

COMPETITION COMMISSION INQUIRY INTO THE
DOMESTIC BULK LPG MARKET

Calor's response on the Competition Commission's Remedies
Working Paper

Appendix 2 to Howard Kerr's letter to Peter Freeman of 23 March 2006

<i>Title</i>	Calor's Comments
<p>TANK TRANSFER <i>(paragraphs 20 – 238)</i></p>	
<p><i>Paragraph 22</i></p>	<p>1 The Competition Commission states that “the tank transfer remedy would substantially reduce the inconvenience faced by customers switching supplier” and reduce costs. Calor does not accept this line of reasoning, on the grounds already explained at length, because:</p> <ul style="list-style-type: none"> (a) the evidence does not support the inconvenience argument; there is a large number of uplifts and replacements of tanks each year for maintenance purposes as well as for switching that do not result in complaint. The majority of these uplifts for replacement purposes will continue even if the tank transfer remedy is introduced. Approximately [excised] tank uplifts from domestic premises occur each year with virtually no customer complaints and so, contrary to what the Competition Commission appears to believe, tank uplift is not inconvenient and indeed is routine. (b) the cost of switching would not be materially different under a tank transfer regime. The only analysis which Calor has seen is of course that which it has provided in the Appendix to Howard Kerr's letter on 23 September 2005 (<i>Addendum 2 of the Annex to Appendix III</i>) and it has seen no evidence to support the view that a tank transfer regime would in practice be materially cheaper, and indeed it could well be more expensive, particularly when the costs of set-up, the costs of internal, financial and administrative arrangements, and the costs of potential disputes are factored in. (c) the Competition Commission is perfectly capable of capping the costs of switching to customers and indeed is proposing to do so in the context of tank transfer. We do not understand why this could not equally be done in the case of tank uplift.
<p><i>Paragraph 23</i></p>	<p>2 Calor feels that here, as elsewhere (for example in <i>paragraphs 320 and 321</i>) the Competition Commission may not have fully grasped the distinction between an individual bulk tank on a customer's premises and a metered estate where the bulk tanks are in a separate compound under the supplier's control away from any individual customer's premises. Calor was not consulted on the issue of transfer of tanks on</p>

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	<p>metered estates and there are some very specific problems, not least that many of these installations fall outside the standard domestic sizes and configurations. This alone makes them unsuitable for the “simple” valuation approach suggested for example in <i>paragraph 52</i>, leaving aside the questions of fittings and equipment. In addition, if the main purpose of tank transfer on the part of the Competition Commission is to avoid the alleged inconvenience to customers (with which, for reasons already explained, Calor does not agree), this problem does not exist on a metered estate where the tanks are remote from the customer's property. Calor would in any event ask the Competition Commission to clarify precisely what it means by a “metered estate” in this context. (As to the appropriateness of the inclusion of metered estates, please see paragraphs 7 – 9 of Howard Kerr's letter of 23 September 2005.)</p> <p>There are many complexities involved in transfer of such piped systems. Calor would be pleased to discuss these issues in depth with the Competition Commission if it would assist.</p>
<p>What is to be transferred? <i>(paragraphs 25-35)</i></p>	
	<p>3 We consider Figure 1 to be misleading and not representative of the industry. Most suppliers will retain ownership only up to (and including) the 2nd stage regulator. We suggest the shaded area is reduced to reflect this. For the minority of installations where the supplier does own the pipework, the text in <i>paragraphs 26 to 30</i> should be amended to cover this.</p>
<p><i>Paragraphs 26-28</i></p>	<p>4 In the first sentence of <i>paragraph 25</i>, we believe including the phrase in parenthesis “(including the emergency control valve)” is not factually correct in the majority of cases. As stated above, in the majority of installations this would be owned by the customer.</p> <p>5 In <i>paragraph 26</i> the last sentence is ambiguous as it could imply that whilst Calor does not own the pipework it does own the emergency control valve.</p>
<p><i>Paragraph 29</i></p>	<p>6 Calor cannot trace having been consulted about the content of <i>paragraph 29</i> on any previous occasion. Calor would observe that if the Competition Commission is trying to create a clear and simple modus operandi for the tank transfer regime, the content of <i>paragraph 29</i> is neither clear nor simple. To add such negotiations with the customers</p>

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	<p>as set out in <i>sub-paragraphs 29 (a) and 29 (b)</i> merely confuses the issue. If <i>paragraph 29(a)</i> were omitted nothing would be lost subject to the following comments. Calor believes the key objective here is ensuring that the pipework is safe and fit for service. It is important that in a tank transfer, the ongoing ownership of the service pipework is clear to the incoming supplier and customer but this is a subsidiary point to the pipework's integrity.</p> <p>We have previously argued that a benefit of the existing system is that the incoming supplier must test the service pipework by undertaking a pressure drop test before re-connecting the new tank. We have also argued that under the obligations of the GSIUR's an incoming supplier would still have to do this as a result of carrying out functionality tests to the regulators' safety controls. A clear statement of this requirement in the remedy or its inclusion in an Approved Code of Practice would remove any ambiguity.</p> <p>Returning to the subsidiary point of ownership, we believe the only issue is the circumstance where the outgoing supplier owns the service pipework. This of course is no different to the existing situation where tanks are exchanged and to Calor's knowledge has not proved an obstacle to switching.</p> <p>In conclusion, the key issue is whether the pipework is safe to supply into. All other matters are a private issue between the supplier and the customer.</p> <p>7 The Competition Commission should bear in mind that whilst pipework may be an asset where it is paid for and owned by the supplier, it also carries significant liabilities for maintenance and safety. This means that an incoming supplier is not going to want to buy pipework which is not normally their responsibility; but the outgoing supplier in those circumstances will want to be compensated for the loss of its asset. This merely underlines the reason why the valuation methodology needs to be so precise that there is absolutely no room for disputes, which could gravely undermine the tank transfer remedy. The HSE appears to recognise that pipework is an issue (<i>paragraph 27</i>) but, apart from a general comment in <i>paragraph 30</i>, there is no indication or guidance on how it intends to resolve the matter.[excised], Calor does not own the pipework and would not wish to buy it.</p>
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Tank valuation <i>(paragraphs 36 – 94)</i>	
<u>Overall Approach</u> <i>Paragraphs 36 – 50</i>	<p>8 The Competition Commission contends that “in order to be effective, the valuation methodology must be simple, robust and easy to use” <i>(paragraph 52)</i>. In particular, the Competition Commission believes that it will be sufficient to calculate base prices for tanks and fittings for underground and aboveground tanks of different capacities <i>(paragraph 62)</i>.</p> <p>9 Calor has argued that “to achieve this [a robust tank transfer system], it [the tank valuation methodology] would have to be detailed and prescriptive” <i>(paragraph 12.i. of Calor's letter to John Banfield of 18 January 2006)</i>. The Competition Commission rejects this view and states that the complexity of Calor's proposed valuation methodology would render tank transfer an ineffective remedy <i>(paragraph 59)</i>.</p> <p>10 The Competition Commission's provides three main reasons for this conclusion:</p> <p>(1) The three other major suppliers envisaged a much simpler methodology than the one outlined by Calor <i>(paragraph 58)</i>.</p> <p>(2) The Competition Commission is concerned that Calor's approach would result in many more tables for suppliers to agree upon, and this would reduce the chances of it being effective <i>(paragraph 59)</i>.</p> <p>(3) The Competition Commission believes that Calor's approach would be mechanistic and not allow suppliers the freedom to negotiate transfer prices <i>(paragraph 59)</i>.</p>
<u>The risk of valuation errors</u>	<p>11 In relation to points (1) and (2) above, Calor has, on a number of occasions, described to the Competition Commission the consequences of getting the price of tanks wrong –“undervaluing tanks and their fittings,...would be unfair to outgoing suppliers and distort the operation of the market” [excised]</p> <p>12 Calor has argued that “...the actual condition of the tank...will depend...on the circumstances in which the tank is located and operates, the frequency of its use etc. and the standard of maintenance. Even new tanks vary in quality” [excised] The Competition Commission appears to agree with this, acknowledging that there “...may be differences in the quality of various tanks and fittings and that the tank transfer remedy should not provide suppliers with a</p>

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	<p>disincentive to buy good quality tanks and fittings" (<i>paragraph 68</i>).</p> <p>13 Valuation errors give rise to two types of risk:</p> <p>(a) the incoming supplier is exposed to the risk that the condition and the quality of the tank is below average, but they purchase the tanks at a high price based on a high quality tank (i.e. the backstop price is too high); and</p> <p>(b) the outgoing supplier is exposed to the risk that the condition and the quality of the tank is above average, but they are obliged to sell the tanks at a price based on a low quality tank (i.e. the backstop price is too low).</p> <p>14 The significance of these types of valuation error depends on the accuracy of the valuation methodology. The Competition Commission does not appear to have tried to quantify the likely impact of any errors, or the consequential impact on investment incentives, maintenance, or the financial position of different suppliers.</p>
<p><u>The relevance of negotiations</u></p>	<p>15 In relation to point (3) above (<i>our paragraph 10(3) above</i>), the aim of Calor's methodology was to avoid the need for negotiations by ensuring that the transfer price reflected the true replacement cost of the installed tank as closely as possible. It would, however, be straightforward to allow for a short period of negotiation in Calor's proposal if the Competition Commission thought that this was desirable.</p> <p>16 Calor believes that the impact of the pre-transfer negotiations will be very small. In practice:</p> <ul style="list-style-type: none"> • the incoming supplier will never agree to pay more than the backstop transfer price, but can be expected to seek a reduction; • the outgoing supplier would only be prepared to contemplate transferring the tank at a price below the backstop price if (a) this is more profitable than retaining and uplifting the tank, and (b) if this was necessary to persuade the incoming supplier to take over the tank in situ. <p>17 Accordingly, negotiations between the outgoing and incoming supplier can only ever (if at all) be expected to result in a transfer price below the backstop price. Whilst this may in theory stimulate tank transfers if</p>

