

## The Domestic Bulk Liquefied Petroleum Gas Market Investigation Order

### Notice of intention to make an Order under section 165 of, and Schedule 10 to, the Enterprise Act 2002 and public consultation on the proposed Order

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 regarded the following as features of the market which adversely affected competition:
  - (a) the practice of uplifting and replacing tanks when a customer switches supplier;
  - (b) the lack of information available to customers on the costs and benefits of switching;
  - (c) the imposition of contractual restrictions on switching; and
  - (d) the limited ability of suppliers to identify and target their marketing efforts on each other's customers.
4. 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 action should be taken by it, or whether it should recommend the taking of action by others, 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.
5. The CC consulted on a range of possible actions in a Remedies Notice published on 23 August 2005. The CC considered that a package of remedies consisting of the following key elements would be effective and proportionate in remedying the various features of the market identified as having an adverse effect on competition:
  - (a) tank transfer with a price determined by a formula in default of agreement;
  - (b) standardization of, and improved information on, the switching process;
  - (c) changes to customer contracts; and
  - (d) improved information on suppliers and their offers.

6. The CC indicated in the report that it intended to implement the remedies by an order rather than undertakings.
7. On 31 July 2007, the CC gave notice of its intention to make an Order. A draft of the Order was published and written representations were received from [insert number] parties.
8. Following consideration of those representations, the CC made certain modifications to the draft Order.
9. In accordance with its obligations under paragraph 2(4) of Schedule 10 to the Act, the CC now gives notice of its intention to make the modified Order. A draft of the modified Order is attached. The CC invites written representations from any interested person or persons.
10. This notice and the draft Order have been published on the CC website.
11. In accordance with paragraph 2(2)(f) of Schedule 10 to the Act, which requires that consultation extends for a period of not less than 21 days from the date of publication of this notice, representations should reach the CC by 17.00 on 1 August 2008.
12. Comments on the draft Order should be provided to the CC, preferably electronically, or in writing and should be addressed to: [david.peel@cc.gsi.gov.uk](mailto:david.peel@cc.gsi.gov.uk) or David Peel, Inquiry Secretary, Competition Commission, Victoria House, Southampton Row, London WC1 4AD.

Peter Freeman  
Group Chairman  
Competition Commission  
11 July 2008

**Domestic Bulk Liquefied Petroleum Gas Market Investigation Order**

**Date of report: June 2006**

**Date of Order: [DRAFT FOR CONSULTATION]**

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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.
5. The CC received a number of responses to this consultation. Having considered those responses, the CC has made a number of changes to the Order. In accordance with paragraph 2(4) of Schedule 10 to the Act, which requires that there be a further consultation if the Order is modified after the initial consultation, the CC is now consulting on the proposed modified Order. Representations should reach the CC by 17.00 on [30 days from date of the notice].

## 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, or may be expected to result, 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*.<sup>1</sup> This Order does not apply to any person who supplies LPG for domestic use in the UK to a person residing on a metered estate.

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<sup>1</sup>[www.competition-commission.org.uk/rep\\_pub/reports/2006/514lpg.htm](http://www.competition-commission.org.uk/rep_pub/reports/2006/514lpg.htm).

## **A. Title, commencement, application and interpretation**

1.1 This Order may be cited as the 'Domestic Bulk Liquefied Petroleum Gas Market Investigation Order 2008' and shall come into force on [*three 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 except in respect of supply to any person residing on a metered estate.

