

BP RESPONSE TO THE DRAFT ORDER FOR CONSULTATION

Domestic Bulk Liquefied Petroleum Gas Market Investigation Order

Date of report: June 2006

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Background

1. On 5 July 2004, the Office of Fair Trading (OFT), in exercise of its powers under section 131 of the Enterprise Act 2002 (the Act), referred to the Competition Commission (CC), for investigation and report, the supply of domestic bulk liquefied petroleum gas (LPG) in the UK. On 20 October 2004 the OFT announced that, following a period of consultation, it had varied the terms of reference to the supply of bulk LPG for domestic use.

2. The CC investigated the matters referred to it in accordance with section 131 of the Act and concluded, in accordance with section 134(1), that there were features of the market, either alone or in combination, which prevent, restrict or distort competition within the relevant market, and in accordance with section 134(2) that an adverse effect on competition existed.

3. The CC found that there was a detrimental effect on customers resulting from the adverse effect on competition and considered, in accordance with section 134(4), whether (a) action should be taken by it for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or the detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition and whether (b) it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition.

4. In accordance with section 165 and paragraph 2(1)(a) of Schedule 10, the CC published on 31 July 2007 a Notice stating its intention to make this Order, indicating the nature of its provisions and stating that any interested person who wished to make representations about it should do so in writing before 17.00 on 14 September 2007.

The Draft Order

The CC makes this Order, in performance of its duty under section 138 and in exercise of the powers it has in section 161(1), 161(3) and 161(4) of, and Schedule 8 to, the Act. It does so for the purpose of remedying, mitigating or preventing the adverse effect on competition and any detrimental effects on customers, so far as they have resulted from the adverse effect on competition, specified in the report of the CC entitled *Market investigation into supply of bulk liquefied petroleum gas for domestic use*.¹

¹ www.competition-commission.org.uk/rep_pub/reports/2006/514lpg.htm.

1. Title, commencement and application

1.1 This Order may be cited as the 'Domestic Bulk Liquefied Petroleum Gas Market Investigation Order 2007' and shall come into force on [*nine months from date of making the order*].

1.2 This Order applies to any person who supplies bulk LPG for domestic use in the UK.

Part I

Supply of domestic bulk LPG other than to metered estates

A: Interpretation

2. Definitions

2.1 In this Part:

'the Act' means the Enterprise Act 2002

'BS' means a British Standard set by BSI British Standards, the UK's national standards body

'bulk LPG' means LPG supplied to tanks

'CC' means Competition Commission

'customer' means a customer purchasing domestic bulk LPG

'**date of purchase**'² means the date on which the existing supplier and the new supplier execute a transfer document to transfer the responsibility and ownership of the tank from the existing supplier to the new supplier

'domestic bulk LPG' means bulk LPG supplied for domestic use only

'eligible to switch' describes the status of a customer who is able to switch supplier

'emergency control' means a valve for shutting off the supply of LPG in an emergency, this being a valve intended for use by the customer

'emergency cover' means any arrangements made by suppliers to ensure that reports of emergencies can be received and responded to 24 hours a day in order to comply with regulation 37 of GSIUR

'exclusivity period' means any fixed period provided for in a contract for the supply of domestic bulk LPG during which the customer is obliged to purchase LPG solely from that supplier and during which the customer is not able unilaterally to terminate the contract for the sole purpose of switching supplier

² BP has concerns about the phrasing of this new definition. First, BP is unclear how the new supplier will know the exact date of purchase as it will not always know when the existing supplier receives the purchase funds. Therefore the new supplier may not know when its 14 day period referred to in article 7.5 begins. On a more general note, BP is considering how it will interact with other LPG suppliers to pay transfer prices in circumstances where more than one transfer happens in any set period. BP and another LPG supplier could agree to introduce reconciliation invoices to be issued on a monthly or even quarterly basis, where just one invoice would pass between the parties setting out the dates and details of transfers between the parties and transfer prices paid during a period and a single payment is made on the set date by the LPG supplier who has an outstanding balance as shown on the reconciliation invoice. In this case the transfer monies could be paid nearly three months after a transfer takes place if, for example, a transfer occurs on 1 Jan and the invoice due date is not until 31 March under a quarterly payment arrangement. BP suggests that the coupling of payment of transfer price with the transfer of responsibility of the tank is unnecessary and instead, BP proposes that the existing supplier and new supplier enter into a short form transfer agreement, the execution of which would trigger the transfer of responsibility and ownership, even if the transfer price was paid at a later date. BP has inserted revised wording in this definition for the Commission to consider

'existing supplier' means the person supplying the customer immediately before the customer proposes to switch to a new supplier

'formula price' means the price of a tank for the purpose of tank transfer as determined by the tank valuation formula

'GSIUR' means the Gas Safety (Installation and Use) Regulations 1998³ as amended or replaced with or without modification

'industry trade association' means any association representing suppliers of domestic bulk LPG in the UK and includes the LP Gas Association and the Association of Liquid Gas and Equipment Distributors or any successor body

'LPG' means liquefied petroleum gas a group of hydrocarbon gases typically containing three or four carbon atoms per molecule and often referred to as C3 or C4, the quality specifications for which are defined by BS 4250

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'new supplier' means the supplier to which the customer proposes to switch

'new tank' means a tank that has not previously been used in the supply of LPG or a refurbished tank

'normal UK working hours' means 0900 to 1700 hours on a working day in the UK

'OFT' means Office of Fair Trading

'PED' means Directive 97/23/EC as amended or replaced with or without modification

'PSSR' means The Pressure Systems Safety Regulations 2000⁵ as amended or replaced with or without modification

'RPI' means the 'all Items' index figure of the Index of Retail Prices published by the Office of National Statistics or any successor Office, Department or Ministry

'service pipework' means a pipe or system of pipes for supplying gas to premises from a tank, being any pipe and associated fittings between the gas storage vessel outlet valve and the outlet of the emergency control

'signage' means a notice indicating the owner of the tank or any procedure to be followed in the event of an emergency

'specified information' means the information required by Schedule 4 to this Order

'statement of eligibility to switch' means a statement in writing confirming whether or not a customer is eligible to switch

'statement of tank ownership' means a statement in writing confirming whether or not a tank is owned by the existing supplier⁶

'Steel Price Index' means the index of average UK steel prices as compiled by the Iron and Steel Statistics Bureau or any successor body

'supplier' means any person who supplies domestic bulk LPG

'switching' means the act of a customer changing supplier

³ SI 1998 No 2451.

