



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO194Feb21

In the matter between:

The Competition Commission of South Africa

Applicant

And

McCullagh and Bothwell (Hyde Park) (Pty) Ltd;
McCullagh and Bothwell (Pty) Ltd; DRRW
Investments (Pty) Ltd

Respondent

Panel: M Mazwai (Presiding Member)
E Daniels (Tribunal Member)
Y Carrim (Tribunal Member)

Heard on: 12 February 2021

Last submission date: 9 November 2021

Decided on: 10 November 2021

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement concluded between the Competition Commission and McCullagh and Bothwell (Hyde Park) (Pty) Ltd; McCullagh and Bothwell (Pty) Ltd; DRRW Investments (Pty) Ltd annexed hereto.



Presiding Member
Ms Mondo Mazwai

10 November 2021

Date

Concurring: Mr Enver Daniels and Ms Yasmin Carrim

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA**

CT CASE NO: _____

CC CASE NO: 2017JAN0035

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

McCULLAGH AND BOTHWELL (HYDE PARK) PTY LTD

First Respondent

McCULLAGH AND BOTHWELL (PTY) LTD

Second Respondent

DRRW INVESTMENTS (PTY) LTD

Third Respondent

**CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
MCCULLAGH & BOTHWELL (HYDE PARK) PTY LTD, MCCULLAGH & BOTHWELL
(PTY) LTD AND DRRW INVESTMENTS (PTY) LTD**

PREAMBLE

The Competition Commission and McCullagh and Bothwell (Hyde Park) (Pty) Ltd ("Mc&B (Hyde Park)"), McCullagh and Bothwell (Pty) Ltd ("Mc&B (Pty) Ltd") and DRRW Investments (Pty) Ltd ("DRRW") hereby agree that 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, as amended, on the terms set out below:

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 **"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 Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3 **"Commissioner"** means the Commissioner of the Commission, appointed in terms of section 22 of the Act;
- 1.4 **"Competitive bidding process"** means a transparent procurement method employed by schools or their governing bodies in terms of which bids from competing suppliers, distributors or retailers are invited by openly advertising the scope, specifications, and terms and conditions of the proposed contract, as well as the criteria by which the bids will be evaluated. A competitive bidding process is aimed at obtaining goods of the required quality and a reliable service offering at the lowest prices by stimulating competition;



- 1.5 **"Complaint"** means the complaint initiated by the Commissioner in terms of section 49B of the Act under case number 2017Jan0035;
- 1.6 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Mc&B (Pty) Ltd, Mc&B (Hyde Park) and DRRW;
- 1.7 **"Evergreen agreement"** means a supply agreement which continues indefinitely unless one of the parties gives notice to terminate the agreement;
- 1.8 **"Generic"** (with reference to school uniform items) means not specific to a particular school and not having only one particular brand name;
- 1.9 **"McCullagh and Bothwell"** refers to:
- 1.9.1 DRRW, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its registered address Cedarwood Office Park, Giuricich Bros building, Mount Lebanon Road, Woodmead, Gauteng;
- 1.9.2 Mc&B Hyde Park, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at Hyde Park Shopping Centre, Jan Smuts Avenue, Hyde Park, Gauteng; and
- 1.9.3 Mc&B (Pty) Ltd, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal

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place of business at Shop U2, Upper Level Fourways Crossing Shopping Centre, Fourways, Gauteng.

1.10 **"McCullagh and Bothwell Retail Outlets"** refer to:

10.1.1 the McCullagh and Bothwell outlet at Shop 15, Upper Mall, Hyde Park Corner Shopping Centre, corner Jan Smuts, William Nicol and 6th Avenue, Johannesburg;

10.1.2 the McCullagh and Bothwell outlet at Shop U2, Upper Level Fourways Crossing Shopping Centre, William Nicol Drive and Sunrise Boulevard, Lonehill, Fourways; and

10.1.3 the McCullagh and Bothwell outlet at Micky Lill Centre, Sacred Heart College Campus, 15 Eckstein Street and Corner Innes Avenue, Observatory, Johannesburg.

1.11 **"Parties"** or **"Party"** means the Commission and McCullagh and Bothwell;

1.12 **"School uniform items"** mean clothing items that form part of a school uniform and include but are not limited to blazers, shirts, pants, etc.;

1.13 **"Supplier"** includes a reference to wholesaler, a retailer or distributor;

1.14 **"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 Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng; and

- 1.15 “**Unique**” (with reference to school uniform items) means belonging to or connected to one particular school.

