



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM185Oct18

In the matter between:

Glencore South Africa Oil Investments (Pty) Ltd

Primary Acquiring Firm

And

Chevron South Africa (Pty) Ltd
(Now known as Astron Energy
Proprietary Limited)

Primary Target Firm

Panel : Y Carrim (Presiding Member)
A Ndoni (Tribunal Member)
I Valodia (Tribunal Member)

Heard on : 13 March 2019

Decided on : 15 March 2019

ORDER

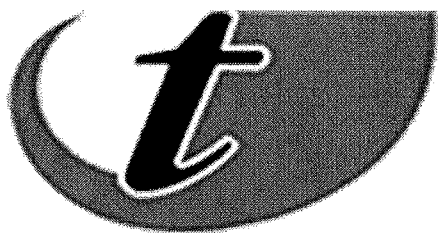
Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that -

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto marked as **Annexure A** and **Annexure AA**; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

**Presiding Member
Ms Yasmin Carrim**

15 March 2019
Date

Concurring: Ms Andiswa Ndoni and Prof. Imraan Valodia



competitiontribunal
south africa

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Merger Clearance Certificate

Date: 15 March 2019

To: **Werksmans Attorneys**

Case Number: LM185Oct18

Glencore South Africa Oil Investments (Pty) Ltd And Chevron South Africa (Pty) Ltd (Now known as Astron Energy Proprietary Limited)

You applied to the Competition Commission on **27 September 2018** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

☐ no conditions.

☒ the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

The registrar, Competition Tribunal:

Annexure A

Commission Case No: 2018Sep0060

Tribunal Case No: LM185Oct18

In the large merger involving

Glencore SA Oil Investment (Pty) Limited

Primary Acquiring Firm

And

**Chevron South Africa (Pty) Ltd
(Now known as Astron Energy
Proprietary Limited)**

Primary Target Firm

CONDITIONS

1. DEFINITIONS

- 1.1 **“Approval Date”** means the date referred to in the Tribunal Order.
- 1.2 **“Astron”** means Astron Energy Proprietary Limited, formerly known as Chevron South Africa Proprietary limited, a company incorporated in South Africa and which is the Primary Target Firm for the purposes of the Proposed Transaction
- 1.3 **“Black-owned Business”** means a business directly or indirectly controlled by Black Persons.
- 1.4 **“Black Person”** means person/s defined as “Black” in the Broad-Based Black Economic Empowerment Act No. 53 of 2003.
- 1.5 **“Branded Marketers”** means those independent wholesalers / distributors to whom Astron sold its wholesale / distribution business in defined territories (primarily in rural or more remote areas) several years ago and assigned to them the contracts with operators of retail service stations in such territories. The Branded Marketers are responsible for the wholesale and distribution of Astron’s products to service stations in those territories in terms of Astron’s so called Branded Marketer Programme.

- 1.6 **“Broad Based Black Economic Empowerment”** means “broad-based black economic empowerment” as defined in the Broad-Based Black Economic Empowerment Act No. 53 of 2003.
- 1.7 **“Commission”** means the South African Competition Commission duly established under Competition Act. **“Competition Act”** means the Competition Act No. 89 of 1998, as amended.
- 1.8 **“Conditions”** means, collectively, the conditions referred to in this document.
- 1.9 **“Development Fund”** means the fund to be created by Astron in terms of paragraph 2.7.1 below.
- 1.10 **“Direct Investment Territories”** are retail sites which are part of the Astron retail channel and include sites which are Astron owned and retailer operated; Astron leased and retailer operated, retailer owned and retailer operated; or retailer owned with Astron assets (e.g. underground tanks, pumps and signage).
- 1.11 **“Economic Return Ratio”** means the rate of economic return between Astron owned and independently owned service stations in the Direct Investment Territories, where the ratio will be determined between Astron and the EDD with reference, inter alia, to the throughput and profitability of the service stations.
- 1.12 **“EDD”** means the Economic Development Department of the Government of South Africa.
- 1.13 **“Framework Agreement”** means the Framework Agreement concluded between Glencore and the EDD, marked as **Annexure B** hereto.
- 1.14 **“Glencore”** means Glencore SA Oil Investment (Pty) Limited.
- 1.15 **“Government”** means the government of South Africa.
- 1.16 **“Implementation Date”** means the date, occurring after the Approval Date, on which the Proposed Transaction closes and Glencore takes control of Astron.
- 1.17 **“LPG”** means liquefied petroleum gas.
- 1.18 **“Merger” or “Proposed Transaction”** means the transaction whereby the Merging Parties notified a large merger to the Commission on 27 September 2018 in terms of which Glencore intends to acquire, from OTS, 75% of the shares and related interests