⁴ BP notes that the Commission doesn't actually use the definition of 'metered estate' in Part I and as this definition is now redundant, it should be deleted.

⁵ SI 2000 No 128.

⁶ BP proposes that the statement of tank ownership requires the existing supplier to state only whether or not it owns the tank at the time the transfer request is made as, if the existing supplier doesn't own the tank, it may be difficult for it to ascertain whether the customer does own the tank.

If the Commission doesn't accept this position and our revision is not accepted, BP seeks clarification from the Commission as to how much investigation the existing supplier should undertake if it knows it does not own the tank but is uncertain whether the customer or any other party owns the tank? BP also seeks clarification as to whether it is permissible for the existing supplier to make the statement "We do not own the tank but we are unable to confirm the name of the owner of the tank"?

'tank' means the storage vessel which is located at a customer's premises and from which LPG is drawn including any fittings and valves fitted directly to the vessel (customarily including the outlet connection, drain connection, fill connection, pressure gauge, level gauge), and all other associated fittings but excluding any telemetry equipment

'tank transfer' means the process by which, when a customer switches supplier, ownership of the tank is transferred to the new supplier with the tank remaining in situ. Where the service pipework is owned by the existing supplier, tank transfer shall include the transfer of the ownership of the service pipework from the existing supplier to the new supplier

'tank uplift' means the process by which, when a customer switches supplier, the existing supplier's tank is removed from the customer's property

'tank valuation formula' means the formula set out in Schedule 1 or Schedule 2 to this Order, as appropriate, for the purpose of determining the price of a tank to be transferred

'telemetry equipment' means any equipment installed on or in the tank or at the customer's premises which enables the supplier remotely to receive information about the contents of the tank

'telephone enquiry point' means a telephone-based service operation which deals with customer enquiries

'**UPSO/OPSO valve**⁷' means the under pressure shut off and over pressure shut off valve, used to protect the pipework when pressure becomes too high or too low

'website' means one or more pages of information published on the Internet's World Wide Web

'working day' means any day which is not:

(a) Saturday, Sunday, Good Friday or Christmas Day; or

(b) **a bank holiday or other public holiday**⁸

'WSOE' means 'Written Scheme of Examination' as defined in regulation 8 of the PSSR

2.2 Except where words and expressions are expressly defined, the Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.

B: Tank transfer and tank uplift general provisions

3. The right to request a tank transfer

3.1 If a customer proposes to change his supplier, the customer shall have the right to request his existing supplier to transfer the tank and the service pipework, which are owned by the existing supplier and which are used in the supply of that customer, to the new supplier.

3.2 The right to request a tank transfer described in article 3.1 is subject to the conditions and exceptions stated in this Order.

⁷ BP suggests that this definition is deleted given that it is not used in the Order. However, if the Commission would like to retain it, BP proposes that the work "pipework" is replaced with "installation" as the valve is intended to protect the installation as a whole rather than just the pipework.

⁸ Given that Scotland has a different bank and public holiday regime to England and Wales, BP recommends that the Commission clarifies in this definition which holiday regime will apply or, if they are both to apply, how the supplier should calculate the number of working days if a bank holiday falls in Scotland but not in England (and vice versa).

3.3 The existing supplier shall not charge the customer any costs connected with the transfer of a tank or service pipework.

4. Tank transfer and tank uplift

4.1 A supplier shall ensure that any tank transfer or tank uplift:
(a) is conducted in accordance with the provisions of this Order;
(b) is carried out expeditiously; and
(c) is carried out in compliance with current safety requirements.

4.2 A supplier shall use all reasonable endeavours to ensure that continuity of supply to the customer is maintained during the tank transfer and tank uplift processes.

C: The tank transfer process requirements

5. Notices

5.1 If a new supplier receives a notice from a customer requiring the new supplier to notify the customer's existing supplier that the customer proposes to terminate his contract, the new supplier shall notify the existing supplier of the customer's proposal as soon as is reasonably practicable and in any event no later than three working days after the new supplier receives the notice.

5.2 If a new supplier receives a notice from a customer requesting a tank transfer, the new supplier shall notify that request to the existing supplier as soon as is reasonably practicable and in any event no later than three working days after the new supplier receives the notice.

5.3 Any notice or notification required to be given by this article shall be in writing.

6. Statements and documents

6.1 If an existing supplier receives a notice in accordance with article 5 **or a notice directly from the customer**⁹ indicating that the customer wishes to terminate his contract with the existing supplier, then within five working days of receiving the notice the existing supplier shall provide the new supplier with:

- (a) a statement of eligibility to switch; and
- (b) a statement of tank ownership.

6.2 If the statements confirm that the customer is eligible to switch and that the customer does not own the tank, the existing supplier shall at the same time as he provides the statement also provide the new supplier with:

- (a) copies of all documents held by virtue of regulation 14 of the PSSR, any other technical and safety documentation that is in the control of the existing supplier and which relates to the tank, its telemetry equipment **together with**¹⁰ details of the tank's WSOE; and

⁹ BP proposes the new wording to acknowledge the fact that occasionally the customer prefers to send a termination notice directly to the existing supplier rather than sending it to the new supplier. Without this additional wording, the transfer process and timetable would not apply where the customer serves his termination notice to the existing supplier.

¹⁰ BP recommends that the Commission changes the "or" in article 6.2(a) to "together with details of the tank's WSOE". BP considers that the current wording creates uncertainty as to whether the WSOE must be

(b) information about the ownership, construction, routing, pressure capacity, operating pressure, age, safety of, or inspection results relating to, the service pipework.

6.3 If any information or documentation mentioned in article 6.2¹¹ is not in the control of the existing supplier the existing supplier shall notify the new supplier accordingly.

6.4 If the statement of eligibility to switch shows that the customer is not eligible to switch the existing supplier shall send the customer a copy of the customer's contract and shall inform the customer of when the customer will become eligible to switch as soon as is reasonably practicable.