2. **BACKGROUND AND CONTEXT**

- 2.1. Prior to 2015, the Commission received a number of complaints from parents and school uniform suppliers regarding *inter alia* the high cost of school uniforms and exclusive agreements preventing suppliers from entering the market.
- 2.2. The Commission undertook advocacy initiatives to address the aforementioned concerns, including engagements with various schools and school groups and the National Department of Basic Education (“**DBE**”).
- 2.3. Engagements with the DBE resulted in the Commission drafting a circular relating to the procurement of school uniforms which was intended to ensure that school uniforms are affordable for all learners.
- 2.4. In May 2015, the DBE addressed this circular to all Members of the Executive Councils of Provincial Education Departments, Heads of Departments of Provincial Education Departments, District Managers of Provincial Education Departments, Provincial School Governing Body Associations and school



principals (the "**Circular**").

2.5. The Circular, in particular, deals with the existence of exclusive agreements between schools and school uniform manufacturers or retailers and sets out the following measures, which is recommended to all public schools, former model C schools, and private schools, in order to address the potential anti-competitive effect of exclusive agreements *viz:-*

2.5.1. School uniform items should be as generic as possible, so that they can be obtained from many suppliers. Where school uniforms consist of more generic items, which parents can buy from general retailers, at lower prices, the potential harm resulting from exclusive agreements may be lessened, since parents will have more choices in respect of where to shop for these items and to decide what price they are willing to pay.

2.5.2. The number of unique school uniform items that form part of the basic school uniform (excluding optional additions) should be limited to only a few items. This principle of limiting the uniqueness of school uniform items should also apply to sport uniforms. Even where there are school uniform items that are unique to a particular school, parents ought to be able to substitute some items with generic versions.

2.5.3. Schools should contract with school uniform suppliers following a competitive bidding process, so that all potential school uniform



suppliers get the opportunity to compete to supply school uniform items to a school.

2.5.4. Where reasonably possible, schools should use more than one supplier. The use of more than one supplier will provide parents with more choices and reduce the incentive of the supplier to charge very high prices.

2.5.5. Any contract entered into to supply school uniform items to a school should be for a limited duration, of 3 to 5 years. At the end of the contract period, a new bidding process should be embarked upon. This procurement process can also be done by way of advertising, where schools invite potential school uniform suppliers to bid.

3. THE COMPLAINT

3.1. On 27 January 2017, the Commissioner initiated a complaint against a number of schools, school uniform manufacturers and suppliers (including McCullagh and Bothwell) for potential contraventions of section 5(1), section 8(a) and/or section 8(c) of the Act pursuant to a number of complaints received from parents and school uniform suppliers.

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- 3.2. Some parents complained that they could only purchase school uniform items for their children from a particular, specifically identified school uniform supplier without any other options being available to them. They consequently contend that they pay high prices for school uniform items.
- 3.3. Some school uniform suppliers complained that some schools have entered into contracts with certain school uniform suppliers, giving these suppliers the exclusive right to sell the school uniform items of that particular school. Consequently, they contended that potential or new school uniform suppliers cannot enter the school uniform market to compete with suppliers benefitting from exclusive agreements.

4. THE COMMISSION'S INVESTIGATION AND FINDINGS

- 4.1. The Commission investigated the Complaint and concluded that the existence of exclusive supply agreements concluded by suppliers and various schools may substantially prevent or lessen competition in the market by excluding potential and existing school uniform suppliers from entering or growing in the relevant market.



- 4.2. Exclusive agreements may in certain instances be problematic particularly when they are of a long duration and where they enable a firm to extract higher prices from customers or prevent other firms from competing for the customers and entering the market or growing their market share. Long term exclusive agreements can potentially deprive customers of choices and disincentivise firms to innovate.
- 4.3. When schools enter into exclusive agreements with school uniform suppliers, it means that the supplier is the only source from which parents can buy branded/unique school uniform items for a particular school. Parents do not have a choice to shop elsewhere and they essentially become a captured market as far as the supplier is concerned. This creates a risk that the supplier may charge excessive prices, as the supplier does not face competition and the risk of losing market share to other suppliers.
- 4.4. The Commission investigated and found the following in respect of McCullagh and Bothwell:
- 4.4.1. McCullagh and Bothwell is a family-owned and managed business which retails menswear and school uniforms. McCullagh and Bothwell has three registered companies involved in the sale of school uniforms. These are Mc&B (Hyde Park), Mc&B (Pty) Ltd, and DRRW.

