

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 011569

In the matter between:

The Competition Commission

Applicant

And

Spring Lights Gas (Pty) Ltd

Respondent

Panel:	N Manoim (Presiding Member)
	Y Carrim (Tribunal Member)
	A Wessels (Tribunal Member)
Heard on:	07 August 2012
Final submission received on:	05 April 2013
Decided on:	11 April 2013

Order

The Tribunal hereby confirms the following attached consent agreements, as agreed to and proposed by the Competition Commission and the Respondent:

1. The main agreement, dated 20 August 2010;
2. The addendum thereto, dated 30 July 2012; and
3. The second addendum thereto, dated 03 April 2013, including the confidential annexures attached thereto.



Presiding Member

N Manoim

Concurring: Y Carrim and A Wessels

BEFORE THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO:

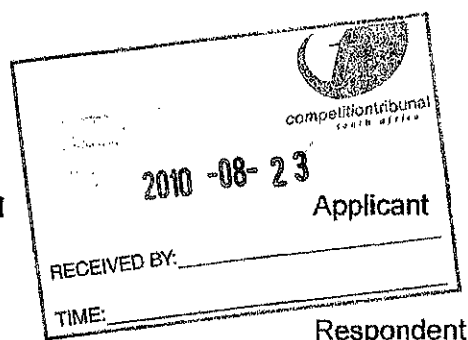
CC CASE NO:

In the matter between:

THE COMPETITION COMMISSION

and

SPRING LIGHTS GAS (PTY) LTD



CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
SPRING LIGHTS GAS (PTY) LTD IN RESPECT OF CONTRAVENTIONS OF
SECTION 4(1) (b) OF THE COMPETITION ACT NO 89 OF 1998

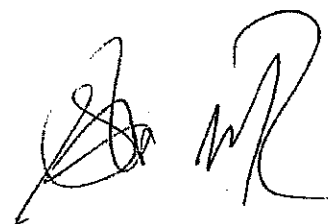
The Competition Commission and Spring Lights Gas (Pty) Ltd hereby agree that application be made to the Competition Tribunal for confirmation of this Consent Agreement as an order of the Tribunal in terms of sections 49D as read with sections 58(1)(a)(iii) and 58(1)(b) of the Competition Act No.89 of 1998, as amended, on the terms set out below:

1. Definitions

In this Consent Agreement, unless the context indicates otherwise:

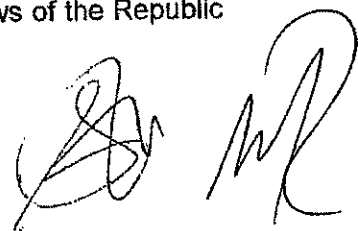
1.1 "*the Act*" means the Competition Act No. 89 of 1998, as amended;

- 1.2 "**The Administration Services Agreement**" means the Agreement between Sasol Gas and Spring Lights as described in clause 2.3 of this Consent Agreement.
- 1.3 "**BEE**" means Black Economic Empowerment;
- 1.4 "**CLP**" means the Corporate Leniency Policy issued by the Commission in terms of the Act to clarify the Commission's policy approach on matters falling within its jurisdiction in terms of the Act;
- 1.5 "**CEPR**" refers to Coal, Energy and Power Resources Limited, a broad based economic empowerment consortium company duly incorporated and registered in accordance with the laws of the Republic of South Africa, with its registered office alternatively principal place of business at 101 Stanley Copley Drive, Asherville, Durban, KwaZulu-Natal;
- 1.6 "**Commission**" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act as a juristic person, with its principal place of business at Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa;
- 1.7 "**Commissioner**" means the Commissioner of the Competition Commission appointed in terms of section 22 of the Act;
- 1.8 "**Complaint**" means the complaint initiated by the Commissioner in terms of section 49 B of the Act under case number 2009Jan4212;
- 1.9 "**Consent Agreement**" means this consent agreement duly signed and concluded between the Commission and Spring Lights;
- 1.10 "**Customer contracts**" means customer contracts purchased by Spring Lights from Sasol Gas;
- 1.11 "**Designated Geographical Area**" means the territory demarcated in the suite of agreements to be the region to which Spring Lights would be



confined, for the purpose of conducting the business rights acquired from Sasol Gas. Initially this area was diagrammatically demarcated as a portion of the Durban South territory. It was later expanded to include the whole of the KwaZulu-Natal province.