6.5 If the statement of eligibility to switch is not provided to the new supplier in accordance with article 6.1, or the existing supplier is unable to provide the customer with a copy of the contract in accordance with article 6.4, then the customer shall be deemed to be eligible to switch.

7. Tank transfer and valuation

7.1 Within 14 calendar days of receiving copies of the documents and the information mentioned in article 6, the new supplier shall notify the existing supplier whether or not he wishes to acquire the tank and the price he is prepared to pay for it.

7.2 If the existing supplier and the new supplier are unable to agree on the price to be paid for the tank, then the price¹² shall be determined by the tank valuation formula:

(a) in the case of tanks situated above the ground, as set out in Schedule 1 to this Order; and

(b) in the case of tanks situated in the ground as set out in Schedule 2 to this Order.

7.3 If at any point in the process the new supplier decides not to purchase the tank then he shall notify the existing supplier and the customer requesting the tank transfer as soon as practicable of his decision and, to the customer only, provide the reasons¹³ for it

¹⁴.

supplied if the information listed previously in part (a) is supplied and given that the WSOE is a document that must be held by an owner under PSSR, the Commission should remove the uncertainty in this wording

¹¹ BP proposes that this reference is amended to article 6.2(b) because (1) BP considers that the information disclosure requirements in article 6.2(a) should be mandatory and that a failure to provide information such as the WSOE or the technical documents could result in a new supplier refusing to complete a transfer, which could inhibit competition in the market and yet (2) there must be an exception made for pipework information because, at present, few suppliers hold pipework documentation and upon the effective date of the Order, very little pipework information will be available as required by article 6.2(b).

¹² Could the Commission please confirm whether VAT will be payable on the price paid for the tank under the tank transfer process?

¹³ BP has reservations about the requirement for the new supplier to provide reasons for not proceeding with the tank uplift to the existing supplier. The reasons for the new supplier not proceeding could be commercial in nature and if the existing supplier uses or relies on such information as part of its ongoing trading strategy, it could impact on the new supplier's ability to compete effectively in the domestic market. BP therefore recommends that the words "and the reasons for it" are deleted or otherwise the section is rephrased to "and, to the customer only, provide the reasons for it".

¹⁴ BP is concerned that the Order implies that once the customer has initiated a switching process, that all parties concerned must continue through to its conclusion, whether that is by way of a tank transfer or a tank uplift. However the reality may be that the new supplier wants to withdraw its initial offer to the

7.4 If the customer receives a notice from the new supplier under article 7.3 and the new supplier and the customer subsequently agree that the new supplier shall install a new tank, then the provisions of article 11 shall apply to the subsequent process as if the existing supplier had received a notice indicating that the customer had requested a new tank¹⁵ and the new supplier had received a statement confirming that the customer was eligible to switch and a statement confirming that the customer did not own the tank.

7.5 The new supplier shall take ownership of the tank and full responsibility for the tank on the date of purchase.¹⁶

7.6 If the new supplier purchases the tank then he shall as soon as reasonably practicable, but in any event no later than 14 calendar days from the date of purchase of the tank:

- (a) notify the customer that he has purchased the tank; and
- (b) obscures¹⁷ the signage of the existing supplier; and
- (c) have his signage displayed permanently and prominently on or near to the tank.

7.7 When a tank and its service pipework are transferred, the existing supplier shall not charge the customer or the new supplier with any costs connected with the transfer other than those costs authorized by this Order.

8. Emergency cover

8.1 The supplier shall respond, or may make arrangements for another person to

customer for commercial or health and safety reasons or the customer may not want to proceed with a tank uplift if it could be disruptive and/or costly to that customer. BP therefore requests that the words "and the reasons for it and of his intention to install a new tank" are deleted from article 7.3. Instead BP recommends that article 7.4 is amended as follows:

"If the customer receives a notice from the new supplier under article 7.3 and the new supplier and the customer subsequently agree that the new supplier shall install a new tank, then the provisions of article 11 shall apply to the subsequent process as if the existing supplier had received a notice indicating that the customer had requested a new tank and the new supplier had received a statement confirming that the customer was eligible to switch and a statement confirming that the customer did not own the tank."

BP considers that this wording allows greater flexibility to the tank transfer/tank uplift system without creating barriers to customer switching

¹⁵ BP considers that this assumption will not always be correct as the customer may not want the existing tank to be uplifted and a new tank installed for a number of reasons.

Could the Commission please clarify how a LPG supplier should classify and report the position where the customer refuses to carry on with the tank uplift where the new supplier rejects the tank transfer process: does this fall within 1(d) of Schedule 4?

¹⁶ BP recommends that the Commission adds in the following provision as a new article 7.5: "The new supplier shall take ownership of the tank and full responsibility for the tank on the date of purchase". As stated previously in our comments on the definition of 'date of purchase', BP considers that it is better that the date of purchase is dependent on the parties signing a short-form transfer agreement rather than the date the transfer monies are received

¹⁷ BP considers that the word 'obliterate' is too strong in this provision and recommends that this word is replaced with "obscures". This is because ownership details are stamped onto the dataplate and some suppliers may be unwilling to permanently remove the ownership details on that dataplate, particularly if it will be hazardous, costly or time consuming to do so. BP considers that the use of the word 'obscure' will ensure that all suppliers properly comply with the obligation to change the ownership signage under this Order and this will result in consistency in the transfer process and also ensure compliance with GSIUR.

respond on the supplier's behalf, to any request for emergency cover made at any time up to 14 calendar days from the date of purchase of the tank.

8.2 For the purposes of article 8.1:

(a) 'supplier' means the person providing the **supply**¹⁸ of the gas to the customer at the time the request for emergency cover is made; and

(b) where, at the time the request for emergency cover is made, the supplier is the existing supplier, the new supplier shall reimburse the existing supplier for the existing supplier's reasonable costs of responding to, or making arrangements for another person to respond to, the request for emergency cover.

9. Telemetry equipment

9.1 Until the expiry of **28 calendar days**¹⁹ from the date of purchase of the tank, the existing supplier may, with due care and attention, remove any of its telemetry equipment from the tank.

9.2 If, after the expiry of 14 calendar days from the date of purchase, telemetry equipment belonging to the existing supplier remains attached to the tank, the new supplier may, with due care and attention, remove this equipment and hold it for collection by the existing supplier.

