

## **Domestic Bulk Liquefied Petroleum Gas Market Investigation (Metered Estates) Order**

### **Response to consultation**

#### **Introduction**

1. As a result of our consultation on a draft Order relating to the domestic supply of LPG to metered estates, published on 2 March 2009, the Competition Commission (CC) has received a number of submissions. The CC has taken these submissions into account and has now issued a final Order in relation to metered estates. In this paper the CC summarizes the changes of substance it has made to the Order as a result of points made in those submissions and gives the reasons why it has not made changes in response to other points made in those submissions. Very minor changes are not discussed. Consequential amendments to the explanatory note have been made following the changes to the draft Order. The CC has previously made the Domestic Bulk Liquefied Petroleum Gas Market Investigation Order on 13 October 2008 (the domestic Order).

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

##### *Article 1.1*

2. The transition period had been shortened from nine months in the July 2007 consultation version of the Order to six months in the March 2009 version of the Order. A number of respondents (Calor, Flogas, UKLPG and BP) said that allowing a six-month transition period between issuing the Order and the Order coming into force would be insufficient. Flogas and BP suggested that a nine-month implementation period and UKLPG suggested that a 12-month period would be required.
3. BP told us that a six-month period would not allow time to evaluate the effectiveness of the processes in place for the domestic Order; the significant revisions of this Order had not made it possible to prepare processes prior to the making of the Order; six months from April would make the Order effective just as it was heading into the busiest time of the year; and the likely low number of customers able to rely upon the Order was not indicative of the challenges of implementing the changes it required. Calor told us that the Order allowed so many different switching permutations (Calor calculated in excess of 100 between metered, bulk and cylinder supplies on residential home parks) that it would not be possible to brief its staff properly within a six-month period, and that systems for invoicing and contracts would need a longer period for changes to be implemented. UKLPG also said that there were a greater number of possible switching situations than in relation to the domestic Order and these would take longer than six months to agree suitable protocols between suppliers. Flogas told us that a longer implementation period would minimize the number of referrals to the proposed arbitration process. Shell has previously told us that an Order having effect around September or October was the best time of the year to reduce pressure on suppliers.
4. We remain of the view that the LPG industry has had awareness of these remedies for a sufficient period to allow it to begin making the changes necessary to implement them. The proposed transitional period has been carefully selected to allow suppliers to identify customers that will be entitled to rely on the provisions of this Order and

develop procedures and process to enable them to comply. We consider that there is a balance between a shorter period which risks confusion and delay to customer requests to switch supplier (in the event of suppliers not being adequately prepared) and a longer period which delays the benefits of customers being able to switch their supplier.

5. We acknowledge that there are a great number of possible switching permutations that might occur given the large variety of physical configurations, ownership and management structures for metered estates. However, we do not accept that it is necessary for every possible permutation to be decided prior to the Order having effect. It is our view that the necessary details for any single metered estate to switch supplier will only become obvious once the negotiation process has begun. The Order provides a comparatively long time period for suppliers to agree the specific terms of a transfer once initiated which thus requires less specific preparation during the transitional [six]-month period than, for example, that required for the domestic Order. We note that the Order will have effect in late summer 2009, which one LPG supplier told us was the most convenient time for the Order to have force and another told us would be an inconvenient time. We have decided to adopt a transition period of [six] months. This will mean that the provisions of this Order will come into force on [ ].

#### *Article 1.2*

6. Calor suggested to us that the words 'is connected to' should be deleted and replaced with the words 'currently takes its supply from' in order to avoid any confusion arising over former customers on a metered estate (who might still be connected to the LPG infrastructure but were no longer taking a supply of LPG) being regarded as a customer for the purposes of this Order. However, the Order is stated to apply to LPG suppliers which supply domestic bulk LPG to metered estates. The current drafting is consistent with the terms of reference for this market investigation and we have decided not to change it.