1.3 Interpretation

'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' means the date when the existing supplier receives notification from the new supplier that he agrees to buy the tank from the existing supplier or the date when the existing supplier is deemed to have received notification from the new supplier that the new supplier agrees to buy the tank from the existing supplier under the provisions of this Order ('deemed notification')

'deemed notification' occurs two working days after the sending of any notification required under any provision of this Order provided it is sent by first class recorded delivery post and proof of such posting is produced on request unless actual notification is expressly required

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

'eligible to switch' describes the status of a customer who is not prevented by the terms of any contract from switching 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 otherwise than in accordance with its terms

'existing contract' means a contract between a supplier and a customer for the supply of domestic bulk LPG that is entered into before the coming into force of this Order

'existing supplier' means the person supplying the customer immediately before a notice of termination of contract is received by that person from either the customer or another supplier, or such notice is deemed to have been received by that person in accordance with the provisions of this Order ('deemed notification')

'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 1998<sup>2</sup> or the Gas Safety (Installation and Use) Regulations (Northern Ireland)<sup>3</sup> as amended or replaced with or without modification

'industry trade association' means any association representing suppliers of domestic bulk LPG in the UK in their capacity as suppliers and includes UKLPG or any successor body but does not include road hauliers or their associations

'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

'new contract' means a contract entered into between a supplier and a customer for the supply of domestic bulk LPG following the coming into force of this Order

'new supplier' means the supplier who has received from the customer an actual notice of termination of contract in relation to the supply of LPG by another supplier or to whom the customer has otherwise indicated in writing his intention to contract for the supply of LPG

'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

'notice of tank transfer request' means a notice from a customer requesting that the tank owned by the customer's existing supplier be transferred to the new supplier

'notice of tank uplift request' means a notice from a customer requesting that the tank owned by the customer's existing supplier be removed and a new tank installed by the new supplier

'notice of termination of contract' means a notice from a customer terminating the customer's contract with his existing supplier which may be given either to the customer's existing supplier or to the new supplier

'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 2000<sup>4</sup> or the Pressure Systems Safety Regulations (Northern Ireland) 2004<sup>5</sup> as amended or replaced with or without modification

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<sup>2</sup>SI 1998 No 2451.

<sup>3</sup>SI 2004/63.

<sup>4</sup>SI 2000 No 128.

<sup>5</sup>SI 2004/222.

'RPI' means the 'all Items' index figure of the Index of Retail Prices published by the Office for 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 tank outlet valve and the outlet of the emergency control

'signage' means any 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 3 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 that the existing supplier owns the tank and the service pipework

'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

'supplier's address for service' means a single postal address at which a notice of termination of contract and a notice of tank transfer request will be received

'switching' means the act of a customer changing supplier

'tank' means the storage vessel 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

'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

'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 day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom

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

- 1.4 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**

### **2. *The request for a tank transfer***

- 2.1 An existing supplier shall be obliged to facilitate the option to switch using tank transfer whenever a customer proposes to switch to a new supplier in accordance with the provisions of this Order.
- 2.2 In the case of a new contract, the existing supplier shall inform the customer of the option to switch using tank transfer at the time that the new contract is entered into.
- 2.3 In the case of an existing contract, the existing supplier shall inform the customer of the option to switch using tank transfer and shall do so (a) no sooner than one month before the termination of the existing contract and/or (b) no sooner than one month before and no later than one month after the end of any exclusivity period provided for under the terms of the existing contract.
- 2.4 If a customer gives a notice of termination of contract and a notice of tank transfer request, either to his existing supplier or to his new supplier, then the customer can request his existing supplier to transfer any tank or service pipework, which is owned by the existing supplier and which is used to supply the customer, to the new supplier and the existing supplier shall be obliged to effect such a transfer.
- 2.5 If a customer does not want a tank transfer, the customer can indicate in a notice of termination of contract that the customer wants the existing tank to be uplifted and a new tank installed and the existing supplier shall be obliged to remove the existing tank from the customer's premises.
- 2.6 If a customer decides, at any time after giving the notices mentioned in article 4.1, that he does not wish to proceed with a tank transfer request, then nothing in this Order shall prevent him from withdrawing those notices provided such withdrawal takes place before the date of purchase.
- 2.7 The existing supplier shall not at the time of tank transfer charge the customer any costs directly connected with the transfer of a tank or service pipework.

### **3. *Tank transfer and tank uplift***

- 3.1 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 the relevant safety requirements in force at the time of transfer or uplift.