10. Tank transfer time limit

10.1 The time taken from the receipt by the existing supplier of notice of the customer's proposal to terminate his contract and request to have his tank transferred to the date of purchase shall take no longer than 28 calendar days.

10.2 In the event that the new supplier considers that the tank will need to be **re-sited**²⁰ or that other civil or remedial works are required and the customer's prior consent to undertake works to this end is obtained by the new supplier, then the number of days taken to perform these tasks shall be disregarded for the purpose of determining whether the new supplier has complied with the time limits in this article.

D: The tank uplift process requirements

11. Notices and statements

¹⁸ BP asks the Commission for confirmation that "providing the supply" also includes the quantity of LPG from the existing supplier already in the tank at the date of transfer since, for example if the customer has a full tank at the date of purchase, there may be no new supply of LPG during the 14 day period or for some considerable time thereafter.

¹⁹ BP asks the Commission to consider extending the 14 day period here to 28 days because within the industry there are few trained technicians who are able to remove the telemetry equipment on behalf of an existing supplier and as a consequence it may prove difficult to arrange for this work to be completed during the 14 day period given the high workload they may face. If the new supplier does remove the telemetry equipment after the expiry of the 14 day period, BP is concerned that the equipment could be damaged if the removal is incorrectly completed.

²⁰ Bp requests that the Commission inserts additional wording after the word 're-sited' and before 'and' as follows: "or that other civil or remedial works are required". BP considers that there will be certain times when a re-siting is not required in the circumstances but the new supplier requires other costly and time-consuming works to be undertaken before the transfer can complete and in these situations the new supplier should be able to stop the clock pursuant to this article 10.2. If this wording is not added, the new supplier could frequently find that it fails to comply with the Order for reasons beyond its control, particularly if the customer is the party undertaking the civil or remedial works.

11.1 If an existing supplier receives a notice either from a customer or from a new supplier in accordance with article 5 and the notice also indicates that the customer wants the existing tank to be uplifted and a new tank installed, then within five working days of receiving the notice the existing supplier shall provide the new supplier with:

- (a) a statement of eligibility to switch; and
- (b) a statement of tank ownership²¹.

11.2²² If the statement of eligibility to switch shows that the customer is not eligible to switch, the existing supplier shall send the customer a copy of the customer's contract.

11.3 If the statement of eligibility to switch is not provided to the new supplier or a copy of the customer's contract is not sent to the customer within five working days, then the customer shall be deemed to be eligible to switch.

12. Tank uplift

12.1 If the statement confirms that the customer is eligible to switch, or the provisions of article 7(4) or 11(2) apply, then:

- (a) within 14 calendar days of receiving the notice the existing supplier shall either remove his tank or make arrangements²³ with the new supplier for its removal;
- (b) if the existing supplier plans to remove or removes his tank then he shall notify the new supplier in advance of doing so or no later than within one working day that he has done so; and
- (c) the new supplier shall install a new tank as soon as reasonably practical or no later than within ten working days²⁴ of receiving notice that the existing supplier's tank has been removed.

13. Tank uplift time limits

13.1 The time taken:

- (a) from the receipt by the existing supplier of notice of the customer's proposal to terminate his contract and request to have a new tank installed; or
- (b) from the existing supplier's receipt of notice from the new supplier under article 7(3) that he does not wish to acquire the tank, to the completion of the installation of the new tank,

²¹ BP considers that the statement of tank ownership in relation to tank uplifts will be unnecessary given that there will be no transfer of ownership within this uplift process and consequently no need to prove current ownership. BP therefore requests that the Commission deletes article 11.1 (b).

²² BP recommends that this article 11.3 is moved above the current article 11.2 as article 11 will read better if this switch is made.

²³ BP would be grateful if the Commission could clarify what "make arrangements" means in this provision and to confirm whether these arrangements must be completed within the 14 day time period? BP notes that in practice many existing suppliers will allow the new supplier to remove the existing supplier's tank and place it in a safe position on the customer's property in preparation for the existing supplier to collect the tank at a future date. Does the Commission intend that this practice can continue under this article 12.1(a)?

²⁴ BP considers that new suppliers may find it difficult to complete the tank installation within the five working day period set within this article, particularly because the contractors that complete such installations on behalf of the suppliers require at least one week's notice prior to the installation taking place, and in busy periods these contractors may not have the capacity to complete the tank installations requested within these timescales. BP suggests that this time period is extended to 10 working days.

shall in both cases be no more than 28 calendar days.

13.2 In the event that the new supplier considers that the tank will need to be resited²⁵ or that other civil or remedial works are required and the customer's prior consent to undertake works to this end is obtained by the new supplier, then the number of days taken to perform these tasks shall be disregarded for the purpose of determining whether the new supplier has complied with the time limits in this article.

14. Tank uplift charges

14.1 When a tank is uplifted, the existing supplier shall not charge the customer²⁶ or the new supplier with any costs connected with the tank uplift save that where the customer undertakes work or omits to complete work or does any act on his property with the consequence that the existing supplier is unable to conduct its standard uplift process to uplift its tank, then the existing supplier shall be entitled to charge the customer reasonable uplift costs representing the additional complexity, cost and time required to uplift the tank from the customer's property.

E: The switching process time limit

15. The overall limit

15.1 The new supplier shall ensure that:

- (a) the period of time between the existing supplier receiving notice of the customer's proposal to terminate his domestic bulk LPG supply contract; and
 - (b) the new supplier's acquisition of the tank used to supply the customer or installation of a new tank,
- shall be no more than 42 calendar days.

15.2 The overall limit in article 15.1 shall not apply where the new supplier has the express written consent of the customer that it may be exceeded.

F: Customers

16. Customer contracts

16.1 A supplier shall ensure that in any contract for the supply of domestic bulk LPG, the notice period²⁷ for the termination of the contract shall not exceed 42 calendar days,

²⁵ BP requests that the Commission inserts the following wording after 'resited' and before 'and': "or that other civil or remedial works are required..." (please see footnote 20 for justification).