#### *Article 1.3*

7. Calor raised concerns about the way in which 'customer' was defined. In particular, that a customer might be defined in the Order as connected to a metered estate but unable to draw LPG because their meter is disconnected, which might become confusing. It was suggested to us that the definition is redrafted to refer to being currently supplied with LPG from a metered estate. We have not made any change to this definition as we consider that the operative provisions work best with the current drafting of 'customer'.
8. Calor suggested that we provided a definition for disconnect and disconnection (used in Articles 3.1 and 3.3) because it was of the view that isolation by itself would not discharge a supplier's legal obligation under GSIUR which are specific about disconnecting meters. The Office of Fair Trading (OFT) also suggested that these terms were further defined. We agree that it would be helpful to clarify further these terms and an appropriate definition has now been provided.
9. Calor suggested that we introduced a new definition 'distribution pipework' and amend the definitions for 'LPG infrastructure' and 'service pipework'. This was intended to reflect the definitions used within the industry which identify differences between distribution pipework (which is connected to the tank(s) and forms the network around the metered estate) and service pipework (which connects between distribution pipework and a customer's premises). We decided not to make any

change as the definition 'LPG infrastructure' is intended to be all-inclusive of the equipment that is required to deliver LPG to customers on a metered estate regardless of the precise function that parts of it perform. To further define aspects of the LPG infrastructure is unnecessary and we do not see that any confusion can be caused by using a term that encompasses both types of pipework.

10. Calor also suggested that, to avoid confusion between the definitions 'individual contract' (a contract between a customer and supplier) and 'individual supply' (a customer who is supplied with domestic bulk LPG other than via a metered estate), the Order should refer to 'direct contract' instead of 'individual contract'. We have not adopted this suggestion as we consider that the definitions are sufficiently clear and we have concern that the term 'direct contract' may potentially mislead.
11. Calor suggested that the definition of 'meter' is changed to be consistent with that of 'primary meter' in the GSIUR. We have considered this suggestion carefully as we can see merit, where possible, in aligning the Order with the GSIUR. However, we do not consider that the definition given in the GSIUR is sufficiently broad for the purposes of the Order and thus have not amended the definition.
12. Calor suggested that the definition of 'supplier' was changed to clarify that it excluded any person acting in its capacity as a metered estate manager. We consider this clarification helpful and have adopted it. BH&HPA stated that it understood that the Order would not intervene in contractual relationships for the supply of LPG for domestic use between the owner of a park home estate (the owner of the land on which the park home is located) and park home residents. We consider that this has been clarified further with the slight amendment to this definition.
13. We were told by Calor that the definition of 'tank' should refer to 'pressure vessel(s)' to be more accurate. We have also adopted this clarification.

## ***Obligations on suppliers***

### *The overriding obligations*

#### *Article 2.1*

14. Shell has suggested that the obligation imposed by this Article should be limited to instances where there is no impediment which might prevent a customer or metered estate manager from switching. Further, Shell suggested that this article should be explicitly made subject to Article 4.2 to make it clear that customers on individual contracts can only switch where all customers are eligible to switch and unanimously agree to do so. We have not made a change to this article because we consider that there may be situations where an (unknown) general impediment prevents switching which might be agreed by suppliers operating pursuant to a general obligation to use reasonable endeavours to facilitate switching. In addition, we consider that a supplier should use all reasonable endeavours to facilitate switching up to the point of determining that particular customers are not unanimous or subject to valid exclusivity period(s).

#### *Article 2.2*

15. The Order requires that the existing supplier and new supplier negotiate in 'good faith' to give effect to its provisions. Calor has suggested that it would be more appropriate to state that suppliers should negotiate using 'reasonable endeavours', as this would be a more appropriate burden to place on the parties as it is a well-

defined legal term in English law. We are aware that the 'good faith' obligation imposes a relatively high burden upon suppliers and consider that this is justified to oblige both existing and new suppliers generally to work together in a facilitative way. We also consider that this requirement does have sufficient legal clarity in its meaning.

#### *Article 2.3*

16. Calor suggested that a clarification was necessary to explain that a metered estate manager is not a 'supplier' for the purposes of the Order. We have reflected this comment by amending the definition of 'supplier' in Article 1.2.