- 1.12 "**Gas Bill**" means the Gas Bill of 2001 which was subsequently enacted and promulgated into law as the Gas Act;
- 1.13 "**Gas Act**" means the Gas Act No. 48 of 2001, as amended;
- 1.14 "**Gas Regulator**" means the National Gas Regulator established by section 3 of the Gas Act;
- 1.15 "**NERSA**" means the National Energy Regulator of South Africa, a regulatory authority established in terms of the National Energy Regulator Act No. 40 of 2004, as amended, with the mandate to undertake functions of, *inter alia*, the Gas Regulator as set out in the Gas Act;
- 1.16 "**Piped gas**" means natural gas consisting mainly of methane transmitted, distributed and reticulated through pipelines and is used as an energy source in industrial and urban areas;
- 1.17 "**Sasol**" refers to Sasol Limited, a company duly incorporated and registered in accordance with the laws of the Republic of South Africa, with its registered office alternatively principal place of business at 22 Kent Avenue, Ferndale, Johannesburg, South Africa.
- 1.18 "**Sasol Gas**" refers to Sasol Gas Limited, a wholly owned subsidiary of Sasol Gas Holdings duly incorporated and registered in accordance with the laws of the Republic of South Africa, with its registered office alternatively principal place of business at 272 Kent Avenue, Ferndale, Johannesburg, South Africa;
- 1.19 "**Sasol Gas Holdings**" refers to Sasol Gas Holdings (Pty) Ltd, a company duly incorporated and registered in accordance with the laws of the Republic



of South Africa, with its registered office alternatively principal place of business at 272 Kent Avenue, Ferndale, Johannesburg, South Africa

1.20 "**Spring Lights**" refers to Spring Lights Gas (Pty) Ltd, a company duly incorporated and registered in accordance with the laws of the Republic of South Africa, with its registered office alternatively principal place of business at BKS House, 2 Maryvale Road, Westville, KwaZulu-Natal, South Africa;

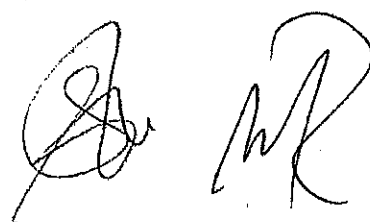
1.21 "**Suite of agreements**" refers collectively to agreements entered into between Sasol Gas and Spring Lights set out in clause 4 of this Consent Agreement; and

1.22 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act as a Tribunal of record, with its principal place of business at Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria.

2. Background

2.1 Spring Lights was previously known as Spring Lights 40 (Pty) Ltd. Sasol Gas Holdings holds 49% of the issued share capital of Spring Lights. The remaining 51% of the issued shares in Spring Lights is held by CEPR. Sasol facilitated the creation of CEPR as an entity whose shareholding was broad based and in keeping with principles underpinning the advancement of Sasol's BEE ideals. Sasol, together with CEPR, formed Spring Lights in 2002, for the specific purpose of Spring Lights' acquisition of a portion of the business of Sasol Gas. Consequently CEPR could, as a majority shareholder in Spring Lights, participate in that part of the business of Sasol Gas which Spring Lights acquired. The aforesaid acquisition formed part of Sasol's BEE strategy, as implemented at that time.