in Astron pursuant to the arrangements agreed between OTS and Glencore prior to OTS's acquisition of 75% of the shares and related interests in Astron.

- 1.19 **"Merging Parties"** means Glencore and Astron.
- 1.20 **"OTS"** means Off the Shelf Investments 56 (RF) (Pty) Ltd, a company duly incorporated and registered in South Africa.
- 1.21 **"Refinery"** means the refinery owned and operated by Astron in Cape Town, South Africa.
- 1.22 **"Small Business"** means a business generally regarded in South Africa as a small business, including SMMes.
- 1.23 **"SMME"** means a business generally recognised as a small, medium or micro-enterprise, including those defined as a "small business" under the National Small Business Act No. 102 of 1996.
- 1.24 **"South Africa"** means the Republic of South Africa.
- 1.25 **"Tribunal"** means the South African Competition Tribunal duly established under the Competition Act.

2. CONDITIONS

2.1 HEAD OFFICE

- 2.1.1 Glencore shall ensure that Astron's head office remains in South Africa, to coordinate and oversee Astron's midstream and downstream operations.
- 2.1.2 Glencore shall ensure that Astron is operated substantially on a stand-alone basis and Astron's decisions will be taken in South Africa and, where practicable, be implemented utilising local skills and expertise.

2.2 EMPLOYMENT COMMITMENTS

- 2.2.1 Astron shall not retrench any employees as a result of the Merger.
- 2.2.2 Astron commits that, for a period of no less than 5 (five) years from the Implementation Date, Astron will maintain at least the number of employees as

are employed in aggregate by Astron as at the Implementation Date. For the purposes of this paragraph 2.2.2, the term “employees” includes direct contractors being individuals under fixed term contracts of varying lengths who fill a specific role at Astron and is understood to mean South African residents. For the avoidance of doubt, Astron shall not be precluded from effecting non-merger related lawful dismissals for cause, provided that Astron will replace any dismissed employees within a reasonable period in order to maintain the number of employees as are employed in aggregate by Astron as at the Implementation Date.

- 2.2.3 Glencore shall ensure that Astron continues to meet any ongoing contractual obligations which it has towards retired employees of Astron. In this regard, the Merging Parties acknowledge that the medical aid subsidies are included as one of the ongoing legal and contractual obligations of Astron, the duration of which is for the remainder of the lifetime of the beneficiaries. The terms and conditions of the subsidies may not be unilaterally amended or cancelled by Astron. Astron shall meet with its retired employees and their representatives from time to time, at their request, on matters relating to the post-retirement medical-aid benefit.
- 2.2.4 Glencore shall ensure that Astron encourages any third parties involved in the value chain for the production and sale of Astron’s products to expand their levels of employment wherever reasonably possible.
- 2.2.5 Glencore shall ensure that Astron uses all reasonable efforts to increase indirect employment through investment in production and the Development Fund.

2.3 PRODUCTION COMMITMENTS

- 2.3.1 Glencore shall procure that Astron invests a total of R6 000 000 000 (six billion Rand) over and above Astron’s current investment plans (as recorded in its most recent business plans as at 27 September 2018), within a period of 5 (five) years from 27 September 2018 so as to:
 - 2.3.1.1 eliminate bottlenecks and increase the Refinery’s production from the current 75% to 90% of current nameplate capacity;
 - 2.3.1.2 improve Astron’s and the Refinery’s safety and environmental performance;
 - 2.3.1.3 upgrade the IT and automation systems;