²⁶ BP proposes that an exception to this general rule is made in the circumstances where the customer has undertaken work or done any act or failed to complete work on his property (after the date the existing supplier's tank was installed) which makes it very difficult for the existing supplier to uplift the tank without incurring large costs and spending a large amount of time in doing so. For example this could occur where the customer has surrounded the existing tank with outside buildings and only a crane can be used to lift the tank. In that case it seems unreasonable for the existing supplier to bear all of the costs associated with that complex and expensive uplift and BP considers that it should be possible to charge the client with reasonable uplift costs in these circumstances. BP therefore proposes that the Commission inserts the following wording at the end of this article: "save that where the customer undertakes work or omits to complete work or does any act on his property with the consequence that the existing supplier is unable to conduct its standard uplift process to uplift its tank, then the existing supplier shall be entitled to charge the customer reasonable uplift costs representing the additional complexity, cost and time required to uplift the tank from the customer's property."

²⁷ BP requests confirmation from the Commission that the existing supplier can now enforce the full 42 day notice period against its customer and is no longer required to waive any remaining notice period if the switch is completed within the 42 days (as was required by article 9(6) in a previous version of the Order).

and the maximum length of any exclusivity period in the contract shall not exceed 24 months.

16.2 The requirements in article 16.1 shall apply to contracts for the supply of domestic bulk LPG entered into before this Order comes into force.

16.3 In the case of contracts entered into after this Order comes into force, any exclusivity period shall begin:

- (a) where a customer is seeking a supply of bulk LPG for the first time and a tank²⁸ is first installed on their property, on the date of installation; and
- (b) in any other case on the date²⁹ of the contract.

16.4 Subject to article 14.1, a supplier shall not charge³⁰ the customer for switching away from it to another supplier, provided that any exclusivity period in the contract has expired.

16.5 A supplier shall ensure that a customer's contract includes a document containing, clearly and prominently:

- (a) a description of the procedure the customer has to follow to switch away from that supplier to another supplier;
- (b) the date on which the customer will first become eligible to switch supplier;
- (c) details of its own websites and telephone enquiry points and those of the industry trade associations; and
- (d)³¹ a description of how the customer may find out whether he is eligible to switch supplier.

G: Suppliers' obligations to provide information

17. Industry trade association information

17.1 A supplier shall ensure, so far as reasonably practicable, that any industry trade association of which he is a member makes available to the public free of charge:

- (a) a list of the supplier members of the association;
- (b) a description of the geographical areas³² in the UK served by each of the supplier

²⁸ BP considers that this wording causes confusion because the words 'new tank' are defined in the order as a new or refurbished tank and yet in this instance the Commission is detailing the position where the customer is new to LPG. BP therefore recommends that the wording is changed as follows: "where a customer is seeking a supply of LPG for the first time and a tank is first installed on their property, on the date of installation".

²⁹ BP would like to point out that there is an inconsistency between the Order which refers to the 'date of the contract' and the Explanatory Note which states at paragraph 29 that the 'exclusivity period begins on the date on which the contract comes into force'. As the effective date can differ from the contract date dependent on the contract drafting, BP asks the Commission to either amend the inconsistency within the Explanatory Note so that it mirrors article 16.3(b) or to change 16.3(b) to read "in any other case on the date the contract comes into force".

³⁰ Following on from footnote 26, as BP is asking the Commission to recognise that sometimes the customer should bear some of the uplifting costs where the customer has done something to prevent a straightforward uplift, BP asks for a reference to this new insertion within this article.

³¹ BP requests that this wording is removed since at the time of contracting the customer will not be eligible to switch unless they are in a non-exclusive contract, which we think will be rare within the industry.

members;

(c) contact details of each of the supplier members; and

(d) contact details for any other industry trade association including any website address and telephone number for such association.

17.2 The information mentioned in article 17.1 subparagraphs (a) to (d) shall be published on the association's website and be made available during normal UK working hours from a telephone enquiry point.

17.3 A supplier shall ensure, so far as reasonably practicable, that any trade association of which it is a member works with any other trade association in order to create a single unified source providing the information mentioned in article 17.1.

18. Information on invoices

18.1 A supplier shall ensure that any invoice sent to a customer contains:

(a) a statement drawing the attention of the customer to the fact that the information mentioned in article 17.1 subparagraphs (a) to (d) can be obtained from the relevant websites and telephone enquiry points; and

(b) a statement of the amount of LPG³³ in litres supplied to the customer under the invoice and the price payable for that amount in pounds sterling and pence per litre.

19. Eligibility to switch

19.1 Within³⁴ one month of the customer becoming eligible to switch, a supplier shall notify that customer in writing of that fact.

19.2 A customer shall be eligible to switch from the later of:

(a) the date on which this order comes into force; or

(b) the end of the exclusivity period.

20. Information about switching

20.1 A supplier shall ensure that a description of the procedure any of its customers would have to follow to switch to a new supplier, together with information about any possible charges that the existing supplier might make and the circumstances in which such charges may be made, is available from a telephone enquiry point during normal working hours.

20.2 A supplier shall make available to a customer, from a telephone enquiry point, an estimate of how much it will cost the customer to switch supplier and how long it will take, including the maximum time periods for switching, tank uplift and tank transfer

³² BP seeks clarification from the Commission as to the description of the "geographical areas" that is expected on the industry websites or other public information. If for example, a supplier provides national coverage, is it permissible to simply say 'national coverage' or is it necessary to specify which counties the supplier trades in or is something else required?

³³ BP recommends that the Commission adds the words "in litres" after 'LPG' otherwise the customer will not be able to reconcile his price in litres against the actual volume and price if the supplier is setting out the volume in, for example, tonnes.

³⁴ BP seeks clarification as to the interpretation to be given to "Within": Conceivably it could mean one month after the customer becomes eligible to switch and also one month before the customer becomes eligible to switch. Therefore could the Commission please either confirm that both of these interpretations are permissible or amend the wording of this article 19.1 to remove any ambiguity

included in this order.

20.3 A supplier shall make available via a telephone enquiry point quotes for the supply of domestic bulk LPG to a customer, such quotes to be provided in pounds sterling and pence per litre.

20.4 Any information a supplier provides in accordance with articles 20.2 and 20.3 may be stated to be subject to an inspection of the tank and its site.

20.5 Any information a supplier is required to make available from a telephone enquiry point may also be made available from the supplier's website.