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- 4.4.2. McCullagh and Bothwell purchases school uniforms from South African based manufacturers or wholesalers and retails these uniform items at the McCullagh and Bothwell Retail Outlets, or sells them through a consignment system (i.e DRRW provides school uniforms on consignment to a selling agent with premises based at or nearby the schools which it supplies). At these premises the school uniform items are sold to individual customers (the parents or guardians of learners).
- 4.4.3. McCullagh and Bothwell determine the prices at which the school uniform is sold to parents. The schools, however, after consultation with McCullagh and Bothwell, determine the school uniform items supplied by McCullagh and Bothwell as well as the quality of these items – which affects the price of the school uniforms.
- 4.4.4. McCullagh and Bothwell has entered into supply agreements with various schools and school groups in South Africa to supply those schools with school uniform items. While nothing in the supply agreements prevents schools from appointing additional suppliers (subject to 12 months' notice), in some cases the schools have appointed McCullagh and Bothwell as the sole supplier or provider of school uniforms. A list of the schools and school groups with which McCullagh and Bothwell currently has a formal supply agreement in place is attached herewith, as **Annexure A**.



4.4.5. The Commission has concluded that the exclusive agreements between McCullagh and Bothwell and schools are likely to have contravened sections 5(1), 8(a) and/or 8(c) of the Act, but notes that this is disputed by McCullagh and Bothwell.

5. McCULLAGH AND BOTHWELL'S CO-OPERATION

5.1. Since the commencement of the investigation, McCullagh and Bothwell has readily cooperated with the Commission.

5.2. McCullagh and Bothwell has since the start of the investigation, begun amending the existing supply agreements to make it clear to schools that nothing in the current supply agreements prevent schools, at any time, from appointing additional suppliers or from engaging in a competitive bidding process, subject only to a 12 month notice period. For the avoidance of doubt, nothing in this Consent Agreement will prevent any school from re-appointing McCullagh and Bothwell as a stockist.

6. SETTLEMENT

6.1. The Commission has engaged with various schools and school groups, school uniform manufacturers, distributors and other relevant stakeholders in order to bring about change to the practices taking place in the supply of school uniforms so that the price of school uniform items becomes reasonable and affordable for parents.

- 6.2. In particular the Commission engaged with schools and suppliers in order to solicit firm commitments to change future conduct. In this regard the Commission engaged with McCullagh and Bothwell, whose co-operation with the Commission is noted in this Consent Agreement and which engagement has resulted in this Consent Agreement.
- 6.3. The Commission further notes that McCullagh and Bothwell has expressed willingness to enter into a consent order agreement with the Commission on the basis set out in clause 8 below.

7. THE PURPOSE OF THE CONSENT AGREEMENT

- 7.1. The purpose of this Consent Agreement is to settle the Complaint and to provide clarity in relation to the Commission's views in respect of the competition concerns arising from the Complaint. The Commission considered the benefits to the public interest if the cost of school uniform items could be reduced. The cost of school uniform items represents a significant part of the cost of schooling. In South Africa many parents struggle to afford schooling for their children. The Commission concluded that the interests of consumers and competitors in the relevant market would be better served by ensuring changes in the market now by obtaining undertakings from the Respondents as to future conduct, rather than proceeding with protracted and lengthy litigation proceedings to achieve the same outcome.

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- 7.2. McCullagh and Bothwell does not make any admission of liability of any kind whatsoever in relation to any prohibited conduct under the Act arising from the conduct described in the Complaint, because it contends that it has not engaged in any unlawful conduct in contravention of sections 5(1), 8(a) and/or 8(c) of the Act.

8. AGREEMENT CONCERNING THE RESPONDENTS' FUTURE CONDUCT

- 8.1. McCullagh and Bothwell undertakes to ensure that all supply agreements entered into with any school and/or school group after the date of this Consent Agreement, for the supply of school uniform items:

8.1.1. shall not include a clause in the supply agreement which appoints McCullagh and Bothwell as the sole stockist of school uniform items for the school; and

8.1.2. shall have a termination date no later than 5 years after the date of signature.