#### *Obligation to facilitate individual supply*

##### *Articles 3.1, 3.3 and 3.5*

17. The OFT suggested that the terms 'disconnect' and 'isolate' needed appropriate definitions. Calor suggested that isolation of a customer on a metered estate would be insufficient to discharge a supplier's legal obligation under the GSIUR which are specific about the disconnection of meters. We have removed the term 'isolation' from Articles 3.1, 3.3 and 3.5 to clarify that a customer's premises must be disconnected from the LPG infrastructure. 'Disconnection' has been defined in Article 1.2.
18. BP noted its concern that Article 3.1 requires a supplier to disconnect a customer irrespective of cost to the supplier or related disruption in the gas supply to other metered estate residents. We hold the view that the cost of disconnection is not a relevant factor, although if it is demonstrably impractical to disconnect a customer this obligation will not apply.

#### *Obligations to customers and metered estate managers*

##### *Article 4.2*

19. Shell has suggested that the Order should specify the appropriate standard form to be used to prove that all customers have unanimously resolved to switch. We consider that a written notice (as required by Article 6.1) that shows agreement from all customers on a metered estate (where an agent has not been appointed) is a sufficiently clear description for the purposes of this article and we have also set this point out in the explanatory note.
20. An LPG customer, Mr Routly, expressed a concern that unanimous agreement was required from all customers on a metered estate. Mr Routly instead suggested that: a majority decision among customers should be sufficient; or that it should be made easier for customers to break exclusivity periods; or that suppliers should be entitled to negotiate value for remaining exclusivity periods; or allow metered estates to own their own tanks and organize their own individual supplies to fill it up. We expressly considered all of these alternatives as we drafted the Order and decided that unanimous agreement was the only practicable way to implement a tank transfer remedy which would also be consistent with the terms of the Report. We note that Article 4.3 permits customers to settle on an agent to act on their behalf and as long as an agent has the authority of all the customers to act on their behalf, it is possible that the agent–customer relationship allows majority decisions to be sufficient when electing to transfer supplier. We also note that exclusivity periods can be terminated by a customer in some instances (usually upon payment of a fee) and are unlikely to

be a determinative factor to prevent motivated customers from switching supplier. Finally, we note that a supplier is legally responsible for the infrastructure that contains LPG that it has supplied. We did not consider that it was appropriate to obligate suppliers to supply LPG to infrastructure that they do not own because such a requirement could conflict with safety obligations.

#### *Article 4.3*

21. BP suggested that there may be an inconsistency between Article 4.3 (which refers to customers being able to appoint an agent to *negotiate* on their collective behalf) and paragraph 19 of the explanatory note (which refers to the agent being able to *undertake all relevant actions on behalf of the customers*). BP enquired whether the scope of the agent was limited to negotiating the switching process and the new contracts or whether the agent would also have authority to execute contracts on behalf of the metered estate manager or customers. We consider that the nature of any particular agency arrangement may vary according to circumstances and that an appropriate agency for a small metered estate may be different for a large metered estate. An agent's role may be limited to negotiation/coordination of the switching process or may also include the execution of contracts (and any other appropriate functions). In either event it is important that the agent has authorization for its function(s) and the existing and new supplier understand and have proof of the extent of the authority granted. Article 4.3 and the explanatory note have been amended to clarify this point.

### ***Transfer of LPG infrastructure***

#### *General provisions*

##### *Article 5.1*

22. Shell considered that this article should be qualified by a customer initiating the switching process by making a request to do so, otherwise this obligation would appear to apply to all customers all of the time. We have clarified this article by making this amendment so that the obligation under Article 5.1 only arises following a request to switch made under Article 6.2.

