

## LPG MARKET INQUIRY

### Notice of Possible Remedies under Rule 11 of the Competition Commission Rules of Procedure

#### Introduction

1. On 5 July 2004, the Office of Fair Trading (OFT) referred the supply of domestic bulk liquefied petroleum gas (LPG) (the Reference Goods and Services) in the UK to the Competition Commission (CC) for investigation.
2. The reference was made under the provisions of section 131 of the Enterprise Act 2002 (the Act). On 20 October 2004 the OFT announced that, following a period of consultation, it had varied the terms of reference to the supply of bulk LPG for domestic use ('bulk domestic LPG').
3. In its provisional findings on the reference notified to the main parties of this inquiry on 23 August 2005, the CC inquiry group (the Group) found provisionally that there were features of the market, either alone or in combination, which prevent, restrict or distort competition within the relevant markets such that there is an adverse effect on competition (AEC).
4. This notice invites comments on the actions which the Group considers might be taken by the CC, or recommended for implementation by others, for the purpose of remedying, mitigating or preventing the AEC concerned or any resulting detrimental effect on customers. No significance should be attached to the ordering of the measures set out in this notice.

#### The market for domestic bulk LPG in Great Britain: possible remedies on which views are sought

5. The various measures, alone or in combination, that are currently being considered by the Group as possible remedies to the adverse effect on competition that it has identified in the market for domestic bulk LPG in Great Britain, and on which comments are invited are as follows:

**(i) *Standardize the process for a customer switching supplier***

6. In its provisional findings the Group has reached the view that the exercise of discretion by suppliers over the terms on which customers can switch between them, over the switching process itself and the information provided to customers about the switching process generates an adverse effect on competition. The Group is therefore considering measures aimed at securing a standard switching process that would make switching easier. The Group notes the high degree of complementarity between this measure and those aimed at improving information on the switching process (measure (iii) outlined below).
7. In particular, in relation to standardizing the switching process, the Group is considering:

- setting or capping the charges that suppliers can levy on customers for switching supplier. The Group is specifically considering capping such charges at zero;
- capping the period of time following a customer request within which suppliers must effect a switch;
- arrangements setting out compensation for customers in the event of suppliers failing to effect a switch within the maximum permitted period;
- what might be the appropriate process for resolving disputes between suppliers and between suppliers and customers over the switching process and how the costs of such disputes be allocated;
- how best to implement a standardized switching process while ensuring safety; and
- any other measure that might be necessary in order to ensure the effectiveness of a standardized switching process as a remedy.

**(ii) *Establish arrangements for tank transfer upon a customer switching supplier***

8. In its provisional findings the Group has reached the view that the widespread practice of switching tanks upon switching supplier, and, to the extent that they are passed on to customers, the costs to suppliers of removing and installing tanks in such situations act as barriers to switching. The Group has also identified the inconvenience faced by customers as a result of tank removal and installation, or the expectation of this inconvenience, as an additional barrier to switching. Further, the Group is of the view that the costs to the suppliers of removal and installing tanks upon switching, to the extent that these are borne by the suppliers, reduces the incentives for suppliers to compete for new customers.
9. The Group is therefore currently considering measures that would, in the event of a customer switching LPG supplier, enable the ownership of the LPG tank to be transferred from the outgoing supplier to the incoming supplier. Such an arrangement would obviate the need for the LPG tank to be removed and a new tank installed each time a customer switches LPG supplier. This would reduce the costs incurred by the suppliers when customers switch and should therefore also reduce the charges levied on customers at the point of switching. It should also reduce the inconvenience associated with removing the outgoing supplier's tank and installing the tank of the incoming supplier.
10. In connection with possible arrangements for tank transfer, the Group is considering:
  - conferring on the incoming supplier a 'right to buy' the existing tank, such that the incoming supplier would have the right to buy the tank of a customer it had acquired from the outgoing supplier;
  - what would be the appropriate methodology for arriving at a price that should be paid by the buyer of the tank to the seller of the tank;
  - how and at what level suppliers should be permitted to recover the costs necessarily incurred in the process of tank transfer from customers;

