

## **Views of trade associations, other suppliers and public sector bodies**

### **Association of Liquefied Gas and Equipment Distributors (ALGED)**

*Letter of 23 August 2004*

The requests for our views on certain aspects of the market are given where appropriate and possible, given that as members adopt differing policies and practices we are not able to give consensus views at all times.

The market we define as 'home heating', where the industry competes with oil, natural gas, electricity and solid fuel. There is considerable competition here for both new business and with consumers switching their fuel type.

Following a meeting of a sub-group of Association members, representing the views of the independent regional suppliers of bulk LPG, the following points were made in relation to competition between domestic bulk LPG providers:

- A number of our members currently trade with domestic consumers without a contract or supply agreement, working on the basis that they provide a very good service in their local area at a competitive price.
- Certain members confirmed that they had sold LPG tanks to domestic customers, as long as the position with regard to periodic vessel testing, 24 hour emergency cover and other health and safety matters were satisfied.
- Examples were also raised whereby gas companies had sold a tank in situ, to an incoming LPG competitor, thus alleviating the necessity and cost of removing one tank and installing another.
- On the issues of charges for removal of tanks, again a number of members do not make any charge upon removal of their tanks, they are keen to recover their asset and put it back into the market as quickly as possible to provide them with a return.

The above is an indication of the general views and common sense approach taken by the smaller, independent supplier in the market. It also illustrates to an extent, how these companies may indeed share some of the frustrations that customers have themselves with regard to the difficulty in the process of customer's changing supplier. Our members representing the sub-group support the desire to make it easier for domestic consumers to switch from one supplier to another.

In a specialist business where we believe that three companies have a combined overall market share of 85% or more, and assuming this market share is similar in the domestic bulk LPG sector of the market, there is a great deal of scope for the independent regional companies to enjoy a larger share.

The smaller companies, who have made very limited in-roads into this sector of the market, could be seen almost as new entrants to the market. They do however have the advantage that, these companies already have the facilities, together with the knowledge and experience of handling and distributing the product, with appropriately trained staff.

The process of change will undoubtedly have its difficulties and challenges, with all aspects of health and safety being a priority. From an LPG company view point,

asset value recovery would be a key issue to address, as all stakeholders in the process need to be encouraged to support the changes, if any, that are eventually put in place.

The immense health and safety requirements are undoubtedly an impediment to change; our strong expert view is that these responsibilities must not fall upon the domestic consumer. We do however believe that we could assist greatly in providing a workable solution to eliminate this and other foreseen areas of difficulty.

In summary, we strongly believe that we are in an ideal position to support the Competition Commission through its consultation process. As already stated, there will be numerous challenges in the process which we feel we have the knowledge and expertise to provide workable solutions for and look forward to being involved in the ongoing process.

## **Summary of points arising at hearing with ALGED**

### ***Introduction***

- The Association of Liquefied Gas and Equipment Distributors (ALGED), which currently had 47 members, had been established for just over 30 years. It represented the voice and views of the principal regional independent suppliers in the LPG supply market. It was initially set up as a distributor organisation for Shell Mex and BP, who were, along with Calor Gas, one of probably only two main suppliers going back 30 to 35 years. About 10 years after its establishment other independent suppliers became involved. 24 of its members currently supplied LPG, 18 of whom supplied bulk domestic LPG.
- In the last 10-15 years, through acquisition of some of the smaller regional players and some of the national players, membership numbers had dwindled. However in the last five to ten years ex-senior employees of the acquired businesses set up their own operations, in particular in the LPG cylinder market. Many companies started out in this market and then progressed into the bulk LPG market once they had the technical expertise, the safety understanding and the facilities.
- ALGED assumed that the current reference had arisen because of the dissatisfaction of domestic customers with the practices adopted by some companies, practices that would be alien to regional suppliers albeit perhaps with similar contractual relationships with customers, but these were 'not used in anger'. However, through various acquisitions, service levels in some parts of the industry might have deteriorated.
- The general feeling, as ALGED understood it, identified by the OFT was that LPG supplied to domestic customers was quite expensive, and that one reason for this was the difficulty in switching supplier in part because of the contractual arrangements on the tank. Safety issues were related to this, and ALGED's members all agreed health and safety issues should not be taken lightly. But safety could be used as an excuse, and there were alternative ways of ensuring that responsibility could still be held by a responsible organisation.
- The view of the regional suppliers was that they would like the opportunity to expand their exposure in the bulk domestic LPG market. They had been prohibited from doing so in the same way that the domestic customer had been

prohibited from switching. But ALGED's members felt strongly that the ownership of the LPG tank should remain with a competent organisation, preferably the gas supplying company, because of the difficulties with all the legislation that the industry was burdened with.

### ***The LPG market***

- Bulk LPG accounted for about 3 to 5 per cent of the non gas mains market, with a very low share in the non urban areas. The general perception was that LPG was expensive and ALGED put this down to the lack of publicity within the industry. One reason for this was because the industry was fragmented and suppliers tended to promote their own activities.
- ALGED regarded the cylinder side as totally different, cylinders being portable. There was a choice of supplier, and of firms who could remove a customer's existing cylinders, as distinct from bulk gas with its fixed tank. Similarly for oil; because an oil tank was owned by the user, the consumer had a choice of 3 to 4 companies from which to buy, without the same health and safety structure.
- On average ALGED's members lost more customers (although still a very small percentage) to oil than to another LPG supplier and oil was LPG's major competitor. LPG was more expensive than oil, but there were other benefits, such as environmental issues and energy efficiency, that LPG could offer its customers. Another reason which people took into account when choosing LPG was their lifestyle. City dwellers who moved to the country often wanted the same benefits they had received from natural gas and so they were willing to pay a premium to continue that lifestyle. They didn't want a boiler reeking of oil or the risk of a power cut for electricity users.
- There was a wide profile of properties using LPG. But an LPG tank needed a 10 foot separation distance, which excluded many typical smaller houses and more cost-conscious users.
- Most of ALGED's members priced their business based on the volume of gas used. Large domestic customers enjoyed better prices than smaller commercial customers, since the industry was purely volume-driven.
- Typical customers in domestic terms were small, medium and large. One company recognised this by having three different price bands, with a 1p difference between the small and the medium and a 1p difference between the medium and the large bands. The average bill for a domestic customer was about £600 to £700 for the last year (some paying up to £1,500, others as little as £300), but prices had since risen. Certain suppliers, however, tended to charge quite high tariffs, some 20 to 25 per cent above those of the smaller regional suppliers.
- The domestic bulk LPG heating market was reasonably stagnant with no major growth or decline in that sector at the moment. The majority of growth came from taking business from other LPG suppliers. The major suppliers were at a disadvantage here because they could not be as flexible with their pricing policies as some of the smaller suppliers. One downside was that the industry was a very capital-intensive one in which the major suppliers defended their investment, particularly in tanks: if the ownership of tank was to be released, there would be a significant opportunity for the smaller player to grow.

- ALGED believed that companies charging higher prices than the regional suppliers should be making substantial profits on the prices they charged consumers, although their cost base could be higher. The industry as a whole was just starting to come back into profit after a disastrous few years in the pricing of cylinders. In recent times a major player might easily be passing on increases into the market without looking internally at the cost reductions they were making, but the regional suppliers had to do this all the time.
- Another problem had been the recent increases in oil prices, which were closely linked to the LPG wholesale pricing. Such increases had to be absorbed by LPG suppliers. The price increases of some competitors appeared to be too high, compared with the impact of wholesale price increases.
- Competition in France was totally unlike competition in the UK: there was little switching of tanks or between suppliers. A 'white tanker' delivered LPG for all the major suppliers, with each supplier charging their own customer rate. The supplier was responsible for the vessel that it serviced as well as supplying gas to them.