2.2 As a result of this acquisition by Spring Lights of a portion of the business of Sasol Gas, a suite of agreements was concluded. The suite of agreements were directed towards the purchase and sale of a portion of the Sasol Gas



business acquired by Spring Lights; the supply of gas by Sasol Gas to Spring Lights; the terms and conditions upon which such gas would be supplied; the regulation of the relationship between Sasol Gas Holdings and CEPR as shareholders in Spring Lights; and the widening of the ambit of the business that Spring Lights initially acquired in terms of the sale of business agreement. The suite of agreements resulted in the market allocation arrangements forming the subject-matter of this Consent Agreement.

2.3 In addition, Sasol Gas and Spring Lights concluded the Administration Services Agreement, in terms of which Sasol Gas agreed to provide administrative support to Spring Lights, including making available certain published international and local energy price indices (such as crude oil, coal, electricity and other oil derivative prices) and economic data (such as GDP and inflation related data). These indices were not produced by Sasol, and were (and are still) obtainable independent of Sasol (although for a cost). Sasol Gas also agreed to assist Spring Lights to implement the price adjustments according to the price escalation mechanisms contained in the agreements between Spring Lights and its customers.

2.4 The Administration Services Agreement was used as a basis for the price adjustment administration assistance provided by Sasol Gas which arrangement is considered by the Commission to constitute a contravention of section 4(1)(b)(i), which Spring Lights does not dispute.

3. Complaint investigation and findings

3.1 The Commission initiated the complaint based on information received from a leniency application submitted in terms of the Commission's CLP on 30 October 2008 by Sasol on behalf of its subsidiary, Sasol Gas. The CLP applicant submitted information and supporting documentation which indicated that Sasol Gas and Spring Lights entered into a suite of agreements which contravened sections 4(1)(b)(i) and (ii) of the Act.



3.2 Prior to submitting the application for leniency, Sasol had made an application for a Marker in terms of Commission's CLP which was granted on 7 October 2008. The Commission initiated the complaint on 22 December 2008. In conducting its investigation of the complaint, the Commission consulted the Gas Regulator established in terms of the Gas Act.

3.3 The Commission conducted an investigation of the complaint as a result of which it found that Sasol Gas and Spring Lights Gas have:

3.3.1 engaged in conduct in terms of the Administration Services Agreement which resulted in a contravention of s 4(1)(b)(i) of the Act; and

3.3.2 entered into a suite of agreements which had the effect of dividing the piped gas market by allocating customers and territories in contravention of s 4(1)(b)(ii) of the Act.

4. Market allocation

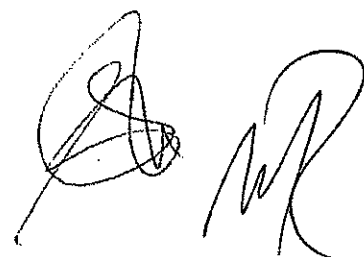
4.1 The suite of agreements between Sasol and Spring Lights dividing the market by allocating customers and territories are the following:

4.1.1 the Sale and Purchase of Business Agreement dated 1 July 2002 between Spring Lights and Sasol Gas;

4.1.2 the Shareholders Agreement dated 20 August 2002, between Sasol Gas Holdings and CEPR;

4.1.3 the First Gas Supply Agreement dated 1 July 2002, between Spring Lights and Sasol Gas;

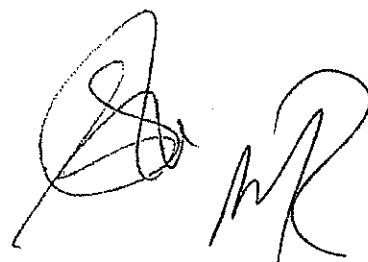
4.1.4 the Memorandum of Understanding dated 16 May 2006 between CEPR and Sasol Gas Holdings; and



4.1.5 the Second Gas Supply Agreement dated 22 August 2007, between Spring Lights and Sasol Gas.