H: The OFT

21. Provision of specified information

21.1 The obligations in Schedule 4 to this Order shall apply.

I: The CC

22. Directions by the Competition Commission as to compliance

22.1 The CC may give directions to a person specified in the directions, or to a holder for the time being of an office so specified in any company or association:

(a) to take such steps as may be specified or described in the directions for the purpose of carrying out, or securing compliance with, this Part; or

(b) to do, or refrain from doing, anything so specified or described which he might be required by this Part to do or refrain from doing.

22.2 In article 22.1 subparagraph (a) 'steps' include steps to introduce and maintain arrangements to ensure any director, employee or agent of a supplier discharges the obligations of, or secures compliance with, this Part.

22.3 The CC may vary or revoke any directions given under this article.

Part II³⁵

Supply of domestic bulk LPG to metered estates

A: Interpretation

23. Definitions

23.1 In this Part:

'BS' means a British Standard set by BSI British Standards, the UK's national standards body

'bulk LPG' means LPG supplied to metered estate tanks

'CC' means Competition Commission

'domestic bulk LPG' means bulk LPG supplied for domestic use only

'existing metered estate supplier' means the person supplying the metered estate customer immediately before the metered estate customer proposes to switch to a new metered estate supplier

'formula price' means the price of a metered estate tank for the purpose of metered

³⁵ BP has separately expressed serious concerns to the Commission regarding Part II, which go to the heart of whether such a remedy for metered estates could be made workable. Therefore, BP has not provided drafting revisions for Part II, as these could not address the more fundamental problems sufficiently.

estate tank transfer as determined by the tank valuation formula

'industry trade association' means any association representing metered estate suppliers of domestic bulk LPG in the UK and includes the LP Gas Association and the Association of Liquid Gas and Equipment Distributors or any successor body

'LPG' means liquefied petroleum gas a group of hydrocarbon gases typically containing three or four carbon atoms per molecule and often referred to as C3 or C4, the quality specifications for which are defined by BS 4250

'metered estate' means an estate where more than one residential consumer of domestic bulk LPG is supplied using a tank (or tanks) and pipework which are shared between consumers and where their consumption is measured by a meter

'metered estate customer' means any person with a contract with a metered estate supplier for the supply of domestic bulk LPG

'metered estate supplier' means the supplier of domestic bulk LPG to a metered estate tank

'metered estate switching' means the act of a metered estate customer changing supplier

'metered estate tank' means the storage vessel from which domestic bulk LPG is drawn for distribution to the metered estate customer and includes the pipework connecting metered estate tanks to each other

'metered estate tank transfer' means the process by which, when a metered estate customer switches metered estate supplier, ownership of the tank is transferred to the new metered estate supplier with the tank remaining in situ

'metered estate tank uplift' means the process by which, when a metered estate customer switches supplier, the existing metered estate supplier's metered estate tank is removed from the site it occupied while used in the supply of that metered estate customer

'new metered estate supplier' means the metered estate supplier to which the metered estate customer proposes to switch

'OFT' means the Office of Fair Trading

'tank valuation formula' means the formula set out in Schedule 3 to this Order for the purpose of determining the price of tank to be transferred

'telephone enquiry point' means a telephone-based service operation which deals with customer enquiries

'website' means one or more pages of information published on the Internet's World Wide Web

Except where words and expressions are expressly defined, the Interpretation Act 1978 shall

apply to this Part as it does to Acts of Parliament.

B: Metered estate tank transfer and metered estate tank uplift general provisions

24. The right to request a metered estate tank transfer

24.1 If a metered estate customer proposes to change his supplier and has the necessary authorization to change supplier, the metered estate customer shall have the right to request his existing metered estate supplier to transfer the metered estate tank which is owned by the existing metered estate supplier and which is used in the supply of that metered estate customer to the new metered estate supplier.

24.2 The right to request a metered estate tank transfer described in article 24.1 is subject to the conditions and exceptions stated in this Order.

24.3 The existing metered estate supplier shall not charge the metered estate customer any costs connected with the transfer of a metered estate tank.

25. Metered estate tank transfer and metered estate tank uplift

25.1 A metered estate supplier shall ensure that any metered estate tank transfer or metered estate tank uplift:

- (a) is conducted in accordance with the provisions of this Part;
- (b) is carried out expeditiously; and
- (c) is carried out in compliance with current safety requirements.

25.2 A metered estate supplier shall use all reasonable endeavours to ensure that continuity of supply to the metered estate customer is maintained during the metered estate tank transfer and metered estate tank uplift processes.

C: Metered estate switching process requirements

26. Notices

26.1 If a new metered estate supplier receives a notice from a metered estate customer requiring the new supplier to notify the metered estate customer's existing metered estate supplier that the metered estate customer proposes to terminate his contract, the new metered estate supplier shall notify the existing metered estate supplier of the metered estate customer's proposal as soon as is reasonably practicable and in any event no later than three working days after the new supplier receives the notice.

26.2 If a new metered estate supplier receives a notice from a metered estate customer requesting a metered estate tank transfer, the new metered estate supplier shall notify that request to the existing metered estate supplier as soon as is reasonably practicable and in any event no later than three working days after the new supplier receives the notice.

26.3 If the existing metered estate supplier receives a notice in writing from a metered estate customer or from a new metered estate supplier which indicates that the metered estate customer proposes to change his existing metered estate supplier to a new metered estate supplier, and if the existing metered estate supplier is satisfied that the metered estate customer has the necessary authorization to switch supplier, then the existing metered estate supplier and the new metered estate supplier shall use their reasonable endeavours to enable the metered estate customer to do so.

26.4 If the existing metered estate supplier receives a notice in writing from a metered estate customer in accordance with article 26.1, and if the existing metered estate supplier believes that the metered estate customer is prohibited from switching supplier by the terms of its contract, the existing metered estate supplier shall send the metered estate customer a copy of the metered estate customer's contract.

26.5 If at any point in the process the new metered estate supplier decides not to purchase the metered estate tank, he shall notify the existing metered estate supplier and the customer as soon as reasonably practicable of his decision and the reasons for it and whether he intends to install a new tank.

26.6 Any notice or notification required to be given by this article shall be in writing.

27. Statements and documents

27.1 If an existing metered supplier receives notice in accordance with article 26 indicating that the metered estate customer wishes to terminate his contract with the existing metered estate supplier and requests a metered estate tank transfer, then, as soon as is reasonably practicable, the existing metered estate supplier shall provide the new metered estate supplier with:

- (a) a statement of eligibility to switch; and
- (b) a statement of metered estate tank ownership.