##### *Article 5.4*

23. Calor suggested that the Order should provide for a notice of termination to be given as well as a request to switch to ensure consistency between this Order and the Order dated 13 October 2008. However, the provision of notice is one of the key differences between the Orders. A notice of termination, in the case of a metered estate, can only be provided once a date for agreement to purchase has been provided by the new supplier. This might be at any stage during the extended period for negotiation or after arbitration has been concluded. If a notice to terminate a contract was received by an existing supplier and a date for agreement to purchase was still to be determined, then it is possible that the customer would have no supply during the intervening period or would be placed in a position of having to negotiate a new contract with the existing supplier for the intervening period. We expect that once the new supplier has settled on a date for agreement to purchase the customer will then be in a position to provide a notice to terminate the existing contract. We have now included this explanation in the explanatory note and also confirmed that, for the avoidance of any doubt, the provisions of the Order and the domestic Order are intentionally different, to reflect the different factual circumstances.

### *Article 5.5*

24. BP has noted that it might be difficult for a metered estate manager or customer to know how negotiations between suppliers are progressing and when to provide a notice to terminate the existing contract with the existing supplier. We have added a new Article 5.6 which requires both the existing and new supplier to make reasonable endeavours to keep the metered estate manager, customer or agent informed on progress concerning the request to switch. What is 'reasonable endeavours' will depend upon the circumstances and reinforces the overriding obligation for both suppliers to work together to switch a metered estate.
25. BP told us that, given that all customers needed to provide a notice to terminate their contracts (and the notice period would have had to expire) before the switch could take place, it would be possible for one customer to delay and frustrate the switching process. BP also suggested that we might make provision in the Order to coordinate customers to provide a notice to terminate their existing contracts. We consider that it is not appropriate to be prescriptive on how customers should coordinate themselves and we would expect that it is unlikely that the switching process would be delayed in this way. Given that both suppliers are aware of the date of agreement to purchase, the notice to terminate the existing contract is a formality which should not dictate the timeline for switching. It would be possible for the existing supplier to remind any customer to provide a notice to terminate their existing contract.

### *Statements and documents*

#### *Article 6.2*

26. Calor suggested that the words 'specifying the new supplier' should be added at the end of this article. However, this is not necessary because the definition of request to switch includes this requirement.
27. BP suggested that the word 'only' should be added to this article to make clear that a request to switch must be made to the existing supplier and not (as is permitted in the domestic Order) to the new supplier. We have made this amendment.

#### *Article 6.3*

28. Shell suggested that an existing supplier should only be required to confirm if a customer can switch within a week of receiving the request to switch, because a statement of ownership will not be necessary where a customer is unable to switch. We agree and have adjusted this article to require that the statement of ownership is only provided where there is no impediment to switching.
29. Calor queried whether in view of the amendments to the draft Order impediments no longer included physical impediments and, if that were the case, suggested that the Order be clarified. In the explanatory note we set out that it is unlikely that any other impediment to switching is likely to exist, but the complexity of some metered estates means that this provision is necessary for genuine issues to be raised by an existing supplier. We do not intend to amend this provision as we consider it important to keep open the possibility for issues other than exclusivity to be raised.

#### *Article 6.4*

30. BP noted that there is a general lack of information about land ownership and rights within the LPG industry and suppliers may have to attempt to conclude a sale of land

or granting of rights over land in the absence of formal paperwork. We have been aware of these concerns and this is part of the reason to impose a general obligation on suppliers to negotiate in good faith.

## *Valuation*

### *Article 7.1*

31. Calor suggested that 28 days instead of 21 days should be allowed for a new supplier to decide if it wished to purchase a metered estate given the complexity and extensive infrastructure of a metered estate. We note that this time period only begins up to one month after a customer has provided a request to switch supplier. While we are concerned that the negotiation process should not be unduly delayed we have amended this provision to allow a little extra time for a new supplier to enter negotiation.
32. BP noted a potential discrepancy between Article 7.1, which states that the new supplier must indicate the price it will pay at the end of the 21-day period, and the explanatory note which could be interpreted as not requiring the new supplier to indicate a price, but merely that it wishes to proceed. In particular, BP was concerned to understand when a new supplier should propose a price. We have amended the explanatory note to clarify that following the receipt of the information specified in Article 6.4, the new supplier must indicate the price it is prepared to pay, which will then form the basis for negotiations going forward.
33. The OFT suggested that we might provide for the existing supplier to have a right to refer unsatisfactory disputes to arbitration. However, we consider that an existing supplier might adequately protect its position by refusing to accept any offer that it considers to be too low—which then places the onus upon the new supplier to initiate arbitration. The new supplier has no other means of compelling the existing supplier to accept a reasonable offer if the existing supplier is determined not to proceed.

