

The Supply of Domestic Bulk LPG

BP Comments on the CC's Remedies Working Paper

This paper sets out BP's response to the CC's remedies working paper issued in relation to its ongoing inquiry into the supply of domestic bulk LPG in Great Britain and Northern Ireland.

The comments provided below should be seen as being supplementary to those made by BP in its remedies paper submitted to the CC on 14 December 2005. Unless otherwise specified below BP's position on remedies continues to be that as stated in its December response.

The paper tracks the CC's description of the proposed remedies package at paragraph 351 of the remedies working paper.

(a) Tank transfer

- (i) a customer's right to request tank transfer;
- (ii) an incoming supplier's right to buy the existing tank from the outgoing supplier;

- **Right to purchase the outgoing supplier's tank:** BP welcomes the CC's proposal that incoming suppliers shall be given the right, but not the obligation, to buy the existing tank from the outgoing supplier.
- **Timing of incoming supplier's inspection of the outgoing supplier's tank:** BP welcomes the CC's proposal that incoming suppliers be given the opportunity to inspect the customer's tank prior to transfer. However, BP also notes that the CC is proposing that incoming suppliers will be required to notify the outgoing supplier as soon as possible after the customer has signed the agreement. This will mean that the customer's cooling off period could expire up to 14 days into the tank transfer process. BP is concerned that the incoming supplier will undertake a significant amount of work during the first two weeks of the tank transfer (e.g. document retrieval, review of tank documentation; planning of engineer's visit) which could be to no avail if the customer decides to remain with its existing supplier. Customer awareness of their ability to switch between competing LPG suppliers will increase as a result of the remedies being proposed by the CC. As such it is quite possible that the proportion of successful price defends will increase. BP notes that the CC's cost estimates for the tank transfer process do not appear to take into account the likelihood of such wasted costs incurred by "incoming suppliers" during aborted switches. In practice incoming suppliers will schedule their tank inspection after the expiry of the cooling off period. Given that incoming suppliers need to allow sufficient time to value the tank and (with the CC's new proposed remedy) negotiate the tank price with the outgoing supplier, the window of time available for a tank inspection will be limited. [] BP's position in relation to the cooling off period was previously stated in its December remedies paper. To summarise, []
- **Engineer's visits to customer premises:** BP remains concerned that the tank transfer process could require two separate visits by an engineer: (i) pre-transfer

inspection; and (ii) post-transfer visit to conduct invasive work such as pressure testing of pipe work and to fit BP's standard vessel kit. BP will also need to affix its own signage to the tank (e.g. BP branding, BP emergency contact number). This will increase the cost of the tank transfer process by approximately []. [] BP believes that other LPG suppliers would be placed under similar pressures. BP's position in relation to pre-transfer remedial work is explained more fully in its paper dated 14 December 2005.

- **Emergency work undertaken by the outgoing supplier post-transfer:** BP notes the CC's comments in relation to the liability issues of an incoming supplier performing maintenance work on a tank which it does not yet own. BP would also note that similar issues of legal liability could arise if damage or personal injury occurs when an outgoing supplier is performing emergency work on a tank which it no longer owns. []
- **Documentation:** BP agrees with the CC's proposal that the outgoing supplier should be obliged in all cases to provide the incoming supplier with the most recent test certificate for the tank and the Written Scheme of Examination. Where such documents exist, BP also agrees that the outgoing supplier should be obliged to provide the incoming supplier the pressure test certificate, the certification of design conditions, and any other documentation relating to the tank. BP continues to have concerns with the possible inconsistency in the manner in which the above documentation has been completed in the past but sees this as an opportunity for tank related documentation to become standardised. BP believes that the CC should encourage stakeholders to develop, in time, an industry wide Code of Practice for the consistent completion of tank documentation.
- **Changing the vessel dataplate:** BP does not envisage the vessel data plate being changed as this is a fundamental component of the vessel designed to stay with the tank for life – carrying as it does key technical and historical data for the tank.
- **Ownership of tank:** The CC refers to either the outgoing supplier or the customer as being the owner of the tank. []
- **Ownership of pipework:** BP notes the CC statement in relation to customer ownership of service pipework. BP is concerned that uncertainties surrounding ownership of pipework could result in delays in the tank transfer process. BP seeks clarification from the CC as to whether the purchase of pipework owned by the customer would also need to occur within the tank transfer deadline. []
- **Cost of the tank transfer process:** The cost estimates provided by BP in table 1 (para 132) were provided on the assumption that BP would carry out only one engineer's visit. Working on the assumption of two separate engineers visits the tank transfer process would become more expensive than physical tank transfer. BP has provided an updated assessment of the likely costs incurred by BP based on the revised package of remedies being contemplated by the CC. The CC will note that the need to carry out two separate visits will increase costs by approximately £[].