3.2 The new supplier and the existing supplier shall use all reasonable endeavours to ensure that continuity of supply to the customer is maintained during any tank transfer or tank uplift.

## **C. The tank transfer process requirements**

### **4. Notices**

4.1 If a new supplier receives a notice of termination of contract from a customer, the new supplier shall give the notice 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.

4.2 If a new supplier receives a notice of tank transfer request from a customer, the new supplier shall give the notice 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.

4.3 If a new supplier receives both a notice of termination of contract and a notice of tank transfer request, the new supplier shall ensure, as far as is reasonably practicable, that the existing supplier is given both notices at the same time.

4.4 If a new supplier receives a notice of termination of contract from a customer and the customer does not submit a notice of tank transfer request or a notice of tank uplift request, the customer shall be deemed to have requested tank transfer and the relevant provisions of this Order shall apply accordingly.

4.5 Any notice required by this article shall be in writing, signed and dated and sent by first class recorded delivery post to the supplier's address for service. Where proof of such posting is produced, receipt shall be deemed to have taken place two working days after the date of posting.

4.6 A supplier may also send a notice of termination of contract and a notice of tank transfer request electronically provided the supplier has previously sent the same notice by first class post.

### **5. Statements and documents**

5.1 If an existing supplier receives a notice of termination of contract and a notice of tank transfer request from the new supplier or from a customer, or the customer is deemed to have requested tank transfer in accordance with the provisions of article 4.4, then within five working days of receiving the notice of tank transfer request or having been deemed to have received it the existing supplier shall provide the new supplier with:

(a) a statement of eligibility to switch; and

(b) a statement of tank ownership.

5.2 If the statements confirm that the customer is eligible to switch and that the existing supplier owns the tank, the existing supplier shall at the same time as he provides the statements also provide the new supplier with:

- (a) copies of all documents held by virtue of regulation 14 of the PSSR, and any other technical and safety documentation that the existing supplier has, which relates to the tank, together with details of the tank's WSOE;
  - (b) information as to the existence of any telemetry equipment;
  - (c) any information that the existing supplier has about the existence, ownership, construction, routing, pressure capacity, operating pressure, age, safety of, or inspection results relating to, the service pipework; and
  - (d) in the case of a tank below ground, full documentation relating to its cathodic protection.
- 5.3 If the existing supplier does not have any information or documentation mentioned in article 5.2(c) and (d), the existing supplier shall notify the new supplier accordingly.
- 5.4 If the statement of eligibility to switch shows that the customer is not eligible to switch, the existing supplier shall, as soon as is reasonably practicable and in any event within five working days of receiving a notice of termination of contract and a notice of tank transfer request from the new supplier or from a customer, inform the customer of when the customer will become eligible to switch and send the customer a copy of the customer's contract.
- 5.5 If the statement of eligibility to switch mentioned in article 5.1 is not provided to the new supplier or the existing supplier is unable to provide the customer with a copy of the contract in accordance with article 5.4, then the customer shall be deemed to be eligible to switch.

## **6. Tank transfer and valuation**

- 6.1 Within 14 calendar days of receiving copies of the documents and the information mentioned in article 5, 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.
- 6.2 If the existing supplier and the new supplier are unable within two working days of the new supplier having received the information and documentation set out in articles 5.2 and 5.3 to agree on the price to be paid for the tank, then the price 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 below ground, as set out in Schedule 2 to this Order.
- 6.3 If at any point before the date of purchase the new supplier decides not to purchase the tank then he shall as soon as is reasonably practicable:
- (a) notify the existing supplier of that fact; and
  - (b) notify the customer requesting the tank transfer of his decision and the reasons for it, as well as his intention to install a new tank.
- 6.4 If a customer who has initially requested tank transfer subsequently receives a notification from the new supplier under article 6.3(b) and consequently decides to proceed with a tank uplift with that new supplier instead of 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 existing supplier owned the tank.

