

Annexure A

Commission Case No: 2017Nov0015

Tribunal Case No: LM232Nov17

In the large merger involving

Off the Shelf Investments Fifty Six (RF) (Proprietary) Limited

Primary Acquiring Firm

Chevron South Africa (Proprietary) Limited

Primary Target Firm

CONDITIONS

1. **DEFINITIONS**

- 1.1 **“Approval Date”** means the date referred to in the Tribunal Order.
- 1.2 **“Black-owned Business”** means a business directly or indirectly controlled by Black Persons.
- 1.3 **“Black Person”** means person/s defined as “Black” in the Broad-Based Black Economic Empowerment Act No. 53 of 2003.
- 1.4 **“Branded Marketers”** means those independent wholesalers / distributors to whom CSA 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 CSA’s products to service stations in those territories in terms of CSA’s so called Branded Marketer Programme.
- 1.5 **“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.
- 1.6 **“CGEI”** means Chevron Global Energy Inc., a company incorporated in the United States of America.
- 1.7 **“Commission”** means the South African Competition Commission duly established under Competition Act.
- 1.8 **“Competition Act”** means the Competition Act No. 89 of 1998, as amended.
- 1.9 **“Conditions”** means, collectively, the conditions referred to in this document.

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- 1.10 **“CSA”** means Chevron South Africa (Proprietary) Limited, a company incorporated in South Africa, which will be renamed following the Implementation Date, and which is the Primary Target Firm for the purposes of the Proposed Transaction.
- 1.11 **“Development Fund”** means the fund to be created by CSA in terms of paragraph 2.7.1 below.
- 1.12 **“Direct Investment Territories”** are retail sites which are part of the CSA retail channel and include sites which are CSA owned and retailer operated; CSA leased and retailer operated, retailer owned and retailer operated; or retailer owned with CSA assets (e.g. underground tanks, pumps and signage).
- 1.13 **“Economic Return Ratio”** means the rate of economic return between CSA owned and independently owned service stations in the Direct Investment Territories, where the ratio will be determined between CSA and the EDD with reference, inter alia, to the throughput and profitability of the service stations.
- 1.14 **“EDD”** means the Economic Development Department of the Government of South Africa.
- 1.15 **“Framework Agreement”** means the Framework Agreement concluded between OFT, CSA, CGEI and the EDD on 26 July 2018, marked as **Annexure B** hereto
- 1.16 **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger will be implemented by the Merging Parties.
- 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 7 November 2017 in terms of which OTS intends to acquire 75% of the shares of and related interests in CSA from CGEI.
- 1.19 **“Merging Parties”** means OTS and CSA.
- 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 CSA 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 OTS shall maintain its head office in South Africa.

2.1.2 CSA shall maintain its head office in South Africa, to coordinate and oversee its midstream and downstream operations.

2.1.3 OTS shall ensure that CSA is operated on a stand-alone basis and its decisions will be taken in South Africa and be implemented utilising local skills and expertise.

2.2 **EMPLOYMENT COMMITMENTS**

2.2.1 CSA shall not retrench any employees as a result of the merger.

2.2.2 CSA commits that, for a period of no less than 5 (five) years from the Implementation Date, it will maintain at least the number of employees as are employed in aggregate by CSA 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 CSA and is understood to mean South African residents. For the avoidance of doubt, CSA shall not be precluded from effecting non-merger related lawful dismissals for cause, provided that CSA will replace any dismissed employees within a reasonable period in order to maintain the number of employees as are employed in aggregate by CSA as at the Implementation Date.

2.2.3 OTS shall ensure that CSA continues to meet any ongoing contractual obligations which it has towards retired employees of CSA. In this regard, the Merging Parties acknowledge that the medical aid subsidies are included as one of the ongoing legal and contractual obligations of CSA, 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 CSA. CSA 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 CSA shall encourage any third parties involved in the value chain for the production and sale of CSA's products to expand their levels of employment wherever reasonably possible.

2.2.5 OTS shall ensure that CSA uses all reasonable efforts to increase indirect employment through investment in production and the Development Fund.

2.3 **PRODUCTION COMMITMENTS**

2.3.1 OTS shall procure that CSA invests a total of R6 000 000 000 (six billion Rand) over and above CSA's current investment plans (as recorded in its most recent business plans), within a period of 5 (five) years from the Implementation Date 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 CSA 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 OTS 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 the Implementation Date; 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 the Implementation Date; and

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- 2.3.2.3 a further R4 000 000 000 (four billion Rand) to be invested within a period of 5 (five) years from the Implementation Date.
- 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, OTS undertakes that CSA shall conduct further de-bottlenecks so as to reach a minimum production of 100 000 barrels per day over time. OTS 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 the Implementation Date;
- 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 the Implementation Date; 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, OTS shall ensure that CSA 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, OTS shall ensure that CSA keep the EDD and the Commission informed of significant milestones reached during each evaluation exercise.
- 2.3.6 In line with OTS's ambition to develop CSA'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, OTS 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, OTS 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.