### *Article 7.2*

34. Calor has again suggested that it would be more appropriate to state that suppliers should negotiate using 'reasonable endeavours', as this would be a more appropriate burden to place on the parties as it is a well-defined legal term in English law.. In this specific situation we consider that to negotiate using 'reasonable endeavours' is an appropriate standard given that in the overriding obligation suppliers are required to deal with each other in good faith. We have amended this clause accordingly.
35. BP has suggested that the explanatory note of Article 7.2 differs from what the Order provides. In particular, the explanatory note suggests that all negotiation will end if agreement has not been reached after four months (and arbitration has not been elected). BP has noted that the article drafting is preferable because it is not so specific and indicates that negotiation may continue in these circumstances (and is therefore more likely to result in a positive switching outcome). A new supplier will need to consider carefully whether to waive its right to initiate arbitration but there may be circumstances where this is decided. We have amended the explanatory note and the article to make this possibility more explicit.

### *Articles 7.4 and 7.10*

36. BP suggested that the time frame provided for a meter to be read was an unreasonable period for suppliers to perform to because there were limited meter-

reading resources within the LPG industry. We have not adjusted this time frame because it is up to the two suppliers to agree what the time period for the date of the agreement to purchase is and allow each other time to meet this obligation. Calor considered that final meter readings taken by an existing supplier should be required to be provided to the new supplier to save duplicated effort amongst suppliers. We consider that this amendment would be beneficial and have amended the drafting of these two articles accordingly.

#### *Article 7.5*

37. Calor and Shell have suggested that the imposition of a requirement to obtain third-party consent using 'best endeavours' is overly burdensome in the context of this article. Shell was concerned that knowledge of the existence of this obligation could cause the third-party owner of the required property right to act unreasonably so as to extract an unreasonably high price for the grant of the necessary right. In this specific situation we consider that a requirement to use 'all reasonable endeavours' is sufficient given that in the overriding obligation suppliers are required to deal with each other in good faith. We have amended this clause accordingly and also removed the reference to 'good faith'.

#### *Article 7.6*

38. Flogas expressed concern over the provisions which set out the transfer or grant of an interest in or over land. In particular, Flogas suggested that this article, together with Articles 7.5 and 7.7, would encourage new suppliers to opt to acquire an interest in or over the land, as this would be a cheaper option than acquiring the land itself. Flogas considered that the value of any land owned by existing suppliers would be significantly diminished and an existing supplier could retain significant responsibilities in respect of land leased or licensed to a new supplier, as a result of these articles. The intention of these provisions is to provide an existing supplier with an unambiguous argument during negotiation that only that land or interest *required* to supply LPG to a metered estate is necessary to be transferred. We have clarified these articles so that only the existing supplier has the discretion to limit the transfer or grant of an interest in or over land where this continues to give effect to the Order. Further, we have also made it clear that the extent of any transfer of or interest in or over land should not be the subject of arbitration.
39. In most instances we expect that all associated land will be required to be transferred along with the LPG infrastructure to permit the new supplier to provide LPG to the metered estate. However, in some instances it is possible that not all associated land is required for this purpose. Where this is the case, the existing supplier has a unilateral discretion to transfer only that land which is necessary to give effect to the Order. In addition, the new supplier is not entitled to seek to limit the transfer or grant of an interest in or over land through arbitration.

#### *Article 7.7*

40. Calor and Shell have again suggested that the imposition of a requirement to obtain third-party consent using 'best endeavours' is overly burdensome. In this specific situation we consider that a requirement to use 'all reasonable endeavours' is sufficient given that in the overriding obligation suppliers are required to deal with each other in good faith. We have amended this clause accordingly.

