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BY EMAIL AND POST

14 September 2007

Mr David Peel
Inquiry Secretary
Competition Commission
Victoria House
Southampton Row
London
WC1B 4AD

Dear Mr Peel,

Domestic Bulk LPG Inquiry: Competition Commission draft Order of 31 July 2007

I refer to Julie Hawes' email of 31 July enclosing a copy of the revised draft Order.

We believe that the latest draft Order is on the whole an improved document on the two earlier drafts and some of the concerns we had on the earlier drafts have now been addressed. For example, we welcome the clarification on the status of existing customer supply contracts when the Order becomes effective, as set out in paragraph 27 of the Explanatory Note. In our opinion, that paragraph and Articles 16.1, 16.2 and 16.3 of the draft Order accurately and correctly reflect the CC's intention in its Final Report. Although we would have preferred an amendment to Article 16.1 by the addition of the words *"…including any time expired before the date the Order becomes effective."* at the end of the sentence (as previously suggested), we believe that the clarification in the Explanatory Note has to a large degree eliminated the uncertainty we were previously concerned about.

We would make the following comments and would propose the following amendments to the draft Order.

Part I – Supply of domestic bulk LPG other than to metered estates

1. **Definition of "existing supplier":** In our opinion the current definition is limited. For example, it does not address any potential confusion arising over responsibility for the provision of emergency cover after the tank has been transferred. We would therefore propose amending the definition, with our suggested changes underlined:

"'existing supplier' means the <u>supplier</u> supplying the customer immediately before the customer proposes to switch to a new supplier <u>and having responsibility under article 8 for the provision of emergency cover up to 14 days after the date of purchase</u>"

2. **Article 6.2:** In the third line of the opening sentence, the word *"statement"* should read *"statement<u>s</u>"*

   On the second line of Article 6.2 (a), after the words *"technical and safety documentation"*, we recommend inserting the words *"(including, in the case of underground tanks, cathodic protection check records)"*. This is because it is the history of the cathodic protection check records that is important and not merely having a snapshot at the time the tank is transferred.

   In the same Article, there is reference to *"telemetry equipment"*. As telemetry equipment will not form part of any tank transfer, it is inappropriate for the new supplier to be supplied with any documentation relating to telemetry equipment. That said, we believe that is very important for the new supplier to be made aware of its existence if it is present. Therefore, we would suggest that the words *"its telemetry equipment"* be deleted and the words *"and confirmation of the existence of any telemetry equipment"* be inserted after the words *"or details of the tank's WSOE"*.

3. **Article 7.4:** The reference to Article 11 does not appear to make sense. We would suggest amending the wording to read as follows, with our suggested changes underlined: *"If the customer receives a notice from the new supplier under article 7.3, <u>then the provisions of articles 12 – 14 shall apply as if the provisions of article 11.1 had been satisfied."</u>*

4. **Article 7.5 (b) and definition of "signage":** As mentioned previously, it is important that the existing supplier's name is removed from the dataplate. We acknowledge the changes already made to the definition of *"signage"* in Article 2.1. We suggest one minor further change. Instead of *"a notice"* we would suggest saying *"<u>any</u> notice"*.

5. **Article 7.5 (c):** We suggest that the words "on or near to the tank" are deleted. This will ensure that the emergency notice on the emergency control valve (ecv) is also covered in the amended definition of *"signage"*.

6. **Article 7.6:** We suggest inserting the words *"(if applicable)"* after *"its pipework"* as the pipework will not necessarily be transferred with the tank. The pipework may be owned by the customer, in which case any transfer of it will be a matter between the customer and the new supplier.

7. **Article 8.1:** Following on from our suggested amendment to the definition of *"existing supplier"* in Article 2.1, the beginning of Article 8.1 can be amended to read *"The <u>new or existing</u> supplier….."*. Article 8.2 (a) is then no longer required (see below for the rationale).

In addition, on the second line, the words *"respond on the supplier's behalf"* should then read *"respond on that supplier's behalf"*.

8. **Article 8.2 (a):** There is scope for confusion here, particularly arising from the phrase *"providing the supply"*. At the time notice to terminate is given, the LPG will have been supplied by the existing supplier but, on termination (i.e. when the transfer has been effected), the person providing the supply is the new supplier (even though no supplies may yet have been delivered). In that situation, who would be deemed to *"providing the supply"* of LPG to the customer? Unfortunately, paragraph 18 of the Explanatory Note does not help to resolve this as the existing supplier is not "supplying" at the time the request is made. If the CC is not prepared to amend the definition of *"existing supplier"* in Article 2.1 or make our suggested changes to Article 8.1, then we would suggest that Article 8.2 (a) is amended to make reference to *"the supplier that last provided LPG to the customer."* The difficulty then is that it is conceivable that the supplier that last supplied LPG to the customer could be neither the existing supplier nor the new supplier. Hence, our preferred suggested amendments to the definition of *"existing supplier"* and Article 8.1.