2.4 **COMMITMENTS IN RESPECT OF CSA'S WHOLESALE AND RETAIL CHAINS**

- 2.4.1 It is recorded that CSA's competitors in general own approximately 75% of their service stations, with only 25% being independently owned. In contrast, CSA'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 CSA.
- 2.4.2 In relation to the service stations in CSA's network as at the Implementation Date, and any new service stations established after the Implementation Date, OTS shall:
- 2.4.2.1 Ensure that CSA 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 65%; and
- 2.4.2.2 where independently owned service stations are to be established, CSA shall give preference to Small Businesses, especially Black-owned Businesses; and
- 2.4.2.3 in relation to service stations falling within CSA's Direct Investment Territory, and with reference to the ratio of CSA owned service stations compared to retailer owned service stations:
- 2.4.2.3.1 OTS shall ensure that in establishing new retailer owned service stations, CSA favours SMMEs in the grant of rights in respect of such service stations;
- 2.4.2.3.2 OTS 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 CSA 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, CSA 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 CSA, 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, OTS 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, OTS shall ensure that:
- 2.4.3.1 The network of CSA's service stations will be fully rebranded in line with OTS's branding requirements by approximately 2024.
- 2.4.3.1.1 OTS shall ensure that CSA bear the costs of rebranding, to the OTS brand, 227 service stations falling under CSA'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 OTS shall ensure that CSA will also cover the rebranding costs to the OTS 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 CSA, such costs are presently estimated to be R290 000 000 (two hundred and ninety million Rand);
- 2.4.3.1.4 OTS shall ensure that CSA provides a contribution of 20% to the costs of rebranding to the OTS standards 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 CSA'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 CSA will require the Branded Marketer to pass on the benefit of CSA's contribution to the service station owners. The aggregate value of CSA's contribution in this regard is presently estimated at R25 000 000 (twenty-five million Rand); and

2.4.3.2 OTS shall ensure that CSA 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, OTS 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 CSA that may affect the Branded Marketers.

2.4.3.4 OTS shall ensure that CSA continue with its current levels of engagement with the Branded Marketers, including: regular operational discussions, every other month meetings between CSA 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 CSA management.

2.5 **COMMITMENTS IN RESPECT OF BY-PRODUCTS AND LOGISTICS**

2.5.1 It is recorded that CSA 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, OTS shall ensure that:

2.5.2.1 CSA 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, CSA 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 CSA, upon completion of the evaluation exercise, shall share the results with the EDD and the Commission;

- 2.5.2.3 CSA 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 CSA shall increase where feasible LPG supply into South Africa through purchases on international markets;
- 2.5.2.5 where feasible CSA 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, CSA 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 OTS or CSA makes further investments in CSA's terminals and logistics infrastructure in South Africa, OTS 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 CSA 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, OTS shall ensure that CSA 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, OTS shall ensure that CSA 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 CSA's value chain, OTS shall ensure that CSA 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 OTS's clear understanding of the development objectives of South Africa, OTS shall ensure that, within 2 (two) years of the Implementation Date, CSA establish the Development Fund in order to support those Small Businesses and Black-owned Businesses which are involved in CSA's value chain. It is recorded that CSA already provides funding mechanisms to Black-owned Businesses through its Enterprise and Supplier Development ("ESD") and Socio-Economic Development ("SED") initiatives.

2.7.2 OTS shall ensure that CSA ensures that the activities of the Development Fund are additional to and incremental upon the activities of the ESD and SED initiatives. OTS shall provide funding to the Development Fund of US\$ 15 000 000 (fifteen million US Dollars) (approximately R215 000 000 (two hundred and fifteen million Rand)) over a period of 5 (five) years from the Implementation Date to support CSA 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 2.8.1.3 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 CSA'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 CSA'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 CSA retailer or to enhance their existing retailer business' performance;

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- 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 CSA 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 OTS 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, OTS 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 CSA 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, OTS shall ensure that:*
- 2.8.1.1 *OTS remain at least 90% Black-owned Business for as long as it remains a shareholder of CSA;*
- 2.8.1.2 *CSA 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*
- 2.8.1.3 *CSA 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.*

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- 2.8.2 OTS shall procure that a Broad Based Black Economic Empowerment shareholding in CSA of no less than 29% is achieved within a 5 (five) year period from the Implementation Date.
- 2.8.3 *OTS and CSA shall be entitled 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 OTS and CSA 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.*

3. **MONITORING OF COMPLIANCE WITH THE CONDITIONS**

- 3.1 OTS shall inform the Commission of the Implementation Date within 5 (five) days of it becoming effective as well as the number of CSA employees as at the Implementation Date as contemplated in paragraph 2.2.2.
- 3.2 OTS shall ensure that CSA will within 10 (ten) days from the Approval Date circulate a copy of the Conditions relating to employment to the employees of CSA.
- 3.3 As proof of compliance herewith, OTS shall within 5 (five) days of circulating the Conditions, provide the Commission with an affidavit by the Chief Executive Officer of CSA attesting to the circulation of the Conditions and attach a copy of the said notice.
- 3.4 *OTS, 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 CSA with the provisions of the Conditions.*
- 3.5 *The report referred, to in paragraph 3.4 above shall be accompanied by an affidavit attested to by the Chief Executive Officer of CSA confirming the accuracy of the annual report and full compliance of these Conditions.*
- 3.6 *The Commission may request any addition information from the Merging Parties which the Commission from time to time deems necessary from the monitoring of compliance with these Conditions.*
- 3.7 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.

3.8 *All correspondence in relation to the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za.*

4. **VARIATION**

4.1 *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 the direct or indirect takeover or change in shareholding of CSA anticipated by a proposed sale of a controlling stake in CSA by OTS to another firm or entity. The Commission will not be precluded from opposing such application.*

4.2 *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.*