#### *Article 7.12*

41. Calor suggested that this article should provide for a revocation of notice to terminate a contract to ensure that when the notice to switch was revoked the notice to terminate was also revoked and be consistent with Article 6.7 of the Order dated 13 October 2008. For the same reasons given at paragraph 23, we do not consider that it is useful or necessary for a notice of termination to be set out in this Order.

### ***Emergency cover***

#### *Article 8.1*

42. BP suggested that the proviso to this article, that a supplier shall only respond to an emergency situation—subject to having a right to enter property—may raise a conflict with the GSIUR. In addition, BP suggested that the practicality of supplier access was a general safety concern which should be considered further by the CC. This proviso was included because Calor has pointed out to us that in the case of piped supply to premises such as on a metered estate, an LPG supplier must have a contract which contains the power to enter property to address an emergency situation, and in this particular case it should be the supplier having the requisite power who has the obligation to respond.
43. The safety obligations on suppliers are not particularly clear during a period of switching ownership of LPG infrastructure and we note that the Health and Safety Executive has previously approved these particular articles which we have drafted for this scenario. We consider that Articles 8.1 and 8.2 make it clear that either supplier must take responsibility to resolve a safety issue whether that is done using their own technical resources or making sure that another supplier has adequate information on the emergency. Should there be any uncertainty over who has responsibility for an emergency situation both suppliers must reach appropriate arrangements between themselves to resolve any concerns about rights to enter property at any given time. Therefore, there is an obligation on both suppliers to respond to any emergency call regardless of the supplier to whom the call is directed.
44. On balance we have decided to remove the proviso rather than cause any possible confusion on this issue.

### ***Limitations on contractual terms and information to be provided***

#### *Article 9.4*

45. Calor suggested that the ‘date of first supply’ should be more accurately defined for the purpose of the Order, given that the first LPG supply to a central storage tank on a metered estate would not relate to any particular customer on the metered estate. Specifically, the exclusivity period should begin for metered estate managers when supplied with domestic bulk LPG for the first time and for customers when their meter is first read. Flogas also suggested that the definition used for the beginning of the exclusivity period should be amended. UKLPG suggested that the CC should consult further with suppliers to identify a suitable definition that would allow the exclusivity period to begin as close to when a supply for a particular customer started. We have decided to amend Article 9.4(a) to apply only in relation to a metered estate manager and that the relevant date for individual customers should be the first reading of that customer’s meter.

46. Shell noted that a strict interpretation of Article 9.4 and the definition of 'new contract' meant that this article would apply to any contract made after the Order had been made and prior to the article having explicit application six months after the Order has been made. We have decided to redraft this article to apply only to contracts as at the date this article has application and therefore avoid any possible confusion.
47. BP said that in this article it was unclear what was meant by the phrase 'the relevant parts of the LPG infrastructure' and said that as it was necessary to test every part of the infrastructure it could not see any additional benefit from this wording. We have deleted this phrase from the Order.

#### *Article 9.6*

48. Calor has suggested that the obligations under this article should only relate to contracts entered into, modified, or extended after the Order came into force because Article 12.1 is directed toward obligations on existing contracts. However, we consider that this clause should refer to all contracts because it provides further detail on the more general obligations set out in Articles 9.1 and 9.2. We have made a slight amendment to this clause to make this clearer.
49. An LPG customer, Mr Vale, was concerned that Article 9.6(c) might permit a supplier to impose additional, unforeseen charges for termination of a contract. However, this clause is merely an information obligation on suppliers to notify customers or metered estate managers of any and all costs for ending an exclusivity period prior to its agreed term.

#### *Article 9.7*

50. BP suggested that the phrase 'with specific reference to this Order' in subparagraph (a) of this article adds little value given the references in subparagraph (b) to Articles 4.2 and 4.3. BP also sought guidance as to the nature of the 'specific reference' it would expect suppliers to issue to customers. We have slightly amended this paragraph as a result.