#### ***The role of ALGED's members in the market***

- ALGED believed that its members offered their customers good service and competitive pricing. Its members were hard working and dedicated to the business. Many had worked for the major suppliers and learnt the business and realised there was something else they could do. They were generally much closer to their customers and more businesslike. ALGED believed this was what the customers wanted. Its members were more flexible—they were willing to go and talk to their customers in person, they were much faster on the uptake and were able to offer their customers what they wanted. Some of the larger suppliers, on the other hand, with a wide range of interests, had grown through acquisitions, for which they had paid a premium, and which they had subsequently managed unsuccessfully.
- The industry generally had a good track record for service. Regional suppliers tended to pick up customers from suppliers who offered bad service although the extent of this was limited by switching costs. The larger national suppliers appeared to have an uplift charge in the region of £200, which could equate to as much as 13p a litre on an annual bill for a user of a small amount of gas. The two major suppliers had recently brought in substantial price increases, but price alone was often not a sufficient reason to switch. Other reasons for changing supplier included service and location, with customers often preferring to deal with a local supplier. One smaller supplier gained 80 new customers a year.
- ALGED's members considered that the cost of moving supplier was not a barrier, but were keen to support anything that would make it easier. ALGED also believed some of its members involved in bulk LPG industrial and commercial applications could not, given the current restrictions, enter the current bulk domestic market.
- All the LPG company was trying to do was to recover the cost of getting its tank back. This involved quite skilled technical staff and a vehicle movement, involving a crane. The removal of a tank cost between £200 and £250 and then someone else had to incur a similar cost to replace that vessel.

- The larger wealthier companies would be effectively supporting or subsidising new supply by way of the projected cash flow over the next three to five years. However, smaller companies tended to charge a proportion, if not sometimes all, of that initial cost, but then the consumer enjoyed a lower on-going supply cost. One way or another that cost had to be borne by the consumer. The view of ALGED's members was that the smaller, regional players tried to negotiate the best deal with customers, they were not looking to tie customers into a relationship they did not want to be in and did not use the tank to do so. They were open with customers and told them the cost. If customers contributed to that cost, obviously companies did not have to recover it through the on-going LPG price.
- Many smaller companies did not have a contract with their customers. If customers wanted to change, they would. Where contracts were used they tended to be for three years. Contracts provided the supplier with time to get over the initial cost barrier and build a good relationship with the customer. There was also the view that contracts assisted suppliers arrangements for insurance and right of access implications. They also enabled customers and suppliers to clearly understand what their responsibilities were.
- ALGED believed it was easy for customers to find out about competing companies. The internet, yellow pages and the fact that well liveried vehicles with telephone numbers on were passing through their area all provided extensive advertising. Customers may though have a problem in convincing alternative suppliers that it was feasible to supply them with gas, given the costs of providing the customer with a tank, and the response of the existing supplier to retain its customer (for example to fill up the tank to retain the customer for a few more months).
- Some of ALGED's members confirmed initial quotes they gave to potential new customers. This was followed up with a site visit to ensure among other things that the tank was correctly sited. Prices would be pitched based on what fitted the supplier's model, and what they felt was competitive in the area and that would provide them with the return that they needed. Pricing policies were not dependent on the contractual life or the contractual tie-up with the consumer, but on the economics of the supplier's position.
- For the regional suppliers, there was only a limited differential in charges between new and existing customers, but the bigger competitors adopted a different pricing policy. Some of the larger suppliers had a 10p differential between charges to new and existing customers which made it extremely difficult for the smaller players to compete for new customers. Once a new customer was tied into a contract the price can be increased.
- Some of ALGED's members had difficulty in obtaining the wholesale product from the people whom they were competing with downstream on a local basis. However, the market was a lot looser now, although the newer, smaller players, might find that they had not got the major suppliers rushing to supply them. However, once a supplier was established it was less of a problem.

## **Safety**

- ALGED used LPGA's code of practice. Many of its members actively participated in developing those codes as experts in their particular field. In the last 15 to 20 years the HSE had pushed a horrendous burden on the industry.
- ALGED believed that the codes of practice for bulk domestic LPG installations were appropriate, and were a commonsense approach to the issue and that they adequately protected the consumer and the gas supplying company from the safety issues that were prevalent. As an association, ALGED actively encouraged its members to adhere to all codes and made them fully aware of the consequences if they did not.
- On technical aspects of safety, in the domestic market there was no technical reason why a tanker could not fill almost all LPG tanks. There were only two or three suppliers of LPG tanks and they all had a standard filler valve. The valve was in fact part of a code of practice (although some suppliers had different policies about valve configuration).
- There may be some cases where access was difficult and require use of a smaller tanker, but companies tended to charge a premium for doing so. All tanks were made to the same standard and only varied in size and shape. After acquiring a company, a supplier might find that the fittings are different, with different pipework, but ultimately an engineer would go out and make the necessary adjustments to standardise the tank.
- When supplying a tank to a brand new customer there were many safety procedures a supplier would need to complete. A concrete base, with the correct safety distances, and adequate space for the tanker to fill the tank, were needed. The regulations then required annual inspections. Anything that was technically wrong would be rectified, but the tanker driver would be trained to carry out some inspections every time he was refilling the tank. Every five years (soon to be ten years) the pressure relief valve would be changed and every ten years a full inspection would be carried out. Underground tanks had their pressure test done every 20 years. An ultrasonic test checked the integrity of the steel of the tank to make sure its thickness was sufficient to withstand the pressure; if it was not then the tank needed to be removed and changed. The track record of the LPG industry was good in the UK and ALGED assumed it was good because it carried out these working practices.
- Each new tank had a test certificate which the owner of the tank held. The log was kept on a computer system which generated future requirements for testing, and servicing etc. It was a very important system to have in place, making sure that checks were made within the timescale provided.
- Some customers occasionally asked about the maintenance of their tank, but it was considered something that customers did not have to worry about. Checks were outlined in the initial agreement between a customer and supplier. Although it was considered a health and safety responsibility it was also a bone of contention with the consumer that suppliers typically charged a £40 to £50 a year service charge for a service of which the customer may be unaware.

### ***Ownership of tanks***

- ALGED were concerned that if the ownership of tanks was to be separated from LPG supply, a supplier might find himself filling another companies' tank without knowing whether the safety checks or maintenance had been carried out. In the unlikely event that there was an incident and a house was blown up, at present, the LPG supplier who last filled the tank would be responsible.
- ALGED did not, however, see why, instead of a physical movement of a tank if there was a change of supplier, there should not be a changeover of the ownership of the tank, hence for the responsibility for it to fall to the new supplier. Responsibility would therefore remain with an LPG supply company which had the technical expertise to maintain it, while easing the ability for a consumer to switch supplier. While it was desirable for the ownership of the tank to be kept away from the consumer, the consumer would thereby have the benefit of 'virtually owning' the tank.
- This would require a yardstick for what tanks cost, depending on their age. When one supplier currently purchased another supplier including its tanks, the history of the tanks including their test certificates were always reflected in the price paid (as well as other factors such as the value of the tonnage). A nine year old tank was obviously worth a lot less than a younger model. Tanks were written off or amortised over periods of 10 to 20 years. For the asset value a buyer would have to look at useful life, which could easily be 30 years, so it would be some sort of formula based arrangement where a buyer recognised the capital value and eliminated the upheaval of changing the tank, which gave rise to all the costs of the outgoing and the incoming supplier.
- ALGED also felt that one of the biggest safety risks was the transferring of tanks. ALGED were concerned that removing a customers' tank when they changed company and replacing it with a new one the next day created risks that could be eliminated.
- As to whether health and safety aspects could be managed by a separate organisation outside the gas suppliers, there was a tank supply and maintenance company currently in operation, but to use it tended to increase costs. Suppliers felt happier when their own engineers installed LPG vessels, since they knew they could trust them. Similarly, some companies were happy to outsource emergency cover outside of working hours, whereas others preferred to deal with emergencies themselves, believing that they had all the relevant paperwork to hand and could solve any problems quicker. Hence, ALGED believed it was right and proper for ownership to stay with the gas supplying company, with ownership of the tank potentially moving between gas suppliers, and in that scenario no other party would be needed.

