

Completed acquisition by Flogas UK Limited of BP's LPG business in Great Britain (trading as MacGas)

ME/5686/12

The OFT's decision on reference under section 22(1) given on 11 January 2013. Full text of decision published 23 January 2013.

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**Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.**

## **PARTIES**

1. **Flogas UK Limited ('Flogas')** distributes bulk and cylinder liquefied petroleum gas ('LPG') in the UK. Its UK turnover in the year ended 31 March 2012 was around £171 million. Flogas is a subsidiary of DCC Energy UK Limited, which through its subsidiary GB Oils Limited also distributes heating, transport and gas oil in the UK. These entities are all (indirectly) held by DCC plc (together '**DCC**'), which is headquartered in Dublin and had a worldwide turnover of nearly €10.7 billion and a UK turnover of around €7.9 billion in the year ended 31 March 2012.
2. **GB LPG Limited** distributes bulk and cylinder LPG in Great Britain. Before the merger it was part of BP Oil UK Limited and traded under the BP brand. Since the merger it has been trading as **MacGas**<sup>1</sup> and it is referred to as such in this decision. Its turnover in 2011 was around £[ ] million, including LPG sales to BP forecourts.

## **TRANSACTION**

3. BP's LPG business was transferred into GB LPG Limited, which was acquired by Flogas on 28 September 2012 (the '**Acquisition**').

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<sup>1</sup> MacGas was an LPG supplier active in Scotland that was acquired by BP in 1987.

## JURISDICTION

4. As a result of the Acquisition, Flogas and MacGas ceased to be distinct. These enterprises overlap in the supply of LPG, with a combined share of supply exceeding 25 per cent in several segments (see paragraphs 40, 52 and 61 below). Further, the UK turnover of MacGas exceeds £70 million.<sup>2</sup> Therefore, both the share of supply test and the turnover test in section 23 of the Enterprise Act 2002 (the '**Act**') are met and the OFT believes that it is or may be the case that the Acquisition has resulted in the creation of a relevant merger situation.
5. The Acquisition was publicly announced on 8 August 2012, before its completion. Following extensions under section 25(2) of the Act, the statutory deadline is 4 February 2013. The administrative deadline is 11 January 2013.

## BACKGROUND

6. LPG is supplied in bulk, which is generally delivered by tanker to outdoor storage tanks, and in cylinders (bottled LPG), which are generally filled at filling stations and distributed by suppliers and dealers. LPG is used for many purposes, including heating, cooking, industrial and agricultural processes and as a transportation fuel.
7. The supply of bulk LPG to domestic customers was the subject of a market investigation by the Competition Commission (the '**CC**') in June 2006 (the '**CC Report**').<sup>3</sup> The CC concluded that there were features of the domestic bulk LPG market that adversely affected competition. To address this, in 2008 and 2009 it implemented two Orders aimed at easing switching by domestic customers between suppliers of bulk LPG (the '**CC Orders**').<sup>4</sup>

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<sup>2</sup> The OFT has included the turnover from MacGas's sales to BP for the purposes of the turnover test, as these sales will be external sales following the Acquisition (*Mergers – jurisdictional and procedural guidance* (OFT527), June 2009, paragraph B.14 of Annexe B).

<sup>3</sup> *Market investigation into supply of bulk liquefied petroleum gas for domestic use*, Competition Commission report of 29 June 2006.

<sup>4</sup> The Domestic Bulk Liquefied Petroleum Gas Market Investigation Order 2008 and the Domestic Bulk Liquefied Petroleum Gas Market Investigation (Metered Estates) Order 2009. The OFT has published a guide for customers (see [www.of.gov.uk/shared\\_of/monopolies/OFT-Domestic-bulk.pdf](http://www.of.gov.uk/shared_of/monopolies/OFT-Domestic-bulk.pdf)).

8. The supply of LPG to domestic customers for heating purposes was also included in a market study into off-grid energy conducted by the OFT in 2011 (the '**OFT off-grid energy study**').<sup>5</sup> The OFT found that the CC Orders appeared to have substantially increased switching rates for individual bulk LPG customers, although less so for metered estate customers. The OFT also identified concerns that some suppliers may not be treating their domestic bulk LPG customers fairly and in April 2012 the OFT secured voluntary agreements from the major LPG suppliers, including Flogas and BP Oil UK Limited (of which MacGas formed part before the Acquisition), to make changes to their domestic bulk customer contracts and improve transparency around switching and cancellation rights.<sup>6</sup>

## **MARKET DEFINITION**

9. The overlap between the merged parties is in the distribution of bulk and cylinder LPG in Great Britain. MacGas is not active in Northern Ireland. Neither party is active in the production of LPG.
10. There are two forms of LPG: propane and butane. They are interchangeable for most purposes, although butane is less suited to outdoor storage in cold conditions and hence is not generally supplied in bulk for use in outdoor tanks. There are no material differences between propane and butane in distribution. Neither the parties nor any third parties suggested that the impact of the Acquisition would differ between these forms of LPG and the OFT has therefore not considered them separately.

### **Product scope**

#### Other forms of energy

11. Other forms of energy, in particular heating oil but also mains gas, coal and wood, can be used as alternatives to LPG for some of its functions. The CC Report found that, although these forms of energy placed some constraint on the price of domestic bulk LPG, they were not close enough substitutes to be considered part of the same market. In the present case, DCC submitted that heating oil customers increasingly see LPG as an alternative given its lower carbon emissions, but nevertheless assumed in its analysis

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<sup>5</sup> *Off-grid energy, an OFT market study*, OFT report of October 2011 (OFT1380), in particular at chapter 5. This report covered both bulk and cylinder LPG as a source of domestic heating.