4.2 In terms of the suite of agreements referred to above —

- 4.2.1 The portion of the Sasol Gas business which Spring Lights would acquire, which would be the business of Spring Lights (which could only change by unanimous resolution of the shareholders), was the business of selling gas in the Durban South region to a specified group of customers and potential future customers in that geographical area, to the exclusion of certain identified customers and certain categories of business and any geographical area which was not included in the sale of business.
- 4.2.2 Sasol Gas would supply gas to Spring Lights to enable Spring Lights to conduct its business, but subject to the restriction that Spring Lights could only buy gas from Sasol Gas and sell it to its customers (being the customers whose customer contracts it acquired in terms of the Sale and Purchase of Business Agreement) and to customers in the Durban South area. However, Spring Lights was restricted from selling to any customer which, to the knowledge of Spring Lights, on-sold the gas for consumption inside or outside of the territory specified in the supply agreement..
- 4.2.3 Through the Shareholders' Agreement, Sasol Gas Holdings and CEPR recognised that the business of Spring Lights would be restricted to the business purchased by Spring Lights in terms of the Sale and Purchase of Business Agreement and to future customers in the Durban South region (which customers, read together with the first gas supply agreement, were restricted to the pool of customers to whom Spring Lights could sell gas and the territory within which it could sell gas).

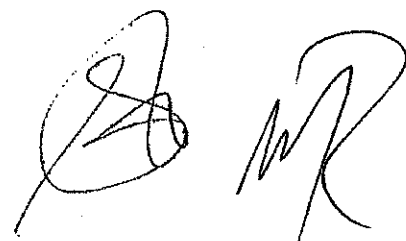
Two handwritten signatures are located at the bottom right of the page. The first signature is a stylized, cursive 'A' with a large loop. The second signature is a cursive 'MR'.

4.2.4 Sasol Gas Holdings and CEPR later concluded a memorandum of understanding to, *inter alia*, expand the potential customers to whom Spring Lights could sell gas purchased from Sasol Gas and to expand the territory within which Spring Lights could sell gas purchased from Sasol Gas. Consequently, a second gas supply agreement was concluded which had the effect of expanding the territory in which Spring Lights could trade, and Spring Lights' potential customer base, but still contained restrictions in that Spring Lights was limited to selling gas within the designated geographic area and was prohibited from selling gas within certain categories and to certain identified customers.

4.3 The suite of agreements referred to above was implemented by Sasol Gas, Spring Lights and CEPR and the parties acted in accordance with the terms of those agreements. Consequently, Sasol Gas and Spring Lights have entered into a suite of agreements which had the effect of dividing the market by allocating customers and territories of piped gas in contravention of s 4(1)(b)(ii) of the Act.

4.4 Spring Lights submitted a licence applications to the Gas Regulator (NERSA) in terms of the Gas Act on a basis consistent with the suite of agreements (particularly in relation to marketing areas) as set out in the suite of agreements.

4.5 The rationale behind these provisions was to foster BEE at the trading level of the gas supply chain by providing Spring Lights, as an empowered firm, with a customer base and assisting it to acquire the necessary expertise to develop and excel. Sasol Gas was of the view that if it had continued servicing this customer base, or offered to service potential future customers in the relevant Designated Geographical Area, Spring Lights would not have secured a foothold in the market. Consequently, Spring Lights has made an application to the Competition Commission to exempt the conduct permitted



in terms of these agreements, on the basis that it promotes the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive, in terms of section 10 (3)(b)(ii) of the Act.