## Summary of points arising at hearing with the Health and Safety Executive (HSE)

### *The relevant legislation*

- The general requirements under the Health and Safety at Work etc Act 1974 made an employer or a self employed person responsible for their own safety and the safety of others. For LPG at domestic premises these duties applied to those supplying and delivering gas whereby they had to make sure that all the equipment they were supplying to was safe. This could be achieved by ensuring it was regularly inspected and maintained.
- There were several regulations which were concerned with the proper storage and use of LPG. These include:
  - (a) Gas Safety (Installation and Use) Regulations 1998, which are concerned with installations in domestic premises;
  - (b) the Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR);
  - (c) The Pressure Systems Safety Regulations 2000 (PSSR). There had been some debate as to the relevance of the PSSR to domestic installations; but the HSE's view was that it did apply to domestic bulk LPG, except where a system was under the full control of the households;
  - (d) The Pressure Equipment Regulations 1999 which implemented the Pressure Equipment Directive and was relevant to the initial integrity of pressure equipment;
  - (e) The Simple Pressure Vessels Regulations 1991 (as amended) which ensured that equipment which is bought, purchased and installed had to be of suitable quality and safety; and
  - (f) The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004.
- The HSE also told us that some years ago both the LP Gas Association (LPGA) and the HSE used to produce guidance documents relevant to the LPG industry, in some cases these were essentially the same. Subsequently, the LPGA produced some guidance in full consultation with HSE and the HSE withdrew its own guidance. The HSE wrote a forward to the LPGA Codes of Practice on which it was fully consulted ie those Codes that covered topics where HSE had previously produced guidance. HSE consulted widely on such Codes of Practice, as it did more generally, not just with the LPGA and members of the LPGA.
- A registration system was in operation under the Gas Safety (Installation and Use) Regulations 1998. Gas installation businesses doing gas work (as defined in the Regulations) had to be registered with the Council for Registered Gas Installers (CORGI).
- OFGEM also operated a licensing system for gas suppliers, but this applied to only to a limited sector of the LPG industry. The Gas Act 1986 applied to gas supplied to premises through pipes: hence, in the context of LPG, to situations such as an estate of properties supplied from a central tank. But there was an exemption relating to the conveyance and supply of propane or butane (LPG) which meant that an OFGEM licence was not required for the supply of LPG, nor for the conveyance of LPG to any premises, subject to certain conditions, including that the contract for supply empowered a person authorised by the

supplier to enter the premises being supplied with gas where necessary to avert danger to life or property.

- There was no legal requirement which specifically required an LPG tank to be in the ownership of a particular person. There were legal requirements regarding safety, but in themselves these did not specifically prescribe that the tank should be in the ownership of a particular person, be that the supplier or the occupier of the premises or a landlord. The definition of 'supplier' in the Gas Safety (Installation and Use) Regulations, which governed the application of related duties, specifically included a provision (paragraph (b) of the definition of 'supplier'), which took account of the fact that the consumer or the supplier could own the tank.
- Supplier-related duties under the Gas Safety (Installation and Use) Regulations, which include the duty to provide an emergency service, currently fell to the gas supplier which HSE interpreted as the LPG company in most cases. The only exception to this (for supply from a bulk storage tank) was where the gas was supplied on by a landlord to premises other than buildings (e.g. caravans), where HSE considered the landlord to be responsible, although the final decision on such an interpretation of the law would rest with the court. Otherwise, the responsibility was taken to fall on the LPG company in the case of individual customer tanks, irrespective of whether the gas supplier or the customer owned the tank. In the case of supply to a metered estate which received LPG from a common tank, the supplier-related duties fell on the person supplying the gas through the primary meter.
- If there were a changeover of suppliers, there might be some question as to whose gas was responsible for a particular emergency, but the HSE would generally consider responsibility to comply with emergency response duties would fall on the last supplier of gas.
- The HSE said there were instances where the legislation could be clarified, but it was satisfied that the law was adequate to cover situations where there was a diversity of LPG suppliers to domestic users. It was more a question of how dutyholders could be made aware of their responsibilities in a more diverse supply situation. The law already made provision for some aspects of this: Regulation 9(4) of the Gas Safety (Installation and Use) Regulations 1998 for instance, required somebody supplying gas to premises for the first time to check that the emergency notice placed at the emergency control or at the meter was accurate. In such ways, the HSE had made some provision for a change in suppliers. It was concerned that people were made aware of what they should be doing, rather than about there being any loophole in the their safety regulations that would give problems in a more diverse market.
- A potential issue was that, with newer companies and other ones coming in, there might be a problem of communication with them; but this was a general problem and not specific to this case.
- Although the gas safety regulations were prescriptive, the HSE's legislation was generally aimed at dealing with outcomes. The person supplying LPG gas was required to have the information to ensure that the storage installation was safe. The HSE was not concerned with the means of how they did that, just as long as they were effective. It could be by ownership, or contract, for example the maintenance and inspection duties could fall on the person who owned the tank,

who would have to provide the person supplying LPG into that tank with confirmation and documents confirming such duties had been carried out. Each was perfectly acceptable to the HSE, as long as checks were carried out. Ownership was one of the issues that were excluded from the regulations. It was the person who had the duties and carried them out which was important.

- As regards the possibility of opening up the market, the HSE told us it did not get directly involved in the commercial activities of the people that it dealt with. But it did have experience of different situations where it dealt with duty holders (people who have a requirement to comply with one set of legislation or another). HSE thought it would be reasonable to argue that the more duty holders that were required to comply, perhaps the more difficult it was for the HSE to reach them; also perhaps that the introduction of people who were less familiar with the business and less familiar with the legal requirements might lead to a requirement for some training and some action. It was for the HSE to enforce the regulations and standards and it would have to make a judgement, whatever decision was made and whatever the eventual situation was, as to what sort of resources would be necessary to put into enforcing the standards that were pertaining at the time.
- Hence, HSE had no particular view on whether one firm carried out all the roles in the process of ownership of a tank and supply of the gas to that tank or whether several did so, as long as the duties were carried out.

### ***Inspection***

- The amount of inspection that the HSE carried out was very much dependent on both the consequences should an incident occur and also the performance of the industry that it was dealing with. In terms of the major hazard business, there was a very stringent and ongoing system of inspection and verification that the standards were being met. With large numbers of small installations, there had to be some balance between the amount of inspection that could take place and the number of inspectors available.
- Generally in the UK, for various different types of equipment that had a risk and required regular routine inspections because of deterioration (which included pressure vessels, lifting equipment and lifts), the various regulations required a system of thorough inspections by competent persons. In many instances these were insurance companies. The people carrying out such tests had the authority to issue notices which in effect could require matters to be put right in a particular period, or if they felt that a piece of equipment was unsafe they could take the necessary action to prevent the equipment being used. All such instances were reported to the HSE. The regulations therefore, imposed the duty where the compliance option effectively delegated inspections to a third party.
- The HSE did not carry out a proactive system of checking that safety checks were carried out on tanks. The only instance when a check was made was if the HSE were investigating a particular event, in which case it would ask for what was called an audit trail for decision-making. The HSE only recorded problems from faults, where things were wrong. If an inspector went on site he would record a limited amount of information, for example, where the tank was situated, and if there was a problem or an area of defects, that would be recorded, but as part of that process they might ask a lot of questions. Unless an inspector had

got some particular reason for looking, they probably would not record that positive fact.

- There were also general duties under Management Health and Safety Regulations 1999 which required suppliers to have management systems to ensure safe operations, and companies were expected to have their own internal audit systems.