<sup>6</sup> See [www.ofg.gov.uk/news-and-updates/press/2012/28-12](http://www.ofg.gov.uk/news-and-updates/press/2012/28-12) and [www.ofg.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/lpg](http://www.ofg.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/lpg).

of the Acquisition that LPG was in a separate market. Only very few LPG customers told the OFT that they would switch to alternative forms of energy. This is also consistent with recent decisions in other cases.<sup>7</sup>

12. The OFT has therefore not considered other forms of energy to be part of the same market as LPG.

#### Bulk LPG and cylinder LPG

13. LPG is distributed in bulk form or in cylinders. The product is identical and the only difference is in the method of transport and storage. DCC submitted that these segments exert competitive pressure on each other as it is relatively easy for customers to switch between bulk and cylinder LPG, although it acknowledged that switching was partly determined by usage levels given that cylinder LPG is more expensive per litre and hence is more suitable for lower usage. The OFT noted in its off-grid energy study that cylinder LPG tends to be used in locations where a customer is unable to site a tank or where tanker access is difficult.<sup>8</sup> It concluded that switching between the two forms of LPG was unlikely given differences in terms of price, space requirements and convenience of delivery and handling, and found little evidence of switching.
14. On the supply side, bulk and cylinder LPG have different distribution models. While bulk LPG is delivered directly by suppliers to customers, cylinders need to be filled in filling stations and are then distributed to end users not only by suppliers directly but also through a network of dealers and retailers.
15. The OFT has therefore considered the supply of bulk LPG and cylinder LPG separately in its assessment of the Acquisition.

#### Segmentation of bulk LPG by customer group

16. The OFT may define relevant markets for separate customer groups if the effects of the merger on competition to supply a targeted group of customers may differ from its effects on other groups of customers, and

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<sup>7</sup> *DCC Energy UK Limited/Rontec Investments LLP*, CC report of 4 September 2012, paragraph 68 of Appendix D (as regards heating oil compared with LPG), and *Shell/Rontec*, OFT decision of 3 February 2012, paragraph 25 (as regards auto-LPG compared with petrol and diesel).

<sup>8</sup> OFT off-grid energy study, paragraphs 5.6, 5.7 and 5.72.

require a separate analysis.<sup>9</sup> Bulk LPG is supplied to domestic customers (which was the focus of the CC Report and the OFT off-grid energy study) and to commercial customers (including industrial customers), as well as to forecourts for use in vehicles (autogas). The OFT has therefore considered whether it is appropriate to identify separate relevant markets for these different customer groups for bulk LPG.

17. DCC submitted that for cylinder LPG it is not appropriate to consider separate customer groups, because the parties supply mainly at the wholesale level (to cylinder dealers and retailers) rather than to end users, and because the equipment, infrastructure and prices do not generally vary between groups of end users. The OFT did not receive any evidence from third parties to suggest that a different approach was appropriate. The OFT has therefore not considered separate customer groups for cylinder LPG.<sup>10</sup>

#### Domestic and small/large commercial customers

18. DCC submitted that the supply of bulk LPG to domestic and commercial customers can be considered together, since the product supplied, the means of supply and the competitive dynamics are identical. DCC submitted that the main difference in the competitive environment may be that the CC Orders, which are aimed at easing switching between suppliers, only apply to domestic customers.
19. The OFT's investigation suggested that the most relevant distinction in customer groups may be between (a) large commercial customers and (b) domestic and small commercial customers. Information from Flogas indicates that [ ] customers accounted for a significant share of its turnover. Several of the large commercial customers contacted by the OFT stated that they preferred to buy from the major, nationally active LPG suppliers rather than from regional independents, in some cases to allow them to single-source to multiple sites across the country. Also, price information from MacGas<sup>11</sup> indicated that average prices and margins were [ ] for large commercial customers (including customers whose price was determined by a set margin above a published index tracking, for example,

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<sup>9</sup> *Merger Assessment Guidelines* (CC2 and OFT1254, September 2010), paragraph 5.2.28.

<sup>10</sup> The OFT also considered whether it was appropriate to distinguish between cylinders sizes and types but concluded that this was not the case, as information provided by the parties and third parties indicated that the competitive conditions were similar for all sizes and types.

<sup>11</sup> The OFT did not obtain similarly disaggregated information for Flogas.

crude oil prices) than for small commercial and domestic customers, while [ ]. As the merged parties may both be considered to be among the major LPG suppliers, on a cautious basis the OFT has therefore separately considered the impact of the Acquisition on large commercial bulk LPG customers.

20. Small commercial and domestic customers of bulk LPG did not generally express a preference for major suppliers over regional independents to the OFT. The same set of suppliers is able to serve both of these customer groups and, although the CC Orders have recently made switching between suppliers easier for domestic customers, the OFT's investigation suggested that suppliers who previously focused on commercial customers appear to have increasingly expanded into supplying domestic customers. All of the parties' competitors who responded to the OFT supply both domestic and commercial customers. The OFT also notes that the MacGas prices and margins for small commercial and domestic customers [ ]. The OFT therefore considers that the impact of the Acquisition is likely to be very similar for small commercial and domestic bulk LPG customers and has considered these groups together in its competitive assessment.
21. The OFT also considered whether customers on metered estates should be considered separately. These are customers who buy LPG from a central tank that also supplies other customers or through an intermediary such as a developer or estate owner. Although switching is more difficult for metered estate customers than for individual customers,<sup>12</sup> the CC Report did not find that metered estate customers constituted a separate market.<sup>13</sup> In the present case, DCC submitted that this was still correct and the OFT found no evidence to suggest that there is a different supplier set for metered estate customers. Also, evidence from the parties' prices for metered estate customers and the costs of supplying them did not indicate that a different approach was appropriate. The OFT has therefore considered metered estate customers as part of domestic customers for the purpose of assessing the competitive impact of the Acquisition.

