



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.:
LM185Oct18/VAR087Aug24

In the matter between:

Astron Energy (Pty) Ltd First Applicant

Glencore South Africa Oil Investment (Pty) Ltd Second Applicant

And

Competition Commission of South Africa First Respondent

The Minister of Trade, Industry and Competition Second Respondent

In re the large merger between:

Glencore South Africa Oil Investment (Pty) Ltd Primary Acquiring Firm

And


Chevron South Africa (Pty) Ltd (Now known as Astron Energy (Pty) Ltd) Primary Target Firm

Panel:	A Wessels (Presiding Member)
	A Ndoni (Tribunal Member)
	T Vilakazi (Tribunal Member)
Heard on:	04 October 2024
Last date of submission:	04 October 2024
Decided on:	07 October 2024

ORDER

On application by the First and Second Applicants to vary the conditions imposed by the Competition Tribunal ("Tribunal") in the abovementioned large merger, the Tribunal orders the following:

- 1 The conditions attached to the Tribunal's order issued on 15 March 2019 under case number LM1850ct187 are amended by adding an Addendum thereto in the form of **Annexure AAA** hereto.
- 2 There is no order as to costs.



Mr. Andreas Wessels

07 October 2024

Date

Ms Andiswa Ndoni and Professor Thando Vilakazi concurring

ANNEXURE AAA

Case No.:
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In the matter between:

Astron Energy (Pty) Ltd

First Applicant

Glencore South Africa Oil Investment (Pty) Ltd

Second Applicant

And

Competition Commission of South Africa

First Respondent

The Minister of Trade, Industry and Competition

Second Respondent

In re the large merger between:

Glencore South Africa Oil Investment (Pty) Ltd

Primary Acquiring Firm

And

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

Primary Target Firm

ADDENDUM TO THE CONDITIONS

1 DEFINITIONS

1.1 **Addendum** means the first addendum to the Conditions as recorded in this document.

1.2 **Astron** means Astron Energy Proprietary Limited, formerly known as Chevron South Africa Proprietary Limited, a company in South Africa.

- 1.3 **Commission** means the South African Competition Commission duly established under Competition Act.
- 1.4 **Competition Act** means the Competition Act No.89 of 1998, as amended.
- 1.5 **Conditions** means the conditions imposed by the Tribunal on Glencore and Astron under case number LM185OCT18 in respect of its approval of the Transaction on 15 March 2019.
- 1.6 **DTIC** means the Department of Trade, Industry and Competition of the Government of South Africa.
- 1.7 **Glencore** means Glencore SA Oil Investments (Pty) Limited.
- 1.8 **Implementation Date** means 8 April 2019, being the date on which the Transaction was implemented and Glencore took control of Astron.
- 1.9 **Transaction** means the transaction in terms of which Glencore acquired 75% of the shares and related interests in Astron.
- 1.10 **Tribunal** means the South African Competition Tribunal duly established under the Competition Act.

2 INTRODUCTION

- 2.1 Due to certain unforeseen circumstances, difficulties have arisen in Astron and Glencore meeting certain of the terms of the Conditions within the timeframe set out therein.
- 2.2 The Merging Parties and the Commission have engaged with each other in good faith to amend and supplement the Conditions so as to address those difficulties to their mutual satisfaction. Their agreement is recorded in this Addendum.

3 PRODUCTION COMMITMENTS

It is recorded that:

- 3.1 between the Implementation Date and 27 September 2022, Astron has invested a total of R [REDACTED] (Rand) to achieve the Production Commitments contained in paragraph 2.3 of the Conditions and Astron has also invested an amount of approximately R [REDACTED] (Rand) in respect of the Production Commitments contained in clause 2.3.1.5 of the Conditions;
- 3.2 by 30 September 2023, Astron had increased the Refinery's production capacity and technical capability to 90% of current nameplate capacity, as envisaged in clause 2.3.1.1 of the Conditions; and
- 3.3 a further R [REDACTED] (Rand) was still to be spent to fulfil the Production Commitments as at 27 September 2022. For the avoidance of doubt, the Merging Parties record that such investment amount shall:
- 3.3.1 be over and above the investment plans of Astron recorded in its business plans of September 2018; and
- 3.3.2 not include R [REDACTED] (Rand) being the amount of proceeds Astron has received arising out of its property damage insurance, relating to the loss of or damage to the Plant 4 platformer unit pursuant to the July 2020 Refinery incident.