- 2.3.1.4 increase the production of environmentally cleaner fuels, complying with the D50 product quality standard; and
- 2.3.1.5 where possible, seek to cooperate with public sector entities and universities in the area of the Refinery, to make the Refinery a centre of excellence for the training and development of engineers.
- 2.3.2 Glencore shall make the investment referred to in paragraph 2.3.1 above in three phases, which may run concurrently, as follows:
 - 2.3.2.1 R800 000 000 (eight hundred million Rand) to be invested within a period of 2 (two) years from 27 September 2018; and
 - 2.3.2.2 a further R1 200 000 000 (one billion two hundred million Rand) to be invested within a period of 3 (three) years from 27 September 2018; and
 - 2.3.2.3 a further R4 000 000 000 (four billion Rand) to be invested within a period of 5 (five) years from 27 September 2018.
- 2.3.3 The timing of the investments outlined in paragraph 2.3.2 above are subject to securing South African regulatory approvals from the Department of Energy or any other relevant regulatory authorities.
- 2.3.4 After completion of the investments described under paragraph 2.3.2 above, Glencore undertakes that Astron shall conduct further de-bottlenecks so as to reach a minimum production of 100 000 barrels per day over time. Glencore shall further ensure that it conducts the necessary feasibility studies for the following projects, using South African resources wherever appropriate:
 - 2.3.4.1 a project for upgrading the cleaner fuels standard from Euro IV to Euro V. The evaluation of this project shall be completed within 3 (three) years from 27 September 2018;
 - 2.3.4.2 a project to potentially further increase the capacity of the Refinery and to produce products not presently manufactured by the Refinery. The evaluation of this project shall be completed within 5 (five) years from 27 September 2018; and
 - 2.3.4.3 a project to investigate the possibility of realising energy efficiencies in the Refinery, using technologies (e.g. fuel cell technologies) that are in line with the beneficiation policy in South Africa.

- 2.3.5 In relation to the evaluation exercises referred to in this paragraph 2.3.4, Glencore shall ensure that Astron conducts the studies in a transparent manner and, upon completion of these exercises, share the conclusions with the EDD and the Commission. In this regard, Glencore shall ensure that Astron keeps the EDD and the Commission informed of significant milestones reached during each evaluation exercise.
- 2.3.6 In line with Glencore's ambition to develop Astron's midstream and downstream operations in South Africa, and if any of the studies referred to in paragraphs 2.3.4.1 and 2.3.4.2 above indicate that a project is commercially and economically viable, Glencore shall consider the implementation of the project expeditiously and within its corporate capital planning at the time.
- 2.3.7 In relation to the investments contemplated in this paragraph 2.3, Glencore shall procure the inputs locally within South Africa, wherever practically possible and feasible, it being recognised that the opportunity to benefit the South African economy and local capital supply base should be maximised.
- 2.3.8 The commitments from Glencore set out in these Conditions shall incorporate any actions or expenditure in terms of this paragraph 2 during the period of OTS's ownership of Astron.

2.4 COMMITMENTS IN RESPECT OF ASTRON'S WHOLESALE AND RETAIL CHAINS

- 2.4.1 It is recorded that Astron's competitors in general own approximately 75% of their service stations, with only 25% being independently owned. In contrast, Astron's current ratio of independently owned service stations is approximately 75% (615 stations) (such 615 stations are hereinafter called "the baseline number"), with only approximately 25% being owned by Astron.
- 2.4.2 In relation to the service stations in Astron's network as at the Implementation Date, and any new service stations established after the Implementation Date, Glencore shall:
- 2.4.2.1 ensure that Astron maintains at least the baseline number of independently owned service stations and further commits that as it grows its business, it shall,

in aggregate, ensure a ratio of independently owned service stations of at least 73%; and

2.4.2.2 where independently owned service stations are to be established, Astron shall give preference to Small Businesses, especially Black-owned Businesses; and

2.4.2.3 in relation to service stations falling within Astron's Direct Investment Territory, and with reference to the ratio of Astron owned service stations compared to retailer owned service stations:

2.4.2.3.1 Glencore shall ensure that in establishing new retailer owned service stations, Astron favours SMMEs in the grant of rights in respect of such service stations;

