorporated in accordance with the Company Laws of the Republic of South Africa with its principal place of business at Shop 2, Island Centre, Paarden Eiland Rd, Cape Town, Western Cape;
- 1.3 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.4 "Commissioner" means the Commissioner of the Competition Commission (the Commissioner) in terms of section 24(1) of the Act;
- 1.5 "Consent Agreement" means this agreement duly signed and concluded between the Commission and Caffeluxe;
- 1.6 "Global Coffee" means Global Coffee Exports Ltd a public company registered in accordance with the Company Laws of the Republic of South Africa with its principal place of business situated at 15 Trans Oranje, Parow



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Industria, Cape Town in the Western Cape;

1.7 "Parties" means the Commission and Caffeluxe;

1.8 "Respondents" means Caffeluxe and Global Coffee Exports Ltd and;

1.9 "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business at the 1<sup>st</sup> Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

## 2. INVESTIGATION AND FINDINGS OF THE COMMISSION

2.1. On 29 July 2015, the Commissioner initiated a complaint in terms of section 49B(1) of the Act, whereby it is alleged that the Respondents entered into an agreement not to undercut each other when selling coffee capsules to retail customers in contravention of section 4(1)(b)(i) of the Act.

2.2. The Commission's investigation under Case No's. 2015JUL0443 revealed the following:

2.2.1. During the period 2013 and May 2014, the Respondents, being in a horizontal relationship, agreed or alternatively engaged in a concerted practice to fix the price of coffee capsules.

2.2.2. In terms of the agreement, Global Coffee was precluded from



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undercutting Caffeluxe when selling coffee capsules to grocery retail outlets. This position was as a result of the collusive arrangement between the Respondents.

**3. ADMISSION**

3.1. Caffeluxe admits that it entered into an agreement with Global Coffee not to undercut each other when selling coffee capsules to grocery retail outlets in contravention of section 4(1)(b)(i) of the Act.

**4. CO-OPERATION**

4.1. Caffeluxe confirms that it has ceased engaging in the conduct set out in clause 2.2 above.

4.2. The Respondents were the only parties to this agreement.

**5. ADMINISTRATIVE PENALTY**

5.1. Caffeluxe agrees that it is liable to pay an administrative penalty of R750 000 (Seven Hundred and Fifty Thousand Rand). This amount is less than 10% of Caffeluxe annual turnover for the year ended February 2014;

5.2. Caffeluxe will pay a lump sum of R150 000 (One Hundred and Fifty Thousand Rand) to the Commission within 30 days of the confirmation of the Consent Agreement as an order of the Tribunal. Thereafter the



remaining R600 000 (Six Hundred Thousand Rand) will be paid over a 12 month period, in four tranches as follows:

- 5.3. The first instalment of R150 000 on or before 31 January 2018;
- 5.4. The second instalment of R150 000 on or before 30 April 2018
- 5.5. The third instalment of R150 000 on or before 31 July 2018
- 5.6. The fourth instalment of R150 000 on or before 31 October 2018.
- 5.7. The payment shall be made into the Commission's bank account, details of which are as follows:

<b>Bank name:</b>	<b>Absa Bank</b>
<b>Branch name:</b>	<b>Pretoria</b>
<b>Account holder:</b>	<b>Competition Commission Fees Account</b>
<b>Account number:</b>	<b>4087641778</b>
<b>Account type:</b>	<b>Current Account</b>
<b>Branch Code:</b>	<b>632005</b>
<b>Reference:</b>	<b>2015JUL0443/CAFFELUXE</b>

- 5.8. The penalty will be paid over by the Commission to the National Revenue



Fund in accordance with section 59(4) of the Act.

**6. AGREEMENT REGARDING FUTURE CONDUCT**

6.1. Caffeluxe undertakes to refrain from engaging in any anti-competitive conduct in contravention of the Act in future.

6.2. Caffeluxe will implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme will include mechanisms for the monitoring and detection of any contraventions of the Act.

