

BRITISH HOLIDAY & HOME PARKS ASSOCIATION LTD

*The representative body
of the parks industry including
caravans, chalets, lodges,
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of self catering accommodation.*

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David Peel
Inquiry Secretary
Competition Commission
Victoria House
Southampton Row
London WC1 4AD

14 September 2007

Dear Mr Peel

From: The British Holiday & Home Parks Association
Responding to: Draft Bulk Liquefied Petroleum Gas Market Investigation Order and
Explanatory Notes

The British Holiday & Home Parks Association

The British Holiday & Home Parks Association (BH&HPA) is the national trade body for the parks industry.

Tourism

The BH&HPA membership owns and manages an estimated 80% of the total licensed caravan and self-catering "on-site" pitches in the UK. BH&HPA estimates there to be some 3,500 holiday parks geographically dispersed to the coastal and rural areas that are attractive to holiday makers. The industry includes well known brands such as Butlins, Haven and Bourne but the majority of the 3,500 businesses in the sector are SMEs or micro-enterprises, usually independently owned and managed as a family concern.

Housing

The Association's membership also owns or manages residential parks, often known as 'Park Home Estates' or 'Mobile Home Parks', accounting for 60% of residential home park pitches in the UK. Economic consultants, working on a project for the Office of the Deputy Prime Minister in 2002¹, found that there may be up to 2000 residential home parks in the UK, accounting for about 70,000 homes and around 120,000 residents; they also established that demand for this sort of low-cost market housing is likely to increase.

The Proposed Order

BH&HPA understands the role of the Competition Commission (CC) in investigating the bulk LPG market for domestic use. The Association welcomes measures that protect consumer interests

¹ Economics of the Park Homes Industry, ODPM October 2002

and would be pleased to work with the CC to explore how its aims might reasonably be achieved in the context of residential parks.

Consultation

It is only within that last few days that we have become aware of the CC's work in the investigation of the bulk domestic LPG market and the proposed Order. We have therefore carried out a preliminary review of the proposed Order and Explanatory Notes and drawn the conclusion that there could be serious negative implications for the bulk LPG supply arrangements on residential parks if the Order were to be implemented as presently framed.

Given the application of the Order is designed to impact directly on park business we are particularly concerned that the Order has not been the subject of earlier, targeted consultation with us as the industry's representative body. Government's Code of Practice on Consultations stipulates that consultation, with pro-actively identified, interested parties who are likely to be affected, should begin early in the process of policy development and we feel that this guidance has not been followed.

Part I

Bulk LPG supply arrangements on some residential parks where mini-bulk tanks are installed on individual pitches may be viewed as being within scope of Part I as presently drafted and we are very concerned that such arrangements on residential parks are not properly accommodated within the terms of the Order. We would be grateful for an early opportunity to discuss the relevant issues; if the potential ambiguities in the proposed Order are not resolved **before** the Order is published there are likely to be avoidable disputes and there is the potential for costly litigation.

Preliminary matters of concern in Part I

The table following this letter (Appendix A) lists some of our concerns in more detail. However, given the time available to us to respond this is not an exhaustive submission; the Order will require further, meticulous scrutiny.

1. Where LPG is supplied via mini-bulk tanks, sited on individual park home pitches, to park home owners on residential mobile home parks it appears unlikely that such parks fall within the definition of 'metered estates'.
2. As drafted the Order *could appear* to apply where bulk LPG is supplied to mini-bulk tanks that are presently serviced via the park owner. Gas supply companies presently consider this to be a commercial contract and, as such, the terms of the draft Order are entirely inappropriate for such applications.
3. The definitions in Part I, such as 'consumer' and 'supplier' are not 'fit for purpose' in the context of parks where LPG supply to mini-bulk tanks is presently administered via the park owner. The Gas Safety (Installation and Use) Regulations 1998 also provide a definition of 'supplier' that is inconsistent with the definition in the draft Order; this will inevitably give rise to confusion.

Part II

With regard to Part II of the Order, the Association requests that the implementation of Part II is deferred to allow full and proper consideration of the Order as it may apply in the residential parks industry. This delay is necessary to ensure the proposed Order can be applied pragmatically and will not give rise to unnecessary disputes and possibly waste Courts' time.

It is explained in paragraph 4 of the Explanatory Notes that Part II is entirely free-standing, with its own definitions and provisions, and it distinguishes clearly between the rights of 'metered estate

customers' and the individual 'customer' defined in Part I. A justifiable delay in the delivery of Part II in the Order would not therefore stand in the way of the CC pursuing implementation of Part I.