### ***Emergency services***

- In 1994 the storage and use of LPG was added to the Gas Safety (Installation and Use) Regulations. The HSE believed that the industry wanted to be seen to be a competent industry and properly regulated, but there was a question of balance between unnecessary burdens and required safety measures.
- In the case of natural gas, the Gas Safety (Management) Regulations 1996 placed a duty on BG plc (following liberalisation of the domestic gas market and break up of BG plc this duty had passed to Transco plc) to provide a continuously manned national emergency call centre. The Regulations also required the gas conveyor to make arrangements to attend and make safe a gas escape; they could do this 'in house' or appoint another body to act as an emergency service provider (in practice, Transco currently fulfilled this role for all gas conveyors).
- In the case of LPG, covered by the Gas Safety (Installation and Use) Regulations 1998, there was a duty for the gas supplier to effectively make safe within 12 hours of being notified of a gas escape, by attending or otherwise. There was specific provision in the Regulations in the case of carbon monoxide emission as opposed to the fuel gas escape, which allowed the gas supplier to discharge their duty through giving advice to the consumer on what to do to avert the danger and to call in a CORGI registered installer to repair the appliance.
- The HSE said an issue had been put to it in the context of emergency services regarding the rights of entry into properties. Transco had legal powers of entry in the case of piped natural gas, but these generally did not extend in relation to LPG. The LPGA had told the HSE that, in the case of rented property, the LPG company would not have any contractual arrangement with the tenant who used the gas (that could provide for access into the property). HSE acknowledged this point, but believed that in the case of most emergencies the consumer would be quite willing to cooperate with the LPG supplier to avert danger. There might be an issue with unoccupied properties or where an occupant was unable to provide access (e.g. because of immobility) but, in emergency situations, the fire brigade and police were also likely to be involved. The HSE was not informed of every incident but was unaware of any major practical difficulties currently arising on the latter.

### ***Regulators***

- The HSE were also asked about responsibility for ensuring that regulators were fitted to installations.
- HSE told us that the duty to provide pressure control facilities was quite specifically prescribed. However, the HSE believed the dutyholder in a particular situation was open to interpretation and it would be for a court finally to decide on legal responsibilities in a given case. This duty, which required the provision of

pressure regulation facilities (to prevent the gas system downstream from being subjected to a pressure different to that for which it was designed) was placed on the person that caused gas to be supplied from a gas storage vessel. The HSE was not aware of any case law providing legal interpretation of what was meant by 'a person causing gas to be supplied'. However, where a tank was first taken into use, the person who first opened the valve or connected the pipe, to allow gas to be supplied to the premises might attract responsibility. The gas company might also attract some responsibility since its gas was filling the tank. In some cases where a consumer had control over the valve supplying gas to the premises, the consumer might also have a degree of control in causing the gas to be supplied to the premises. However, it would be for a court finally to decide on the interpretation of the law in particular circumstances.

### ***The Fundamental Gas Review***

- In 1999 the Health and Safety Commission asked for a Fundamental Review of the downstream regime to be carried out. The HSE visited various stakeholders to identify issues of concern to them and eventually published a discussion document which went out for three months for public consultation. The HSE carried out an analysis of the replies. In addition it commissioned research from independent consultants on the risks from domestic gas. This research concluded that the risk from gas in the home was very low compared to a number of other risks, such as slips, trips, falls and poisoning. A document containing proposals for change to the gas safety regime was then produced. There were 47 recommendations made.
- The HSE's key philosophy was that if a change was to be made it did not want any reduction in safety standards. There were a number of recommendations in the Review related to non-legal matters and there were others that would have required legal changes to bring them about. Most of these related to the downstream regulations, the Gas Safety (Installation and Use) Regulations. Ministers broadly agreed with the findings of the report and the Health and Safety Commission set up a number of working groups to start putting the recommendations into practical effect.
- HSE put forward some proposals for change in relation to emergency services, which were subsequently developed. A working group was invited to look at the potential for at least partial alignment with the natural gas sector (an issue referred to above). The HSE did not get a great volume of responses on the proposals for change in terms specifically of LPG. This possibly reflected the smaller number of users. However the HSE did receive a number which questioned the degree of alignment with the natural gas sector. It put forward a recommendation in the proposals for change, which was developed by the working group.
- In terms of alignment, the working group had explored three options. The first, along the lines of the review recommendation, was specifically to require the LPG supplier to attend in the case of a reported carbon monoxide escape where the escape related to the supply from a bulk vessel. The second option was to require attendance for either a fuel gas escape or a CO emission in the case of supply from a bulk vessel. The third option, based on LPGA proposals, was to align attendance for supplies from a central storage tank supplying five or more customers. These options were explored as possible alternatives to the present system where attendance was not specifically required. However, this work is

now subject to review in the light of HSC's recently published strategy which focuses priorities on addressing risks in the workplace situation. The issue of aligning the domestic LPG emergency response service with that of mains gas is not an immediate priority for HSE.

- The LPGA also put forward a proposal to place duties to respond to gas escapes on tank owners in certain circumstances. Legal duties were currently placed on the supplier (as defined in the Regulations) and the logic behind the proposal was that, if there was a diversity of suppliers, responsibility would be more clearly identified by placing the duty on the person in control of the tank. It was also related to the issue of rights of entry referred to above. As with the other options, this proposal had not, however, gone as far as public consultation.

### ***Alternative scenarios***

- The HSE was asked to comment on issues relating to emergency services and regulation in a number of specific cases; firstly, if a tank was transferred in situ to a new supplier.
- The HSE told us that any new supplier must be aware of their legal duties. In cases where ownership of a tank changed (which was fairly common as a result of companies changing hands), the new owner would need to ensure that the purchased equipment was safe and suitable for use. If the correct certificates and documentation were available, either on computer or paper, then the HSE believed that further safety checks would not be needed. However if they were not, then the HSE would expect the new supplier to make some inquiries and possibly have another examination carried out to make sure that the equipment was safe.
- It was important to have regular checks carried out. If after six months or a year a supplier went to fill a tank, some sort of check should be carried out to ensure that nothing unforeseen had happened to the equipment. A scheme should be in place to ensure that all the fittings are correct for their particular tanks, since there could have been different fittings in place.
- Secondly, it was asked to comment on cases where a bulk LPG tank was owned by a third party, but where the customer had an exclusive contract with one supplier. HSE said the duty would still rest with the gas supplier to carry out its duties (although some other duties would fall, for example, on those installing the tanks). The ownership itself was not therefore relevant.
- There could also be a situation in which the owner of a tank maintained and inspected it. In such a case, the supplier of gas to the tank would have to make sure the tank was safe to deliver to, through documentation or certification. HSE would also expect checks to be carried out by drivers when going on site to deliver, as would apply in any situation.
- The HSE was also asked whether there were risks in uplifting tanks, which it might wish to prevent arising. It said there were certain safety checks and inspections that should be carried out when a tank was removed from a property and a new one installed. It was, for example, important to check that the right equipment was being used. The HSE was aware that when major pieces of equipment were changed there was in theory a higher likelihood of faults and errors in the first period after installation, because faults might have occurred

during the actual installation. However this was not a complicated process and it was technically not impossible to be confident that the installation would be completed efficiently. There were also obvious risks in the lifting operation. However, there were a number of reasons to change or move a tank: a supplier might need to change a tank due to its age and deterioration or just to relocate it. The risks associated with changing a tank were not that great, and could be controlled, as long as the extra checks were made.

- The need to replace tanks on changing supplier was therefore a commercial decision which was outside HSE's control. But ownership was not that relevant: there would also be no problem if the control over the tank could be passed without changing the tank itself, subject to proper observance of standards. Hence 'the justification for changing the tank cannot be hidden behind health and safety reasons'.
- The HSE was asked about whether legislative changes would be necessary if an increasing number of tanks and pipe work were owned by a party which was not the LPG supplier. The HSE said it would be keen to get the industry to produce guidance that it could look at and give a forward to, rather than having to always write it themselves; quite often the HSE did not have the expertise to deal with these matters. Working with the industry to produce actual requirements that everyone could understand might be a way forward. But it did not have any concerns as to the actual legislation and its powers.
- Hence, HSE would wish the industry to develop its response to changes properly. HSE also itself had a number of gas safety publications which it issued to landlords and members of the public where issues, such as emergency provisions, were put in. They were a means for encouraging people to check the provisions that were in place, for example, to make landlords or the consumers themselves, not necessarily the duty holders, aware of what they should be expecting from the duty holders.