#### Autogas customers

22. DCC submitted that it may be appropriate to consider the supply of bulk LPG that is meant to be used in vehicles – often referred to as autogas – to

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<sup>12</sup> See the OFT off-grid energy study, paragraphs 5.46-49.

<sup>13</sup> CC Report, paragraphs 3.10-11.

(primarily) forecourts as part of the same market as the supply to domestic and commercial customers, since the product and the delivery method are the same. According to DCC, autogas deliveries are included in suppliers' delivery runs along with deliveries to domestic and commercial customers. DCC stated that almost all of the parties' autogas deliveries are made to forecourts and (to a small extent) non-forecourt retailers, while a small percentage of their deliveries (around [ ] per cent) is made to end users such as transport hauliers.

23. Information provided by the parties indicates that autogas customers require significantly more frequent and larger deliveries than either commercial or domestic customers. The OFT also notes that buyers of autogas frequently own their own storage equipment, which gives them a greater ability to switch between suppliers. These factors may create different conditions of competition than for domestic and (in particular small) commercial customers.
24. On a cautious basis, the OFT has therefore separately considered the impact of the Acquisition on autogas customers.

### **Geographic scope**

25. Both parties are active across Great Britain. Flogas is active in Northern Ireland, but MacGas is not and the OFT has therefore not further considered the supply of LPG in Northern Ireland.

### **Domestic and small commercial customers of bulk LPG**

26. DCC submitted that the geographic market for domestic and commercial bulk LPG is Great Britain. It stated that, while some distributors may maintain a regional focus, regional market definitions are not appropriate due to the fact that LPG can be transported over long distances, the existence of chains of substitution, the ease of geographic expansion and the possibility for small suppliers to outsource delivery in an area far removed from their depot.<sup>14</sup>

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<sup>14</sup> DCC also referred to merger decisions by the European Commission in which it found national markets for LPG distribution in other European countries, but the OFT notes that the evidential value of such decisions is limited where geographic conditions and market structures vary between countries.

27. The CC Report found that depots could economically deliver to domestic customers within a range of up to 100 miles, although in practice most customers may be significantly closer to the depot. It also found that pricing appeared to be broadly similar across Great Britain. Accordingly, it did not identify any distinct local or regional markets, although it did recognise that the supply to domestic customers has a local dimension, with smaller suppliers building reputations in their local sales area and larger suppliers recognising the importance of a local sales presence. Given the overlaps between competing depots the CC Report found a continuous chain across Great Britain, although it also noted that any chain of substitution is likely to be considerably weakened or broken by price discrimination.<sup>15</sup> The OFT off-grid energy report did not identify any significant changes in the sector in this respect.<sup>16</sup>
28. In the present case, information provided by DCC indicated that the parties' depot catchment areas, that is, the areas in which 80 per cent (by volume) of the parties' bulk LPG customers were located, were around [0-50] and [0-50] miles on average for Flogas and MacGas respectively, with a maximum of [50-100] and [50-100] miles respectively. DCC submitted that this understated the size of the area that depots serve, given the use of 'lollipop routes', in which tankers travel a long distance and then deliver to a number of customers close together, and 'daisy chain routes', in which deliveries are made to a number of customers en route to each other resulting in a possibly long distance from the depot for the furthest customer.<sup>17</sup> Competing suppliers confirmed the use of such routes (for example, [ ]), but most identified a maximum delivery distance between 50 and 100 miles. The OFT considers this suggests a regional approach to the geographic scope of the market may be appropriate.
29. It is unclear that a chain of substitution exists, particularly as suppliers have the ability to price-discriminate between customers in accordance with, for example, the degree of local competition. The OFT found that the parties' prices show some regional variation, which may be caused, at least in part, by competitive factors given that the number and identity of

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<sup>15</sup> CC Report, paragraphs 3.12-14 and Appendix E, paragraphs 20-21.

<sup>16</sup> OFT off-grid energy report, paragraph 5.25.

<sup>17</sup> DCC also noted that its method to calculate these catchment areas results in some underestimation of the actual catchment area due to its assumption that customers are supplied by their nearest depot when in reality this is not correct in all cases, but the extent of this is not clear.

suppliers differ substantially across Great Britain but are broadly similar within nearby counties. The OFT also notes that MacGas, although active throughout Great Britain, is significantly stronger in Scotland and the South West of England than in other regions, reflecting the fact that BP's LPG business originated with Macgas in Scotland (acquired by BP in 1987) and Handygas in southern England and Wales (acquired in 1989).

30. The OFT has therefore, on a cautious basis, assessed the impact of the Acquisition on domestic and small commercial customers of bulk LPG not only a national basis but also on a regional basis. As the OFT has not found significant competition concerns on either basis, it was not necessary for the OFT to reach a conclusion in this regard.
31. Given the delivery distances from depots, the OFT considers that the most appropriate regions for its assessment are in most cases likely to be larger than individual counties. For practical reasons, the OFT has therefore had regard to the regional subdivision that is used for statistical purposes.<sup>18</sup> In England, this consists of the following regions: the South East, South West, East of England, West Midlands, East Midlands, Yorkshire and Humberside, North East, and North West. In Wales and Scotland, the OFT has also distinguished between northern and southern regions.<sup>19</sup>

#### Large commercial and autogas customers of bulk LPG

32. The relevant geographic scope for large commercial customers and autogas customers is more likely to be national, as many of these customers operate from multiple sites across Great Britain and several prefer a nationally active supplier, as noted above (paragraph 19). The OFT has therefore considered the impact of the Acquisition for these customer groups on a national basis, although it was not necessary for the OFT to reach a conclusion in this respect given the lack of competition concerns on any geographic basis, as set out below.

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<sup>18</sup> NUTS1 regions (Nomenclature of Territorial Units for Statistics), developed by the European Union.