Preliminary matters of concern in Part II

Appendix A also lists some of our concerns around Part II and we reiterate that further close scrutiny is required.

1. The terms 'metered estate', 'metered estate customer' and 'metered estate supplier' as defined in the Order cannot be appropriately applied in the context of residential parks.
2. The Explanatory Notes (even though some matters are raised at paragraph 39) fail to recognise the extent of the difficulties that would be generated through the application of the proposed Order and the operational and administrative chaos that would undoubtedly ensue. The Notes in this instance offer no useful explanations or guidance.

Parts I & II

The Order would give rise to many practical problems for parks and their customers. The CC acknowledges in the Notes that it does not have the legal powers to resolve them. Government is committed to a better regulation agenda and the notion that an Order might be introduced with the potential to create operational and administrative discord on residential parks appears, in our view, to fly in the face of such undertakings.

The result of incompetent regulation that is capable of misinterpretation by all stakeholders could be a breakdown in valuable relationships between park home owners, with the park management and with LPG supply companies.

In summary

In order to ensure that confusion is avoided we seek the CC's cooperation achieve a satisfactory outcome. With regard to Part I of the Order, we would be grateful of an early opportunity to meet the CC so that we can explain and discuss the circumstances that prevail on residential parks where mini-bulk tanks are located on individual pitches. In connection with Part II, we urge the CC to delay implementation of Part II to avoid potentially divisive, unintended consequences and to allow time for proper consultation with all appropriate stakeholders.

Consultation should include the Department of Communities and Local Government team (located within Housing) responsible for park home legislation, national residents' associations and the industry's trade associations.

BH&HPA would be pleased to assist and participate in that process and we look forward to receiving your response to these representations.

Yours sincerely,

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Appendix A

BH&HPA Comment on the Draft Order and Explanatory Notes			
	Draft Order	Explanatory Notes	BH&HPA Comment
1.	Part I Supply of domestic bulk LPG other than to metered estates		
	2. Definitions		
1.1	'customer' means a customer purchasing domestic bulk LPG		Who is the customer on a residential park? Is it the park owner who purchases LPG that will ultimately be used for domestic purposes only?
1.2.	'domestic bulk LPG' means bulk LPG supplied for domestic use only		We believe the Order would not therefore apply where the LPG was used to fuel a communal park facility or supplied to any commercial undertaking(s) on the park.
1.3	'existing supplier' means the person supplying the customer immediately before the customer proposes to switch to a new supplier 'supplier' means any person who supplies domestic bulk LPG		In both cases the supplier may be the residential park owner
1.4	'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		This draws the ambiguity around the terms 'customer' and 'supplier' into sharp focus. On a residential park where Part I may apply (see 1.5 below) the CC should be aware that pipework is likely to be owned (and maintained) by the park owner while the tank is owned by the LPG supply company.

1.5	<p>'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.</p>		<p><u>Residential Mobile Home Parks</u></p> <p>Bulk LPG supply to residential mobile homes is sometimes via mini bulk tanks located on individual park home pitches. The home owner may have</p> <p>a) A contract directly with the LPG supply company, or, b) A contract with the park owner who, in turn, contracts with the LPG supply company to service mini-bulk tanks on the park.</p> <p>In such circumstances the residential home park cannot be considered a metered estate and falls outside the scope of Part I.</p>
1.6	<p>Sections B - G</p>		<p>3. The right to request tank transfer – 20. Information about switching</p> <p>With so much uncertainty around the fundamental definitions that underpin this draft Order (as it relates to Residential Parks) all these sections provide scope for confusion and ambiguity.</p> <p>In the context of residential parks where LPG supply to mini-bulk tanks is presently administered via the park owner probably using the park owner's pipework, then the terms of the Order cannot realistically be applied in the same way as in the usual, and much more common, circumstances of the bulk domestic LPG tank.</p>