## Summary of points arising at hearing with LP Gas Association (LPGA)

*Letter of 3 September 2004*

As an association, our main role is the provision to members of technical codes of practice, health and safety guidance and the representation of the LPG industry to government and others. We do not get involved with purely commercial issues and therefore most of your questions will no doubt be covered more fully in your communications directly with our members.

On the points you raise our response is as follows:

(i) Market definitions

We can comment on your market definitions as set out in the OFT terms of reference as follows:

- 'LPG' means liquefied petroleum gas;
- 'bulk' means supplied by tanker to fixed storage tanks, as opposed to supplied in cylinders. For relatively small deliveries the term 'mini-bulk' is often used to differentiate from large, wholesale bulk deliveries.
- 'domestic' means supplies for use by households, but there is no clear understanding that businesses with a similar consumption of LPG come under this definition.

(ii) Barriers to entry to such markets

Due to the nature of LPG as a product, new entrants must have a high level of technical knowledge, especially on health and safety issues. They must also have access to specialist equipment in order to store and distribute LPG safely. The technical knowledge required takes several years of experience in the industry to acquire and in practical terms any company entering the market will need to employ or contract people who already have this knowledge.

Most of the technical standards required for the industry are published by our Association in Codes of Practice (COP), which are produced in conjunction with the HSE. Additional requirements are contained in regulations and standards.

We have 16 members who are mini-bulk suppliers of LPG and of these two are relatively new entrants. One new member entrant is Bulk Gas UK who started up around 3 years ago and supplies gas to several market sectors including domestic. The company was set up by an individual person without outside financial support which indicates that barriers to entry are relatively low in financial terms. The other new entrant is Home Heat Gas Co Ltd/Premier Autogas, which is a long-established company for cylinder gas that expanded their operation by entering the domestic bulk market around 4 years ago.

Other small non-member companies may have entered the market in recent years.

- (iii) The conduct of, and the extent of competition between, domestic bulk LPG providers.

Competition does exist in the market place and customers do switch suppliers. The LPGA does not get involved directly in commercial matters such as this but does publish a COP as an enabling device for such transactions (see the response in section iv).

- (iv) The ease with which customers can switch between domestic bulk LPG providers

When customers do switch suppliers, it is essential that the change-over of tanks is done in a safe and timely manner and that the customer is not inconvenienced. In order to achieve this the LPGA produced a policy statement in June 1994 which sets out the agreed procedures for the change-over of tanks and this was published in our Code of Practice (COP) 26 'uplifting of static LPG vessels from site, and their carriage to and from site by road'.

All our members sign up to agree to work to our Codes of Practice and this policy statement has served the industry well for the last 10 years. The policy statement is shown as Attachment I.

- (v) The structure of the domestic bulk LPG market

LPG is produced from two sources within the UK. It is a naturally occurring co-product from the natural gas extraction process and it is produced from oil refining activities. It is then used for both sales to domestic and commercial consumers and for various industrial and chemical processes. LPG is also traded on the world market and several of our member companies are involved in the sale and purchase of gas on this market.

Our member mini-bulk suppliers of LPG gas are shown in attachment II [*not reproduced here*] and this information is also freely available on our website. These companies are the main players in the industry and some give a national service, whilst others a regional service. In addition to these member companies, there are a number of small non-member companies who operate on a regional basis.

- (vi) The quality and transparency of information available to customers

Other than technical and safety literature, we do not have access to the information which our members make available to customers.

- (vii) Profitability, capital structure and financing in relation to the reference services

We do not have any information on these aspects.

- (viii) Any other issues you consider relevant

The single most important issue for a sustainable LPG market within the UK is the necessity for a rigorous and enforceable health and safety regime.

For the domestic bulk LPG market, the LPG supply company almost always owns the tank for safety reasons.

A whole raft of health and safety legislation applies to LPG delivery companies and their drivers to ensure:

- that tanks are safe to be filled;
- the safety of everyone who might be affected during the filling process.

Whoever owns the tank, the filler (in practice, the tanker driver) has significant and well-defined responsibilities. If the customer owns the tank it would neither be fair nor reasonable to expect the filler to accept these responsibilities when he has no expertise or knowledge relating to that individual tank. To burden the customer with these responsibilities would require new legislation and could make LPG an unattractive proposition against the more polluting competitive fuels of oil, solid fuel and conventionally generated electricity.

The application of the Pressure Systems Safety Regulations at domestic premises has never been entirely clear. If the LPG company owns and fills the tank (ie is the user) the pressure system is intended to be used at work when its operatives are working on it (eg filling). Industry has avoided the possibility of legal challenge in the courts by voluntarily applying PSSR duties to domestic tanks. It must also be said that it is doubtful that HSE even remotely considered the possibility of householder owned pressure systems containing significant quantities of hazardous materials when framing PSSR and that if they had done so the duties might have been pitched far wider.

Without a PSSR type duty on a domestic tank owner (householder) it is not clear how the LPG filling company could ensure the safety of its operatives and others who might be affected during the filling process without rigorous verification of the safety of the system and of its statutory liabilities and duties. This would have to go beyond a 'paperwork exercise' and would require a detailed site survey/inspection of both the tank and the site prior to a first fill by each filling company to ensure compliance with Gas Safety Installation and Used Regulations (GSIUR) and industry technical Codes.

PSSR does apply to customers who own tanks when work (filling) takes place at sites which are workplaces (pubs, restaurants, offices, etc).

LPG companies and their operatives have duties under:

- the Health and Safety at Work etc Act;
- the Management of Health and Safety at Work Regulations;
- the Provision and Use of Work Equipment Regulations;
- the Gas Safety (Installation and Use) Regulations;
- the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations; and
- the Dangerous Substances and Explosive Atmospheres Regulations

In addition to the above requirements for the LPG supplier in relation to the filling of the tank, current GSIUR requires that the LPG supplier provides a 365 day 24-7 emergency service and response. All LPG member gas supply companies provide such a service which relies heavily upon a prior

knowledge of integrity and safety of the installation and its safety devices over which they have control and ownership.

It is hard to see how they could comply with these duties without imposing contractual and other arrangements on their customer to effectively demonstrate that the installation is safe to be filled and ensure the safety of its operative and others who might be affected both during the filling process and in the provision of an emergency service.

If tanks were not company owned, and were subject to filling by multi-suppliers it is difficult to envisage how the emergency service would operate in practice and there is likely to be widespread customer confusion. Whilst the legal responsibility rests with the last gas supplier how could the effect of earlier activities and responsibilities be clearly established and how would any liabilities and costs be apportioned? The LPGA considers that this is an important area which needs careful consideration to ensure industry safety standards are maintained.

As a point of interest, most other European countries operate on the same basis as in the UK for the domestic bulk LPG market, in that the gas supply company remains the owner of the tank and takes responsibility for the tank.

## **ATTACHMENT 1**

### **The LP Gas Association Code of Practice 26**

#### **Uplifting of bulk LPG vessels from site and their carriage to and from site by road**

##### **LPGA policy statement**

In the interests of safe practice LPG suppliers shall refrain from (and shall ensure that their representatives or agents refrain from) interfering with or moving any LPG storage vessels owned by a third party without that party's permission.

Where a consumer has decided to change suppliers, subject to any overriding contractual arrangement, the incoming supplier should ask the consumer firstly to confirm the proposed change in writing to the outgoing supplier and secondly to request the outgoing supplier's co-operation in co-ordinating the safe disconnection and removal of its storage vessels and equipment with the installation of equipment by the incoming supplier. LPG suppliers shall ensure that arrangements are not unreasonably delayed and that the work is completed within 14 days.

An incoming supplier may, with the written authorisation of the outgoing supplier, disconnect the outgoing supplier's storage vessel as long as it is carefully placed in a suitable temporary location.

The uplifting of storage vessels from consumer's premises shall be carried out in full compliance with Code of Practice No 26.