### **Switching**

#### *Article 13.1*

51. Calor considered that, given its experience in implementing the requirements of the domestic Order, a considerable transition period was needed to prepare documentation and procedures specific to the changes being imposed. Calor considered that it was inappropriate for this article to have application from the date the Order was made. We have not changed the application of this provision and we consider that it is very important that those customers in the process of agreeing a contract with a supplier (during the period between the making of the Order and the application of the operative provisions) are informed of the impending changes and their rights to switch. We note that this provision merely builds upon those fair trading obligations which are already incumbent upon suppliers during this period. If a supplier was not providing this information, regardless of this article having explicit application at the time the Order is made, that supplier would in our view risk breaching its obligations under the provisions of the Consumer Protection from Unfair Trading Regulations 2008.

### *Article 13.3*

52. Calor and BP have stated that it was not clear how a supplier could provide a reasonable estimate for the costs of early termination as it was not clear what this meant. BP also said it would not be able to provide an accurate estimate during the course of a single telephone call. In addition, Calor did not consider that an existing supplier would be able to provide an estimate of the duration a transfer might take because the period of negotiation would be unknown. The OFT also suggested that this information should be made clear on their websites (where a supplier has one). We have decided to make this clause clearer to state that a supplier shall make available information on how much it is likely to cost a customer or metered estate manager if they decided to terminate their existing contract during an exclusivity period. Further, the supplier shall set out its understanding of how long the transfer process could potentially take pursuant to this Order and its experience (if any) of how long the process has taken on other similar transfers. Where this is not possible during a telephone call we have provided for the supplier to call back within a reasonable period. We agree with the OFT that this information may also be provided on the supplier's website where it has one and have expressly provided for this in Article 13.6.

### *Article 13.4*

53. BP told us that it would typically undertake an amount of research before it provided a quote for the supply of LPG to a metered estate, and this might take longer than the time available for a typical telephone call. BP was therefore concerned about the effect of the mandatory wording in this article and believed that notwithstanding Article 13.5, callers might expect a quotation over the phone as a right. We have amended Article 13.5 to include provision for the supplier to respond in a reasonable time where it is not possible to provide a quote immediately, or any of the other information required under Article 13.
54. Flogas has also suggested that Article 13.4 should be made explicitly subject to Article 13.5. We have not incorporated this proposal as we consider it is already clear when Articles 13.4 and 13.5 are read together that any quotation provided under Article 13.4 may be conditional upon an inspection of the LPG infrastructure and site and such other checks as are reasonably necessary.

### ***Tank uplift***

55. Calor has suggested that this Order should permit a customer to elect for an existing supplier to uplift existing tanks and the new supplier to install new ones. Calor suggested that a proposed transfer of LPG infrastructure might in some circumstances fail for this reason. We have not included provisions within the Order to allow a customer to elect for the tanks to be uplifted. There are a number of reasons why it was not practical to permit this election in the context of a metered estate. In particular, it would create significant additional complexity and uncertainty to the negotiated transfer of the metered estate (with significant added complexity to the Order itself). In addition, in most metered estate situations, it would not be practical or reasonable for the transfer process to impose significant disruption to potentially hundreds of customers at the time of the transfer process. The replacement of defective infrastructure would be disruptive in its own right and would only be more difficult to effect between two parties coordinating with each other. The new supplier should always have prerogative to decline to supply LPG infrastructure that is defective. Finally, a new supplier is not precluded from negotiating the transfer of a metered estate and then upgrading the infrastructure it receives after the transfer. If a

new supplier has an upgrade in mind this would seem likely to influence the price the new supplier is willing to pay and an existing supplier might expect to receive (assuming that the existing supplier would need to upgrade the LPG infrastructure itself should the transfer not proceed). It does not seem likely that the condition of the LPG infrastructure is going to be a determinative factor in the transfer process given that this factor would be part of the negotiation process.

### ***Arbitration***

56. BP suggested that arbitration could be a time-consuming and costly process for suppliers and delays which result from this process could lead to customer dissatisfaction. We have considered alternative obligations to place upon suppliers—such as time limits for agreement (as provided for in the domestic Order). However, the complexity and uniqueness of each metered estate means that universal obligations would not work in this particular context. We also note that most of the other suppliers have supported an agreement and arbitration process in lieu of detailed provisions for the valuation of metered estates.