2.4.2.3.2 Glencore shall ensure, subject to paragraph 2.4.2.3.3, that going forward from the Implementation Date, the Economic Return Ratio earned by the retailer owned stations shall be maintained or increased in favour of the retailer owned stations and, in particular, towards smaller and black-owned retailers when compared to the Economic Return Ratio earned by Astron owned service stations;

2.4.2.3.3 for the purposes of paragraph 2.4.2.3.2, within a period of 6 (six) months from the Implementation Date, Astron and the EDD and their relevant experts will engage with each other in order to develop and agree on a benchmark Economic Return Ratio as at the Implementation Date and a formula for assessing changes to such benchmark Economic Return Ratio over time. If there is any dispute in developing, agreeing and implementing a benchmark Economic Return Ratio and/or formula, such dispute shall be referred to and adjudicated by an independent expert to be agreed between the EDD and Astron, or, failing agreement, such expert will be nominated by the Chairperson of the South African Institute of Chartered Accountants.

2.4.2.4 the commitment referred to in paragraph 2.4.2.3.2 shall be audited every 3 (three) years following the Implementation Date and shall form part of the annual compliance report to the Commission and EDD. In the event that, for any year following the Implementation Date, the commitment referred to in paragraph 2.4.2.3.2 is not met for any reason, Glencore shall ensure that the position is remedied within a period of 2 (two) years from the end of the year concerned; and

2.4.2.5 any dispute regarding the implementation of this paragraph 2.4.2.3 shall be resolved in accordance with the dispute resolution mechanism agreed to under paragraph 2.4.2.3.3.

2.4.3 To ensure that the Branded Marketers and Independent Retailers will not be materially worse off financially than they would be absent the Proposed Transaction, Glencore shall ensure that:

2.4.3.1 The network of Astron's service stations will be fully rebranded in line with Glencore's branding requirements by approximately 2024:

2.4.3.1.1 Glencore shall ensure that Astron bears the costs of rebranding, to the brand selected by Glencore to replace the Caltex brand ("**Glencore brand**"), 227 service stations falling under Astron's Branded Marketer footprint which service stations have already been upgraded to the latest Caltex standards. A list of the 227 service stations is attached hereto as **Annexure C**.

2.4.3.1.2 Glencore shall ensure that Astron will also cover the rebranding costs to the Glencore brand for approximately 353 sites in the three large metropolitan areas (outside Branded Marketer areas). Such rebranding is anticipated to be completed within 6 (six) years of the Implementation Date. A list of the 353 sites is attached hereto as **Annexure D**.

2.4.3.1.3 The costs of the rebranding of the 227 and 353 sites, are borne by Astron, such costs are presently estimated to be R290 000 000 (two hundred and ninety million Rand);

2.4.3.1.4 Glencore shall ensure that Astron provides a minimum contribution of 20% to the costs of rebranding to the Glencore brand of approximately 254 additional service stations falling under the Branded Marketer Programme which have not yet been upgraded to the latest Caltex standards and are required to be upgraded to the latest Caltex standards (a list of 254 additional service stations is attached hereto as **Annexure E**), which rebranding is anticipated to be completed within 6 (six) years of the Implementation Date;

2.4.3.1.5 Astron's contribution to these costs shall be made through an incentive mechanism paid to the relevant Branded Marketer or service station concerned. To the extent that the Branded Marketers require the service station owners concerned to bear the cost of any rebranding, the incentive scheme shall be designed such that Astron will require the Branded

Marketer to pass on the benefit of Astron's contribution to the service station owners. The aggregate value of Astron's contribution in this regard is presently estimated at R25 000 000 (twenty-five million Rand); and

- 2.4.3.2 Glencore shall ensure that Astron will not change any of the existing contracts with Branded Marketers to the extent that it would be on less favourable terms to the Branded Marketers.
- 2.4.3.3 If the Proposed Transaction is successfully implemented, Glencore shall meet with the Branded Marketers as soon as reasonably practicable after the Implementation Date to engage with the Branded Marketers in regard to any aspects of its evolving long term strategy for Astron that may affect the Branded Marketers.
- 2.4.3.4 Glencore shall ensure that Astron continue with its current levels of engagement with the Branded Marketers, including: regular operational discussions, every other month meetings between Astron management and the individual Branded Marketer representatives (which will include mid-year and end of year business plan discussions); and one or two meetings per year that include all of the Branded Marketers and Astron management.