- what the process of tank transfer would need to involve, eg administration, tank inspection, transfer of safety records;
  - what might be the appropriate process for resolving disputes between suppliers over tank transfer and how should the costs of such disputes be allocated;
  - how best to ensure safety under a system of tank transfer. Specifically the group is considering:
    - whether and how to establish a system of tank registration and record keeping (eg tank ‘log books’);
    - how best to ensure that responsibility for tank safety and tank maintenance are unambiguously allocated; and
    - the extent to which maintaining safety under a system of tank transfer would require changes to the relevant regulations and/or the way in which they are currently implemented;
  - how best to make customers aware of the possibility of tank transfer; and
  - any other measures that might be necessary to ensure the effectiveness of tank transfer as a remedy.
11. The discussion above has concentrated on the facilitation of tank transfer. It has been put to us the currently predominant model, whereby the LPG supplier is responsible not only for supply of LPG but also for tank ownership, tank maintenance and safety, brings significant benefits over possible alternative arrangements and the Group notes that measures to facilitate tank transfer would allow this model to continue. However, if such measures could not be implemented, the Group would consider other options, such as the facilitation of customer-ownership of tanks.
- (iii) *Improve the information available to customers on the switching process***
12. In its provisional findings the Group has reached the view that the lack of information among customers about their ability to switch supplier, their liability for switching charges and the likely level of inconvenience involved in the switching process constitutes a barrier to switching.
13. The group is therefore considering measures to ensure the provision of useful, accurate information to customers on the process involved in switching LPG suppliers would therefore reduce barriers to switching.
14. In particular the Group is considering:
- whether LPG suppliers should clearly set out the switching process (eg the charges to be levied on switching, the administrative process involved, the maximum time period) in their contracts with customers;
  - whether LPG suppliers should clearly set out the switching process on their web sites and/or in their publicity material; and

- how best customers can be informed about the process involved in switching supplier. This could, for example, involve LPG suppliers including such information on their bills or regularly writing to customers informing them of the process.

**(iv) Address barriers to switching through contract terms**

15. In its provisional findings the Group noted that the use of fixed minimum terms of supply in introductory contracts of three or five years and requiring contract renewal (with a further fixed term of supply) as a condition of selective discounts constitute barriers to switching. Measures to restrict the use of fixed contract terms would therefore reduce barriers to switching.
16. In particular, the Group is considering:
- whether fixed contract terms should be permitted at all;
  - if fixed contract terms are to be permitted, what the appropriate term would be;
  - whether a maximum term for domestic bulk LPG supply contracts should be set and if so what that period should be;
  - whether LPG suppliers should be permitted to levy charges for early termination and if so at what level those penalties should be set; and
  - whether to prohibit suppliers from subjecting customers to a further fixed term in return for a discounted price.

**(v) Reduce contractual notice periods**

17. In its provisional findings, the Group has identified lengthy (usually three-month) contractual notice periods as a feature of the market that creates a barrier to switching. This is in part because the notice period has the effect of tying the customer to his or her current supplier for a given period and in part because it provides the opportunity for the current supplier to 'price defend' and retain the customer. The Group is therefore considering measures to address this.
18. In particular, the Group is considering:
- Whether to impose a maximum contractual notice period and, if so, how long that period should be (which will be linked to the process involved in switching suppliers).

**(vi) Improve the information available to customers on other suppliers and their offers**

19. In its provisional findings the Group identified both lack of customer awareness of other LPG suppliers and a lack of price transparency as barriers to switching. A particular concern stems from the difficulty customers face in getting quotes for provision of LPG from other suppliers, which are subject to site visits. The Group has also noted that the lack of price transparency helps to facilitate selective discounting, which weakens the effectiveness of any competitive constraint on LPG suppliers. The

group is therefore considering the use of measures to improve customer awareness both of other LPG suppliers and of prices.

20. In particular, the Group is considering:

- the creation and maintenance of a web site and/or telephone service providing details of the domestic bulk LPG suppliers active in particular areas. Such a facility could, for example, allow customers to give their postcode and receive a list of suppliers serving their area;
- whether suppliers should publish their average price for domestic bulk LPG, together with the minimum and maximum price charged, thereby allowing customers a comparator for their own prices;
- whether suppliers should remotely provide quotes to customers (via a web site or over the telephone) on the basis of a number of key pieces of information, eg annual usage, tank size, postcode;
- whether and by how much suppliers should be permitted to revise remotely provided quotes following a site visit;
- whether suppliers should show separately the prices for LPG, tank rental and perhaps also tank maintenance; and
- whether suppliers should publish non-price terms and conditions of supply, such as maximum contract length, notice periods, switching process, switching charges.

**(vii) *Reduce the scope for selective discounting***

21. In its provisional findings the Group has identified the practice among most suppliers of selective discounting as a feature of the market with an adverse effect on competition. This is because selective discounting reduces the effectiveness of any competitive constraint on LPG suppliers by allowing the suppliers to win new customers and retain existing customers who threaten to switch by lowering prices for those customers alone and without extending the benefit of lower prices to all customers. The Group is therefore considering measures to reduce the scope for selective discounting.