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	<p>the backstop price is too high, it does not provide the outgoing supplier with any protection against expropriation if the backstop price is too low.</p> <p>18 The power of negotiation does rest with the incoming supplier as it can always install its own tank, if it considers the backstop price to be too high for a particular installation. This would be the economical stance if the incoming supplier was of the opinion that the condition of the tank was such that increased maintenance meant the actual value of the tank was lower than the backstop price.</p> <p>19 Therefore, the backstop price has to be calculated fairly and accurately to protect the interests of the outgoing supplier, as it does not have the power to walk away from the transaction as in normal commercial negotiations. Consequently, it is imperative that the Competition Commission's and the OFT's calculations of the backstop price is as accurate as possible in order for proposed tank transfer remedy to be practicable and equitable. The simplification of the methodology results in a simple but less accurate tank value that may result in fewer tank transfers as incoming suppliers choose to install their own tank instead of purchasing the outgoing supplier's tank.</p> <p>20 Unless and until the Competition Commission publishes its proposed backstop prices, suppliers cannot comment on the commercial impact and proportionality of the remedy.</p> <p>21 In practice, we believe that the scope for negotiation will be limited under the proposed tank valuation methodology (<i>paragraph 50</i>). Under the proposal once a backstop price has been reached the outgoing supplier will be obliged to sell. It is unlikely that the incoming and outgoing suppliers will be willing to negotiate a lower or higher price than the backstop price. Allowing for negotiation will increase industry costs and will lead to delay in effecting a smooth transfer. The principal aim of the tank transfer remedy is to facilitate switching by the customer consumer who has no interest in the tank price agreed between the suppliers.</p>
<p><u>Calor's recommended methodology</u></p>	<p>22 It is essential that the calculation of the backstop price reflects the true replacement cost of the installation to ensure that the tank transfer remedy is effective and this avoids the risks of disputes and market distortion for both suppliers.</p>

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<p><u>Maintenance of the valuation tables by the OFT</u></p>	<p>23 The Competition Commission has dismissed Calor's recommendation for a more detailed tank valuation table system as over complicated and not easy to use. In fact, Calor's valuation methodology is not very different from the approach adopted by the Competition Commission, it is merely more prescriptive .</p> <p>24 Whilst Calor accepts that the initial set-up of its proposed methodology may appear complicated through the use of multiple tables and would take longer to set up, it firmly believes that once set up the proposal would be simple to use and would benefit the LPG industry as fairer tank transfer prices would be calculated with fewer disputes arising between suppliers. In addition, being able to obtain a fair price is crucial if more switches by tank transfer are going to happen.</p> <p>25 Simply because the calculations in Calor's system are detailed does not necessarily mean that the suppliers will be faced with complex tables that are difficult to understand and use. Suppliers could interrogate many tables of data via an easy to use user interface.</p> <p>26 The updating of the tables is believed by the Competition Commission to "represent an extensive exercise that would involve significant costs" (<i>paragraph 61</i>). Its own <i>paragraph 66</i> negates this by suggesting annual adjustments of the valuations in accordance with pre-set indices and recalculations by the OFT every 3, 4 or 5 years. There is no reason to suggest that this would not be a complex exercise. Moreover, the Competition Commission also suggests in <i>paragraph 90</i> that the OFT should re-assess the 10 and 20 year test costs. There is a contradiction in the Competition Commission's reasoning.</p> <p>27 The Competition Commission proposes that the maintenance of the valuation tables will be the responsibility of the OFT (<i>paragraph 66</i>). We assume that the cost of the OFT maintaining the tank tables will not be passed on to suppliers and that it will be wholly administered and funded by the OFT. However, we would welcome the Competition Commission's confirmation. If it is to be funded by the suppliers, this is a further cost to be factored in to the tank transfer proposal.</p> <p>28 For the tables to be accurate it is essential that the relevant person in or acting on behalf of the OFT has knowledge of the LPG industry. In addition Calor has noted that it is proposed that the tables will be updated every five years and for the intervening years that prices will be increased by the steel price index or RPI. The Competition</p>
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	<p>Commission should recognize that, although in principle this may be an adequate method of calculating prices annually, in practice we believe that a five yearly revaluation is not frequent enough. Calor's experience suggests prices should be rebased every three years (<i>see our paragraph 29 below</i>).</p> <p>29 In our opinion, prices should be reviewed annually to ensure they are still accurate even if no adjustments are made to the base prices.</p> <p>30 In addition, Calor does not understand why the Competition Commission considers that test costs should be indexed based on steel prices and not RPI. Tests are undertaken by engineers whose costs would be determined by labour costs not steel costs.</p>
<p><u>Tank maintenance and quality incentives</u></p>	<p>31 The Competition Commission suggests that suppliers will have an incentive to buy "good quality" tanks by ensuring that the base prices used in the tank valuation methodology are based on the "replacement cost of good quality tanks and fittings" (<i>paragraph 68</i>). The argument here is that the incoming supplier will seek to negotiate a lower price if the tank is below average quality. This assumes, however, that incoming suppliers will be able to assess properly including by examination the condition of tanks.</p> <p>32 There is an opportunity for suppliers to install low quality and low value fittings in the anticipation that they will benefit from the average base cost being based on higher quality fittings should a tank transfer occur in the future. This will ultimately reduce the incentive for suppliers to invest in good quality fittings, inevitably resulting in a reduction in safety standards as poorer quality fittings are used in tank installations.</p> <p>33 In <i>paragraph 68</i> the Competition Commission states that "the base prices used in the tank valuation methodology are based on replacement cost of good quality tanks and fittings". "Good quality tanks" can be interpreted to mean that the suppliers can take a subjective view; how does the Competition Commission define quality materials or tanks? If tank valuation is to work effectively then an acceptable listing of the tanks and all the tank fittings, PRVs, regulators, UPSO/OPSO devices etc. and the standards to which they conform must be used as the basis of all value calculations.</p>

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	<p>34 The Competition Commission has acknowledged that there are various qualities of tank in the LPG market (<i>paragraph 68</i>), however it proposes to value all tanks on the basis that they are “good quality tanks”. With reference to <i>paragraph 67</i>, as Calor has mentioned to the Competition Commission on a number of occasions, its experience is that the quality of domestic tanks varies considerably from supplier to supplier. [excised] In our view, to value all tanks on the basis that they are “good quality tanks”, as the Competition Commission proposes, will make the tank transfer system ineffective as an incoming supplier will not want to pay a good quality price for a poor quality tank. Instead, it will choose to uplift the tank and install its own. [We firmly believe that the over simplistic view of tank valuation taken by the Competition Commission will result in tank transfer being an impracticable remedy.]</p>
<p><u>The depreciation profile of tanks and fittings</u></p>	<p>35 The Competition Commission proposes that the valuation of tanks should be based on a 60-year lifespan (<i>paragraph 76</i>). Calor is unsure how this lifespan was determined after submissions from suppliers stating that a 20 – 50 year lifespan would be more appropriate. It should be noted that the tank manufacturer referred to by the Competition Commission was also unsure how long a tank would remain in service.</p> <p>36 There is no evidence to support the Competition Commission suggested asset life of 60 years. In particular, differences in level of refurbishment/maintenance activity on a tank will significantly affect its longevity. The extent to which a long asset life will adequately address such differences is questionable – it something that is likely to vary tank by tank.</p> <p>37 If differences in quality are not reflected in tank transfer prices, it is likely that there will be some tanks that are significantly overvalued and some tanks that are significantly undervalued. [excised]Calor has explained to the Competition Commission that it does not believe that a “you win some, you lose some” approach will work [excised].</p> <p>38 In fact, the Competition Commission acknowledges that “it [is] appropriate to take account of the cost of maintenance in valuing the tank” (<i>paragraph 84</i>). The Competition Commission does not, however, indicate how it intends to take account of the cost of maintenance when valuing the tank. This may be particularly problematic in relation to the ten and twenty year test, where the Competition Commission has found that the cost of the test differs between suppliers.</p>

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	<p>39 The Competition Commission has also suggested that a 60 year asset life should also be applied to the tank fittings. Similarly, there is no evidence to support the proposition that the asset life of tank fittings is the same as tanks. In fact, some fittings only have a maximum life span of 10 to 20 years (e.g., the valves, gauges and hydrostats).</p> <p>40 The implication is that for those fittings that have not been replaced, a 60 year asset life will be very likely to over value them and for those fittings that have been replaced (after 10 or 20 years), a 60 year asset life may under or over value them.</p> <p>41 There are particularly serious issues for Calor in connection with a 60 year lifespan concerning the tax implications. Please refer to the comments on <i>paragraph 364</i> below.</p>
<u>Bringing standards up to date</u>	<p>42 The Competition Commission's valuation methodology approach does not appear to address the problem referred to in <i>paragraph 47</i>, of tanks being transferred that are not of a standard required by the current safety and technical standards. The issue of who should pay for the tank to be brought up to today's current industry requirements was discussed but no conclusion was reached.</p> <p>43 This issue has the potential of becoming very contentious between suppliers and of making tank transfer impracticable in a substantial number of cases based on our experience. [excised]</p>
<u>Telemetry</u>	<p>44 The Competition Commission states that the cost of telemetry will not be included in the installation transfer price.</p> <p>45 [excised]</p>
<u>Installation Base Cost</u>	<p>46 The Competition Commission proposes that the base cost of an installation is to be determined by the replacement cost of those assets (<i>paragraph 64</i>).</p> <p>47 In <i>paragraph 60</i> the Competition Commission implies that only six tables would be required based on the evidence of one tank manufacturer which currently only supplies six types of tank for domestic use in the UK: above ground tanks of 600kg, 1000 kg and 2000kg and underground tanks of 600kg, 1000kg and 2000kg.</p>