<sup>19</sup> As indicated in the competitive assessment below, not all of the information available to the OFT was fully consistent with this regional division, but the OFT has not received any evidence to suggest that this had a material impact on its assessment.

## Cylinder LPG

33. DCC submitted that the geographic market for cylinder LPG is Great Britain. It noted that both parties operate throughout Great Britain and that MacGas does so from only three cylinder filling sites (Purton in South West England, Blaydon in North East England and Perth in Scotland). However, the OFT notes (see Table 5 below) that the regional share of supply of MacGas for cylinder LPG is in fact negligible in most regions and that its sales are concentrated around its three filling sites (this is in contrast to bulk LPG, where MacGas has several depots throughout Great Britain and where its regional distribution of shares is more even, as set out in Table 2 below). This is related to the fact that the area in which MacGas supplies 80 per cent of its cylinder LPG (by volume) varies between [50-100] and [100-150] miles for its three stations, while the distance between Purton and Blaydon is close to 300 miles. The OFT has therefore, on a cautious basis, assessed the impact of the Acquisition on the supply of cylinder LPG on a regional basis. The OFT applied the same regional subdivision as for bulk LPG (see paragraph 31 above).

## Conclusion

34. For the reasons set out above, the OFT has, on a cautious basis, considered the competitive impact of the Acquisition on:
- a. the supply of bulk LPG to domestic and small commercial customers in Great Britain on a national and regional basis
  - b. the supply of bulk LPG to large commercial customers in Great Britain on a national basis
  - c. the supply of bulk LPG to autogas customers in Great Britain on a national basis, and
  - d. the supply of cylinder LPG in Great Britain on a regional basis.

## HORIZONTAL UNILATERAL ISSUES

### Supply of bulk LPG to domestic and small commercial customers

#### National level

35. DCC provided the OFT with estimates of the shares of supply in Great Britain of the parties and their main competitors in the supply of bulk LPG

to domestic and commercial customers by volume,<sup>20</sup> as set out at Table 1 below. The OFT was not provided with share estimates distinguishing between small and large commercial customers.

**Table 1: Shares of supply of bulk LPG in Great Britain in 2011 by volume (per cent)**

| Company              | Domestic customers | Commercial customers |
|----------------------|--------------------|----------------------|
| Flogas               | [15-25]            | [10-20]              |
| MacGas               | [0-10]             | [5-15]               |
| <b>Merged firm</b>   | <b>[20-30]</b>     | <b>[20-30]</b>       |
| Calor                | [45-55]            | [45-55]              |
| Avanti               | [5-15]             | [5-15]               |
| Others <sup>21</sup> | [10-20]            | [10-20]              |
| Total                | 100                | 100                  |

Source: DCC estimates based on DECC data.<sup>22</sup> Numbers may not sum up due to rounding.

36. DCC's share of supply estimates for domestic customers since 2006 indicate a gradual decline in the shares of supply to these customers for the merged parties (the 2006 shares of Flogas and MacGas were [15-25] and [five-15] per cent respectively) as well as Calor (2006 share of [50-60] per cent) to the benefit of small, independent suppliers (combined share, excluding Avanti, of [0-10] per cent in 2006).<sup>23</sup> This is consistent with the finding in the OFT's off-grid energy study that the CC Orders appear to have facilitated an increase in switching, resulting in gains for the independent suppliers at the expense of major suppliers such as Flogas and MacGas.<sup>24</sup> DCC noted that MacGas's loss of share is particularly significant at around [ ] between 2006 and 2011 and it provided data for MacGas

<sup>20</sup> DCC was unable to provide the OFT with share estimates based on value, but given the commodity nature of LPG the OFT considers it unlikely that such estimates would differ significantly from share estimates based on volume.

<sup>21</sup> Including BDS Fuels, Callow Gas, Countrywide, Discount Gas, Energas, Extra Gas, JGas, Lister Gases, LPG Direct, Northern Energy and Premier LPG.

<sup>22</sup> The Department of Energy and Climate Change (DECC) calculates the total size of bulk LPG supplies to different customer groups. Since some LPG suppliers are omitted from DECC's calculation, DCC submitted that its share estimates overestimate the parties' actual shares. However, the extent of such overestimation is likely to be small (according to DCC, perhaps up to one percentage point for each party).

<sup>23</sup> The OFT was not provided with similar data for commercial customers.

<sup>24</sup> OFT off-grid energy study, paragraphs 5.41-42.

showing that the number of domestic customers and the volume sold to domestic customers had dropped by [ ] between 2009 and 2011.

37. At a national level, the Acquisition strengthens the position of Flogas as the second largest supplier – albeit still significantly smaller than Calor – in a relatively concentrated market. However, the OFT notes that the combined share of Flogas and MacGas is not at a level that normally gives rise to prima facie competition concerns. Also, based on these shares of supply and their development over the past few years for domestic customers, MacGas is not as strong a competitor to Flogas as are Calor, Avanti and the independent sector.
38. Data on customer switching behaviour for both parties for both domestic and commercial customers do not indicate that the parties are closer competitors than suggested by their shares of supply. These data confirm that small suppliers are a significantly stronger competitive constraint than suggested by their individual shares, for both domestic and commercial customers.
39. Some domestic and commercial customers expressed concern to the OFT about the Acquisition, but they represented significantly less than half of the customers who responded to the OFT. Several, in particular domestic, customers expressed more general concerns about the LPG sector, which however were not affected by the Acquisition. The information provided by customers about their preferred alternative supplier was consistent with the parties not being closer competitors than their shares of supply suggest. Competitors did not express material concerns about the Acquisition.

#### Regional level

40. DCC provided the OFT with estimates of the parties' regional shares of supply of bulk LPG to domestic and all commercial customers by volume,<sup>25</sup> as set out at Table 2 below.

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<sup>25</sup> See footnote 20 above.