## **Summary of points arising at hearing with LPGA**

### ***Role of LPGA***

- The LP Gas Association (LPGA) is a small organisation made up of 140 companies. Some of its members supplied gas, others equipment and services and other members converted vehicles to run on gas. The bigger companies were the gas suppliers, although they were now in the minority due to recent takeovers and acquisitions and a number of smaller, regional suppliers of LPG were not members. The equipment and service side had not altered very much in the last ten years, however the automotive side had altered quite a lot due to the newness of the industry. All members paid a subscription which covered part of LPGA's operations. LPGA was concerned with the technical aspect of the industry, the safety aspect and the global scene of the industry, the wholesale situation and supply and demand.
- LPGA worked in conjunction with HSE and other government departments in setting the technical standards for the industry. These were published as codes of practice and covered everything to do with the supply, transportation and use of LP gas. All codes of practice reflect relevant European legislation.
- LPGA is deeply involved with European work. European directives were adopted by the UK and LPGA liaised very closely with the HSE to make sure that their implementation was sensible, cost effective and improved safety. LPGA is an active member of AEGPL who represented the European LP gas industry. It also liaised with the World LP Gas Association who dealt with global matters.
- One recent European directive had been concerned with the temperature of gas during transportation. As an island, the UK did not have any trans-border transportation of gas, and did not have the extreme temperatures experienced in other parts of the EU. LPGA had put forward the case that the UK should have an exemption for different climatic zones and lower temperatures. By doing that, the thickness of the tankers that were used to transport the gas could be reduced or, alternatively, there could be more gas on board, which in turn would mean less transport could be used, saving money and energy and reducing pollution. There was therefore currently a derogation on climatic zones whereby the UK was allowed to adopt a different set of regulations for transporting gas.
- LPGA worked in conjunction with the DTI to produce a range of gas sales statistics. These statistics provided the overall sales of gas, broken down between propane and butane, the commercial, domestic and industrial market as well as the cylinder market.

### ***The LPG market***

- The overall production of gas in the UK was about 7 million tonnes. The UK exported just over 3 million and used just over 3 million tonnes in the petrochemical industry and in the downstream industry about 1.1 million was used. Traders imported about a quarter of a million tonnes where they could obtain gas for a good price. The LPG domestic market was just a very small part of it.
- The LPG domestic industry was fairly steady. The overall size of the industry had remained pretty much the same for the last 10 years at about 1.1 million tonnes.

There was movement within that: the butane market had gone down, mainly because of the reduction in the use of cabinet heaters; domestic central heating had increased so propane for domestic use had gone up slightly over the years but not a lot. Auto gas had come from nowhere to be a market of about 100,000 tonnes, but the overall market had been much the same for the last 10 years. LPGA did not foresee any major changes in the foreseeable future.

- LPGA believed that people preferred to use natural gas where it was available as it was the cheapest fuel. The LPGA members only operated in areas where the consumer could not get natural gas. In that situation suppliers competed with oil, electricity and solid fuel. Although current penetration even in areas without natural gas was low, LPGA believed there was scope for more growth.
- LPGA believed cylinders were in some ways a different market, with different suppliers and consumers. Hence, they were used for portability rather than central heating, for which bulk LPG was a lot cheaper. The consumer could, however, switch reasonably easily between LPG and other fuels; however consumers wishing to switch from LPG to oil would need to change their boiler, which tended to last up to 15 years.
- The LPGA told us that the market had been pretty static for last ten years, hence it was difficult for suppliers to grow organically and they had to grow through acquisitions. There had been a couple of new entrants in recent years in local areas—one member of the LPGA was a totally new company and the other was a company which had expanded into the market. It did not believe that there was a huge barrier to entry, but it was possible for local companies to be cheaper than national companies if they wanted to enter the market. Any restrictions to entry were probably related to technical knowledge.
- There were advantages to both larger and smaller players in the LPG market. Smaller companies played a very useful role in the local area. They provided a sector of the country with a very professional, competitive service. Since the wholesale price of LPG was published, it was possible for smaller companies to purchase it at the same price as national companies, but they did not have many of the overheads of the national companies.
- Some of the smaller companies had grown and continued to grow quite substantially, but not to a national basis. To be large in the industry, a supplier had to provide a national service. Sometimes larger companies had larger storage capacity. If winter proved to be severe and demand went up dramatically, the larger companies would be able to overcome that period of severe weather and high demand better than the smaller companies.
- Some companies operated both as wholesalers and retailers. But LPG was sold to the highest bidder. The wholesale and retail side of the gas business was often operated separately, and the wholesale side of the major oil companies sold to the retail side as well as to their competitors. LPG was a commodity, and a shipment of gas could be bought on the high seas: so retailers were not tied to the big oil companies.
- LPGA wanted to have a regime where customers were free to switch supplier if they wanted to. Its main concern was to ensure that customers could change from one supplier to another safely and conveniently, and it had guidance which the gas companies signed up to in order to ensure this.

- Northern Ireland operated in much the same way as the mainland, although it was a smaller market. The legislation in Northern Ireland, although different, was broadly parallel to the legislation in the UK mainland.
- The supply of LPG was much the same in European countries and America as in the UK. In virtually all European countries, the gas supplier owned the tank and rented it out to the consumer, as was also the case in America.

### ***LPG prices***

- The LPGA pointed out that the underlying wholesale price of LPG was linked to oil in the medium term, but the actual price of LPG reflected more the short term supply and demand situation. For example, in summer the demand was low, so prices were low, but LPG was also used in ethylene crackers. The main feedstock for an ethylene cracker was naphtha, but in summer if LPG dropped below about 90 per cent of the price of naphtha, refiners would swap over to use LPG. So because of that changeover there was a floor below which the price of LPG would not drop in the summer months. A secondary factor was that naphtha was used indirectly in producing petrol, so if there was a big demand for petrol and prices rose or prices rose for other reasons, mainly in North America, the price of naphtha went up and that then had a corresponding influence on raising the price of LPG.
- In winter the demand was high because LPG was used mainly for heating. Thus the price generally tended to be higher in winter with short term spikes where people thought they were running out of gas or there might be a supply problem, and the traders would trade up the price of the gas.

### ***Safety***

- LPGA members agreed to follow its codes of practice, although, since the codes of practice were not retrospective, its members did not have to comply in every respect with them for plant which had been installed for, eg, 20 years. The codes of practice demonstrated good practice, but not necessarily best practice: some members would go further, but if another practice was adopted, it had to be demonstrated through risk assessment that it was safe. But LPGA members adopted broadly the same approach to health and safety.
- Most companies have their own health and safety departments which carry out internal inspections and audits to ensure compliance with legalisation and industry codes of practice. The HSE is principally concerned with facilities which store greater than 25 tonnes of LPG and have a legal responsibility under COMAH Regulations to conduct inspections at sites storing greater than 50 tonnes. LPGA Codes of Practice are used by HSE regulatory inspectors as the basis for their inspections.
- On technical aspects of safety, LPGA believed in general that there was nothing to stop any supplier supplying LPG to any LPG tank, although there may be purely mechanical aspects which prevented a particular supplier supplying a particular tank. Although the industry had tried to harmonise over the years, there were still a number of different sized connections and a number of different practices that were used by different companies which would impact on the safety of the connection for that transport operation. In principle, if there was a

properly installed LPG tank, with proper codes, and properly maintained, there was nothing to stop two companies filling that tank.

- There was uncertainty as to whether domestic tanks fell within the scope of some of the legislation, hence the industry took the precaution of assuming this was the case. This meant that the company that had ownership of a tank had to take statutory responsibility for it. If that tank conformed to their operational methods, there would be no problem; but their operational methods could be written around specifications different to particular tanks.
- In cases where a customer owned their own tanks, there was still a duty on the companies that filled that vessel, both under the Gas Safety and Use Regulations and the Carriage of Dangerous Goods Regulations.
- Regarding the selling of tanks from one company to another the LPGA believed that as long as the correct inspections were done on the tank to make sure that the safety standards were in line with requirements, safety would not be compromised. For a new supplier to offer to buy an existing tank from a customer's existing supplier, subject to checking it had been well maintained and checking the tank, would be no different to what happened when companies took over other companies. For suppliers to take full responsibility for a tank provided the customer with peace of mind, knowing that he didn't have to get involved with that side of the operation.
- With regard to emergency services the industry had a statutory duty under the Gas Safety Regulations to provide 24/7 cover. Larger suppliers would use Corgi registered specialist gas emergency service providers. However, suppliers did not have a right of access to a customers' property and could only deal with an emergency as requested.
- LPGA kept a record of all accidents which were reported to them. However, this would only happen if they were RIDDOR reportable and LPGA could not remember the last time such a report was made.