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	<p>48 In light of the evidence from one manufacturer the Competition Commission is recommending that the different base prices should be based on capacity or whether the tank is above ground or underground and that only “as few as six tank categories” will be required (<i>paragraph 60</i>).</p> <p>49 We believe this proposition to be a gross oversimplification for the following reasons:</p> <ul style="list-style-type: none">• This is the evidence of one tank manufacturer.• These are the tanks that they currently sell. Many tank variants are currently in use in the domestic bulk market that are no longer sold. For example, the 380 litre tank (used singly or pairs) is currently not stated as a potential tank type in the Competition Commission's quoted example – Calor have over of these tanks in use today.• The many different variations made by a number of different manufacturers over the last 20 years and still in the market.• These tank sizes do not include tank sizes used in metered estates.• Calor has circa different tank types in operation today, of which around [excised] are used at domestic premises.• [excised]where Calor described a possible valuation method, it explained in detail why tanks of the same nominal size would have the different values. These include such factors as:<ul style="list-style-type: none">• the tank's design pressure rating,• whether it is “dumpy” or of “standard” length,• whether its liquid withdrawal valve is mounted on the top or the bottom of the tank,• the type of float gauge screws,• the type of relief valve system fitted to the tank.All these factors materially affect the value of the tank hence our more complex valuation method. <p>50 The Competition Commission believes that the cost of maintenance should be included in the value of the tank (<i>paragraph 84</i>) . For the</p>
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	<p>purpose of clarification, it needs to be understood whether the 10 year and 20 year tests or other maintenance costs are included.</p> <p>51 Calor would like to emphasise that only the cost of the ten year and twenty year tests that re-life the asset should be included in the value of the tank. The cost of periodic maintenance such as repainting should not be included when valuing the tank.</p> <p>52 That aside, maintenance costs will vary by supplier and are therefore not consistent across the industry. In our opinion, it is not feasible to suggest that incoming suppliers will accept maintenance costs that are higher than they themselves experience. Therefore, the methodology should have the ability to cope with different types of test.</p>
<u>Fittings Base Cost</u>	<p>53 [excised], Calor gave a brief rationale for the need for sufficient tables to be taken into consideration when calculating the base cost of an installation. As the Competition Commission appears to have dismissed this rationale, we believe it is appropriate to reiterate here why the factors we mentioned [excised] meeting need to be taken into account when calculating the total installation cost.</p> <p>Our approach was based on a “best case scenario” installation. For example for an above ground tank installation, the tank, pipework and fittings:</p> <ul style="list-style-type: none">would have a future market;were of a design pressure such that it could be painted green or white;could be degassed and removed for maintenance using standard lowest cost methods;the fittings were such that they could be maintained efficiently and at minimal costs;the tank hood could be replaced in situ;the tank had a satisfactory siting;would be in a condition that required the lowest cost repainting solution;for pipework and fittings – ownership, age, condition and type would need to be considered; andtables would be available to decrease the value of an installation not meeting the “best case criteria”.

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	<p>For example, for two, nine year old installations, identical except that one tank that did not have a relief valve adaptor and the other one did. The one without the relief valve adaptor would have a lower value than the one that did because at ten year when the relief valve needs to be changed, the one with the adaptor can be changed in situ without decommissioning the tank (the cost to Calor for this operation would be circa)[excised]. The one without a relief valve adaptor would either have to be decommissioned on site and changed or exchanged for a new /refurbished tank (both options would cost in excess of)[excised]. In this example, although the tanks were identical the value of them to the incoming supplier is clearly different.</p> <p>54 Calor would reiterate that for a tank transfer system to be an effective remedy an accurate and fair valuation of a tank installation is necessary. Accordingly, the above factors are essential factors to be taken into account in calculating the value.</p> <p>55 Although tanks are often supplied with fittings, there are different specifications of fittings in the market. [excised] Likewise, it is not every supplier that installs an UPSO/OPSO valve. If these are not included then the overall value of the tank will be lower. Fittings such as these have to be separately scheduled.</p>
	<p>56 The Competition Commission refers to the first-stage regulator and appear to assume that the second-stage regulator is the same price whereas it is more; and the two regulators plus the relevant kit come to [excised]</p>
<p><u>Condition of tank and tank life</u></p>	<p>57 The simple tank valuation methodology used by the Competition Commission does not take into account the need for an assessment of the condition of the installation. Calor has emphasised in many submissions, including [excised], the requirement to factor in the installation's overall condition in order to determine its value. (It should be noted that this condition factor is supported by the tank manufacturer that the Competition Commission is relying on to support its proposal for only six tank categories to be used. The tank manufacturer has stated that it is not possible to calculate the life expectancy of a tank as the actual lifespan depends on the circumstances in which it was kept (<i>paragraph 75</i>). Therefore, omission of a condition factor in the valuation methodology will result in many tanks being valued incorrectly.</p>

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	58	There is an overall problem with factoring tank condition into a tank installation valuation. If an incoming supplier states that the tank installation is in a poor condition, the incoming supplier must either provide undisputable photographic evidence to the outgoing supplier showing that the tank is indeed in poor condition, or the outgoing supplier will have to send an engineer to verify the incoming supplier's claim. In any event, a more prescriptive methodology will avoid potential disputes.
Tank transfer process (<i>paragraphs 95-140</i>)		
<u>The beginning of the transfer process</u> (<i>paragraphs 95-107</i>)		
<i>Paragraph 103</i>	59	The Competition Commission needs to make allowance for the fact that if a contract is found, the transfer will be cancelled and the outgoing supplier will continue to supply...
<i>Paragraph 107</i>	60	The words "as soon as reasonably practicable" at the end of this paragraph are too lax. For the customer's benefit, it should be an obligation on the incoming supplier to forward the notification of termination immediately it is received.
<u>Provision of documentation</u> (<i>paragraphs 108-114</i>)		
	61	Calor's original list of documents to be provided better reflects the reality of what is supplied with a tank, namely : - original manufacturer's certificate; - any certificates relating to modifications to the tank; and - tank testing certificates. (As noted in [excised], this list does not represent the entirety of the examination which the incoming supplier would have to undertake.)
<i>Paragraph 111</i>	62	In most cases, original documents will not be provided as they may well be imaged from computer records.
<i>Paragraph 113</i>	63	Calor considers that there are inaccuracies in this paragraph.
	64	The information credited to the HSE is contrary to the advice and

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	<p>guidance given by the HSE to the industry in the past as documented in the current version of LPGA Code of Practice 1 Part 3, endorsed by the HSE. This states that the PSSR do not include domestic installations but there is an industry recommendation to include them within a WSOE. Calor understands that many smaller suppliers do not have their domestic tanks covered by a WSOE. This emphasises why a physical examination by a competent person would be essential.</p> <p>65 In addition, the paragraph refers to “any missing information [being] put together by an engineer”. It is not specified whether this would be the engineer of the outgoing or incoming supplier and it is unsatisfactory that this burden should not be identified at this stage.</p>
<i>Paragraph 114</i>	<p>66 Firstly, the Competition Commission needs urgently to confirm their specification of a document to be provided as referred to in the final sentence. Secondly, as indicated in Calor's response on <i>paragraph 108</i>, rewording is required to reflect the reality of the documents which can be provided. Calor has stated, [excised] that about [excised]of the relevant certificates are not available where there have been tank acquisitions. It may well be that for other suppliers with a large tank population they have acquired this percentage could be higher. This will be a regular occurrence and the Competition Commission should state clearly how this real situation is to be dealt with.</p>
<i>Paragraph 118</i>	<p>67 Calor explained [excised] that the requirements in LPGA CoP Part 1 Section 9 relate specifically to the tank as required under the PSSR. They do not deal with the safety devices, regulators, pipework or emergency control valves etc. Calor's position is accordingly being misrepresented here. It is necessary to undertake an inspection not only to ensure the fitness for purpose of the tank, but also the safety relief device, regulators, pipework, emergency control valve etc. before supplying it with gas as required under both the PSSR and the GSIUR..</p>
<i>Paragraph 120</i>	<p>68 The Competition Commission has failed to make reference to the impossibility of obtaining warranties or insurance against criminal penalties, which is a vital element of Calor's reasoning on this point. [excised]. Also, [excised], the legal advice available to Calor suggests that exclusion of all warranties would be unenforceable. We do not believe that the Competition Commission should or indeed could prescribe warranties but that these should be left to negotiation.</p> <p>69 In addition, Calor would again place on record that a “paper</p>

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	<p>transaction” is in all circumstances inadequate. No prudent person would suggest that a commercial vehicle or commercial building should be acquired without proper inspection; a fortiori in the case of a safety sensitive piece of equipment in the nature of a dedicated pressure vessel with its associated fittings, pressure regulating and safety critical equipment and containing a hazardous substance. There is in fact an inaccuracy in <i>paragraph 116</i>, which states that fittings, pressure regulating and safety critical warranties would only apply as to the condition of the tank at its last examination. As a matter of law, unless expressly otherwise agreed, an express or implied warranty under SOGA applies to the condition of the goods being sold at the time the contract was made. Of more concern to Calor is the fact that, with the Competition Commission considering that the outgoing supplier should not be obliged to supply any warranty, it is effectively endorsing the exclusion of the SOGA implied terms. The courts will ultimately decide whether that exclusion is reasonable, but the mere fact that the Competition Commission has endorsed the exclusion will tend to bolster the argument that it is. In the absence of warranties, there is an even greater reason why it is essential that a tank and its associated fittings, pressure regulating and safety critical equipment should be properly examined before purchase.</p>
<p><i>Paragraph 122</i></p>	<p>70 Calor considers that instead of “one week” the timescale should be 5 working days so that there can be no argument, for example in the case of holiday periods.</p>
<p><u>Examination by the incoming supplier</u> (<i>paragraphs 123 – 125</i>)</p>	
	<p>71 Calor is concerned that the Competition Commission has placed far too much reliance on the HSE’s evidence in this inquiry. [excised]. For this reason, it is wrong for the Competition Commission to base its conclusions on the views of the HSE. In addition, the evidence [excised] does not support the interpretation that the HSE “said clearly” that an incoming supplier did not necessarily need to examine [excised]. Calor would also pose the following question: in the event of paper based transfer where the papers appear to be in order, but there was subsequently a serious accident due to a defect that would or should have been spotted by a competent inspector (had an inspection been carried out) would the HSE say that the incoming supplier would satisfy the due diligence test in any resulting prosecution? This is a critical issue from the point of view of public safety, and Calor regards it as wholly inadequate that there should not be an open discussion of</p>