(iii) Incoming suppliers given the opportunity to negotiate a price for a tank with the outgoing supplier, but obligation on the outgoing supplier to sell for "backstop price" determined by methodology

- BP queries whether a period for negotiation of tank value is needed. BP believes that the CC's proposal of a backstop price will mean that, in practice, the incentive of either the outgoing or incoming supplier to negotiate a different price will be limited:
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(b) **Standardization of and improved information on the switching process**

(i)	Outgoing supplier obliged to confirm contractual status of switching customer within seven days;
(ii)	Suppliers to effect switches within 42 days;
(iii)	Switching charges levied by the outgoing supplier capped at zero;
(iv)	Provision of information on how to switch with contracts; on supplier's websites and on basis of a telephone call; and
(v)	Sending of a "wake-up letter" to customers on the expiry of any exclusivity period.

- BP does not have any further comment on these remedies.

(c) **Changes to customer contracts**

(i)	Notice periods of no more than 42 days;
(ii)	Exclusivity periods of no more than two years; and
(iii)	Waiving of remaining notice period where a switch is ready for completion before notice period has expired.

- For the reasons set out in its remedies paper submitted in December 2005 [].
- BP notes the CC's statement at paragraph 301 that "*Given that suppliers will be permitted to recover acquisition costs through upfront charges, the CC considers that there is no reason to differentiate between the maximum exclusivity periods for initial contracts and any contract extensions, so it considers that the same maximum exclusivity period should apply in both cases*". BP queries whether "contract extension" should read "extension of exclusivity" as the customer's LPG supply agreement will continue until termination by either party? For the sake of clarity BP requests that the CC confirm that, if the proposed remedies were implemented, this would mean that, upon the expiry of the initial 2 year exclusivity period, BP could agree successive periods of exclusivity with the customer lasting two years.

(d) **Changes to customer contracts**

(i)	Domestic bulk LPG suppliers to ensure that their trade associations provide on their websites and on the basis of a telephone call a list of suppliers, the areas they serve, and their contact details
(ii)	Domestic bulk LPG suppliers to include on their invoices a statement that further information on the LPG industry can be obtained on these websites and via those telephone numbers;
(iii)	Domestic bulk LPG suppliers to provide customers with quotes (subject to site visit) over the telephone and/or via their websites without previously visiting the site; and
(iv)	Domestic bulk LPG suppliers to provide on invoices the amount of LPG delivered in litres and the price paid in pence per litre.

- BP will work with the LPGA to ensure that the required information is made available on the LPGA website and via telephone. BP's preference would be for the telephone line to be manned during office hours and will communicate this to the LPGA.
- BP already provides on invoices the amount of LPG delivered in litres and the price paid in pence per litre.

(e) **Implementation of Remedies**

The CC therefore considers that the remedy package should not include a transition period of longer than six months.

- With the exception of health & safety the LPG industry is unaccustomed to regulation. There is no industry regulator and no standard process for introducing industry-wide changes. To avoid the possibility of conflict between the stakeholders, resulting in delay in the implementation of the remedies, BP believes that the CC or another independent third party (which probably excludes trade associations such as the LPGA) should be appointed to manage the implementation of the remedies. **To enable stakeholders to fully plan for the implementation of the remedies BP believes that the CC should provide guidance on this matter as soon as possible and certainly prior to the publication of their final report.**
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(f) **Scope of Remedies**

BP notes the CC's observations at paragraphs 342 to 350 as to the scope of the remedies. BP believes that the CC's remedies order will also need to be absolutely clear as to which bulk LPG customers the remedies will apply to. BP notes that the "reference goods" in the CC's revised term of reference is the bulk supply of LPG for domestic use. BP believes that this description is too broad for it to be incorporated into the order.

BP further notes the CC's conclusions in its provisional findings that:

- "there appears to be a reasonable argument that LPG suppliers delivering gas to fixed storage tanks for distribution by an intermediary [e.g. a housing estate association or mobile home park owner] fall within the ToRs where the gas is intended ultimately, whether directly or indirectly, for domestic use."
- "the supply by an LPG supplier to an intermediary park-owner of a leisure site probably does fall within the ToRs."

BP believes that the order will need to be clear as to its application to these types of customer. Moreover, BP believes that the following scenarios will also need to be addressed in the order:

- Sale to intermediaries (e.g. metered estates) who purchase LPG for resale to residents who include both domestic and commercial "residents";
- Customers whose premises are mixed use e.g. farms, B&Bs

As BP submitted in response to the OFT's original terms of reference it would clearly be inappropriate to define a domestic bulk LPG customer by reference to volume consumed.