27.2 If the new metered estate supplier wishes to purchase the metered estate tank he shall notify the existing metered estate supplier of this and the existing metered supplier shall within five working days of receiving the notice, provide the new metered estate supplier with:

- (a) copies of all documents held by virtue of regulation 14 of the PSSR, any other technical and safety documentation that is in the control of the existing supplier and which relates to the tank, its telemetry equipment or details of the tank's WSOE.

27.3 If any information or documentation mentioned in article 27.2 subparagraph (a) is not in the control of the existing metered estate supplier, the existing metered estate supplier shall notify the new metered estate supplier accordingly.

28. Metered estate tank transfer and valuation

28.1 If the existing metered estate supplier received a notice in writing from a metered estate customer or from a new metered estate supplier which indicates that the metered estate customer proposes to change his existing metered estate supplier to a new metered estate supplier and requests a metered estate tank transfer, and if the existing metered estate supplier is satisfied that the metered estate customer has the necessary authorization to switch supplier, then the existing metered estate supplier and the new metered estate supplier shall use their reasonable endeavours to enable the metered estate customer to do so using a metered estate tank transfer.

28.2 If the new metered estate supplier proposes to purchase the metered estate tank from the existing metered estate supplier and are unable to agree on the price to be paid for the metered estate tank within a reasonable period of time, then the tank price formula in Schedule 3 shall be applied to determine the price of the tank.

28.3 If the new metered estate supplier purchases the metered estate tank then he shall, as soon as reasonably practicable after the date of purchase:

- (a) notify the metered estate customer that he has purchased the tank; and
- (b) obliterate the signage of the existing metered estate supplier; and
- (c) have his signage displayed permanently and prominently on or near to the tank.

29. Emergency cover

29.1 If the new metered estate supplier purchases the metered estate tank then he and the existing metered estate supplier shall use their reasonable endeavours to ensure continuity in the provision of emergency cover in relation to the metered estate tank.

30. Telemetry equipment

30.1 If the new metered estate supplier purchases the metered estate tank then he and the existing metered estate supplier shall use their reasonable endeavours to ensure that arrangements are made for the removal of any telemetry equipment belonging to the existing metered estate supplier from the metered estate tank.

D: Metered estate suppliers' obligations to provide information

31. Industry trade association information

31.1 A metered estate supplier shall ensure, so far as reasonably practicable, that any industry trade association of which he is a member makes available to the public free of charge:

- (a) a list of the metered estate supplier members of the association;
- (b) a description of the geographical areas in the UK served by each of the metered estate supplier members;
- (c) contact details of each of the metered estate supplier members; and
- (d) contact details for any other industry trade association including any website address and telephone number.

31.2 The information mentioned in article 31.1 subparagraphs (a) to (d) shall be published on the association's website and be made available during normal UK working hours from a telephone enquiry point.

31.3 A metered estate supplier shall ensure, as far as reasonably practicable, that any trade association of which it is a member works with any other trade association in order to create a single unified source providing the information mentioned in article 31.1 subparagraphs (a) to (d).

32. Information on invoices

32.1 A metered estate supplier shall ensure that any invoice sent to a metered estate customer contains:

- (a) a statement drawing the attention of the customer to the fact that the information mentioned in article 31.1 can be obtained from the relevant websites and telephone enquiry points; and
- (b) a statement of the amount of LPG supplied to a customer under that invoice and the price payable for that amount in pounds sterling and pence per litre.

33. Information about switching

33.1 A metered estate supplier shall ensure that a description of the procedure metered estate customers would have to follow to switch to a new metered estate supplier, together with information about any possible charges that may be made by the existing metered estate supplier, is available from a telephone enquiry point during normal working hours.

33.2 A metered estate supplier shall make available to a metered estate customer, from a telephone enquiry point, an estimate of how much it will cost the metered estate customer to switch supplier and how long it will take.

33.3 A metered estate supplier shall make available via a telephone enquiry point quotes for the supply of domestic bulk LPG to a metered estate customer, such quotes to be provided in pounds sterling and pence per litre.

33.4 Any information a metered estate supplier provides in accordance with articles 31.2 and 31.3 may be stated to be subject to an inspection of the metered estate tank and its site.

33.5 Any information a metered estate supplier is required to make available from a telephone enquiry point may also be made available from the metered estate supplier's website.

E: The OFT

34. Provision of specified information

34.1 A metered estate supplier shall provide the OFT with any information and documents which the OFT may require for the purpose of monitoring compliance with, or giving effect to any of the provisions of, this Part in the form specified by the OFT.

34.2 For the purposes of this article, information includes, but is not limited to:

(a) the number of requests to change supplier the metered estate supplier has received;

(b) the outcome of those requests; and

(c) the number of metered estate tank transfers completed.

34.3 A metered estate supplier shall provide the OFT with any information required by this Part on the first working day following 1 July 2008 and annually thereafter.

34.4 A metered estate supplier may be required by the OFT to keep, maintain and produce such records specified in writing by the OFT that relate to the operation of any of the provisions of this Part.

34.5 A metered estate supplier whom the OFT believes may have information which may help it monitor or review the operation of this Part may be required by the OFT to attend and provide such information in person.

F: The CC

35. Directions by the CC as to compliance

35.1 The CC may give directions to a person specified in the directions, or to a holder for the time being of an office so specified in any company or association:

(a) to take such steps as may be specified or described in the directions for the purpose of carrying out, or securing compliance with, this Part; or

(b) to do, or refrain from doing, anything so specified or described which he might be required by this Part to do or refrain from doing.

35.2 In article 35.1 subparagraph (a), 'steps' includes steps to introduce and maintain arrangements to ensure that any director, employee or agent of a metered estate supplier discharges the obligations of, or secures compliance with, this Part.