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	<p>its concerns with the HSE – something which it has twice offered to do under the aegis of the Competition Commission [excised], but it was only on 14 March 2006 that the Competition Commission advised Calor that it was not willing to proceed with the proposal).</p>
72	<p>Calor has already provided evidence as to the unsatisfactory nature of the tanks it has acquired from other suppliers, [excised] and that even new tanks are sometimes faulty (<i>see the last sentence of paragraph 68 of the Remedies Working Paper</i>). In Calor's view this means that examinations must be required to be carried out – if only at the very least to allocate liability and responsibility and to promote the adoption of appropriate safety standards [excised]. This would be consistent with paragraph 5.26(d) of the Competition Commission's Provisional Findings Report.</p>
73	<p>Calor has a separate concern with tank transfer regarding Regulation 4 of the PSSR. As the Competition Commission is aware, under Regulation 4 PSSR, which imposes an express statutory obligation, the outgoing supplier must ensure that its tank is capable of being examined. The Competition Commission's proposal fails to appreciate that in a tank transfer scenario where the tank is in use and in situ, it is debatable whether a full examination can in fact be carried out. If it cannot be carried out, Regulation 4 of the PSSR would place the supplier of the system (i.e. the outgoing supplier) in breach of the regulation, and accordingly subject to criminal proceedings. Calor questions whether this issue has been resolved between the Competition Commission and the HSE as otherwise there is the possibility that the commission of a series of Health and Safety offences may be promoted.</p>
74	<p>The consequence of not being able to properly inspect tanks in the field, is that overall safety standards within the industry are likely to deteriorate. [excised]</p>
75	<p>There is little or no reference [excised] to the GSIUR, or to the tank's safety critical and ancillary items such as valves, pressure relief valve, regulators etc. LPGA Cop 1, Part 1, Section 9 deals with the paperwork to confirm that the pressure vessel is "fit for purpose" as required under PSSR. It does not, [excised], satisfy the GSIUR requirements relating to the functionality of the regulator, the presence of UPSO/OPSO, or compliance with the LPGA Codes of Practice relating to the installation or its siting. The HSE's comments referred to in <i>paragraph 124</i> relate to the PSSR, not to the statutory duties of a</p>

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	<p>supplier under the GSIUR. Calor remains deeply concerned at this omission, which underscores the need for an urgent discussion with the HSE.</p> <p>76 There is also a point at issue concerning UKAS accreditation. The PSSR require the person to be competent and UKAS accreditation is a way of demonstrating this. However, Calor understands that it is the only supplier to satisfy this requirement (namely, having UKAS accredited tank inspectors) and accordingly to make the assumption that the outgoing supplier’s tank would have been examined by a (UKAS accredited) person is unsustainable.</p> <p>77 Calor reiterates that examination of the pressure vessel by a competent UKAS accredited tank inspector and checking of regulator functionality by a CORGI engineer is required to ensure compliance with the PSSR and the GSUIR.</p> <p>78 At the end of <i>paragraph 123</i>, it is stated that one supplier “would be prepared to supply into (a reputable tank).” It is not clear whether this means that they would also be prepared to buy it.</p> <p>79 <i>Paragraph 125</i> suggests that the outgoing supplier can give access to the equipment. If this is on customer’s property, it is for the customer to give permission, which may or not be covered under contract.</p> <p>80 Finally, the net effect of the Competition Commission’s proposals here is to place a commercial premium on not fully complying with the safety rules. particularly for those whose interest in the market is short-term. Given the pressure on all sales organisations, it could be very much in the interest of an incoming supplier, not to ask too many questions about the installation and indeed to rely on paperwork as in some cases it could be argued that this saves costs, and puts the fewest obstacles in the way of winning a customer.</p>
<p><u>Transfer of Title</u> (<i>paragraphs 126 – 136</i>)</p>	
<p><i>Paragraphs 127-128</i></p>	<p>81 Calor doubts the precise meaning of the words “urgently” and “urgent” as they relate to remedial work... We would define “urgent remedial work” as work required where the tank was in, or near to being, in a state that could cause an incident: e.g. if the tank or fitting was leaking, if the tanks was severely corroded or had suffered physically damage, or a heat/ignition source had been placed within the separation distance</p>

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	<p>of the tank. In any event, paragraph 128 gives rise to the likelihood rather than possibility of disputes between the outgoing and incoming suppliers as to the need for “remedial works” a peculiar feature of the tank transfer remedy and one which will add to cost.</p>
<i>Paragraph 130</i>	<p>82 Calor considers that there should be total clarity concerning the signage and dataplate so that there can be no doubt about the matter. The GSIUR requires an emergency notice at the emergency isolation valve (which must be updated in accordance with Regulation 93 of the GSIUR). Where an emergency control is installed which is not adjacent to a primary meter, or where no meter is installed, the notice should be prominently displayed on or near the control, bearing the words “gas emergency control” and telling the customer:</p> <p>(a) to shut off the supply of gas if there is a gas escape in the premises: and</p> <p>(b) if the gas continues to escape, immediately to notify the.... supplier's emergency service, details of which are also required to be given.</p> <p>83 Calor considers that there should be absolute clarity on the timing of transfer of title (flexible to meet problems such as unavoidable delay) thus eliminating all legal ambiguity at present in the Competition Commission's proposal.</p>
<i>Paragraph 131</i>	<p>84 Calor considers that the HSE has seriously misjudged the point; where the tank population of another company is acquired, all the tanks have accordingly transferred (together with the emergency number) and there was no ambiguity whatsoever in emergency arrangements. This statement is as given in <i>paragraph 132</i>.</p>
<i>Paragraph 135</i>	<p>85 It should be noted that it is the gas supplier, not the tank owner, that is responsible for the emergency service under the GSIUR. The outgoing supplier remains liable under the GSIUR until a gas delivery is made and, since their gas still in the tank at that stage, arguably still later than that. This aspect of the regulations requires urgent clarification. Calor has always argued that the responsibility for the emergency supply should be with the tank owner not the gas supplier where LPG bulk supply is concerned but this is not currently the definition given in the GSIUR (<i>see Regulation 2(1)</i>).</p>

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	<p>86 Calor feels strongly that the legal position is being misrepresented. Sub-contracting does not discharge the supplier's primary liability. The GSIUR envisages sub-contracting to a specialist third party emergency provider not another supplier. In this particular scenario the outgoing supplier would retain the primary liability. In other words, the obligation as between the outgoing supplier, the customer and indeed the law remain as before, whether or not the outgoing supplier sub-contracts. Any failure in provision accordingly will remain the responsibility of the outgoing supplier.</p>
<p><i>Paragraph 136</i></p>	<p>87 In the light of the foregoing, the 14 day overlap of the emergency cover suggested in <i>paragraph 136</i> introduces potential confusion. If the customer, for example, were to call the outgoing supplier to an emergency a week after transfer, the outgoing supplier would be obliged to attend. If they were to attend and to discover that the incoming supplier has already put their logo on the tank and fixed a new dataplate, the outgoing supplier would presumably repair the leak (if that was what the emergency consisted of) and bill the incoming supplier. The incoming supplier might well refuse to pay as they had not been given the opportunity to attend themselves and the tank had clearly been re-logo-ed. This is another potential source of dispute. The fall back position of supplier attending an installation which it does not own is to switch off the supply and leave the customer to arrange rectification with its own supplier. This is not customer-friendly. With tank uplift, the position is absolutely clear, not only in practical terms but also regarding responsibilities under the GSIUR. Accordingly, the transfer of responsibility for emergency cover should be concurrent with the transfer of title. The two week period for changing the dataplate and signage is inappropriate; it should be done on the same day. Whilst this would not fully resolve all the legal problems it would at least provide clarity to the customer.</p>
<p><u>Resiting and upgrades</u> (<i>paragraphs 137-140</i>)</p>	
	<p>88 At the end of <i>paragraph 140</i>, the Competition Commission may consider that "it is ...not necessary to consider the implications for the tank transfer remedy of such a situation" (i.e. tank resiting). This may be strictly true, but this does give rise to the issue of uncertainty from the customer's point of view. Calor is concerned that if tank transfer is "sold" as a standard situation, but in a significant number of cases the customer cannot have it, customers may be disillusioned not only with the industry but with the proposed remedy itself. This is a prime</p>

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	<p>example, which Calor has previously pointed out, where there will need to be an uplift. This is quite apart from the significant number of uplifts – some 90% or more (see our comments on <i>paragraph 22</i>) - required for operational reasons which will continue, whether the tank transfer remedy is in place or not.</p>
<p>Dispute resolution (<i>paragraphs 141-150</i>)</p>	
	<p>89 Whilst Calor notes and welcomes that the Competition Commission does not propose to put in place a system of customer-supplier dispute resolution, the fact remains that disputes will occur – one example of which is a dispute over the validity of contracts or breaches of contract – which will result in cost. Indeed, in Calor's view tank transfer is likely to lead to a far greater number of customer-supplier and supplier-supplier disputes. This will result in an increase in overall industry costs, thus potentially rendering tank transfer a more costly form of supply than under the current arrangement. (<i>See paragraph 11.4(g) of Appendix 1 to Howard Kerr's letter of 23 September 2005</i>).</p>
<p>Time periods (<i>paragraphs 151-159</i>)</p>	
	<p>90 Calor notes and welcomes that the Competition Commission considers that “customers [should have] clear expectations of what is likely to be involved...”. However, Calor feels that the tank transfer remedy does not achieve this objective. As indicated against <i>paragraph 150</i> above, the Competition Commission glosses over the likelihood of disputes. Perhaps more importantly, from Calor's own experience [excised], it may be expected that upwards of [excised] of acquired customers have tanks which will require uplift and replacement. If the point made by the Competition Commission in <i>paragraph 169</i> is also factored in (i.e. the right of incoming suppliers to decide to limit a number of tank types) a significant proportion of customers who have been led to expect a tank transfer will have a tank uplift. It is unreasonable for the Competition Commission to suggest therefore that tank transfer will necessarily result in clear (and fulfilled) customer expectations.</p>
<i>Paragraph 155</i>	<p>91 [excised]</p>
<i>Paragraph 156</i>	<p>92 In Calor's opinion an examination will always be necessary. This should also be built into <i>Figure 6</i> under <i>paragraph 159</i> – as mentioned in the comment on that figure below, and as also hinted at in <i>paragraph 125</i>,</p>