**Table 2: Regional shares of supply of bulk LPG in 2011 by volume (per cent)**

| Region <sup>26</sup> | Domestic customers |         |         | Commercial customers |         |         |
|----------------------|--------------------|---------|---------|----------------------|---------|---------|
|                      | Flogas             | MacGas  | Merged  | Flogas               | MacGas  | Merged  |
| South East           | [10-20]            | [0-10]  | [15-25] | [10-20]              | [0-10]  | [15-25] |
| South West           | [10-20]            | [10-20] | [25-35] | [10-20]              | [15-25] | [25-35] |
| East Anglia          | [10-20]            | [0-10]  | [15-25] | [10-20]              | [5-15]  | [20-30] |
| Central              | [15-25]            | [0-10]  | [20-30] | [20-30]              | [0-10]  | [25-35] |
| South Wales          | [20-30]            | [0-10]  | [25-35] | [15-25]              | [0-10]  | [20-30] |
| North and Mid Wales  | [25-35]            | [0-10]  | [25-35] | [15-25]              | [0-10]  | [20-30] |
| North East           | [15-25]            | [0-10]  | [25-35] | [10-20]              | [5-15]  | [15-25] |
| North West           | [10-20]            | [0-10]  | [10-20] | [10-20]              | [0-10]  | [15-25] |
| Scotland             | [0-10]             | [15-25] | [20-30] | [0-10]               | [15-25] | [20-30] |

Source: DCC estimates.

41. The OFT notes that these share estimates indicate that the parties' combined share is not at a level that normally gives rise to prima facie competition concerns in any region. Also, in most regions the increment resulting from the Acquisition is low, indicated that the effect of the Acquisition in these regions is weak. The increment is greater only in the South West of England and, for commercial customers, in East Anglia and the North East of England. In Scotland MacGas's share of supply is much larger than its national share, reflecting its history (see paragraph 29 above), but the share of Flogas in Scotland is small. Given that Flogas's only bulk LPG depot in Scotland is close to Edinburgh, its share is unlikely to be materially different if northern and southern Scotland are considered separately.
42. For these regions, the OFT has also considered the number of remaining suppliers after the Acquisition, based on information on a per-county basis

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<sup>26</sup> These regions broadly follow the statistical division set out at paragraph 31 above. The main differences are that DCC's estimates cover a 'Central' region that largely corresponds with the East and West Midlands; the 'East Anglia' region largely corresponds with the East of England region; and the 'North East' region includes Yorkshire and Humber. DCC was not able to provide separate estimates for northern and southern Scotland, but the OFT does not consider that there is a material difference in the Acquisition's impact between these regions, as set out below.

provided by UKLPG, the LPG trade association.<sup>27</sup> This shows that in all of the counties within these regions there will be three or more alternative suppliers to the merged parties after the Acquisition. This also applies to all other counties where the UKLPG data show both Flogas and MacGas as suppliers.

43. Switching data on a regional level was only available for Flogas for domestic and commercial customers combined. This data shows that Flogas's closest competitors in all regions (except Scotland) were Calor, Avanti and small, independent suppliers. In all regions switching to MacGas was similar to or lower than suggested by its regional shares of supply, with the exception of Scotland and East of England where the switch of one large commercial customer and one domestic buying group from Flogas to MacGas drove high switching of volumes to MacGas. This suggests that MacGas does still exert a competitive constraint on Flogas, despite its loss of share in recent years.
44. Third-party comments are discussed at paragraph 39 above. Although the OFT received relatively more concerns from domestic customers in the South West of England, these still represented not more than half of the customer responses from this region. In this region, switching data for Flogas suggests that the competitive constraint from MacGas is smaller than indicated by its share of supply. Also, in each of the counties in the South West the merged firm will face competition from Calor, Avanti and one or more additional suppliers. No other regions were highlighted as of particular concern in customer or competitor comments.

#### Conclusion on supply of bulk LPG to domestic and small commercial customers

45. The parties' combined share of the supply of bulk LPG to domestic and commercial customers remains below the level that normally gives rise to prima facie competition concerns, at both the national and the regional level, although the OFT notes that the market is relatively concentrated. The OFT was not provided with shares excluding large commercial customers, but the OFT did not receive any evidence to suggest that such shares would be materially different. Further, the increment resulting from the Acquisition is small at a national level and within most regions. In those

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<sup>27</sup> UKLPG collates this information from LPG suppliers. This information regards suppliers to domestic customers, but the OFT considers that such suppliers will generally also supply small commercial customers (see paragraph 20 above).

regions where the increment is larger, in particular the South West of England and East Anglia, at least three alternative suppliers will remain after the Acquisition. The OFT also notes, based on switching data and the development of shares of supply over the past few years, that MacGas was not Flogas's closest competitor and had suffered significant loss of market share, in any case for domestic customers, and that smaller regional suppliers exert an increasing competitive constraint.

46. Taking all of these factors into account, the OFT considers that the Acquisition does not give rise to a realistic prospect of a substantial lessening of competition in the supply of bulk LPG to domestic and small commercial customers within Great Britain and all regions.

