

19 April 2006

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NON-CONFIDENTIAL VERSION

Dear Mr Simon

**DOMESTIC BULK LPG INQUIRY - FLOGAS' RESPONSE TO PROPOSED FINAL REPORT**

I refer to your letter of 29 March 2006 enclosing the Competition Commission's proposed Final Report ("Proposed Report"), inviting comments on the Proposed Report and seeking additional submissions on confidentiality.

Flogas' additional submissions on confidentiality are contained in the attached schedule. The schedule contains submissions on confidential information that the Commission has not otherwise highlighted as being confidential in the confidential version of the Proposed Report. For the avoidance of doubt, Flogas considers that disclosure of the information already highlighted as being confidential in the confidential version of the Proposed Report would significantly harm the legitimate business interests of Flogas within the meaning of Part 9 of the Enterprise Act 2002.

The Proposed Report does not differ substantially from the Commission's Provisional Findings Report and the various working papers issued by the Commission. As Flogas has previously commented at length on the various issues raised, it does not intend to repeat its comments at this stage. The fact that Flogas has not expressly addressed a particular view presented in the Proposed Report should not be understood to indicate Flogas' agreement with that view.

Nevertheless, Flogas would like to express significant concerns in relation to two aspects of the Proposed Report: the view taken as regards the practice of selective discounting, and the attempts made by the Commission to estimate the "consumer detriment" arising from the Commission's assertion that prices in Great Britain are "*higher than might have been the case in a market without the features identified having an adverse effect on competition*".

**A. SELECTIVE DISCOUNTING**

Flogas is disappointed that the Commission continues, at paragraph 4.76 *et seq*, and at paragraphs 109 *et seq* of Annex G, of the Proposed Report, to assert that the practice of selective discounting restricts competition and therefore results in higher overall prices.

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Jeremy Simon Esq  
19 April 2006  
Page 2

For the reasons set out at paragraphs 16 to 35 of Flogas' response to the Commission's Provisional Findings Report, the Commission's conclusions on selective discounting are unfounded: the Commission's conclusions are not based on a sound application of economic theory, nor are they supported by fact.

Selective discounting allows Flogas and other suppliers to compete vigorously against each other. The dynamics of pricing for the supply of bulk LPG are the result of a complex interplay between the efforts of suppliers to win and retain customers, the effects of rising costs and competitive efforts to retain customers in the face of those rising costs. Importantly, there is no basis for assuming that a different pricing structure would result in lower overall prices for customers. The Commission has not provided evidence that justifies its departure from the statement made at paragraph 4.78 of the Proposed Report that the Commission does "*not regard selective discounting in itself as an anti-competitive practice*".

## **B. CONSUMER DETRIMENT**

At paragraph 4.80 of the Proposed Report, and at Annex 3 of Appendix I to the Proposed Report, the Commission seeks to calculate the "consumer detriment" arising from the Commission's assertion that prices in Great Britain are "*higher than might have been the case in a market without the features identified having an adverse effect on competition*".

Flogas submits that the three methods adopted by the Commission to calculate "consumer detriment" are deeply flawed, and that no meaningful conclusions can be drawn from the Commission's analysis. Indeed, given the limitations of the analysis conceded at paragraph 3.1 of Annex 3 (i.e. that any estimate will be broad and will depend on the methodology used and the assumptions made), Flogas questions the value of such analysis.

The Commission's first methodology assumes that there is overcharging, and has arbitrarily selected a benchmark against which it is presumed that customers are being overcharged. Equally, there is no economic justification for assuming that the dramatic change in pricing structure implied by the Commission's analysis would lead to consumers paying the price of customers currently at the first decile in the range. As a method of assessing any alleged "consumer detriment", the Commission's first methodology is therefore circular and entirely valueless.

As regards the Commission's second methodology, which compares prices in Great Britain with prices in Northern Ireland, the Commission ignores the evidence that has been provided to the Commission as to the difficult market circumstances faced in Northern Ireland, notably the expansion of the natural gas network in Northern Ireland and the resulting lower returns achieved there. [CONFIDENTIAL].

Jeremy Simon Esq  
19 April 2006  
Page 3

As regards the Commission's third methodology, as the Commission notes at paragraph 5.16 of the Proposed Report, [CONFIDENTIAL].

Yours sincerely

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