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		the Competition Commission seems to believe that the tank examination is primarily to do with price negotiation. This is a further matter of great concern to Calor; it is in fact to do with safety. As a side issue, it may inform price negotiation in some cases, although as already stated elsewhere Calor would prefer that "negotiation" does not enter into the picture and that tanks should be sold at a readily ascertainable price previously stipulated.
<i>Paragraphs 157-158</i>	93	The time from knowing the price to completing the transaction should be 5 working days to make allowance for bank holidays.
<i>Paragraph 159 (Figure 6)</i>	94	Calor would strongly recommend an alteration to <i>Figure 6</i> stemming mainly from its concerns with the importance of tank examination. In the righthand column, the box "I/c supplier inspects tank" should not be placed above the box "I/c negotiates tank price with O/g supplier" but beside it and in parallel with it and there should be no line bypassing it. There could be an optional flow leading from supplier inspects tank to supplier negotiates tank price, but this diagram and indeed <i>paragraph 125</i> create the most unfortunate impression that the tank inspection/examination is something primarily to do with price; it is not. It is primarily concerned with safety issues, and Calor considers that it would be in the general interest not to suggest that the safety aspects of the tank inspection take second place to price negotiation.
The safety implications of tank transfer <i>(paragraphs 160-193)</i>		
<u>Allocation of responsibility</u> <i>(paragraphs 163-166)</i>	95	Calor is concerned by the sentence "However, the Competition Commission does not accept that the tank transfer remedy will necessarily result in a loss of clarity over the allocation of responsibility for tank safety" (<i>paragraph 163</i>). This is not a sufficient test. Risks must be controlled so as to be as low as reasonably practicable, and a remedy which does not "necessarily" result in a loss of clarity is not sufficient; it must be certain that it does not result in a loss of clarity. In the same paragraph, the Competition Commission observes that the tank transfer remedy will "to a large extent" retain the integrity of the integrated supplier model. This is only true if the proposal is regarded as a snapshot in time. What it does destroy is the continued cradle-to-grave integration of supply of LPG with ownership and control of the particular equipment throughout its operational lifetime. This includes such important practical matters such as the history of the tank and its supply, knowledge of the design, procurement and quality of the valves, fittings, pressure relief valves, regulators etc. This lack of clarity

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	<p>represents a failure to comply with the ALARP principle</p> <p>96 As we have said at paragraph 2.2 of Appendix 1 to Howard Kerr’s letter of 23 September 2005:</p> <p>“The key principles which govern the supply of bulk LPG is that risks at work must be kept as low as reasonably practicable (the ALARP principle under the 1974 Act) and the obligation imposed on persons responsible for products to keep risks to the minimum consistent with the use of those products (the minimal risk principle under the GPSR). These mean that any departure from best practice is, in law, a compromise of safety. Calor accepts that the mere existence of rules does not mean that the obligations and standards they impose will be met. The Competition Commission itself recognises that mere compliance with the specific regulations does not guarantee compliance with the underlying obligations in the 1974 Act (see <u>for example</u> paragraphs 2.9 of the Provisional Findings). But under the current system responsibility is clear and it provides economic incentives to suppliers to meet the higher standards without suffering commercial disadvantage.”</p> <p>97 The Competition Commission, at <i>paragraph 163</i>, says that it “does not accept that the tank transfer remedy will necessarily result in a loss of clarity over the allocation of responsibility for tank safety.” This carefully phrased sentence leaves open the observation that it may. The Competition Commission says that the model preserves integration of supply with provision and maintenance of the installation which is true if viewed as a snapshot in time. What of course it does destroy is the continued integration of supply of LPG with ownership and control of the particular equipment throughout its operational lifetime.</p>
<p><i>Paragraph 164</i></p>	<p>98 Again, Calor has to reiterate that Regulation 4 of the PSSR has nothing to do with the civil liabilities that may arise as a result of the outgoing supplier selling a defective tank. Regulation 4 creates a criminal offence. The same point applies in <i>paragraph 187</i> (where it is assumed that the Competition Commission intended to refer to Regulation 4 of the PSSR as Regulation 7 is not relevant in this context), and (as there) Calor urged that this point is clarified with the HSE.</p>
<p><i>Paragraph 165</i></p>	<p>99 The Competition Commission appears to acknowledge the potential of the tank transfer model to encourage suppliers to take “a short-term</p>

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	<p>view” and reduce their incentive to maintain tanks but they reject the conclusion that its remedy will lead to lower levels of investment and safety as the incoming supplier can still make a claim against the outgoing supplier (<i>paragraph 180</i> in particular refers). The Competition Commission has failed to address the problem that it will no longer be as attractive for suppliers to invest in long-term tank safety or to develop new technology and safety initiatives. In a similar context, the tank valuation method could skew commercial incentives and lead to short term views. To suggest that a problem which would to a great extent be resolved by tank examination in every case should be left to be resolved through the civil courts is perverse.</p> <p>100 As mentioned above against <i>paragraph 164</i>, the reference to “claims” under PSSR is incorrect. The PSSR establish criminal offences. <i>Paragraph 165</i> suggests the possibility of “claims” under PSSR, seemingly as a control mechanism – in truth, no system which encourages or envisages or even, arguably, sets up such “claims” as a normal occurrence can be counteracted. (Please see our comments on Regulation 4 of the PSSR against <i>paragraphs 164 and 187</i>)</p> <p>101 In any event, if there is damage to an unexamined tank or a defect, there is great difficulty in establishing when this may have occurred. This is likely to lead to yet more disputes, which may well be complex, and to greater costs.</p>
<p><u>Increasing average age of tanks</u> (<i>paragraphs 166 and 167</i>)</p>	<p>102 The point is being missed here by the Competition Commission. Under the present arrangements, on every switch the incoming supplier automatically replaces the tank with one of their own for which they take full unfettered and untrammled responsibility. Under the proposed tank transfer model, the responsibility accepted is down to the responsibility level of the individual supplier, where all the commercial incentives are to accept a lower standard of safety where there is any doubt. The incoming supplier can choose as a matter of deliberate policy not to examine (as indeed seems to be accepted with equanimity by the Competition Commission and even the HSE according to the evidence as presented) and thus avoid any “problems” associated with safety. To win the customer, they may have every commercial incentive to do this. Secondly, a less responsible supplier, even if they do inspect the tank, may take a decision to buy it even where its safety levels (e.g. siting) are marginal. As elsewhere in the report, the Competition Commission also omits to note the importance of the valves, fittings, regulators and pipework which are the</p>

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	<p>components most likely to wear and leak. The HSE noted quite correctly a number of issues which could affect the condition of the tank itself yet the Competition Commission pronounced themselves still happy to prolong the life of the tank indefinitely.</p>
<p><u>Increasing diversity of tanks, fittings, regulators and pipework</u> (<i>paragraphs 168 -172</i>)</p>	<p>103 The point previously made by Calor[excised], is that the diversity of tanks, fittings, regulators and pipework has an impact on the extent of training of drivers and engineers as well as the range of replacement parts needed to be carried by engineers. During an emergency call-out, the engineer may not have available a suitable replacement part to cope with the diversity of installations and will have no alternative but to turn off the gas supply at considerable customer inconvenience, until a replacement part has been sourced and the repair undertaken. This increases the possibility of an incident and increases cost. In addition, there will no incentive in the future to develop or invest in new valves and fittings as these items cannot be changed in the field and no credit is given for them in the tank valuation process. Suppliers will be encouraged economically to obtain the cheapest components and safety standards will fall to the lowest common denominator with no incentive for future technical or safety developments.</p>
<p><u>Paragraph 174</u></p>	<p>104 The Competition Commission has left open the issue of insurance. This is highly unsatisfactory and needs to be addressed by the Competition Commission, if only to accept that this may be another unquantifiable cost of the tank transfer remedy.</p>
<p><u>Increasing number of companies involved in the life-cycle of a tank</u> (<i>paragraphs 173-178</i>) <i>Paragraph 175</i></p>	<p>105 As far as can be seen from this paragraph and <i>paragraph 176 (3)</i> the major suppliers have expressed concerns on the issue of less safety conscious suppliers. In this context, it appears that the Competition Commission is not even going to recommend that the industry Codes of Practice should be made Approved Codes of Practice which would improve the legal position considerably and give an incentive to both the industry and the HSE to resolve certain of these issues.</p>
<p><i>Paragraph 176</i></p>	<p>106 There is a misrepresentation at least of Calor's position in the final sentence of this paragraph. Calor referred to this at the excisions stage,</p>

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	<p>and if it is still to appear the implication is damaging to the industry as a whole. Calor's concern is not whether it is easier or not for customers to switch. What is of concern is the way in which tanks are transferred. Calor considers that tank transfer may well create opportunities (which do not at present exist) for less safe suppliers but that is not a factor of the rate of switching as is suggested in <i>paragraph 176</i>. We believe that this must be corrected. The overall commercial incentives are such that it just may be uneconomic for reputable suppliers to compete with cut-price less safety conscious suppliers, with the longer term effect of reducing safety standards across the industry.</p>
<i>Paragraph 178</i>	<p>107 For the reasons stated for example against <i>paragraphs 113.123-5, 131 or 183</i>, Calor is most concerned that the Competition Commission states it places considerable weight on the evidence provided on safety issues by the HSE and states that it sees no reason for introducing more codification and consistency in the application of safety standards. However, it then goes on immediately to say that suppliers are free to work with the HSE if they wish. This side-steps the core issues of how the tank transfer model could affect safety standards within the current regulatory regime, as indicated by Calor above.</p>
<p><u>Lower Levels of investment in safety</u> (<i>paragraphs 179 – 180</i>) <i>Paragraph 180</i></p>	<p>108 The Competition Commission seems to believe that essentially, enforcement of safety will devolve upon the incoming supplier making "claims" against the outgoing supplier. The Competition Commission does not address the situation where the incoming supplier chooses not to undertake an examination of the tank by a competent person. In that event, proving the origin of a particular safety defect and the liability of the outgoing supplier will provide rich pickings for lawyers, but no consistent and effective discipline such as would be to a great extent introduced by compulsory examination and the introduction of Approved Codes of Practice. Second, if the concerns of Calor at least are realised and there is acquisition of tanks by less scrupulous suppliers (possibly newcomers to the industry) this paragraph does not address the equally important point that they may have no concern for safety standards at any stage. In the event that the acquisition is in the other direction, and the tank is being acquired by a reputable supplier from any unscrupulous one, examination would soon reveal that it was in the interest of the incoming supplier in those circumstances to uplift and replace the tank. The Competition Commission's reasoning on this issue is fundamentally flawed.</p>
<u>"Opportunistic"</u>	<p>109 Contrary to the Competition Commission's position (<i>paragraph 182</i>), we</p>