5. Price-fixing

- 5.1 As described above, in terms of the Administration Services Agreement, Sasol Gas undertook to provide administrative assistance to Spring Lights. Such administrative support included making available pricing indices (consisting of independently sourced economic and energy-related time series data), which Spring Lights used to periodically adjust the price that it would charge to customers, and assisting Spring Lights to administer the price adjustment mechanisms contained in Spring Lights agreements with its customers. Sasol Gas was paid a service fee for maintaining a database of indices, generating forecasts for budgeting purposes, and ensuring the price adjustment intervals were complied with.
- 5.2 Given that Spring Lights was a new entrant in the gas market, it had no expertise in the industry or any personnel with the requisite skills or experience. The Administration Services Agreement was thus concluded in order for Sasol Gas to provide administrative assistance to Spring Lights – with the intention being that, in time and through the passing of skills, Spring Lights would become independent and would itself undertake the work envisaged in the Administration Services Agreement.
- 5.3 Pursuant to the agreement, Sasol Gas would receive information about the identities of the customers to whom Spring Lights sold gas and the extent of gas purchases by these customers from Spring Lights, and information regarding price increases to these customers.
- 5.4 Consequently, Sasol Gas and Spring Lights entered into an agreement, which had the effect of fixing the price of piped gas in contravention of s 4(1)(b)(i) of the Act.

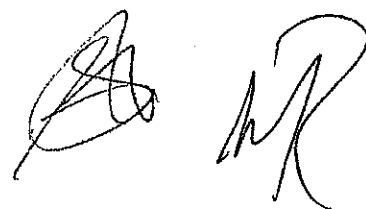


6. Admissions

- 6.1 Spring Lights admits the facts set out in paragraph 4 above and admits that it has entered into a suite of agreements which contravened section 4(1)(b)(ii) of the Act in those respects.
- 6.2 Spring Lights admits the facts set out in paragraph 5 above and admits that it entered into an agreement which resulted in a contravention of section 4(1)(b)(i) of the Act in those respects.

7. Agreement concerning future conduct

- 7.1 Spring Lights confirms that it has already put in place measures to prevent any conduct which could be misconstrued as price fixing. It has taken the following measures in this regard:
- 7.1.1 Directors of Spring Lights who were also active in Sasol Gas have resigned from the Board of Spring Lights;
 - 7.1.2 Sasol Gas no longer provides any administrative support services in terms of the Administration Services Agreement;
 - 7.1.3 Spring Lights has secured independent service providers to administer the pricing databases and analyse the economic data that drive the gas price adjustment mechanisms; and
 - 7.1.4 Spring Lights has made significant investments in implementing a new Enterprise Resource and Planning ("ERP") system so that it no longer needs access to Sasol Gas' SAP system for the purpose of administering the business.
- 7.2 In addition, Spring Lights agrees and undertakes:
- 7.2.1 to prepare and circulate a statement summarising the content of this Consent Agreement to its directors and shareholders within 30 days

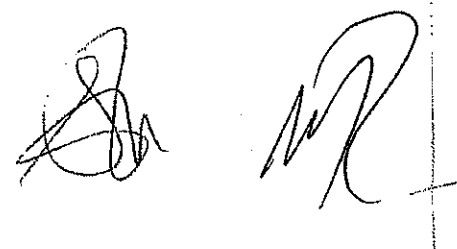


of the date of confirmation of this Consent Agreement as an order of the Tribunal;

- 7.2.2 not to enforce any of market allocation clauses contained in the suite of agreements or any other agreement or require any of the parties to the suite of agreements or any other agreement to abide by the aforesaid clauses, unless an exemption is granted by the Competition Commission;
- 7.2.3 to take necessary steps to procure the amendment of the suite of agreements or any other agreement to remove any market allocation clauses within 60 days of the confirmation of this consent agreement as an order of the Tribunal unless an exemption is granted by the Competition Commission;
- 7.2.4 to, refrain from engaging in price fixing and market allocation in contravention of sections 4(1)(b)(i) and (ii) of the Act; and
- 7.2.5 to develop and implement a compliance programme designed to ensure that its employees, management and directors do not engage in any conduct which constitutes a prohibited practice in terms of the Act, a copy of which programme shall be submitted to the Commission within 60 days of the date of confirmation of this Consent Agreement as an order of the Tribunal.