### **Supply of bulk LPG to large commercial customers**

47. As noted above (see paragraph 19), large commercial customers may be distinguished from domestic and small commercial customers by a preference of at least some of them for supplies by a major, nationally active LPG supplier. This includes Flogas and traditionally also MacGas, although, as indicated above, MacGas has lost significant share for at least domestic customers in the past few years and is very small in certain regions of Great Britain. The main other major suppliers of bulk LPG are Calor and Avanti (formerly part of Shell).
48. The parties' estimated shares of supply of bulk LPG in Great Britain to all commercial customers are [10-20] per cent for Flogas and [five-15] per cent for MacGas (see Table 1 above). The OFT did not receive information enabling it to estimate the parties' shares of supply to large commercial customers, but given the limited number of major suppliers these shares are likely to be greater than their shares for all commercial customers. The OFT is aware of one large commercial customer that switched from Flogas to MacGas in the past year (see paragraph 43 above), which indicates that MacGas was a viable competitor for this customer group although switching levels to MacGas generally are relatively small. However, most of the large commercial customers that offered a view told the OFT that there would still be effective competition between suppliers after the Acquisition and very few large commercial customers raised concerns about the Acquisition. [ ]
49. MacGas's average prices and margins were [ ] for large commercial customers than for domestic and small commercial customers, as noted

above (paragraph 19; the OFT does not have similar data for Flogas). This suggests that large commercial customers may obtain [ ] and/or have a degree of buyer power that they use to drive down prices, which makes a finding of a substantial lessening of competition less likely.<sup>28</sup>

50. The OFT further considers that competition for the supply to large commercial customers is not limited to the relatively small number of major suppliers, since not all large commercial customers who responded to the OFT indicated that they would only consider such suppliers to the exclusion of smaller, regional suppliers. Also, bidding data provided by DCC showed examples of such smaller suppliers bidding for large commercial contracts. DCC also provided examples of multi-sourcing by large commercial customers, which increases the ability of smaller suppliers to supply these customers.
51. Taking all of these factors into account, the OFT considers that the Acquisition does not give rise to a realistic prospect of a substantial lessening of competition in the supply of bulk LPG to large commercial customers in Great Britain. There is no evidence to suggest a different conclusion on a regional basis in view of the OFT's findings regarding the remaining competition on a regional basis in the supply of bulk LPG to domestic and small commercial customers, as set out above.

### **Supply of bulk LPG to autogas customers**

52. DCC provided the OFT with estimates of the shares of supply in Great Britain of the parties and their main competitors in the supply of autogas by volume,<sup>29</sup> as set out at Table 3 below. Most of the parties' autogas sales are made to forecourts, with much lower sales to non-forecourt retailers such as LPG conversion garages. A small part (around [ ] per cent) of each of the parties' sales of autogas is made to end users such as transport hauliers. All of these sales are included in Table 3 below.

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<sup>28</sup> *Merger Assessment Guidelines*, paragraph 5.9.1.

<sup>29</sup> See footnote 20 above.

**Table 3: Shares of supply of autogas in Great Britain in 2011 by volume (per cent)**

| <b>Company</b>                                  | <b>Including sales to BP/Moto</b> | <b>Excluding sales to BP/Moto</b> |
|-------------------------------------------------|-----------------------------------|-----------------------------------|
| Flogas                                          | [20-30]                           | [25-35]                           |
| MacGas                                          | [15-25]                           | [0-10]                            |
| <b>Merged firm</b>                              | <b>[40-50]</b>                    | <b>[30-40]</b>                    |
| Autogas (joint venture between Calor and Shell) | [25-35]                           | [30-40]                           |
| Others <sup>30</sup>                            | [25-35]                           | [30-40]                           |
| <b>Total</b>                                    | <b>100</b>                        | <b>100</b>                        |

Source: DCC estimates based on DECC data.<sup>31</sup> Numbers may not sum up due to rounding.

53. The large majority of MacGas's sales of autogas (around [ ] per cent) is made to BP forecourts and to forecourts at Moto motorway services, which are operated by BP. Before the Acquisition, these sales were intra-group sales that were outside of the market. As part of the Acquisition BP has entered into an exclusive [ ] agreement with Flogas to supply BP and Moto forecourts with autogas. DCC submitted that the appropriate way to calculate shares of supply is therefore to exclude MacGas's sales to BP and Moto, as reflected in the right-hand column of Table 3 above.
54. The OFT considers that it may be more appropriate to assess the parties' position including sales to BP and Moto, since this reflects their post-Acquisition sales of autogas into the market and the new BP/Moto contract can be re-tendered after [ ]. However, the OFT also considers that the merged firm's sales to BP and Moto do not give rise to competition concerns during this [ ] period as their supply arrangement was agreed as part of the Acquisition. The OFT has therefore focused its assessment on MacGas's sales to other autogas customers.
55. As indicated in Table 3, prior to the Acquisition, MacGas's autogas sales excluding sales to BP and Moto were significantly smaller than those of Flogas and Autogas (a joint venture between Calor and Shell, which supplies mainly Shell forecourts but also other autogas customers). They were also significantly smaller than the combined sales of smaller suppliers. In addition, [ ]. As a result, MacGas currently has very small sales of autogas to other customers than BP and Moto and its share is substantially

<sup>30</sup> Including Countrywide, Northern Energy and Premier LPG.

<sup>31</sup> See footnote 22 above.

lower than indicated in Table 3. Further, switching data suggest that switching from Flogas to MacGas in the past five years was very limited.

56. None of the parties' customers nor any competitors expressed any concern about the Acquisition as regards the supply of autogas.
57. Taking all of these factors into account, the OFT considers that the Acquisition does not give rise to a realistic prospect of a substantial lessening of competition in the supply of autogas in Great Britain. There is no evidence to suggest a different conclusion on a regional basis in view of the OFT's findings regarding the remaining competition on a regional basis in the supply of bulk LPG to domestic and small commercial customers, as set out above.

### **Supply of cylinder LPG**

58. DCC submitted that the supply chain for cylinder LPG consists of suppliers, dealers and retailers (stockists). End users are supplied by all three, with dealers obtaining supplies from suppliers and retailers obtaining supplies both from dealers and from suppliers directly.<sup>32</sup> As noted below, the number of upstream suppliers is limited, but there are many dealers and retailers.<sup>33</sup> While Flogas supplies dealers, retailers and end users, MacGas primarily supplies dealers, with only limited sales to retailers (in particular [ ]) and end users. Comments from dealers and pricing information provided by DCC suggest that suppliers have significant influence over dealers' price levels, with very limited scope for dealers to undercut suppliers in sales to end users. For these reasons, the OFT has focused its assessment on the upstream level of the supply chain.
59. DCC provided the OFT with estimates of the shares of supply in Great Britain of the parties and their main competitors in the supply of cylinder LPG by volume,<sup>34</sup> as set out at Table 4 below. DCC also provided updated estimates for the merged parties' shares in 2012.