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<p><i>entry" (paragraphs 181-185)</i></p>	<p>remain of the view that the commercial incentives would be for unscrupulous new entrant suppliers to target domestic bulk tanks with low prices, acquire those tanks but not maintain them in future years. On the basis that these suppliers are very unlikely to have an established and proven safety management regime, they could readily acquire tanks which previously have been maintained under robust safety management programmes. Then over a period of two years of exclusivity, they would be unlikely to encounter any problems with those tanks. At the end of the exclusive contract period the customer is free to switch supplier resulting in the opportunistic outgoing supplier making easy revenue with scant, if any, regard to safety requirements.</p> <p>110 The Competition Commission goes on to state that it has not seen any evidence of any supplier that is a member of ALGED or are not a member of any trade association being less safe than LPGA members. Our concern is that tank transfer is an untried and untested system. Under the tried and tested integrated supply model, each supplier is responsible for its own tank and fittings "from cradle to grave". Under tank transfer, there is an obvious need for trust between suppliers and we believe that it would stand a better chance of being effective if suppliers can be sure that the other supplier is committed to complying with the voluntary Codes of Practice. We would remind the Competition Commission that we suggested that the HSE should have a greater role through the use of ACoPS and that suggestion appears to have been disregarded [excised].</p> <p>111 In paragraph 5.26f of the Provisional Findings Report the Competition Commission suggested that "exploitative new entry" giving rise to safety risks could be addressed by "possibly limiting any willingness of the obligation to sell to sale to members of the LPGA or equivalent body that agreed to follow the CoPS". In our response at paragraph 7.4 and 7.5 of Appendix 1 of Howard Kerr's letter of 23 September 2005 we broadly welcomed that suggestion. <i>(Please see further below in relation to paragraph 184).</i></p>
<p><i>Paragraph 182</i></p>	<p>112 Calor challenges whether the Competition Commission has the evidence to maintain that the tank transfer remedy will not increase non-compliance. This will depend on many features in an untried system, including subtle changes in market forces, the competence of new entrants and the ability of the industry effectively to self-regulate. The HSE has admitted that it does not have the resources actively to police the industry, particularly in the domestic market, with the result</p>

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	<p>that such behaviour is unlikely to attract regulatory attention until there is an incident – which may result in prosecution but could also do severe damage to the industry and customer confidence. In the absence of a requirement for examination and Approved Codes of Practice, the Competition Commission is not only failing to erect barriers to guard against such a situation but indeed making it more likely to occur.</p>
<i>Paragraph 183</i>	<p>113 The Competition Commission states that the HSE has said “clearly” that it would expect the risks associated with tank transfer to be significantly less than the risks associated with uplift and installation. Calor challenges this interpretation of the HSE’s evidence which appears to Calor to be anything but clear on the point, since conflicting views were expressed in the same paper. The HSE has also clearly said that there are no significant risks with tank uplift.</p> <p>114 Looking more closely at the HSE’s evidence, Calor questions whether the HSE has undertaken a detailed risk assessment of the two models to justify the use of the word “expect”, and, if it has, whether the parties in this inquiry have been given the opportunity to scrutinise such an analysis. Further, Calor challenges the Competition Commission’s use of the word “significantly” and requests the Competition Commission to justify the use of that word on the basis of anything said by the HSE.</p> <p>115 [Excised]. This is a serious omission [excised] and underscores Calor’s concerns in this area. As has been previously stated against <i>paragraphs 123-125</i>, Calor considers that an open discussion of these concerns with the HSE which Calor has twice offered to participate through the good offices of the Competition Commission was turned down by the Competition Commission on 14 March 2006. Calor is concerned that if the Competition Commission proceeds with its findings in this area on the basis already stated, it is doing so on an inadequate examination of the relevant issues.</p>
<i>Paragraph 184</i>	<p>116 Whilst Calor notes, and generally agrees with, the Competition Commission’s stance in this area, namely, that it would be undesirable for the Competition Commission to insist that particular suppliers belong to particular trade organisations, the problem remains that, in distinction to the current position, it could well be that existing suppliers will be asked in future to deal with entirely unknown parties who are entering the business opportunistically on the basis that they can do so without making any capital investment (save perhaps only the</p>

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	<p>purchase of a depreciated tank). The only alternative, however, would be registration of suppliers. There is no licensing system for LPG suppliers to domestic tanks and , unless this problem is resolved, a potentially dangerous situation could be created.</p> <p>117 We understand that ALGED members are required to adhere to the LPGA Codes of Practice. While we accept that it is neither realistic nor desirable to rule out the emergence of new trade association in the future, it must be recognised that in a self-regulated industry compliance with codes is critical, as the HSE observed in their evidence. In these circumstances, we do not consider it to be a significant barrier to entry to require suppliers to demonstrate their adherence to the codes of practice through membership of an organisation whose rules require this. In our view, it would not be anti-competitive to be allowed to refuse to transfer a tank to a supplier who is not a member of an organisation requiring compliance with the codes of practice or otherwise who is able to demonstrate that his business methods apply with the applicable codes of practice. This should be supported by the introduction of Approved Codes of Practice.</p>
<p><u>Additional responsibilities for suppliers</u> (<i>paragraphs 186 /190</i>)</p> <p><i>Paragraph 187</i></p>	<p>118 Calor has previously referred, against <i>paragraphs 123-125</i> and <i>paragraph 164</i>, to Regulation 4 of the PSSR. (Calor assumes that the reference to Regulation 7 in these paragraphs should be to Regulation 4 (1)). The point appears to have been missed here: Regulation 4 creates a criminal offence if the obligation it imposes is breached by a supplier of a pressure system (which for these purposes includes an LPG tank installation). Regulation 4 (3) requires that the system is so designed and constructed that all necessary examinations for preventing danger can be carried out. The question as to whether a system charged with gas permits all necessary examinations (to ensure that it is free from danger) to be carried out has not been resolved and this is even more the case with underground tanks. Calor strongly recommends that this issue must be discussed with the HSE before the tank transfer remedy is finally endorsed.</p> <p>119 Calor disagrees with the final sentence of this paragraph. "Obligations", if applied in the general sense, clearly differ if a tank is being sold as opposed to provision of a tank by the supplier for storage of its own gas. Apart from anything else, as has been acknowledged by the Competition Commission SOGA applies, and the Competition Commission (and apparently the HSE) have overlooked Regulation 4 of the PSSR.</p>

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<p><i>Paragraph 188</i></p>	<p>120 The Competition Commission acknowledges that under the GSIUR if “no work” is to be done on the tank when it is to be transferred, there is no need to upgrade the tank to current standards. That artificial limitation does not occur under the current system of tank switching.</p> <p>121 Calor notes that gas fittings are defined in Regulation 2 (1) of the GSIUR and this definition includes valves, fittings and regulators other than emergency controls, whereas a gas storage vessel is also defined under this regulation as “a storage container designed to be filled or re-filled with gas at the place where it is connected for use... and includes the vapour valve”. Therefore the HSE’s interpretation that ‘work’ on gas storage vessels can be treated in isolation from ‘work’ on gas fittings, service pipework and emergency valves downstream of the vapour valve and vice versa, is of interest and an interpretation we would wish to develop further with the HSE.</p> <p>122 Calor firmly believes that the fifth sentence of the paragraph is incorrect, and this would lead to the test in the final line of <i>paragraph 189</i> being invoked frequently. A pressure drop test constitutes “work” under the GSIUR and requires CORGI competence. CORGI’s instructions to its installers and engineers in “The Gas Industry Unsafe Situations Procedure” is that LPG installations without, for example, UPSO/OPSO protection are classified as “at risk” and the customer is advised not to use the installation. This would appear contrary to the advice attributed here to the HSE.</p>
<p><i>Paragraph 190</i></p>	<p>123 In the context of the above comments, the Competition Commission should re-examine its statement in the second sentence of this paragraph that “the Competition Commission is not persuaded that, even if tank transfer were to result in additional obligations on LPG suppliers, their effect would be operationally significant”. It is not entirely clear what the Competition Commission means by the word “operationally”, but for the reasons explained by Calor above the results of the introduction of this new and untried system and they could well be significant if in terms of cost the proposal is structured as it is at present (and arguably even with alternative structures although Calor’s proposals would at least have the benefits of creating a more level playing field).</p>
<p>Impact of sale and leaseback arrangements (Paragraphs 191 – 193)</p>	
<p><u>General position</u></p>	<p>124 The Competition Commission needs to consider the relative impact on</p>

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	<p>all suppliers who opt to lease their tanks rather than purchasing tanks. [excised] Small suppliers may not have sufficient funding to purchase tanks and therefore choosing leasing or hire purchase arrangements might be a better or only option for them. It is unlikely that such suppliers will be free to sell such tanks to other suppliers as they do not legally own them.</p> <p>125 Those suppliers that have tanks subject to leasing or hire purchase agreements will have to assign the relevant agreement to the incoming supplier or cancel the agreement if the incoming supplier does not wish to take an assignment of the current financing agreement.</p>
<i>Assignment</i>	<p>126 The incoming supplier may not wish to take an assignment of a hire purchase agreement for each tank they wish to purchase under tank transfer. There would not only be administrative charges imposed by the financier to negotiate with the incoming supplier but also the financing agreement may be more expensive than the incoming supplier could obtain for itself on the open market.</p> <p>127 There would also be the added administrative cost of having many individual financing agreements for every tank transferred, which would be overly burdensome if tank transfer proved to be as successful as the Competition Commission states it will be.</p>
<i>Cancellation</i>	<p>128 If the outgoing supplier does not wish to take an assignment of the financing agreement but wishes to take ownership of the tank, then the incoming supplier will be forced to terminate the financing arrangement as they no longer have use of the asset covered by the relevant agreement. The cancellation of such agreements will invoke a liquidated damages charge to the outgoing supplier.</p> <p>129 Moreover, if the financier was made aware that the asset may be forced to be sold to another party then it may be reluctant to lend to the supplier, charge a higher premium as there is more risk in that specific contract or invoke higher termination fees.</p> <p>130 Lastly, the prospect of any of the above occurring might persuade a supplier not invest in the domestic bulk LPG market as the financial penalties of losing a domestic customer might not make it worthwhile. Instead of encouraging smaller suppliers to enter the domestic bulk LPG market, there is a possibility that tank transfer will make it more difficult to enter into the market as financing becomes more expensive.</p>