2.5 COMMITMENTS IN RESPECT OF BY-PRODUCTS AND LOGISTICS

- 2.5.1 It is recorded that Astron presently makes available at least 15% of LPG to Black-owned Businesses on contract terms of less than 10 (ten) years, which the Merging Parties note is in excess of the requirements recommended by the Commission in its recent Report on the Market Inquiry in relation to LPG products.
- 2.5.2 Through the Development Fund, Glencore shall ensure that:
 - 2.5.2.1 Astron increase its level of supplies of LPG to Black-owned Businesses in an amount in excess of 15%, following the expiration of current contractual arrangements;
 - 2.5.2.2 within 1 (one) year from the Implementation Date, Astron shall, with the intention to increase availability, conduct an evaluation exercise in order to assess the feasibility of an increase in the amount of bitumen available for on-sale to Black-owned Businesses, and that Astron, upon completion of the evaluation exercise, shall share the results with the EDD and the Commission;

- 2.5.2.3 Astron shall make such unused LPG storage capacity as may exist from time to time, available to third parties on terms compliant with paragraph 2.5.3 and, further, consider the expansion of such storage capacity if feasible;
- 2.5.2.4 Astron shall increase where feasible LPG supply into South Africa through purchases on international markets;
- 2.5.2.5 where feasible Astron shall make available any unused refined products storage capacity available to third parties, on terms compliant with paragraph 2.5.3 with a preference for Black-owned Businesses.
- 2.5.3 To the extent that LPG storage capacity or refined products storage capacity is unused, Astron shall make such storage available to Small Businesses at a price less than market price, but at no less than cost, such that the Small Businesses concerned are assisted in competing in their relevant markets.
- 2.5.4 To the extent that Glencore or Astron makes further investments in Astron's terminals and logistics infrastructure in South Africa, Astron shall ensure that such investments have no negative impact on the production of the Refinery.

2.6 PROCUREMENT COMMITMENTS

- 2.6.1 It is recorded that Astron currently procures a high level of goods and services from South African providers.
- 2.6.2 With effect from the Implementation Date, as to procurements in the ordinary course of business other than those contemplated in paragraph 2.3, Glencore shall ensure that Astron maintain or increase the current level (as a proportion) of expenditure on local procurement of goods and services. For the purposes of this paragraph 2.6.2 future levels of expenditure shall be benchmarked against the average Rand/Dollar exchange rate as published by the South African Reserve Bank for the year prior to the Implementation Date. Any imported crude oil or oil products shall be excluded from the calculations.
- 2.6.3 With effect from the Implementation Date, Glencore shall ensure that Astron shall not substitute current, local, South African owned suppliers with off-shore suppliers of goods or services.
- 2.6.4 Where reasonably possible, in cases where third parties supply goods and services into Astron's value chain, Glencore shall ensure that Astron shall use its

influence over such third party suppliers to encourage them to commit to sourcing their inputs from South African based suppliers of goods and services.