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<sup>32</sup> This supply chain structure is also reflected in Figure 5.5 of the OFT off-grid energy study. DCC noted that the distinction between dealers and retailers is not always clear, but that dealers may be more likely to offer a delivery service but may also have shorter opening hours and focus on larger cylinder sizes.

<sup>33</sup> The OFT off-grid energy study found that there were over 1000 dealers and over 14000 retailers (paragraph 5.87).

<sup>34</sup> See footnote 20 above.

**Table 4: Shares of supply of cylinder LPG in Great Britain by volume (per cent)**

| <b>Company</b>        | <b>2011</b>    | <b>2012</b>    |
|-----------------------|----------------|----------------|
| Flogas                | [20-30]        | [20-30]        |
| MacGas                | [0-10]         | [0-10]         |
| <b>Merged firm</b>    | <b>[25-35]</b> | <b>[25-35]</b> |
| Calor                 | [45-45]        |                |
| Energas (Air Liquide) | [0-10]         |                |
| BOC                   | [0-10]         |                |
| Others <sup>35</sup>  | [5-15]         |                |
| Total                 | 100            |                |

Source: DCC estimates based on DECC data.<sup>36</sup> Numbers may not sum up due to rounding.

60. At a national level, the Acquisition strengthens the position of Flogas as the second largest supplier in a relatively concentrated market. However, the combined share of Flogas and MacGas is not at a level that normally gives rise to prima facie competition concerns. The increment resulting from the Acquisition is also relatively small at [0-10] per cent. DCC stated that the merged parties' share has not changed significantly over the past few years, although Flogas's share has fallen [ ] between 2009 and 2012.
61. DCC further provided the OFT with estimates of the parties' regional shares of supply of cylinder LPG by volume, as set out at Table 5 below.

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<sup>35</sup> Including Cardiff Gas, Countrywide, Extra Gas, Harris Gas, JGas, Novagas and Rectory Gas.

<sup>36</sup> See footnote 22 above.

**Table 5: Regional shares of supply of cylinder LPG in 2011 by volume (per cent)**

| Region <sup>37</sup> | Flogas  | MacGas  | Merged  |
|----------------------|---------|---------|---------|
| South East           | [30-40] | [0-10]  | [30-40] |
| South West           | [25-35] | [5-15]  | [35-45] |
| East Anglia          | [5-15]  | [0-10]  | [5-15]  |
| Central              | [30-40] | [0-10]  | [30-40] |
| South Wales          | [15-25] | [0-10]  | [20-30] |
| North and Mid Wales  | [20-30] | [0-10]  | [20-30] |
| North East           | [30-40] | [0-10]  | [35-45] |
| North West           | [15-25] | [0-10]  | [15-25] |
| Scotland             | [0-10]  | [15-25] | [20-30] |

Source: DCC estimates.

62. These regional shares show that in several regions the combined share of Flogas and MacGas is not at a level that normally gives rise to prima facie competition concerns. Further, the increments as a result of the Acquisition are very small in all regions with the exception of the South West England, Scotland and, to a lesser degree, North East England, which reflects the location of MacGas's three cylinder filling sites in Purton (South West England), Perth (Scotland) and Blaydon (North East England, where MacGas uses a site owned by Flogas). The OFT has therefore focused on these regions in its assessment of the Acquisition's impact on the supply of cylinder LPG.
63. Switching data submitted by DCC for Flogas do not indicate that MacGas was a closer competitor to Flogas than suggested by its share of supply (switching data was not available for MacGas). However, only a very small number of dealers switched away from Flogas in the period for which the OFT received data (January 2011 to May 2012), representing around [ ] per cent.
64. According to DCC, this low level of switching reflects the competitive price offered by Flogas and its good relationship with dealers, in particular because [ ] of its dealers are not subject to exclusivity arrangements as these dealers' contracts with Flogas have expired. However, information the OFT received from dealers indicated that switching costs for dealers may in fact be high. In addition to exclusive supply contracts, which often

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<sup>37</sup> See footnote 26 above.

appear to have a term of about three years, switching costs are created in particular by the fact that suppliers retain ownership of cylinders, which means that a switch to a different supplier entails swapping over the dealer's entire stock of cylinders, including those held by its end user customers. Dealers may, for example, face penalties for returning cylinders late or not at all, even when this is caused by end users.

65. Several of the parties' dealers raised concerns about the Acquisition. Considered on a regional basis, the focus of dealer concerns was the South West of England. The OFT also received a concern from an end user of cylinder LPG in this region. None of the parties' dealers in Scotland raised concerns, with reference in particular to a perceived decline of MacGas's competitive strength. JGas also provides an additional competitive constraint in Scotland. In light of this, as well as the parties' shares in Scotland, the OFT does not therefore consider that the Acquisition gives rise to significant competition concerns in Scotland regarding cylinder LPG. The OFT has not received any evidence to suggest this is different if northern and southern Scotland are considered separately. The OFT takes the same view in relation to the other regions other than the South West given the very small number of dealer concerns from each of these regions and, in particular, the very small position of MacGas in these regions.
66. In the South West of England, both the increment resulting from the Acquisition and the parties' combined share were the largest and at a level at which concerns could not be ruled out. Some dealers in the South West also expressed concerns, although not all dealers in this region that responded to the OFT were concerned. MacGas's dealers are concentrated in the eastern half of the South West, while in Cornwall MacGas has only one dealer, reflecting the location of MacGas's cylinder filling station just west of Swindon and a maximum range of about [100-150] miles for this station.<sup>38</sup>
67. After the Acquisition, the merged firm will continue to face competition across the South West not only from Calor, which has an extensive network in the South West and has filling stations in Devon and near the Isle of Wight, but also from several other suppliers. Countrywide has confirmed to the OFT that it delivers cylinders to customers in the South West with the exception of most of Cornwall. BOC, an industrial gas supplier, also supplies cylinders in the South West. DCC further submitted