## **Summary of points arising at hearing with The Office of Gas and Electricity Markets (OFGEM)**

### ***OFGEM's powers***

- OFGEM's statutory powers laid out in the Gas Act 1986 included protecting the interests of consumers in relation to gas conveyed through pipes. It was responsible for gas supplied through networks but not gas stored in tanks and sold to individual customers. Its jurisdiction therefore only involved the supply to the customer's premises through a network.
- OFGEM explained that gas networks were part of the public sector of the British Gas Corporation and, when the government decided to privatise that, it needed to introduce a regulatory regime.
- OFGEM's remit had been defined as everything connected to the national gas transportation system. This excluded 'metered estates' where there was an LPG tank connected to a number of individual premises. But its remit included a very small number of LPG networks, which had been supplied by the public sector entity, then privatised and regulated under Special Condition 18 of Transco's licence. They were now regarded as a historic anomaly. Special Condition 18 covered four areas supplied by LPG: one in Stornoway, two in Wales, one in Colden in Yorkshire. (It also covered four LNG networks—Wick, Campbeltown, Thurso and Oban—and a ninth group of customers in Stranraer. In 1996, when Special Condition 18 was drafted, consumers in the Stranraer area were not connected to the national grid network, but subsequently had been.) LPG customers in these areas paid natural gas prices for LPG that was piped to them, hence were subsidised both for the cost of the gas and its conveyance. For Stornoway customers, OFGEM thought subsidies per customer were £370 per year; for the other three networks, on average it was £256. Transco was allowed to charge special condition 18 customers historic prices indexed with inflation, but chose to charge them less than this.
- OFGEM believed that the regime of the four LPG networks subject to Special Condition 18 needed to be re-examined. Transco, the owner of the National Grid had announced that it was going to sell four of the regional gas distribution networks and there were a wide range of regulatory changes that were consequent upon that disposal. It was, for example, necessary to consider where the cost of cross-subsidising the groups of customers in those networks should fall. OFGEM may also need to examine the impact of recent European legislation, which may result in changes to the present regime.
- Other than in the four areas covered by Special Condition 18, supply of LPG to domestic users was not subject to regulation, since it had always been supplied by the private sector in the same way central heating oil was supplied; there had always been a choice of supplier, hence there was never seen to be a need for regulation.

### ***Extension of the mains gas network***

- DTI had produced a report on extending the gas network which had concluded that, for the bulk of customers in rural areas, extension of the mains gas network was not the best or most cost effective way for alleviating fuel poverty. There

were more cost effective ways of providing people with heating. OFGEM supported that conclusion.

- The DTI report had, however, said there may be a few communities who lived quite close to the existing mains network for which a mains connection might be the least expensive way of providing people on low incomes with a cost effective energy supply, even if it was not economic in terms of the willingness of customers to pay for the connections.
- OFGEM also told us about the Fuel Poverty Advisory Group with which they were involved. This group had done some interesting work for customers in fuel poverty. It had looked at the most cost-effective way of getting people out of fuel poverty if they were outside the gas network. The lowest cost option was usually the installation of oil fired central heating, combined with decent levels of insulation. OFGEM believed this was a quite likely and credible solution.
- One difficulty in converting households to mains gas was that all the heating appliances would have to be changed. Hence, in addition to the cost of providing the connection to the gas mains, there would be the cost of new appliances.
- Another part of OFGEM's statutory duty was its requirement to carry out its functions having regard to the need to secure that 'so far as it is economical to meet them, all reasonable demands in GB for gas' were met. The phrase 'economical to meet them' was relevant to whether OFGEM should be encouraging very large sums to be spent in connecting more remote communities to the gas network.
- OFGEM had a competitive regime for providing extensions to the gas network. It was not a monopoly activity, so customers who wanted an extension could approach a very wide range of providers if they were willing to finance the cost of construction.
- Approximately 80 per cent of domestic households were connected to the mains gas network. There had not been much change in recent years. This suggested that all the communities where there was a willingness to pay for the connection charges for extending the network had by now been connected.
- Most of the new connections that were being made were to new housing developments. With a new housing development all the utilities were being connected at the same time.

### **Switching**

- Switching statistics which OFGEM had collected were all about consumers staying on the gas network and switching between suppliers. But if a household were to switch their central heating system from gas in general to oil fired central heating it would cost £2,500 to £4,000 in a typical property. Electric storage heaters were cheaper (£800 to £1,300 to install electric storage heaters), however, their running costs were substantially more expensive.
- Roughly half the households in Britain that are connected to the mains gas network had switched in the last six or so years, with annual switching of about 17 to 18 per cent a year. A few had gone back to be supplied by British Gas, making the net figures approximately 40 per cent. OFGEM would like the figure

to be higher than the 50 per cent that had switched, but were encouraged that such a wide range of the population had taken advantage of the various companies offering competition in the industry. It did a lot of work in trying to reduce the barriers to switching in the markets they were responsible for because it believed that a healthy level of switching led to a more competitive market and a better outcome for customers.

- OFGEM believed there were different barriers for different groups. For many there was inertia to chase the £50 to £100 a year that could be saved if a customer switched to the cheapest supplier. There were issues about availability of information. With hundreds of thousands of people changing every month, the transfer process had not worked perfectly in every single case. There had been some bad publicity about customers getting into difficulties and this caused a potential barrier. OFGEM had done a lot of work with the industry in resolving those difficulties so that the processes did work smoothly for the vast bulk of customers. But overall, for the vast majority of people switching had been straightforward.
- OFGEM felt that the issues relating to switching were very similar between domestic gas and electricity customers, those regarding minimising the costs of transfer being almost identical between the two. The customer transfer programme which OFGEM was currently running with the industry covered gas and electricity and its whole approach had been to try and cover both markets in the same way.
- When OFGEM had opened the domestic gas and electricity markets to competition, it had also required suppliers not to have a termination term longer than 28 days. Although there were differences between the markets (for example, the infrequent delivery of LPG), this compared with LPG contracts of up to 5 years.

## **LPG Supplier No 1**

25 August 2004

Comments on OFT decision document

I do not understand what the OFT mean in their report (paragraph 13) where they say customers considering switching supplier may face search costs. What are search costs? Whilst our contract has provision for charging installation charge I cannot recall where we have made such a charge in the last five years. By tank standing charge, I assume you mean rental, which we charge. With reference to tank removal charge we take the view that if a customer has decided not to use our tank even before the contract period ends then we wish to get the tank back into use as soon as possible and we will uplift the tank as soon as a priority. Further we live in hope that the customer will one day wish to return to us, so we do not charge for tank removal. With regard to LPG prices we have several different pricing regimes, however the majority of our customers choose to be on a floating price which will vary with the world market prices.

Our contracts do require customers to give three months notice but as stated in the previous response if a customer wants their tank removing we tend to do this sooner rather than later to get the tank back into use, and we wish to part with our customers on amicable terms. We have experienced delay and obstruction by some of the larger LPG companies in swapping tanks over and we generally get round this by putting a temporary cylinder feed on at no cost to our customers. For customers who own their own tanks, if their tanks fail a test and they require some expensive remedial work doing to the tank, it can prove very difficult to persuade them to have the work completed. Indeed often such customers decide to switch to having a rented tank to avoid expensive maintenance costs.

## **LPG supplier No 2**

20 August 2004

Comments on OFT decision document

Due to the extremely high costs involved in supply, installation and maintenance of LPG bulk tanks, which are usually to be found in difficult delivery access areas, most single domestic properties are paying a high price for the supply of LPG. The other problem being that a return on this investment is very slow with most domestic properties only consuming at most 5,000 to 10,000 litres of LPG per year. With all this in mind we as a company struggle to make a profit in the domestic LPG bulk market.