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<u>Calor's own position</u>	<p>131 [excised]</p> <p>132 [excised]</p> <p>133 [excised]</p> <p>134 [excised]</p> <p>135 [excised]</p>
Alternatives to tank transfer <i>(paragraphs 194 – 229)</i>	
<u>Incoming supplier management of uplift and installation</u> <i>(paragraphs 209 – 229)</i>	136 Calor wishes to record its disappointment and concern that its proposals have not, in its opinion, been given as thorough an examination with conflicting views tested as extensively as the Competition Commission's own preferred remedy. Calor would also pick out a number of very specific points.
<i>Paragraph 216</i>	137 Whilst the comments of ALGED that the proposal "would not reduce the cost of switching supplier by nearly as much as the tank transfer remedy" have been noted, Calor's financial arguments and in particular the comparative costings have not been given sufficient weight. Not only did Calor's proposal show that it would roughly equal the cost of the tank transfer remedy, it avoids the various unknown costs of the tank transfer remedy (including dispute resolution and financial costs – there are others, although given that the remedy is a complete unknown, the possibly extra costs cannot be known either).
<i>Paragraphs 217 – 219</i>	138 It is noted that the appearance is given that all the other major suppliers have concerns suggesting that the proposal could not proceed. On the other hand, the body expressing broad support for the proposal in <i>paragraph 214</i> is not stated. It would appear that this is one of the major suppliers. Calor has been given no opportunity to comment previously on the content of <i>paragraphs 217-219</i> . The gist of Calor's response in this area is that if a contractor is used, most of the concerns expressed in <i>paragraphs 217, 218, 219 and 220</i> would be addressed. This matter has not received sufficient discussion.
<i>Paragraph 221</i>	139 Calor's response on this paragraph is broadly set out in <i>paragraphs 223</i>

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	<i>and 224.</i> However, Calor's response that the delivery and storage of tanks could be made by local arrangement has been omitted.
<i>Paragraph 222</i>	140 Calor reiterates that "inconvenience" is insufficiently justified on the evidence as grounds for rejecting tank uplift. So far as the cost of uplifting and installation referred to in this paragraph is concerned, Calor also reiterates that it has entirely satisfied this criterion by showing that its proposed scheme will in fact be no more expensive than the major change involved in tank transfer.
<i>Paragraph 226</i>	141 The question of care of tanks has previously been raised by Calor. Calor reiterates that if an approved contractor or series of contractors were to be used, the question of care of tanks would be subject to precisely the same requirement as at present. In addition, the Competition Commission notes that an incoming supplier would have an incentive to transport uplifted tanks to and store them at a location that suited it..., but which might not suit the outgoing supplier. The Competition Commission does not recite Calor's response to this at all, although it reaches the conclusion that this means that the remedy would not be "practicable", and there has been no attempt to discuss the possible options at any length, including local agreement, which could easily be introduced under the powers of the Competition Commission.
<i>Paragraph 227</i>	142 The Competition Commission notes that Calor's proposed remedy would "still appear intrusive and inconvenient". Calor notes the use of the word "appear" and questions whether the Competition Commission is basing its approach in this area on intuition or on hard evidence. 143 Later in the paragraph the Competition Commission states that the proposal "would not reduce the cost of switching for the suppliers themselves". Calor has provided ample evidence that the costs would at worst be no higher than the tank transfer remedy and at best would be lower considering all the intangible aspects of the tank transfer remedy itself. This also deals with all the other points in the remainder of the paragraph where Calor considers that its position is being misrepresented by the omission of key evidence.
The cost of tank transfer vs the costs of uplift and installation <i>(paragraphs 230 – 238)</i>	

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	<p>144 Calor takes strong objection to the figures as set out in <i>paragraphs 232 and 235</i> (whether to be excised or not) because the tank uplift cost shown in <i>Table 2</i> is from the existing system and not from Calor's proposed improved system. If the improved system cost were to be included this would be shown as [excised]. The total cost saving from transfer over the improved system cost is therefore nil.</p> <p>145 We also see no reference anywhere to additional costs which would be incurred by the introduction of the tank transfer scheme (one concrete example of these costs is contained in <i>paragraph 360</i>) – there is no attempt to cost, for example, tank valuation (even in its simplest form), insurance, inspections, dispute resolution, and the administrative cost of changes to Codes of Practice and/or legislation. Whilst it is accepted that it may be difficult to quantify these elements with any precision, to include (even if they are corrected) “headline” figures without a reference to unliquidated costs is unbalanced. Neither is there the slightest consideration of the “inconvenience” when a customer anticipates that there will be a tank transfer but the tank is found to be unsatisfactory after expenditure of time and effort with the result that an uplift has to proceed in any event. Calor estimates that this will occur in well over [excised] of cases.</p> <p>146 The Competition Commission's cost comparison between tank uplift and tank transfer ignores the possibility that under tank transfer there may be a significant number of customer-supplier or supplier-supplier disputes. If this proves to be the case it will inevitably lead to high industry costs and could result in tank transfer being the more costly option.</p> <p>147 In <i>paragraph 233</i>, the Competition Commission also states that three suppliers will have a strong incentive to transfer a tank as they will have savings of between 3% and 44%. We would be interested to know the total range of savings that each supplier has quoted to the Competition Commission, because we query whether too much weighting is being applied to the one supplier that has quoted savings of 44%. Moreover, a saving of 3% is not necessarily a strong incentive to use tank transfer considering other factors evident in the Competition Commission's tank transfer proposal, including the cost of dispute resolution which has not been included in it.</p> <p>148 In contrast to Calor [excised], some suppliers have suggested that tank transfer will be cheaper than uplift-installation (<i>paragraph. 236</i>). One</p>
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	supplier has suggested that the outgoing cost savings would be 100% (implying that tank transfer has a zero cost to the outgoing supplier).
THE SWITCHING PROCESS (<i>paragraphs 239 – 291</i>)	
<u>Provision of information by suppliers</u> (<i>paragraphs 246 – 251</i>)	<p>149 We agree that the incoming supplier should be obliged to pass any notification of termination of contract to the outgoing supplier as soon as possible. However, we see no reason why the customer should not be able to do this if they wish (<i>paragraph 247</i>).</p> <p>150 We also support the Competition Commission's view that the switching process, whether or not it involves tank transfer, should not begin until the outgoing supplier has received the notification (<i>paragraph 247</i>).</p> <p>151 Whilst we accept that the onus must be on the outgoing supplier to demonstrate that the customer is not free to switch, it is not appropriate for the customer to be able to switch simply by default because, through no fault of the outgoing supplier (for example, through a failure in the postal service to deliver a letter to the incoming supplier containing proof that the customer is still in contract), the outgoing supplier misses the one week deadline. We, therefore, believe that this deadline should be subject to any event prolonging that period through no fault of the outgoing supplier. It is extremely important that the outgoing supplier's contractual rights are not overridden by factors outside its control (<i>paragraph 248</i>).</p>
<u>Customers in debt</u> (<i>Paragraph 249</i>)	152 Calor does not understand why the treatment should be different from that available to mains gas particularly as, since the delivery patterns result in a high value of fuel being delivered to the customers property "up front", the likelihood is that levels of indebtedness far higher than for mains gas will be incurred. The "debt recovery tools" referred to by the Competition Commission are expensive and all too often ineffective, and the proposal encourages indebted customers to switch suppliers to avoid enforcement action.
<u>Switching charges</u> (<i>paragraphs 252 – 262</i>)	153 Competition between suppliers can be expected to constrain the ability of outgoing suppliers to levy excessive switching costs. This is acknowledged by the Competition Commission which states that "even if suppliers could recover these [uplift and installation] costs from customers, they would face an incentive to <i>minimize</i> costs in order to compete effectively with other suppliers" (footnote 6 of the Remedies

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	<p>Working Paper). This contradicts the Competition Commission’s claim that the outgoing supplier would have an incentive to <i>increase</i> its switching charges to “increase its chances of retaining the customer” because it also simultaneously reduces its chances of winning customers too (<i>paragraph. 261</i>).</p>
<p><u>Time period</u> (<i>paragraphs 263 – 270</i>)</p>	<p>154 We believe that a period of 28/42 days to complete the switching process, subject to either extra time being allowed for customers to complete civil works or the customer agreeing a longer period with the incoming supplier, should be workable. To help ensure that this will work in practice, there should be an obligation on the incoming supplier to inform the outgoing supplier immediately of any changes to the deadline set to complete the switch. (<i>paragraphs 267, 268 and 270</i>).</p>
<p><u>Information for consumers on the switching process</u> (<i>paragraphs 274 -291</i>)</p>	<p>155 Calor has not previously had the opportunity to comment on any evidence provided by Which?, Energywatch or the GCCNI in connection with this inquiry.</p> <p>156 Notwithstanding this point, we take issue with the analogy drawn by Which? with the FSA rules under which a pension provider must notify its policyholders that they can purchase annuities elsewhere shortly before their pension policies mature (which is in any case only once in the lifetime of the policy, not once every two years) (<i>paragraph 282</i>). Unlike the domestic bulk LPG market, the financial services market is necessarily highly regulated as the adverse consequences for policy holders of pension providers failing to act with probity could be considerable. More appropriate analogies should be sought from commerce or the utility markets. The Competition Commission should try and identify markets in these areas where there is an obligation on a supplier to tell its customer that their contract is about to expire. We believe that this proposed remedy is unprecedented and disproportionate</p> <p>157 The Competition Commission states that the supplier should provide information on switching, including the maximum level of charges that it can levy on the customer – this contradicts the Competition Commission’s proposal at <i>paragraph 262</i> stating that switching charges should be capped at zero.</p> <p>158 We believe that the domestic customer should be given more credit in understanding the terms of their contracts of supply. For example, on the front of every Calor DGO there is a box to be completed which</p>