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<sup>38</sup> Based on catchment area data and information from dealers on the areas they serve.

that Energas (the cylinder business of which was recently acquired by Air Liquide) also supplies cylinder LPG in the South West, although the OFT was unable to confirm this. In addition, there is an independent supplier in Cornwall (Warrior Gas) [ ], and there are small suppliers in Bristol and Somerset [ ].

68. Taking all of these factors into account, the OFT considers that the Acquisition does not give rise to a realistic prospect of a substantial lessening of competition in the supply of cylinder LPG in any regions in Great Britain, including the South West of England.

## **BARRIERS TO ENTRY AND EXPANSION**

69. When assessing possible supply-side responses to a merger, including entry and expansion, the OFT will consider whether the response would be (i) timely, (ii) likely, and (iii) sufficient.<sup>39</sup>
70. DCC submitted that the costs of entry are relatively low, in particular for firms supplying bulk LPG to start supplying cylinder LPG and vice versa, and that a new entrant could turn a profit, taking costs of entry into account, after two to three years. It provided examples of two cylinder LPG suppliers who expanded into bulk LPG supply in the past five years as well as several new entrants into cylinder LPG over the past 10 years. DCC also stated that Avanti, which is a sizeable supplier of bulk LPG (including from a depot in Cornwall), announced to investors that it considers entering the cylinder segment. [ ]
71. Information from the parties' competitors indicates that, for bulk LPG, expansion and entry into new regions is feasible and has indeed taken place for the supply to domestic customers since the introduction of the CC Orders. However, this is likely to be significantly more difficult for the supply of bulk LPG to large commercial customers and autogas customers. Third-party comments also indicated that for entry or expansion in the supply of cylinder LPG the cost of cylinders may be a barrier.
72. The OFT considers that it received only limited evidence on the timeliness, likelihood and sufficiency of entry and expansion to exert a significant competitive constraint on the merged firm. However, as the Transaction

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<sup>39</sup> *Merger Assessment Guidelines*, paragraph 5.8.3.

does not give rise to concerns over unilateral effects, there is no need for the OFT to reach a conclusion regarding barriers to entry and expansion.

### **THIRD-PARTY VIEWS**

73. Third-party views have been discussed above where relevant. Customer comments on the Acquisition were mixed. The greatest level of concern was among domestic bulk LPG customers and cylinder LPG dealers, in particular (but not limited to) the South West of England. These third-party comments have been addressed above. None of the parties' competitors expressed material concerns.

### **ASSESSMENT**

74. Flogas and MacGas overlap in Great Britain in the supply of bulk LPG to domestic, commercial and autogas customers and in the supply of cylinder LPG. Flogas is the second largest supplier of LPG in Great Britain, behind Calor, and supply is relatively concentrated. However, the OFT considers that there are a number of factors to allay any significant competition concerns about the Acquisition.
75. The merged parties' combined share of the supply of bulk LPG to domestic and commercial customers remains below the level that normally gives rise to prima facie competition concerns, at both the national and the regional level. Further, the increment resulting from the Acquisition is small at a national level and within most regions. In those regions where the increment is larger, in particular the South West of England and East Anglia, at least three alternative suppliers will remain after the Acquisition. MacGas was not Flogas's closest competitor and had suffered significant loss of market share, in any case for domestic customers, and there is evidence that smaller regional suppliers exert an increasing competitive constraint.
76. The OFT separately considered the supply of bulk LPG to large commercial customers, for at least some of which Flogas and MacGas may be closer competitors given that they are among the small number of major, nationally active bulk LPG suppliers. However, large commercial customers appear to have some buyer power and comments from these customers received by the OFT did not suggest strong concerns about the Acquisition. Smaller, regional suppliers also form some constraint on the merged parties in the supply to large commercial customers.

77. Most of MacGas's sales of autogas are to BP and Moto forecourts, which before the Acquisition were intra-group sales and following the Acquisition are covered by a [ ] agreement that was part of the Acquisition arrangements between Flogas and BP. Excluding these sales, MacGas is a very small supplier of autogas. The merged firm will continue to face competition from other substantial autogas suppliers. The OFT did not receive any concerns regarding autogas supplies.
78. As regards cylinder LPG, the parties' regional shares show that in most regions their combined share is not at a level that normally gives rise to prima facie competition concerns and the increments as a result of the Acquisition are very small. The main exception is in the South West of England, Scotland and, to a lesser degree, North East England, which reflects the location of MacGas's three cylinder filling sites. Switching between suppliers appears to be difficult for cylinder dealers and several dealers expressed concerns about the Acquisition. However, in those regions where MacGas had more than a minimal presence, there remains sufficient competition from other cylinder LPG suppliers, including in the South West. Further, in Scotland the OFT did not receive concerns from dealers.
79. Consequently, the OFT does not believe that it is or may be the case that the Acquisition has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## DECISION

80. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.

## END NOTES

1. As regards paragraph 41 of this decision, the OFT clarifies that Flogas has a second bulk LPG depot in Scotland in Paisley (near Glasgow).
2. As regards paragraph 67 of this decision, the OFT clarifies that DCC's submission was that Air Liquide rather than Energas supplies cylinder LPG in the South West of England, given that Energas's cylinder business was acquired by Air Liquide in 2011.