8. Administrative Penalty

- 8.1 Spring Lights is liable for an administrative penalty in terms of sections 58(1)(a)(iii), 59(2) and (3) of the Act in the amount of R 10.8 million (TEN MILLION AND EIGHT HUNDRED THOUSAND RAND). The administrative penalty represents 3% of Spring Lights' annual turnover for financial year ending 30 June 2008.

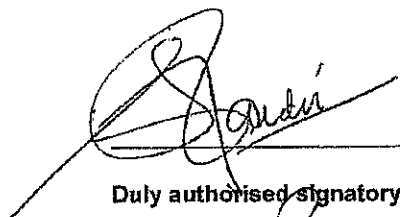


8.2 The administrative penalty will be paid by Spring Lights to the Commission within 60 days after the date of confirmation of this Consent Agreement as an order of the Tribunal. The penalty will be paid over by the Commission to the National Revenue Fund in accordance with the provisions of section 59(4) of the Act.

9. Full and final settlement

This Consent Agreement, upon confirmation thereof as a consent order by the Tribunal, concludes all proceedings between the Commission and Spring Lights, in relation to the contravention of section 4(1)(b)(i) and (ii) of the Act, investigated under the Commission's case number: 2009Jan 4212.

DATED at DURBAN on this the 17th day of AUGUST 2010.



Duly authorised signatory of Spring Lights (Pty) Ltd

DATED at 20 Pretoria on this the 20 day of August 2010.



Shan Ramburuth
Commissioner, Competition Commission

1

KAR

BEFORE THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: 52/CR/Aug10

CC CASE NO: 2009Jan4212

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

SPRING LIGHTS GAS (PTY) LTD

Respondent

**ADDENDUM TO THE CONSENT AGREEMENT BETWEEN THE COMPETITION
COMMISSION AND SPRING LIGHTS GAS (PTY) LTD IN RESPECT OF
CONTRAVENTIONS OF SECTION 4(1) (b) OF THE COMPETITION ACT NO 89 OF
1998**

The consent agreement between Competition Commission and Spring Lights Gas (Pty) Ltd ("the consent agreement") is hereby amended as follows:

1. Amendment of paragraph 1.16

- 1.1. The definition of "*piped gas*" in paragraph 1.16 of the consent agreement is hereby amended by substituting the definition of "*piped gas*" in paragraph 1.16 with the definition for "*gas*" that appears in section 1 of the Gas Act No. 48 of 2001, as amended.
- 1.2. The amended paragraph 1.16 of the consent agreement shall read as follows:



"1.16. "piped gas" means all hydrocarbon gases transported by pipeline, including natural gas, artificial gas, hydrogen rich gas, methane rich gas, synthetic gas, coal bed methane gas, liquefied natural gas, compressed natural gas, re-gasified liquefied natural gas, liquefied petroleum gas or any combination thereof;

2. Insertion of paragraph 7.2.6

2.1. Paragraph 7.2.6. is hereby inserted into the Consent Agreement.

2.2. The inserted paragraph 7.2.6 of the Consent Agreement shall read as follows:

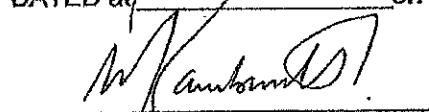
"7.2.6. to submit a draft of the compliance programme referred to in paragraph 7.2.5 above to NERSA."

DATED at WESTVILLE on this 30th day of JULY 2012.



Duly authorised signatory of Spring Lights Gas (Pty) Ltd

DATED at Pretoria on this 30 day of July 2012.