6.5 If the new supplier purchases the tank then he shall, as soon as is reasonably practicable, but in any event within 14 calendar days from the date of purchase of the tank:

- (a) notify the customer that he has purchased the tank; and
- (b) render illegible the signage of the existing supplier; and at the same time
- (c) have his signage displayed permanently and prominently on or near to the tank and on or near to the emergency control valve.

6.6 When a tank and its service pipework (if applicable) are transferred, the existing supplier shall not charge the customer or the new supplier any costs connected with the transfer.

## **7. *Emergency cover***

7.1 The supplier shall respond, or may make arrangements for another person to respond on that supplier's behalf, to any request for emergency cover made at any time within 14 calendar days from the date of purchase of the tank.

7.2 For the purposes of article 7.1:

- (a) 'supplier' means the person providing the supply of the gas to the customer at the time the request for emergency cover is made and may be the existing supplier or the new supplier; 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.

## **8. *Telemetry equipment***

8.1 Within 14 calendar days from the date of purchase of the tank, or within such other period not to exceed 28 days as the existing supplier and the new supplier may agree, the existing supplier may, with due care and attention, remove any of its telemetry equipment from the tank. Where the removal of the telemetry equipment necessitates the installation of a contents gauge, the existing supplier shall supply and fit an appropriate contents gauge at no cost to the new supplier.

8.2 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.

## **9. *Tank transfer time limit***

9.1 The time taken from the receipt by the existing supplier of the notice of termination of contract and tank transfer request to the date of purchase shall be no longer than

28 calendar days from the date when both notices have been received by the existing supplier or the existing supplier is deemed to have received such notices in accordance with the provisions of this Order.

- 9.2 In the event that the new supplier considers that the tank will need to be resited, or that other works are required, and the customer's prior consent to undertake works to this end has been obtained by the new supplier, then the number of days taken to perform such works shall be disregarded for the purpose of determining whether article 9.1 has been complied with.
- 9.3 In the event that article 9.2 applies, the new supplier shall inform the existing supplier of the number of days that have been or will be disregarded for the purpose of determining whether article 9.1 has been complied with.

## **D. The tank uplift process requirements**

### **10. Notices and statements**

- 10.1 If an existing supplier receives a notice of termination of contract, either from a customer or from a new supplier and a notice of tank uplift request, then within five working days of receiving the notice of tank uplift request the existing supplier shall provide the new supplier with a statement of eligibility to switch.
- 10.2 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 within five working days of receiving the notice of tank uplift request.
- 10.3 If the statement of eligibility to switch is not provided to the new supplier, or if the statement of eligibility states that a customer is not eligible to switch and if the existing supplier has not sent the customer a copy of his contract within five working days of having receiving a notice of termination of contract and a notice of tank uplift request from the new supplier or from a customer, then the customer shall be deemed to be eligible to switch.

### **11. Tank uplift**

- 11.1 If the statement of eligibility to switch confirms that the customer is eligible to switch, or the provisions of article 6(4) or 10(3) apply, then:
- (a) within 14 calendar days of receiving the notice the existing supplier shall either remove his tank or put in place arrangements 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 is reasonably practicable or no later than within five working days of receiving notice that the existing supplier's tank has been removed.

### **12. Tank uplift time limits**

- 12.1 The time taken:

- (a) from the receipt by the existing supplier of notice of termination of contract and a notice of tank uplift request; 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 shall in both cases be no more than 28 calendar days.

- 12.2 In the event that the new supplier considers that the tank will need to be resited or that other 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 works shall be disregarded for the purpose of determining whether the new supplier has complied with the time limits in this article.

### **13. Tank uplift charges**

- 13.1 When a tank is uplifted, the existing supplier shall not impose upon the customer or the new supplier any charge directly referable to the uplifting of the customer's tank.