6.3. Caffeluxe shall circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed at Caffeluxe within 60 (sixty) business days from the date of confirmation of this Consent Agreement by the Tribunal.

**7. FULL AND FINAL SETTLEMENT**

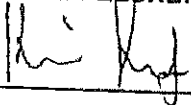
7.1. This Consent Agreement is entered into in full and final settlement of the Commission's investigation under Case No: 2015JUL0443 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Caffeluxe relating to the conduct that is the subject of the



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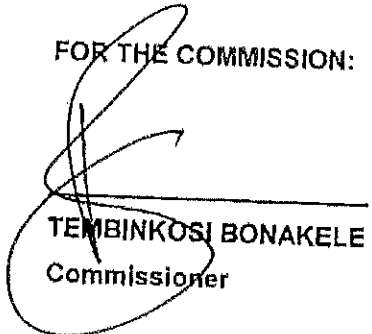
Commission's investigation under Case No: 2015JUL0443.

FOR CAFFELUXE:

  
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Dated and signed at Malta on the 16 day of October 2017.

FOR THE COMMISSION:

  
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TEMBINKOSI BONAKELE  
Commissioner

Dated and signed at PRETORIA on the 4<sup>th</sup> day of December 2017.

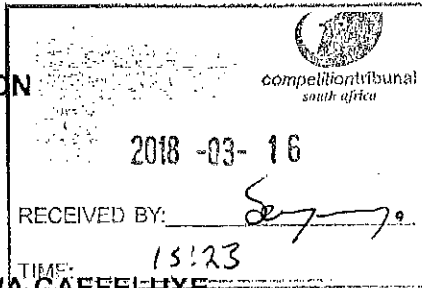


IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT Case No: CR082AUG16  
SA249DEC17  
CC Case No: 2015JUL0443

In the matter between:

THE COMPETITION COMMISSION



APPLICANT

and

SECRET RIVER TRADING CC T/A CAFFELUXE

RESPONDENT

ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED BETWEEN THE  
COMPETITION COMMISSION AND SECRET RIVER TRADING CC T/A  
CAFFELUXE

It is hereby recorded, by agreement between the parties, that the Consent Agreement concluded between the Competition Commission and Secret River Trading CC t/a Caffeluxe, signed on 04 December 2017, and presented for confirmation by the Competition Tribunal on 21 February 2018 be supplemented as recorded below.

1. Paragraphs 5.3 - 5.6 are amended as follows:

- 5.3 The first instalment of R150 000 on or before 31 May 2018.
- 5.4 The second instalment of R150 000 on or before 31 August 2018.
- 5.5 The third instalment of R150 000 on or before 30 November 2018.
- 5.6 The fourth and final instalment of R150 000 on or before 28 February 2019.

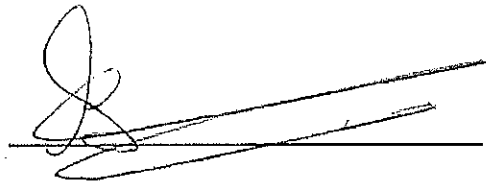
2. The following paragraph is inserted as paragraph 6.4:

6.4 Caffeluxe will provide the Competition Commission with a copy of the competition law compliance programme within 90 days after confirmation of the consent agreement by the Competition Tribunal.

3. This addendum shall be deemed to be incorporated into and form part of the Consent Agreement and, unless otherwise stated, the words and phrases used in this addendum shall bear the meaning as defined in the Consent Agreement.

For Secret River Trading CC t/a Caffeluxe

Signed and Dated at CAPE TOWN on the 1 day of MARCH 2018.



Name in Full: STANLEY HYLTON FRIEDMAN

Designation: MANAGING DIRECTOR

For the Competition Commission

Signed and Dated at PRETORIA on the 14<sup>th</sup> day of March 2018.



Name in Full: **TEMBINKOSI BONAKELE**

Designation: **COMMISSIONER OF THE COMPETITION COMMISSION**