Shan Ramburuth
Commissioner, Competition Commission

BEFORE THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: 52/CR/Aug10

CC CASE NO: 2009Jan4212

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

SPRING LIGHTS GAS (PTY) LTD

Respondent

**SECOND ADDENDUM TO THE CONSENT AGREEMENT BETWEEN THE
COMPETITION COMMISSION AND SPRING LIGHTS GAS (PTY) LTD IN
RESPECT OF CONTRAVENTIONS OF SECTION 4(1) (b) OF THE COMPETITION
ACT NO 89 OF 1998**

The consent agreement between Competition Commission and Spring Lights Gas (Pty) Ltd ("consent agreement") is hereby amended as follows:

1. Amendment of clause 4.5

1.1. The following sentence is inserted at the end of clause 4.5:

"The exemption application was refused by the Commission on
24 February 2012."

1.2. The amended clause 4.5 of the consent agreement will read as follows:

"4.5. The rationale behind these provisions was to foster BEE at the trading level of the gas supply chain by providing Spring Lights, as an empowered firm, with a customer base and assisting it to acquire the necessary expertise to develop and excel. Sasol Gas was of the view that if it had continued servicing this customer base, or offered to service potential future customers in the relevant Designated Geographical Area, Spring Lights would not have secured a foothold in the market. Consequently, Spring Lights has made an application to the Competition Commission to exempt the conduct permitted in terms of these agreements, on the basis that it promotes the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive, in terms of section 10(3)(b)(ii) of the Act. The exemption application was refused by the Commission on 24 February 2012."

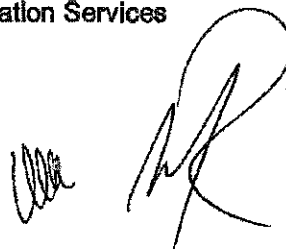
2. Amendment of clause 7.1.2

2.1 The following sentence is inserted at the end of clause 7.1.2:

"Spring Lights and Sasol Gas have signed an addendum to the Administration Services Agreement and Sale of Business Agreement effecting, amongst other things, the termination of the Administration Services Agreements. A copy of this addendum is attached to the Consent Agreement as Annexure "A",

2.2 The amended clause 7.1.2 of the consent agreement will read as follows:

"7.1.2 Sasol Gas no longer provides any administrative support services in terms of the Administration Services Agreement. Spring Lights and Sasol Gas have signed an addendum to the Administration Services Agreement and Sale of Business Agreement effecting, amongst other things, the termination of the Administration Services



Agreement. A copy of this addendum is attached to the Consent Agreement as Annexure "A";"

3. Insertion of clause 7.1.5

3.1. Clause 7.1.5 is inserted into the consent agreement.

3.2. The inserted clause 7.1.5 of the consent agreement will read as follows:

"7.1.5 Spring Lights and Sasol Gas have signed addenda to the Suite of agreements which effect the deletion or amendment, where appropriate, of the clauses of the Suite of Agreements identified in clause 4 of the Consent Agreement. Copies of these addenda are attached to the Consent Agreement as Annexures "A", "B", "C" and "D" respectively."

4. Amendment of clause 7.2.2

4.1 The following words are deleted from the end of clause 7.2.2:

"unless an exemption is granted by the Competition Commission;"

and replaced with the words:

"which clauses have, in any event, been deleted or amended, where appropriate;"

4.2 The amended clause 7.2.2 of the consent agreement will read as follows:

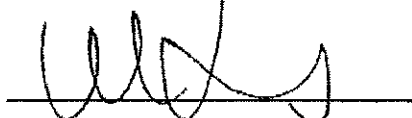
"not to enforce any of the market allocation clauses contained in the suite of agreements or any other agreement or require any of the parties to the suite of agreements or any other agreement to abide by the aforesaid clauses, which clauses have, in any event, been deleted or amended, where appropriate;"



5. **Deletion of clause 7.2.3**

5.1 Clause 7.2.3 is deleted in its entirety.

DATED at WESTVILLE on this 28th day of MARCH 2013.



Duly authorised signatory of Spring Lights Gas (Pty) Ltd

DATED at PRETORIA on this 3 day of April 2013.



Shan Ramburuth
Commissioner, Competition Commission