2.7 COMMITMENTS IN RESPECT OF THE DEVELOPMENT FUND

- 2.7.1 In line with Glencores clear understanding of the development objectives of South Africa, Glencore shall ensure that, within 2 (two) years of the Implementation Date, Astron will establish the Development Fund in order to support those Small Businesses and Black-owned Businesses which are involved in Astron's value chain. It is recorded that Astron already provides funding mechanisms to Black-owned Businesses through its Enterprise and Supplier Development ("ESD") and Socio-Economic Development ("SED") initiatives.
- 2.7.2 Glencore shall ensure that Astron ensures that the activities of the Development Fund are additional to and incremental upon the activities of the ESD and SED initiatives. Astron shall provide funding to the Development Fund of R220 000 000 (two hundred and twenty million Rand) over a period of 5 (five) years from the Implementation Date to support Astron using these funds as seed capital to create a larger Development Fund.
- 2.7.3 The Development Fund shall be focussed on the development of Small Businesses and Black-owned Businesses, especially in the context of the commitments set out in paragraphs 2.5.2 and 2.7.2 above, and paragraphs 2.8.1.1 and 2.8.1.2 below, and shall have the following objectives:
- 2.7.3.1 support the sustainable establishment and development of existing or potential local South African businesses, particularly Small Businesses, that contribute to Astron's value chain, through both financial support and technical support and training, in order to expand the level of local procurement of goods and services in South Africa;
- 2.7.3.2 preference shall be given to businesses which are owned by Black Persons or women, wherever possible, to support inclusive economic growth and employment. However, the Development Fund will not exclusively support businesses which are owned by Black Persons or women;
- 2.7.3.3 due to the specific nature of Astron's business, funding shall focus on both suppliers of goods and services as well as the retail part of the liquid fuels value

chain, assisting independent Small Businesses to establish themselves as a Astron retailer or to enhance their existing retailer business' performance;

2.7.3.4 other areas will also be eligible for support from the Development Fund, based on the relative merit of projects and the meaningfulness of their contribution to the overall fund's objectives and strategy.

2.7.4 The Development Fund shall be entitled to use a combination of instruments to support individual projects in the most appropriate way, building on the work already done by Astron in these areas. These instruments may include development funding loans, commercial loan guarantees, direct grants and technical assistance, skills development and training.

2.7.5 Glencore shall procure that the Development Fund puts in place a rules-based approach setting out the processes and principles necessary to ensure appropriate levels of integrity and compliance with all laws and regulations, both at the level of the Development Fund and in relation to its interaction with beneficiaries.

2.7.6 After consultation with the EDD, Glencore undertakes to procure that an appropriate governance structure is put in place for the Development Fund, taking into account the remit and size of the Development Fund and looking to rely on the existing Astron structures which are already in place.

2.8 ADDITIONAL COMMITMENTS IN RESPECT OF BROAD BASED BLACK ECONOMIC EMPOWERMENT

2.8.1 In addition to the other commitments impacting on Broad Based Black Economic Empowerment already provided for in these Conditions, Glencore shall ensure that:

2.8.1.1 Astron shall use all reasonable endeavours to increase its current Broad Based Black Economic Empowerment scorecard rating by two levels, from level 4 to level 2 within 2 (two) years of the Implementation Date; and

2.8.1.2 Astron shall increase the number of service stations operated by Black-owned Businesses in the large metropolitan areas by at least 20 (twenty) within 5 (five) years from the Implementation Date.

- 2.8.2 Glencore shall procure that over a period of 7 (seven) years from the Implementation Date it will increase the Broad Based Black Economic Empowerment shareholding in Astron from 25% (twenty five percent) to 35% (thirty five percent) and retain it at no less than 35% (thirty five percent), on the terms set out in this paragraph 2.8.
- 2.8.3 Glencore and Astron shall be entitled (subject to paragraphs 2.8.4 and 2.8.5 below) to full latitude to design appropriate schemes to give effect to the commitment made in paragraph 2.8.2, including the use of employee and other Broad Based Black Economic Empowerment schemes, it being recorded that Glencore and Astron will ensure that the schemes will have a significant broad-based component to enable as many Black persons to become equity-holders in companies that operate in South Africa.
- 2.8.4 In pursuance of the undertaking in paragraph 2.8.2:
- 2.8.4.1 OTS has been granted an option ("the OTS option"), exercisable within one year from the Implementation Date, to acquire an additional shareholding in Astron of up to 7% (seven percent); and
- 2.8.4.2 Glencore shall procure that-
- 2.8.4.2.1 an additional 3% (three percent) of the issued share capital in Astron shall be held by ESOPs within 2 (two) years of the Implementation Date, regardless of the exercise of the OTS Option;
- 2.8.4.2.2 a further additional 4% (four percent) of the issued share capital in Astron shall be held by ESOPs and/or any other BEE shareholding or program within (five) years of the Implementation Date; and
- 2.8.4.2.3 a further additional 3% (three percent) of the issued share capital of Astron (i.e. in addition to that referred to in paragraph 2.8.4.2.2) shall be held by ESOPs and/or any other BEE shareholding or program within 7 (seven) years of the Implementation Date,
- provided that in the case of paragraphs 2.8.4.2.2 and 2.8.4.2.3 percentage shareholding (on a cumulative basis) shall be reduced by the percentage shareholding taken up pursuant to the exercise of the OTS Option (but not less than zero). A table setting out the timing of the BEE shareholding commitments is attached hereto, marked Annexure "AA", for illustrative purposes.

