

Shell Gas Limited (SGL)

Summary of comments on the Competition Commission “Safety Issues and Domestic Bulk LPG” paper (the “Safety Paper”)

1. General comments

- 1.1 SGL considers that, in its comments in the Safety Paper, the Commission fails to place enough emphasis on the overriding duties contained in the Health and Safety at Work Act 1974 (“HSWA 1974”).
- 1.2 SGL welcomes the recognition that the integrated approach under the current supply model delivers benefits. SGL is concerned, however, that the Commission does not consider the uplift of tanks to be necessary on safety grounds. Tank uplift is the best way of ensuring a clear allocation of roles and responsibilities and thus of minimising safety risks - particularly in view of the timeframes involved and the fact that a supplier to a tank nearing the end of its life would have difficulties in discharging its duties under the HSWA 1974 if the tank had been under the control of a number of different parties.
- 1.3 SGL fully supports the view that exclusive contracts have practical advantages. In the event of multiple suppliers to a tank, there would be a multiplication of functions, lack of clarity in roles and responsibilities and a resulting reduction in efficiency.
- 1.4 The safety paper makes no mention of the fact that breach of the legislation described in paragraphs 10-15 inclusive is a criminal offence. The fear of committing a criminal offence should be expected to make companies risk averse in the face of uncertainties about the rules.

2. Specific comments

- 2.1 **Paragraph 11:** A householder has no duties under the HSWA 1974. In view of the general obligations of employers to ensure, so far as is reasonably practicable, that persons not in their employment who may be affected thereby, are not exposed to risk to their health and safety, there is a greater onus on those undertakings which affect them to ensure householders’ health and safety.
- 2.2 **Paragraph 21:** The HSE’s own written guidance states that the PSSR “do not apply to systems installed at domestic premises.”

This paragraph also reports that the HSE recognises that the relevance of the PSSR in the domestic sector is ambiguous, although the HSE notes that in any event a system of maintenance and inspection should be in place in order to ensure compliance with the DSEAR 2002 and HSWA 1974. SGL notes that this would also be the case in the event that the supplier did not own the tank. In those circumstances, it would be extremely difficult for the supplier to maintain a satisfactory system of maintenance and inspection and in any event would result in a multiplication of costs.

The HSE fails to recognise that, if the specific and rigorous requirements imposed by the PSSR are not complied with, there could be varying maintenance and inspection systems put in place by suppliers which could lead to an overall decline in safety standards in the industry.

2.3 **Paragraph 23:** SGL places a number of responsibilities on its customers and the approved code of practice for the GSIUR does extend certain responsibilities to houseowners.¹ SGL does, however, recognise that houseowners have no responsibilities under the HSWA 1974.

2.4 **Paragraph 26:** SGL agrees that in the absence of active enforcement activities there is a risk that some operators may operate below minimum safety standards and that the effects of this risk would be greater in the event of a change to the current operating model.

The LPG industry today is largely governed by self-regulation and thought must be given to the fact that any change to the current and prevalent model would have to be compatible with this environment of self-regulation.

2.5 **Paragraph 28:** the word “paramount” misinterprets the point at issue; the provision of a bulk LPG system is simply the safest, the least complex and the most efficient model for the purposes of complying with the current legislative framework.

2.6 **Paragraphs 33:** Some of the counter-arguments put forward against an integrated tank ownership and LPG supply model may have some validity, nonetheless, the aggregate effect of these arguments, if taken to their logical conclusion, would be a considerable additional level of complexity to the way in which the industry works, leading to economic inefficiencies. More specifically, the counter-arguments do not acknowledge the

¹ See for example in relation to Regulation 6(7) ACOP para 74 which states that “the prohibitions extend to everyone, including householders and other members of the public.”

timeframes involved and these alternative arrangements are not, in SGL's view, sufficiently robust. Difficulties may arise for example, if tank certificates are lost, if there are multiple changes of ownership or if there is partial or full discharging of responsibilities for tank, installation and pipework.

2.7 **Paragraph 36:** SGL notes that a transfer of responsibility for arranging emergency provision to the owner would entail a significant element of risk; customers are ill-equipped for arranging emergency provision. Enforcement would also become a major issue.

2.8 **Paragraph 41:** With reference to the comment in relation to the 7th issue that: "This is a compliance issue rather than a justification for not permitting transfer of ownership," the argument in support of the current model is not that transfer of ownership of tanks is not permitted, rather, that for commercial and safety reasons, it rarely happens.

With reference to the mitigating argument to the 9th issue in relation to pipework testing, in the event of a transfer of tank, the new owner would be unable to comply with its duties under the GSIUR in relation to the pipework as it could not check that the buried pipework was initially installed in accordance with the GSIUR; this would lead to further difficulties in allocating roles and responsibilities.

2.9 **Paragraph 42:** Full and careful consideration should be given to suggested transfer of tanks in situ. For example, the transfer of a tank which is undergoing a full maintenance programme (which typically occurs at 10 yearly intervals) could lead to confusion with regards to the responsibility for testing and any subsequent effect on safety. This issue is further complicated by the fact that the LPG industry is currently experiencing a significant volume of 10 year checks as a consequence of the boom in the domestic central heating market in the mid 1980s. It is difficult to imagine who would be responsible for the maintenance of the vessel due to be tested in a year when the customer switched to a new supplier, if ownership of the tank was transferred.

2.10 **Paragraph 49:** SGL notes that not only is it dangerous to transport more than 50kg of gas but that this upper limit is specifically required by LPGA COP 26 paragraph 5.5.

2.11 **Paragraph 51:** SGL is of the view that under the top-up arrangement, a supplier could not accurately predict when the safe limit for uplifting has been reached.

2.12 **Paragraph 54(c):** The practice of supply to customer-owned tanks is an exception to the rule and SGL has expressed growing concern over these current arrangements.