In most cases of LPG domestic enquiries, we try to supply the customer with 2 or 4 x 464kg propane cylinders on a changeover valve, therefore keeping to minimum outlay.

It is not surprising that LPG consumers are met with lengthy contracts tank rental charges and a price for the gas that is 10 pence per litre more than it should be.

How can we provide a better deal?

### Our situation

95 per cent of all LPG domestic bulk tanks in our area are owned by large national gas companies, and have been for many years.

Most of these customers are likely to be tied to a contract of variable degree with the above companies, with several clauses in these contracts as to regards a change of supplier.

### Possible answer

If the customer had the choice of purchasing the bulk tank off their current LPG supplier they could obviously shop around for the best price and service available.

From our point of view taking away the cost of supplying and installing tanks and concentrating on just re-testing and maintaining these tanks, we could offer the following:

1. Up to a 50% saving on heating bills for the majority of LPG domestic users.
2. A same day delivery service for those who run out of gas.
3. A simple COD supply of gas, with no contract or fixed high price.

## Countrywide Energy

24 August 2004

Comments on OFT decision document.

The OFT statement said that they had concluded that there *were features within the supply market which appeared to prevent, restrict or distort competition*. The OFT statement would appear to draw the conclusion that the only evidence of competition is customers switching supply. In our response to the OFT we made reference to the competitive pressures that we as a supplier face as we are continually responding to customers who challenge our prices as a result of negotiating alternative prices from other suppliers. In the period January 2003 to December 2003, 1,230 of our contracted customers negotiated, on a one to one basis, a lower price. This represents 31% of our total customer base and reflects the highly competitive nature of this market place.

The report also made reference to *current and new suppliers often charging for the removal and installation of their respective tanks*. In our own organisation within the 12 months, up to the end of May 2004, we removed 206 customer tanks at an average cost of £23.85 per customer. Our standard charge is £150 but is only levied should termination occur prior to the end of the contract period. Where customers run the full term of the contract we are able to recover some of our initial investment whereas if they terminate early we are financially disadvantaged. I would contend that our average charge represents a very modest cost for removing tanks and we consequently recover only a small proportion of the considerable costs involved in that process.

The report also concluded that *customers endured lengthy contracts, often incurring charges for early termination*. No such charge has ever been applied to any domestic customer of Countrywide.

The OFT also noted that *due to long notice periods for contract termination there was the possibility of a break in supply as a new supplier's tank is brought into use*. Following discussions with the OFT the term of our contract for domestic supply is now 12 months. In the view of the considerable costs involved in installing a tank at a consumers premises (in our submission to the OFT we calculated this to be approximately £1,000) we believe this is not unreasonable. The cost of installing a tank is exclusively borne by ourselves as, in contradiction to the OFT's comment that suppliers often charge for installation, Countrywide makes no charge for installation of a tank.

As to the possibility of a break in supply, we observe the LP Gas Association code of practice 26 – Uplifting of Bulk LPG Vessels from Site and their Carriage to and from Site by Road – which protects the consumer from such an eventuality.

Finally the OFT felt that *consumers may have difficulty in finding out all the information about possible deals with alternative suppliers*. Should a consumer turn to his local Yellow Pages he will find a great deal of choice and we regularly talk to customers of other suppliers as a result of our presence in this publication. This is one of many marketing initiatives we, and no doubt other suppliers, employ to make consumers aware of our products and services.

In view of our own practices, and we have evidence to support the above, I do not feel that the OFT comments, in any way, relate to the activities of Countrywide LP Gas Ltd. Furthermore, it might be helpful to note that Countrywide LP Gas only represents circa 3% of the total UK domestic bulk market and the impact of any market changes to a small business such as ours could damage our commercial viability much more than some of our larger competitors who have a stronger profit base to fall back upon.

## **General Consumer Council for Northern Ireland**

### **Introduction**

As the leading organisation representing energy consumers in Northern Ireland the General Consumer Council welcomes the opportunity to assist the Competition Commission in its investigation into the domestic bulk LPG market.

In line with its statutory remit, the General Consumer Council for Northern Ireland has always monitored the energy market in Northern Ireland with the aim of ensuring that Northern Ireland consumers receive a fair deal in terms of price, standards of service, choice and information. On occasion, the council has deemed it necessary to pursue an investigation into specific markets.

One such area examined in 1993 was the domestic bulk LPG market. The LPG market in Northern Ireland was a closed market consisting of two large companies (Calor Gas NI and Flogas NI) and one smaller supplier Blugas- that is no longer operating.

The council believes that the problems identified at that time in the LPG market mirror those that have led to an inquiry by the Competition Commission.

### **GCCNI Report on Domestic Bulk LPG Market in 1993**

The GCCNI conducted an investigation covering; consumer choice, safety, technical issues, price and contracts and published the findings and recommendations in the report: 'What Choice? - Domestic Consumers Bulk - Supplied LPG in Northern Ireland'. [A copy of this report was given to the Commission: its conclusion and recommendations were as follows]

### **Conclusions**

- There is no real consumer choice regarding tank refill despite the fact there is no technological obstacle to this and that LPG tanks are compatible for refilling for any supplier.
- The Domestic Bulk LPG market in Northern Ireland lacks any real competition resulting in poorer price and service for consumers.
- Contract terms place heavy restrictions on consumers regarding period of contract, accessibility, tank ownership and maintenance, and choice of supplier.
- Safety issues regarding choice of supplier should not be an issue providing that proper safeguards are in place.
- There is a need for simple and effective redress for domestic LPG consumers.

Although customer switching was not directly investigated at the time, the council believes that the issues listed above would themselves be obstacles to switching to a new LPG supplier.

## Recommendations

### Contractual changes

- The length of the contract period should be negotiated between supplier and customer but should not be for a period less than 6 months or more than 3 years.
- New customer contracts should be drawn up free of jargon and in plain English
- The amount of notice required to end a contract by either party should not exceed 30 days.

### Tanks

- Any LPG Gas Association approved company should be allowed to refill tanks.
- Consumers should be allowed to rent tanks or purchase them outright.
- Responsibility for tank maintenance should lie with the consumer either through rental or other agreements.
- Existing customers who have rented a tank for more than three years should be allowed to purchase that tank from the company at a price that takes account of depreciation.
- Tanks must have certification at all stages - installation, each year, 5 year and 10 year examinations.

### Safety

- Any work in refilling or servicing LPG tanks or equipment should be undertaken only by persons or companies approved by and belonging to LP Gas Association.
- Suppliers should retain the right to refuse to fill a tank that is deemed to be unsafe or which does not have the appropriate certification.

### Accessibility

- Companies should not have unrestricted right of access to consumer premises except in case of emergency.

### Redress

- Complaints procedures should be put in place where consumer complaints are acknowledged within 3 working days and replied to within 15 working days.
- The LP Gas Association with OFT should introduce a code of practice containing an industry based arbitration system for the resolution of outstanding disputes.

The final recommendation of the 1993 'What Choice?' report was that the Director General of Fair Trading should investigate the market in Northern Ireland for the supply of LPG to consumers, with specific reference to the bulk supplied domestic sector.

## **Impact and Progress**

After publications of the 'What Choice?' report Flogas and Calor accepted some of the criticisms and amended their contracts. However other recommendations were not as well received and issues such as allowing other approved companies to refill tanks and allowing consumers to organise their own maintenance were not acted upon by either company.

Our recommendation for the LP Gas Association to introduce a code of practice incorporating an arbitration system was not acted upon. The Association said that, as a technical organisation, they were not permitted to assume role of arbitrator.

Further to our request for an investigation to be conducted into the Bulk Domestic LPG market in Northern Ireland, The Director General of Fair Trading considered the matter but felt that he would not be justified in taking action under competition legislation.

Since the report, we have not been made aware of evidence to suggest any other significant improvements made by the suppliers during the intervening period.