- 8.2. For the avoidance of doubt, McCullagh and Bothwell undertakes not to enter into any Evergreen agreement with any school after the date of this Consent Agreement.

- 8.3. Where McCullagh and Bothwell supplies the school uniform items for such school from the McCullagh and Bothwell Retail Outlets, McCullagh and

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Bothwell undertakes to ensure that all supply agreements entered into with any such school and/or school group after the date of this Consent Agreement will set out that the school and/or the incoming stockist will, upon termination of the existing supply agreement with McCullagh and Bothwell in accordance with the notice period agreed, acquire the stock that McCullagh and Bothwell is carrying for such school at cost by the date set out in the existing supply agreement or, if the school and/or incoming stockist is unwilling or unable to acquire such stock at cost by the date set out in the existing supply agreement, the school must allow McCullagh and Bothwell to continue supplying the school as a co-stockist (together with the incoming stockist) for a further 12 months on terms that are no less favourable than those offered by the school to the incoming stockist.

- 8.4. In relation to supply agreements already in place on the date of this Consent Agreement and which do not comply with its undertakings in clauses 8.1, 8.2 and 8.3 above, McCullagh and Bothwell undertakes that:

8.4.1. It will, within 120 calendar days from the date of the confirmation of this Consent Agreement, write to all such schools and request them to effect the following changes to their supply agreements with McCullagh and Bothwell within a period of 120 calendar days:

- (i) any clause in the supply agreement which appoints McCullagh and Bothwell as the sole stockist of school uniform items for the school should be removed or amended;



- (ii) the amended supply agreement should have a termination date no later than 5 years after the date of signature of the amended supply agreement; and
- (iii) where McCullagh and Bothwell supplies the school uniform items for such school from the McCullagh and Bothwell Retail Outlets, the supply agreement should be amended so that the school and/or the incoming stockist will, upon termination of the existing supply agreement with McCullagh and Bothwell in accordance with the notice period agreed, acquire the stock that McCullagh and Bothwell is carrying for such school at cost by the date set out in the existing supply agreement or, if the school and/or incoming stockist is unwilling or unable to acquire such stock by the date set out in the existing supply agreement, the school must allow McCullagh and Bothwell to continue supplying the school as a co-stockist (together with the incoming stockist) for a further 12 months on terms that are no less favourable than those offered by the school to the incoming stockist.

8.4.2. It will provide the Commission with a list of schools that have not effected the changes as contemplated in clause 8.4.1 above after 120 calendar days of McCullagh and Bothwell having written to the schools in terms of clause 8.4.1.

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- 8.4.3. If it is approached by any school, as a result of the correspondence in clause 8.4.1 above or for any other reason, and is requested by such school to amend an existing supply agreement in accordance with clause 8.4.1 above, it will effect such amendments within 120 calendar days of such school approaching McCullagh and Bothwell. For the avoidance of doubt, this clause does not apply in the event that a school requests an amendment to an existing supply agreement other than an amendment which is required ensure compliance with clause 8.4.1 above.
- 8.4.4. If an additional supplier is appointed as a stockist subject to the notice period agreed between McCullagh and Bothwell and the school in the existing supply agreement, McCullagh and Bothwell undertakes not to require such additional stockist to acquire its stock. For the avoidance of doubt, this shall not prevent McCullagh and Bothwell and the additional stockist from entering into an arm's length commercial agreement regarding stock.
- 8.4.5. If a supply agreement between McCullagh and Bothwell and a school is terminated in accordance with the notice period agreed between McCullagh and Bothwell and the school, McCullagh and Bothwell undertakes to purchase no more stock than is reasonably necessary to ensure that the relevant school is adequately supplied during the notice period.

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8.5. McCullagh and Bothwell undertakes to make available its current prices/price lists to its customers upon request. Such prices or price lists will be available no later than 45 calendar days following the confirmation of the consent order. McCullagh and Bothwell will take all reasonable steps to ensure that its price lists are as accurate as possible but it must be appreciated that prices are subject to change at short notice.

8.6. For the avoidance of doubt, nothing in the undertakings offered by McCullagh and Bothwell at clauses 8.1, 8.2, 8.3, 8.4 and 8.5 above shall be taken as cause for the school and/or McCullagh and Bothwell to disregard any right or obligation in terms of any of McCullagh and Bothwell's existing supply agreements.