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	<p>sets out the period of the contract. We do not believe that it is unreasonable to expect a customer to retain their contracts of supply in a safe place, remember where that place is and consequently know when their contract expires. Therefore, we do not agree that it is either appropriate or proportionate to force suppliers to send “wake-up letters” to their customers (<i>paragraph 287</i>). We have [excised] domestic customers with their contracts of supply expiring at different times. The administrative burden and cost of managing a process like this is simply not justified.</p> <p>159 The Competition Commission has ignored the fact that writing such letters to customers would cost Calor approximately [excised] per year (<i>see paragraph 280</i>) not including the cost of any insertions. Ultimately, such costs will be passed on to the customer in the form of higher gas prices or higher standing charges. Moreover, the Competition Commission has not recognised the point Calor made at paragraph 14.3 of Appendix 3 to Howard Kerr's letter of 23 September 2005 which is that wake-up letters will be ignored unless the customer is of a mind-set to switch. This view seems to have been endorsed by Which?</p> <p>160 The Competition Commission continues to ignore the importance of oil as a viable alternative in the eyes of the consumer in NI. Oil is the largest single source of domestic central heating in NI, and will continue to be so, outside the mains gas areas. Notwithstanding this, in a declining LPG market, customers are already switching away from LPG.[excised]</p> <p>161 Calor Gas Northern Ireland Limited does not object to providing switching information to LPG customers in Northern Ireland along the lines contemplated for suppliers in Great Britain. However, it expects to have an active role in ensuring that the GCCNI's recommendations are reasonable and practicable.</p>
<p>Changes to customer contracts (<i>paragraphs 292 – 302</i>)</p>	
<p><u>Notice Periods</u> (<i>paragraphs 293 – 294</i>)</p>	<p>162 It appears to Calor to be wrong in principle for a supplier to be forced to agree to waive any contractual notice period. It would be more workable and practical to have a definite date to which the customer, the incoming supplier and the outgoing supplier can work. Any situation created which could give rise to disagreements between the parties over completion of the switch should be avoided. Certainty is required is a situation like this. Holding the parties to the 28/42 days</p>

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	<p>period will not prejudice any of the parties and forcing the outgoing party to agree to waive any remaining notice period is disproportionate.</p>
<p><u>Exclusivity periods</u> <i>(paragraphs 295 – 302)</i></p>	<p>163 Whilst we welcome the Competition Commission recognising the benefits of exclusivity periods in contracts of supply to both customers and suppliers and proposing a maximum two year exclusivity period (<i>paragraph 301</i>), we remain firmly of the view that customers should benefit from having an option to choose a longer exclusivity period. As the Competition Commission notes in <i>paragraph 297</i>, Calor currently offers the option of 3 or 5 year contracts to its new customers and leaves it to the customers to choose which period is more suitable for them. We would ask the Competition Commission to reconsider its view and allow this element of flexibility (i.e two years or longer if the customer wishes) so that customers can continue to benefit from having this option as they do in other markets such as mains gas or mortgages.</p>
<p>Information on suppliers and their offers <i>(paragraphs 303 – 321)</i></p>	
	<p>164 Whilst Calor remains firmly of the view that the best source of information for <u>all</u> customers (whether or not they have a computer to access websites) is Yellow Pages which clearly identifies who their local suppliers are and their contact details at no cost to the customers, Calor is not in principle averse to improving customer access to information about suppliers. However, the costs to the LPG industry of any improvements should be kept within reason and should not be disproportionate to any issues the Competition Commission has identified in its inquiry.</p> <p>165 It is not appropriate to oblige Calor and other LPGA members to put information about ALGED on their invoices. We are not members of this trade association and see no reason why we should be obliged to promote it. We have no objection to referring to the LPGA on our invoices.</p> <p>166 We share the Competition Commission's concern that "...steps towards price publication could help facilitate conditions for co-ordinated behaviour among LPG suppliers" and welcome its intention to focus on customers having easy access to comparable quotes from suppliers (<i>paragraph 317</i>). We believe that its proposal to obligate suppliers to provide quotes over the phone and via websites to customers, without first requiring a site visit and subject only to confirmation by a site visit,</p>

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	<p>is the correct approach (<i>paragraph 318</i>). Certainly, we see no reason why all suppliers cannot comply with this obligation...</p> <p>167 We also agree that the price and delivery volume on customer invoices should be expressed, and quotes to customers should be made, in pence per litre (<i>paragraph 321</i>).</p>
<p>Assessment of relevant customer benefits (<i>paragraphs 330 to 341</i>)</p>	
	<p>168 Calor takes issue with the key customer benefit which is put forward stemming from the present uplift system – namely, safety – having been completely omitted from consideration in the context of relevant customer benefits. [excised] Calor's presentation on the safety benefits of the tank uplift system should in the interests of fairness be included for assessment purposes. The most important of these benefits is the cradle-to-grave control system as referred to in <i>paragraph 163</i>, combined with the avoidance of the various safety problems which Calor has identified with the tank transfer system. The Competition Commission refers in passing in <i>paragraph 333</i> to this aspect but then goes on to deal with this matter solely in the context of technological advances. The Competition Commission, in <i>paragraph 337</i>, has clearly placed the entire argument in the context of “distributional efficiencies”, not safety.</p>
<p><i>Paragraph 335</i></p>	<p>169 Calor finds the use of evidence inconsistent, when another major supplier has commented on the benefits of telemetry and that, in some cases, the customer already contributes to the cost, yet at <i>paragraph 31</i> the Competition Commission states that it has received evidence of only one supplier using this equipment on domestic bulk tanks. [excised]</p>
<p><i>Paragraph 339</i></p>	<p>170 The Competition Commission's argument here ignores the important point made by Calor particularly, for example, in respect of <i>paragraphs 165 or 179 and 180</i>, that the commercial incentives of the tank transfer system militate against investments in safety, as the cost pressures on suppliers where the equipment is concerned mount. This is particularly the case if the supplier is not properly compensated for the full investment in extra safety measures (and for that matter technological advance such as telemetry). At all points, the Competition Commission seems to assume that the supplier will be free to recover costs from customers whilst ignoring the fact that this places LPG at a significant further disadvantage against the much less regulated oil market. These proposals will not help LPG to compete in the new installation field</p>

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	<p>with its main rival and indeed they will significantly hinder it by simultaneously reducing the incentives for technological advance, and “front loading” the costs of any such advance made by operators.</p> <p>171 In general, Calor reiterates the arguments it has previously made about customer benefits but with a particular emphasis on the safety arguments.</p>
<p>Scope of remedies <i>(paragraphs 342 – 350)</i></p>	
	<p>172 As we have previously said, Calor Gas Northern Ireland (CGNI) is not a subsidiary company of Calor Gas Limited (Calor), nor are its operations controlled and managed by Calor. It is not, therefore, correct to state in <i>paragraph 342</i> that “two of the major suppliers are present in Northern Ireland.” We would be grateful if the Competition Commission would recognise this point by referring to CGNI in relation to the NI market which the Competition Commission has already acknowledged is an entirely separate market from GB. We cannot comment on the structure of the Flogas group of companies or indeed how those companies are managed and controlled.</p> <p>173 In view of the size of the NI market in comparison to the GB market, and the fact that it is declining, we submit that it is illogical for the Competition Commission to assume that a remedy package which it believes is proportionate for the G B market (with which in any event we disagree) is proportionate for the NI market. [excised] The LPG market is already under considerable pressure from the expansion of natural gas. The cost of implementing the Competition Commission’s remedies package must be proportionate to the NI market. The remedies package itself is seemingly out of proportion to the issues identified by the Competition Commission in this inquiry in respect of NI (<i>see paragraph 345</i>). CGNI does not, therefore, believe that the entire remedies package should be implemented in NI.</p> <p>174 Calor supports the Competition Commission’s view that the package of remedies should apply to all suppliers in GB (<i>paragraph 350</i>).</p>
<p>The Competition Commission’s package of remedies <i>(paragraphs 351-352)</i></p>	
	<p>175 Calor reiterates the various points which have been made on each aspect of the proposed package of remedies in the specific relevant paragraphs above.</p>

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An alternative package of remedies <i>(paragraphs 353-359)</i>	
	<p>176 We firmly believe that Calor's proposed package will provide the customer with better information regarding the switching process.</p> <p>177 In summary, we fundamentally disagree with the Competition Commission when it states that Calor's proposed package of remedies would not be effective in addressing the features of the domestic bulk LPG market that the Competition Commission has identified as having an adverse effect on competition (<i>paragraph 359</i>). Calor's package would provide customers with sufficient information on the switching process via contracts, leaflets and suppliers' websites and has developed an improved version of the tried and tested tank uplift model to improve the switching process for customers. In contrast, the Competition Commission's package of remedies is untried and untested, relatively costly and disproportionate to the features it has identified and is seeking to remedy. Furthermore, certain aspects of the Competition Commission's proposed tank transfer model, for example its preferred and simplistic tank valuation methodology, will not in our opinion work in practice, thereby running the real risk of making the whole tank transfer model ineffective. As we have previously stated, it is absolutely essential that any new system introduced by the Competition Commission must be at least as safe and work in practice as well as the current tried and trusted tank uplift system.</p>
<i>Paragraph 356</i>	<p>178 Calor sees no reason why the "provision of information directly to customers about their ability to switch" could not be combined with Calor's proposed remedy, as the Competition Commission has already proposed for its own remedy.</p>
<i>Paragraph 357</i>	<p>179 Calor totally fails to understand why the Competition Commission could not pursue its proposal to cap charges on switching in the way that it is proposing to do in any event – whether tanks are to be uplifted or transferred. As far as the "avoidance of costs" in the final sentence is concerned, Calor has already pointed out that Calor's proposal would not involve greater costs than tank transfer, and in all probability lower costs in the long term. The Competition Commission has not shown any evidence of having carried out a full analysis of the true costs of tank transfer.</p>

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<i>Paragraph 358</i>	<p>180 The reference to “inconvenience” in the fourth line raises the same concerns with Calor as previously – namely, that the evidence that this is a significant element inhibiting switching has been greatly overstated by the Competition Commission; and that the remedy being proposed by the Competition Commission is disproportionate to the alleged problem.</p>
<p>The cost of the Competition Commission's Package of Remedies <i>(Paragraphs 360-364)</i></p>	
	<p>181 Calor considers that the Competition Commission's calculations in this section are flawed. Firstly, until the tank valuation methodology has been finalised, no one can know what the cost of the proposed package will be. Secondly, even on the figures provided by Calor, if the initial cost to Calor under <i>paragraph 360</i> is [excised], other suppliers will also have to bear costs (dependent on the remedies chosen) and the additional costs to those suppliers at [excised] appear to be under estimated. This would give a total implementation cost in any event higher than that suggested in <i>paragraph 362</i>.</p> <p>182 This does however ignore the intangible costs which Calor has already identified (which will be ongoing costs) such as increased levels of disputes, potential for increased insurance premiums, particularly in the event of an incident; and the need for tank examination which does not appear to have been factored in at its full value.</p> <p>183 .[excised]</p> <p>184 [excised].</p> <p>185 [excised].</p>