4 AMENDMENTS

- 4.1 Paragraph 2.3.1 of the Conditions is hereby amended:
- 4.1.1 by substituting the words "within a period of 5 (five) years from 27 September 2018" with the words "by 27 September 2027" at the end of paragraph 2.3.1 of the Conditions;
- 4.1.2 by inserting the words "by 30 September 2023" at the end of paragraph 2.3.1.1 of the Conditions;
- 4.1.3 by inserting the word "and" at the end of paragraph 2.3.1.5 of the Conditions; and

¹ Net qualifying expenditure after having deducted the insurance recovery proceeds referred to in paragraph 3.2.2.

- 4.1.4 by adding the following paragraph 2.3.1.6 to the Conditions: "having completed a feasibility study, execute such project(s) as may be selected by Astron, in its sole discretion, to enable the Refinery by [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] including the projects to be set out in the Capital Investment Update referred to in paragraph 2.3.9, as may be updated by Astron in its sole discretion from time to time."
- 4.2 Paragraph 2.3.2.2 of the Conditions is hereby amended by substituting the words "3 (three) years" with the words "5 (five) years".
- 4.3 Paragraph 2.3.2.3 of the Conditions is hereby amended by substituting the words "within a period of 5 (five) years from 27 September 2018" with the words "[REDACTED]
[REDACTED]
[REDACTED]".
- 4.4 Paragraph 2.3.4.1 of the Conditions is hereby deleted and its contents replaced with the words "Not used".
- 4.5 Paragraph 2.3.6 of the Conditions is hereby amended by substituting the words "paragraphs 2.3.4.1 and 2.3.4.2" with "paragraph 2.3.4.2".
- 4.6 The following paragraph 2.3.9 is added after paragraph 2.3.8 of the Conditions:
- "2.3.9 In addition to and notwithstanding the reporting obligations set out in paragraph 4.4:
- 2.3.9.1 Astron and Glencore shall be required to provide a bi-annual capital investment update (the "**Capital Investment Update**") to the DTIC and the Commission in respect of the Production Commitments on a six-monthly rolling basis (i.e. within 90 days of (i) 8 April (relating to the capital investment made up to the 27

September in the previous calendar year); and (ii) 8 October (relating to the capital investment made up to the 27 March in the current calendar year)) until the obligations to invest a total expenditure of R [REDACTED] (Rand) under paragraph 2.3.1 have been fulfilled.

- 2.3.9.2 The Capital Investment Update will be substantially in the form of the template attached hereto as Appendix X.
- 2.3.9.3 The Merging Parties and the Commission acknowledge that any specific uncompleted projects, timelines and/or expenditures set out in any such Capital Investment Update shall be provisional and approximate and would be presented for information purposes only.
- 2.3.9.4 The Merging Parties and the Commission acknowledge that, by their nature, capital projects are complex undertakings and subject to change, including (but not limited to) in respect of scope, cost, availability of third party resources, legislative and fiscal changes, commercial factors, operational requirements and unforeseen circumstances beyond an organisation's control. Nothing in any Capital Investment Update shall prevent or restrict Astron's flexibility to select which capital projects it will implement in connection with the fulfilment of the Production Commitments and to set and/or amend timelines and/or expenditure in connection with such capital projects as may be required from time to time by the prevailing circumstances, provided that Astron achieves (and Glencore undertakes that Astron will achieve) the Production Commitments set out in paragraph 2.3 (as amended)."

- 4.7 The remaining paragraphs of the Conditions shall continue to apply without amendment.

APPENDIX X

PRIVATE & CONFIDENTIAL

[illegible]