9. MONITORING

9.1. The Commissioner may request, at any time, but not more than once annually, that McCullagh and Bothwell submit a report or an affidavit to the Commission confirming compliance with this Consent Agreement.

9.2. Following receipt of such a report or an affidavit, the Commission may request copies of, or access to, any documents related to compliance with the terms of this Consent Agreement.

10. VARIATION



10.1. McCullagh and Bothwell shall be entitled to apply to the Commission for a waiver, relaxation or modification of any of the terms of this Consent Agreement. In the event of the Commission and McCullagh and Bothwell agreeing upon the waiver, relaxation or modification of this Consent Agreement, the Commission and McCullagh and Bothwell shall apply to the Tribunal for confirmation by it of such waiver, relaxation, or modification.

10.2. In the event of the Commission not agreeing to the waiver, relaxation or modification of this Consent Agreement, McCullagh and Bothwell shall be entitled to apply to the Tribunal for an order waiving, relaxing, or modifying of this Consent Agreement. The Commission shall be entitled to oppose such application, with good reason.

11. CONCLUSION


11.1. This Consent Agreement is in full and final settlement of all complaints against McCullagh and Bothwell arising from the Complaint under the Commission case number 2017Jan0035.

11.2. This Consent Agreement may be signed in counterparts.

FOR THE COMMISSION

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DATED AND SIGNED AT PRETORIA ON THE 25 DAY OF
AUGUST 2021



TEMBINKOSI BONAKELE

COMPETITION COMMISSIONER

FOR MCCULLAGH AND BOTHWELL

DATED AND SIGNED AT Hyde Park ON THE 16th DAY OF August 2021



GRANT WALKER

DIRECTOR: MCCULLAGH AND BOTHWELL

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD IN PRETORIA

CT Case No: CO194Feb21

CC Case No: 2017JAN0035

In the matter between

THE COMPETITION COMMISSION

Applicant

and

McCULLAGH AND BOTHWELL (HYDE PARK) (PTY) LTD

First Respondent

McCULLAGH AND BOTHWELL (PTY) LTD

Second Respondent

DRRW INVESTMENTS (PTY) LTD

Third Respondent

**ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED BETWEEN THE
COMPETITION COMMISSION AND McCULLAGH AND BOTHWELL (HYDE PARK) (PTY)
LTD, McCULLAGH AND BOTHWELL (PTY) LTD AND DRRW INVESTMENTS (PTY) LTD**

It is hereby recorded, by agreement between the parties, that the Consent Agreement concluded between the Competition Commission and McCullagh and Bothwell (Hyde Park) (Pty) Ltd ("**Mc&B (Hyde Park)**"), McCullagh and Bothwell (Pty) Ltd ("**Mc&B (Pty) Ltd**") and DRRW Investments (Pty) Ltd ("**DRRW**") filed on 1 September 2021 for confirmation by the Competition Tribunal, be supplemented as recorded below.



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1. **DELETING CLAUSE 8 IN ITS ENTIRETY AND REPLACING IT TO READ AS FOLLOWS:**

8. AGREEMENT CONCERNING THE RESPONDENTS' FUTURE CONDUCT

- 8.1. McCullagh and Bothwell undertakes to ensure that all supply agreements entered into with any school and/or school group after the date of this Consent Agreement, for the supply of school uniform items:
 - 8.1.1. shall not include a clause in the supply agreement which appoints McCullagh and Bothwell as the sole stockist of school uniform items for the school; and
 - 8.1.2. shall have a termination date no later than 5 years after the date of signature.
- 8.2. For the avoidance of doubt, McCullagh and Bothwell undertakes not to enter into any Evergreen agreement with any school after the date of this Consent Agreement.
- 8.3. Where McCullagh and Bothwell supplies the school uniform items for such school from the McCullagh and Bothwell Retail Outlets, McCullagh and Bothwell undertakes to ensure that all supply agreements entered into with any such school and/or school group after the date of this Consent Agreement will set out that the school and/or the incoming stockist will, upon termination of the existing supply agreement with McCullagh and Bothwell in accordance with the notice period agreed, acquire the stock that McCullagh and Bothwell is carrying for such school at cost by the date set out in the existing supply agreement or, if the school and/or incoming stockist is unwilling or unable to acquire such stock at cost by the date set out in the existing supply agreement, the school must allow McCullagh and Bothwell to continue supplying the school as a co-stockist (together with the incoming stockist) for a further 12 months on terms that are no less favourable than those offered by the school to the incoming stockist.