2.	Part II Supply of domestic bulk LPG to metered estates A: Interpretation 23. Definitions	Part II Supply of domestic bulk LPG to metered estates A: Interpretation 23. Definitions	
2.1	<p>'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.</p>	<p>36. In its report the CC had to consider whether the supply to metered estates could be regarded as within the terms of reference. It concluded that supply to metered estates can be divided into two main categories. The first category comprises supply by suppliers direct to domestic customers. The second category comprises supply by suppliers to a third party (for example, an estate owner), who then supplies those customers. These two categories can each be further subdivided into:</p> <ul style="list-style-type: none"> (a) supply to housing estates; (b) supply to mobile homes, used as permanent residences (known as 'park homes'); and (c) supply to leisure sites open only part of the year. <p>37. The CC concluded, first, that suppliers delivering gas to fixed storage tanks for distribution by an intermediary fell within its terms of reference where the LPG is intended ultimately, whether directly or indirectly, for domestic use, and second, that the supply by an LPG supplier to an intermediary park-owner of a leisure site did not fall within its terms of reference.</p>	<p><u>Residential Mobile Home Parks</u></p> <p>Bulk LPG supply to residential mobile homes could be:</p> <ul style="list-style-type: none"> a) directly from an LPG supplier to a meter at the park home. b) bulk LPG supply to residential mobile homes via mini bulk tanks located on individual park home pitches. The home owner may have either a contract directly with the LPG supply company or a contract with the park owner who, in turn, contracts with the LPG supply company to service mini-bulk tanks on the park. c) via an intermediary, usually the park owner. This is the most common form of LPG supply to residential parks. The pipework may be "<i>shared between consumers</i>" in terms of its usage but is likely to be in the ownership of the park which is also responsible for its maintenance. <p><u>Holiday parks</u></p> <p>BH&HPA notes and welcomes the CC conclusion <i>'that the supply by an LPG supplier to an intermediary park-owner of a leisure site did not fall within its terms of reference'</i>. However, the sub divisions (b) and (c) under note 36 fails to take account of (d) the many parks with planning consent for year-round 12-month opening restricted to holiday/leisure use and (e) many parks with planning consent for a mixture of use residential/holiday/leisure across different pitches and possibly also a mixture of open seasons.</p> <p><u>Mixed Use Residential and Holiday Parks</u></p> <p>Some parks include a combination of both holiday and residential accommodation that may be supplied from one bulk LPG tank.</p>

2.2	'domestic bulk LPG' means bulk LPG supplied for domestic use only	38. The Order does not apply to metered estates that include commercial customers.	We believe the Order would not therefore apply where the LPG was used to fuel a communal park facility or supplied to any commercial undertaking(s) on the park.
2.3	'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		<p>Please see 2.1 above</p> <p>LPG pipework and associated infrastructure on residential parks is invariably owned by, and the responsibility of, the park owner.</p> <p>We would need the opportunity to do further research, for example, to ascertain whether all parks meter the LPG supply or whether some apportion the charges across all homes.</p>
2.4	<p>'existing metered estate supplier' means the person supplying the metered estate.</p> <p>'metered estate customer' means any person with a contract with a metered estate supplier for the supply of domestic bulk LPG.</p> <p>'metered estate supplier' means the supplier of domestic bulk LPG to a metered estate tank</p>	<p>39. Metered estates present considerable practical problems which prevent a straight forward application of the tank transfer and tank uplift process requirements to them. These problems include:</p> <p>(a) the relationship between the customer and the supplier;</p> <p>(b) the relationship between the customers on the metered estate, for example how the estate is managed;</p> <p>(c) the ownership of the metered estate tank and the interconnecting pipework; and</p> <p>(d) the existence of easements and other rights of way for service pipework and service access.</p> <p>40. The CC does not have the legal powers to resolve many of these practical problems in the Order. It cannot, for example, require suppliers to set up a scheme for balloting customers of a metered estate so that if a majority want to switch supplier but a minority do not, then the metered estate can switch.</p>	<p>These definitions are not suited to describing the relationships on residential parks where the circumstances (as described in 2.1 above) are not like, say, the relationship between a gas supplier and customer(s) on a conventional, bricks and mortar housing estate where homes are rented.</p> <p>For example, for all practical purposes, from consumers' perspective, the gas supplier is the park owner.</p> <p>According to the definitions in the proposed Order, the consumer on a residential park who has a contract with the park owner for the supply of gas would not appear to fall within the definition of a 'metered estate customer' as s/he does not have a contract with a 'metered gas supplier'. The 'metered gas supplier' is defined as being the supplier of bulk LPG to a metered estate tank. Clearly the metered gas supplier is the bulk LPG supply company rather than the park owner. The 'metered estate customer' has no contract with the supplier of bulk LPG to the park's tank.</p>