9. **Article 11.1 (b):** We do not believe that a *"statement of tank ownership"* is relevant for tank uplift cases. Therefore, (b) should be deleted.

10. **Article 12.1:** In the opening sentence, the words *"of eligibility to switch"* should be inserted after the word *"statement"*. This is the defined term. Also, the references to *"7(4)"* and *"11(2)"* should be to *"7.4"* and *"11.2"*respectively.

11. **Article 13.1:** The phrase *"to the completion of the installation of a new tank"* should apply to both (a) and (b). We suggest removing this phrase from (b) and including it below before the words *"shall in both cases be….."*. Also, in (b) the reference to *"7(3)"* should be to *"7.3"*. Finally, the last line would read better if the words *"both cases"* are removed and replaced by the words *"each case"*.

12. **Article 15.1:** We would question how the new supplier would know when the existing supplier received notice, for the purposes of calculating the time limit for acquiring the tank? As we have previously pointed out, there is a lack of a "deemed received" provision which would address this point.

    Also, the words *"the period of time between"* in (a) should be removed and inserted in the opening line. Finally, the words *"the new supplier's acquisition"* in (b) should be removed and replaced by the words *"the date of purchase"* which is the defined term.

Part II – Supply of domestic bulk LPG to metered estates

13. **General comment:** As the CC itself acknowledges in paragraphs 39 and 40 of the Explanatory Note, some considerable practical problems will be experienced in relation to transfers of metered estate installations.

To take one example, it is unclear how precisely a residential park home is intended to be affected. The definition of a *"metered estate supplier"* in Article 23 is *"the supplier of domestic bulk LPG to a metered estate tank"*, meaning the LPG supply company and not the site owner. Therefore, on the face of it, a metered estate customer on a residential home park could not request a tank transfer of the supply company, as the customer has no contract of supply with the supply company. This appears to achieve the perverse result that it will be the site owner, and not the individual customers on the site, who will benefit from the Order. Whilst the site owner can "shop around" for alternative suppliers with greater ease, any resulting benefit could well be his and not that of individual customers. We therefore firmly believe that the relevant definitions in Part II require further consideration.

In the absence of further changes to Part II of the Order to address such issues, we believe that the industry itself (through the LPGA and ALGED) should draw up guidelines for suppliers, possibly in the form of a code of practice. We would fully support such steps and, if the rest of the industry were of a similar view, would be prepared to play an active part in formulating any such guidelines.

14. **Article 28.3:** Whilst we can understand that some aspects of the transfer of metered estates might be too complex for having detailed timing provisions, we do not understand why no time limit has been set down in this Article for the new supplier to inform customers of the tank transfer and to obliterate the signage of the outgoing supplier. In our opinion, wording similar to the wording in Article 7.5 should be used instead of *"as soon as reasonably practicable"*. Also, in (c) we suggest adding the following words at the end of the sentence, *"....and all appropriate meters."*

<u>Schedule 1 (tank above ground formula)</u>

15. **Para 1:** We suggest in the definition of 'd' that *"10-year test"* means *"<u>any in service</u> examination…."*. This is because, as we have previously pointed out to the CC, not all tanks are necessarily uplifted for testing at 20 years and an enhanced in service examination may be conducted instead. Accordingly, it would not be correct to assume that the price of the tank at this point should necessarily be determined by the cost of a *"20-year test"*. This will also mean that in many cases the price of the tank will be less than it would otherwise have been.

16. **Para 3:** We believe that it would be best if the OFT sets the value of 'b' in the first year of application of the tank valuation formula because of the current high fluctuations in the scrap steel market. £10 is, for example, too low at the moment.

<u>General points</u>

17. **Notices:** There needs to be some clarification on written notices. We do not believe that notices by email or fax should be regarded as being sufficient. We are concerned that an email or a fax could be sent to a company, become lost and not

acted upon within the strict time limits set down by the Order. Notices should be sent by post to a centralised address. Without such a stipulation, we fear that disputes will arise unnecessarily.

18. **Tank valuation formula:** The formula for valuing tanks makes several references to the calculation of average prices without saying how this will be done and by whom. We believe this should be clarified in the relevant schedules.

If you require any clarification of any of the above comments or suggested drafting changes, please let me know.

Yours sincerely,

Clive Whorton
Solicitor
Company Secretary

Cc. Ms Cathryn Ross
Director of Remedies & Business Analysis