## **E. The switching process time limit**

### **14. The overall limit**

- 14.1 The period of time between the existing supplier receiving a notice of termination of contract and a notice of tank transfer request or a notice of tank uplift request, or the customer being deemed to have requested tank transfer in accordance with the provisions of article 4.4, and the date of purchase in relation to an existing tank or the installation of a new tank shall be no more than 42 calendar days.
- 14.2 The overall limit in article 14.1 shall not apply where the new supplier has the express written consent of the customer that it may be exceeded.
- 14.3 Any days disregarded in accordance with articles 9.2 and 12.2 shall also be disregarded for the purposes of determining whether the overall limit has been complied with.
- 14.4 The length of any statutory or contractual cooling-off period shall be disregarded for the purposes of determining whether the overall limit has been complied with.

## **F. Customers**

### **15. Customer contracts**

- 15.1 A supplier shall ensure that in any contract for the supply of domestic bulk LPG, the notice period for the termination of the contract shall not exceed 42 calendar days, and the maximum length of any exclusivity period in the contract shall not exceed 24 months.
- 15.2 The requirements in article 15.1 shall apply to contracts for the supply of domestic bulk LPG entered into before this Order comes into force.
- 15.3 In the case of new contracts, any exclusivity period shall begin:

- (a) where a customer is being supplied with domestic bulk LPG for the first time and a new tank is installed, on the date of installation; and
  - (b) in any other case on the date the contract was entered into.
- 15.4 A supplier shall not charge the customer for switching away from it to another supplier, provided that any exclusivity period in the contract has expired.
- 15.5 A supplier shall ensure that the customer's contract incorporates the following terms:
  - (a) the date on which the customer will first become eligible to switch supplier;
  - (b) what notice period will apply in the event of termination of contract; and
  - (c) whether and in what circumstances the customer will be charged for terminating his contract and what the maximum level of those charges might be.
- 15.6 A supplier shall ensure that a customer's contract is accompanied by 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) a single postal address at which a notice of termination of contract and a notice of tank transfer request will be received;
  - (c) details of its own websites and telephone enquiry points and those of the industry trade associations; and
  - (d) either a statement confirming when the customer will become eligible to switch supplier or a description of how the customer may find out whether he is eligible to switch supplier.

## **G. Suppliers' obligations to provide information**

### **16. Industry trade association information**

- 16.1 A supplier shall ensure, so far as is 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 areas in the UK served by each of the supplier 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.
- 16.2 A supplier shall ensure, so far as is reasonably practicable, that the information mentioned in article 16.1(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.
- 16.3 A supplier shall ensure, so far as is 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 16.1.

16.4 In the event that an industry trade association ceases to exist, then a supplier shall use his best endeavours to ensure as far as is reasonably practicable that there remains in existence a single unified source providing the information mentioned in article 16.1.

## **17. Information on invoices**

17.1 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 16.1(a) to (d) can be obtained from the relevant websites and telephone enquiry points; and
- (b) a statement of the amount of LPG supplied in litres to the customer under the invoice and the price charged to that customer for that amount in pounds sterling and pence per litre.

## **18. Eligibility to switch**

18.1 A supplier shall notify a customer in writing that he is eligible to switch, no sooner than one month before he becomes eligible to switch and no later than one month after he becomes eligible to switch.

18.2 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 any exclusivity period.

## **19. Information about switching**

19.1 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.

19.2 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 included in this order.

19.3 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.

19.4 Any information a supplier provides in accordance with articles 19.2 and 19.3 may be stated to be subject to an inspection of the tank and its site.

19.5 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

### 20. *Provision of specified information*

20.1 The obligations in Schedule 3 to this Order shall apply.

## I. The CC

### 21. *Directions by the Competition Commission as to compliance*

21.1 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.

21.2 In article 21.1(a), 'steps' include steps to introduce and maintain arrangements to ensure that any director, employee or agent of a supplier discharges the obligations of, or secures compliance with, this Part.

21.3 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:

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

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

All rounding will be done on an upwards arithmetic basis.

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 which 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 which 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**

### **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.