22. To the extent that a lack of price transparency helps to facilitate selective discounting, those measures to improve price transparency (outlined in section (vi) above) will also help to address selective discounting. The Group also notes that measures to prevent LPG suppliers from giving selective discounts to customers in return for a further minimum period of supply (outlined in section (iv) fifth bullet point above) could also have the effect of limiting the scope for selective discounting. In addition the Group is considering:

- whether LPG suppliers should publish standard prices;
- whether LPG suppliers should publish a pricing formula that would allow customer-specific costs (eg costs associated with delivery) to be taken into account in determining price; and
- whether LPG suppliers should offer all customers the same price options.

23. The group notes that some of the measures outlined above could be considered complementary to each other. For example, measures to facilitate tank transfer and measures to standardize the switching process could form part of a package that would reduce the burden on customers of switching while incentivizing LPG suppliers to effect the switch efficiently.

**The market for domestic bulk LPG in Northern Ireland: possible remedies on which views are sought**

24. The various measures, alone or in combination, that are currently being considered by the Group as possible remedies to the adverse effect on competition that it has identified in the market for domestic bulk LPG in Northern Ireland, and on which comments are invited are as follows:

**(viii) Standardize the process for a customer switching supplier**

25. As discussed in section (i).

**(ix) Establish arrangements for tank transfer upon a customer switching supplier**

26. As discussed in section (ii).

**(x) Improve the information available to customers on the switching process**

27. As discussed in section (iii).

**(xi) Address barriers to switching through contract terms**

28. As discussed in section (iv).

**(xii) Reduce contractual notice periods**

29. As discussed in section (v).

**(xiii) Improve the information available to customers on other suppliers and their offers**

30. As discussed in section (vi).

31. In the same way as described in paragraph 23, the Group notes that some of the measures outlined above could be considered complementary to each other.

32. Both in relation to Great Britain and Northern Ireland, the Group is willing to consider any practical alternatives to the possible remedies outlined above that the main parties or other persons would like to propose which they consider would address the identified AEC effectively.

33. Both in relation to Great Britain and Northern Ireland, the Group is also considering whether some or all of these remedial measures should apply only to some of the

(larger) companies supplying domestic bulk LPG and, if so, which of the measures and based upon what criteria.

34. Both in relation to Great Britain and Northern Ireland, the Group has considered the possibility of other remedies, such as divestiture of LPG companies, depots and/or tanks. The Group is currently of the view that, alone or in combination, measures such as those outlined above should be effective in addressing the identified AEC. However, if the Group were to reach the view that such measures were unlikely to be effective it could consider these other remedies further.
35. Although the measures outlined above are aimed primarily at LPG suppliers, the Group is also considering the role that industry associations, such as the LPGA and ALGED might play in implementing and monitoring these measures.

### **Criteria**

36. In choosing appropriate remedial action, the Group will have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the AEC and any detrimental effects resulting from it. When deciding what is an appropriate remedy, the Group will consider the effectiveness of different possible remedies and their associated costs and will have regard to the principle of proportionality. Between two remedies which the Group considers equally effective, it will choose that which imposes the least cost or restriction. In choosing appropriate remedial action in the inquiry, the Group will have regard to the impact of the different possible remedies on safety.

### **Relevant customer benefits**

37. The Group will also have regard to the effects of any remedial action on any relevant customer benefits within the meaning of section 134 (8) of the Act arising from the feature or features of the market concerned. Such benefits comprise lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods and services. The Group welcomes views on the nature, scale and likelihood of such benefits.

### **Next steps**

38. Parties are requested to provide any views in writing, including any alternative remedies they wish the Group to consider, by 23 September 2005 (see note (i)).
39. A copy of this notice will be posted on the CC web site. Other interested persons are requested to provide any views in writing, including any alternative remedies they wish the Group to consider, by 23 September 2005 (see note (i)).

Peter Freeman  
Chairman  
23 August 2005

### **Notes**

- (i) This notice of possible actions to remedy the AEC and any resulting detrimental effects is given having regard to the Group's provisional findings notified to the main parties on

23 August 2005. The parties have until 23 September 2005 to respond to those provisional findings. Other interested persons also have until 23 September 2005 to respond to those provisional findings. In the light of any responses by the parties, or by other interested persons, the Group's findings may alter, in which case the Group may consider other possible remedies, if appropriate.