2.8.5 Notwithstanding anything contained in this paragraph 2.8, Glencore and Astron shall ensure that the Astron's BEE shareholding is at all times not less than 35% (thirty five percent) of its issued share capital with effect from the end of 7 (seven) years from the Implementation Date, and that Astron's ESOP shareholding is at all times not less than 5% (five percent) of its issued share capital with effect from the end of 2 (two) years from the Implementation Date. In achieving the minimum 35% (thirty five) BEE shareholding contemplated in paragraph 2.8.2, Glencore and Astron shall expand the Astron's ESOPs to include Contractors at the Refinery and employees of the Company-operated service stations in addition to any other broad-based BEE schemes. Glencore and the Astron may implement alternative BEE schemes to meet their commitment in terms of this paragraph 2.8 if they are unable to effectively and practically implement an ESOP to include Contractors at the Refinery and employees of the Company-operated service stations provided that it shall have made all reasonable endeavours to implement the ESOP contemplated in this paragraph 2.8.5. For the purpose of this paragraph 2.8.5, the term "Contractors" means individuals who perform work for the Company at the Refinery on an intermittent but relatively consistent basis but who are not employees of the Company.

3. EXPORT OF SOUTH AFRICAN PRODUCTS

3.1 Glencore shall use reasonable endeavours to promote the export and sale of South African manufactured products through the service station network being built up by the Glencore group in Brazil, Mexico and Zimbabwe.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1 Glencore shall inform the Commission of the Implementation Date within 5 (five) days of it becoming effective as well as the number of Astron employees as at the Implementation Date as contemplated in paragraph 2.2.2.
- 4.2 Glencore shall ensure that Astron will within 10 (ten) days from the Approval Date circulate a copy of the Conditions relating to employment to the employees of Astron.
- 4.3 As proof of compliance herewith, Glencore shall within 5 (five) days of circulating the Conditions, provide the Commission with an affidavit by the Chief Executive Officer of Astron attesting to the circulation of the Conditions and attach a copy of the said notice.
- 4.4 Glencore, shall, within 90 (ninety) days of each anniversary of the Implementation Date, provide a suitable and appropriately detailed annual report to the EDD and the Commission regarding its compliance and the compliance of Astron with the provisions of the Conditions.
- 4.5 The report referred to in paragraph 4.4 above shall be accompanied by an affidavit attested to by the Chief Executive Officer of Astron confirming the accuracy of the annual report and full compliance with these Conditions.
- 4.6 The Commission may request any additional information from the Merging Parties which the Commission from time to time deems necessary for the monitoring of compliance with these Conditions.
- 4.7 An apparent breach by the Merging Parties of the Conditions shall be dealt with in terms of Rule 37 of the Rules for the Conduct of Proceedings in the Competition Tribunal read together with Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.
- 4.8 All correspondence in relation to the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za.

5. VARIATION

- 5.1 Either or both of the Merging Parties may at any time, on good cause shown, apply with or without the Commission's consent to the Tribunal for any of the Conditions to be waived, relaxed, modified and/or substituted, provided that "good cause" shall not

include any circumstances giving rise to the request for variation which are reasonably capable of being mitigated in another manner, or which could reasonably have been foreseen at the Date of Approval of these Conditions. The Commission will not be precluded from opposing such application.

- 5.2 The Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be waived, relaxed, modified and/or substituted. The Merging Parties will not be precluded from opposing such application.

ANNEXURE AA

[illegible]