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8.4. In relation to supply agreements already in place on the date of this Consent Agreement and which do not comply with its undertakings in clauses 8.1, 8.2 and 8.3 above, McCullagh and Bothwell undertakes that:

8.4.1. By no later than 30 November 2021, it will write to each such school and inform it of this Consent Agreement. McCullagh and Bothwell shall request to meet with the school at the earliest mutually convenient time in order to discuss proposed amendments to its supply agreement with McCullagh and Bothwell.

8.4.2. McCullagh and Bothwell will request the school to effect the following changes to its supply agreement with McCullagh and Bothwell by no later than 31 May 2022:

- (i) any clause in the supply agreement which appoints McCullagh and Bothwell as the sole stockist of school uniform items for the school should be removed or amended;
- (ii) the amended supply agreement should have a termination date no later than 5 years after the date of signature of the amended supply agreement, and
- (iii) where McCullagh and Bothwell supplies the school uniform items for such school from the McCullagh and Bothwell Retail Outlets, the supply agreement should be amended so that the school and/or the incoming stockist will, upon termination of the existing supply agreement with McCullagh and Bothwell in accordance with the notice period agreed, acquire the stock that McCullagh and Bothwell is carrying for such school at cost by the date set out in the existing supply agreement or, if the school and/or incoming stockist is unwilling or unable to acquire such stock by the date set out in the existing supply agreement, the school must allow



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McCullagh and Bothwell to continue supplying the school as a co-stockist (together with the incoming stockist) for a further 12 months on terms that are no less favourable than those offered by the school to the incoming stockist.

- 8.4.3. If, by 31 May 2022, such school has not made the changes to the supply agreement, McCullagh and Bothwell will provide the Commission with the name of such school, within 14 calendar days of 31 May 2022.
- 8.4.4. If it is approached by any school and is requested by such school to amend an existing supply agreement, it will effect such amendments within 120 calendar days. For the avoidance of doubt, this clause does not apply in the event that a school requests an amendment to an existing supply agreement other than an amendment which is required to ensure compliance with clause 8.4.2 above.
- 8.4.5. If an additional supplier is appointed as a stockist subject to the notice period agreed between McCullagh and Bothwell and the school in the existing supply agreement, McCullagh and Bothwell undertakes not to require such additional stockist to acquire its stock. For the avoidance of doubt, this shall not prevent McCullagh and Bothwell and the additional stockist from entering into an arm's length commercial agreement regarding stock.
- 8.4.6. If a supply agreement between McCullagh and Bothwell and a school is terminated in accordance with the notice period agreed between McCullagh and Bothwell and the school, McCullagh and Bothwell undertakes to purchase no more stock than is reasonably necessary to ensure that the relevant school is adequately supplied during the notice period.



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- 8.5. McCullagh and Bothwell undertakes to make available its current prices/price lists to its customers upon request. Such prices or price lists will be available no later than 45 calendar days following the confirmation of the consent order. McCullagh and Bothwell will take all reasonable steps to ensure that its price lists are as accurate as possible but it must be appreciated that prices are subject to change at short notice.
- 8.6. For the avoidance of doubt, nothing in the undertakings offered by McCullagh and Bothwell at clauses 8.1, 8.2, 8.3, 8.4 and 8.5 above shall be taken as cause for the school and/or McCullagh and Bothwell to disregard any right or obligation in terms of any of McCullagh and Bothwell's existing supply agreements.

2. INSERTING CLAUSE 9.3 TO READ AS FOLLOWS:

- 9.3. Within 14 calendar days of the last date for notifying the relevant schools (which in terms of clause 8.4.1 is 30 November 2021), McCullagh and Bothwell shall notify the Commission in an affidavit of its compliance with clause 8.4.1 (as amended).

FOR THE COMMISSION

DATED AND SIGNED AT _____ ON THE ___ DAY OF _____ 2021

TEMBINKOSI BONAKELE

COMPETITION COMMISSIONER




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Tembinkosib@compcom.co.za

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FOR MCCULLAGH AND BOTHWELL

DATED AND SIGNED AT Fouquierays ON THE 9th DAY OF November 2021



GRANT WALKER

DIRECTOR: MCCULLAGH AND BOTHWELL