35.3 The CC may vary or revoke any directions given under this article.

Schedule 1

Tank above ground price formula

1. The Formula Price of an above ground tank shall be determined using the following formula:

$$FP = (a - 0.05^x(a - b)) + (c(1 - 0.05^y)) + (d(1 - 0.1^z)) + (e(1 - 1/15^w))$$

Where:

'FP' is the Formula Price

'a' is the base price of the tank

'b' is the residual value

'c' is the 20-year test price where '20-year test' means a thorough examination involving degasification of the tank. '20-year test' also includes any work done on the tank as a result of the thorough examination (including, for example, replacement of valves or refurbishment of the tank)

'd' is the 10-year test price where '10-year test' means an examination of a tank that is carried out between installation and the carrying out of the first 20-year test or between 20-year tests and which does not involve degassing the tank. '10-year test' includes any work done on the tank as a result of the examination (including, for example, replacement of valves)

'e' is the price of a replacement anode, if such is used to protect the tank in question

'w' is the number of years since the anode was last replaced (taken to be equal to 15 prior to the first anode replacement)

'x' is the age of the tank

'y' is the number of years since the 20-year test

'z' is the number of years since the 10-year test

2. For the purposes of the tank valuation formula:

'w' is to be expressed in whole years and is to be rounded to the nearest whole year. If the last year in which the anode was replaced is more than 15 years previously or if no anode has yet been replaced, then the figure 15 shall be used in the formula. If an anode is to be used in the valuation methodology, the existing supplier should be willing and able to provide documentary evidence of the work undertaken in installing or replacing that anode and the date of that work.

'x' is to be expressed in whole years and is to be rounded to the nearest whole year. When the age of the tank exceeds 20 years, the figure of 20 shall be used in the formula.

'y' is to be expressed in whole years with the number of years since the last test to be rounded to the nearest whole year. The number of years since a 20-year test cannot exceed 20 years. If the last 20-year test was conducted more than 20 years previously, or if no 20-year test has yet been conducted, then the figure 20 shall be used in the formula. If a 20-year test is to be used in the valuation methodology, the existing supplier should be willing and able to provide documentary evidence of the work undertaken and the date of that work.

'z' is to be expressed in whole years with the number of years since the last test to be rounded to the nearest whole year. The number of years since a 10-year test cannot exceed 10 years. If the last 10-year test was conducted more than 10 years previously, or if no 10-year test has yet been conducted, then the figure 10 should be used in the formula. If a 10-year test is to be used in the valuation methodology, the existing supplier should be willing and able to provide documentary evidence of the work undertaken and the date of that work.

'a', 'b', 'c', 'd' and 'e' are variable Input Values which can be revised every year and

recalculated every three years by the OFT.

3. For the purposes of revising and recalculating the Input Values:

'a' shall be equal to the average price paid by domestic bulk LPG suppliers for PED compliant

tanks within the relevant capacity range supplied with valves and fittings (excluding the cost of delivery) for use in the UK in the 12 months prior to calculation or recalculation. 'a' shall be calculated for each of the following water capacity ranges: 0–500 litres, 501–1,200 litres, 1,201–1,800 litres, 1,801–2,500 litres, 2,501–4,200 litres, 4,201–4,600 litres and 4,601–9,000 litres.

'b', in the first year of application of the tank valuation formula, shall be £10. But for the purposes of recalculating 'b' the value shall be determined by the OFT taking into account the scrap value of the metal in the tank less the cost of uplifting the tanks and making it safe at the time of recalculation.

'c' shall be equal to the average price paid by suppliers in the UK in the 12 months prior to calculation or recalculation for those tests conducted by suppliers of tests who do not supply LPG.

'd' shall be equal to the average price paid by suppliers in the UK in the 12 months prior to calculation or recalculation for those tests conducted by suppliers of tests who do not supply LPG.

'e' shall be equal to the average price paid by suppliers in the UK for the replacement of an anode in the 12 months prior to calculation or recalculation.

4. When the OFT recalculates the Input Values every three years, it shall notify suppliers of the recalculated Input Values and the date from which they are to apply.

5. For those years when the OFT does not recalculate the Input Values, they will be revised as follows:

'a' will be revised according to the Steel Price Index for [month in which the order comes into force]

'b' will be revised according to the Steel Price Index for [month in which the order comes into force]

'c' will be revised according to RPI for [month in which the order comes into force]

'd' will be revised according to RPI for [month in which the order comes into force]

'e' will be revised according to RPI for [month in which the order comes into force]

and the OFT shall notify every supplier of the revised Input Values.

Schedule 2

Tank below ground price formula

1. The formula described in Schedule 1 but with water capacity categories as follows:
0–1,800 litres, 1,801–2,500 litres, 2,501–4,200 litres, 4,201–4,600 litres, 4,601–9,000 litres.

Schedule 3

Metered estate tank price formula

1. The formula described in Schedule 1 but with water capacity categories as follows:

Above-ground tanks:

0–500 litres, 501–1,200 litres, 1,201–1,800 litres, 1,801–2,500 litres, 2,501–4,200 litres, 4,201–4,600 litres, 4,601–9,000 litres.

Underground tanks:

0–1,800 litres, 1,801–2,500 litres, 2,501–4,200 litres, 4,201–4,600 litres, 4,601–9,000 litres.

Schedule 4

The specified information

1. Any person to whom this Order applies is required to provide to the OFT any information and documents which the OFT may require for the purposes of monitoring compliance with this Order or giving effect to any of the provisions of this Order in the form specified by the OFT. The information includes, but is not limited to, the following:

- (a) the number of tank transfer requests received by a supplier and the outcome of each tank transfer request over a specified period;
- (b) the number of days each transfer has taken to complete;
- (c) the number of customers who switched from it in the previous year; and
- (d) the number of transfers requested which have not taken place and the reasons why they did not.

2. In particular, a person to whom this Order applies shall provide the OFT with the following information on the first working day following 1 July 2008, and annually thereafter:

- (a) the number of customers who switched to it in the year to 31 May;
- (b) the number of customers who switched from it in the year to 31 May;
- (c) the number of customers who switched to it in the year to 31 May and who requested a tank transfer and the number of those who did so for whom the process was completed within 28 days; and
- (d) the number of customers who switched to it in the year to 31 May and for whom the switching process was completed within 42 days.

3. Any person to whom this Order applies may be required by the OFT to keep, maintain and produce those records specified in writing by the OFT that relate to the operation of any of the provisions of this Order.

4. Any person to whom this Order applies and whom the OFT believes to have information which may help it monitor or review the operation of this Order or any provision of the Order may be required by the OFT to attend and provide such information in person.