

The supply of liquefied petroleum gas to domestic bulk storage tanks

The OFT's reasons for making a reference to the Competition Commission

July 2004

---

- 1 The Office of Fair Trading (OFT) has made a reference to the Competition Commission (CC) under section 131 of the Enterprise Act 2002 (the Enterprise Act) for an investigation into the supply of domestic bulk LPG in the United Kingdom. For the purposes of this reference, 'LPG' means liquefied petroleum gas; 'domestic' means supplied for use by households and for use by businesses whose consumption of LPG by volume is similar to that of households and 'bulk' means supplied by tanker to fixed storage tanks, as opposed to supplied in cylinders.
- 2 Under section 131 of the Enterprise Act, the OFT may make a market investigation reference to the CC where it has reasonable grounds for suspecting that any feature, or combination of features, of a market in the United Kingdom for goods or services prevents, restricts, or distorts competition in connection with the supply or acquisition of any goods or services in the UK or a part of the UK.
- 3 The OFT suspects, in the light of a preliminary inquiry, that:
  - the provision of domestic bulk LPG has several features which may impede customers switching between companies, principally the charges to the customer for removal of the current supplier's tank and for installation of the new supplier's tank;
  - it is also a mature market where many customers are already contracted to companies, so that any entrant must win customers to a large extent from existing suppliers;

- as a result, the high switching costs may form a barrier to entry, so that competition is restricted and many consumers face higher prices overall than they would in a similar market without switching costs.
- 4 In guidance published in March 2003,<sup>1</sup> The OFT said that it would make a reference to the CC only when the reference test set out in section 131 of the Enterprise Act has been met and, in its view, each of the following criteria have been met:
- it would not be more appropriate to deal with the competition issues identified by applying the Competition Act 1998 (the Competition Act) or using other powers available to the OFT;
  - it would not be more appropriate to address the problem identified by means of undertakings in lieu of a reference;
  - the scale of the suspected problem, in terms of its adverse effect on competition, is such that a reference would be an appropriate response to it; and
  - there is a reasonable chance that appropriate remedies will be available.<sup>2</sup>
- 5 The OFT believes that the test for a reference set out in section 131 of the Enterprise Act is satisfied and that each of the additional criteria set out in its own guidance is also satisfied. We summarise below the features of the market that, in our view, prevent, restrict or distort competition and discuss how we believe the criteria set out in our guidance have been met.
- 6 The OFT's guidance says that in making a reference a view should be expressed as to the possible definition of the market (or markets) affected.<sup>3</sup> This is given in Annexe A, together with information on market structure.

---

<sup>1</sup> *Market investigation references: Guidance about the making of references under Part 4 of the Enterprise Act*, OFT511.

<sup>2</sup> Paragraph 2.1.

<sup>3</sup> Paragraphs 3.7, 4.8 - 4.12.

## Features of the market which prevent, restrict or distort competition

- 7 The OFT has reasonable grounds for suspecting that there are particular features that prevent, restrict or distort competition in the supply of domestic bulk LPG. We believe these features to be widespread although individual features may not necessarily be reflected in the practices of particular companies.
- 8 Customers appear to face high switching costs. Most suppliers of LPG say that they will not supply LPG to customers with bulk storage tanks supplied by other companies and will not permit other companies to supply LPG to their tanks. Typically, when a customer changes supplier, the original supplier charges for removal of its tank and the new supplier charges for installation of another tank. We estimate that the average combined charge for tank removal and installation facing a customer wanting to switch is significantly above £100.
- 9 Suppliers can, and in some cases do, charge different prices to new and existing customers. Moreover, suppliers may also be in a position to discriminate on price among existing customers. Companies may negotiate prices with customers individually and prices may reflect the likelihood of a customer switching, in so far as this is indicated by customers complaining to the companies about prices or giving notice of switching. The price of LPG may also vary between individuals according to other factors, such as the volume of gas taken, the customer's location and introductory offers.
- 10 Switching costs, coupled with firms' ability to price discriminate between old and new customers, mean that companies may be able to increase the price of LPG to customers after they are signed up. The price increase that occurs is generally significant, although this will also partly reflect introductory low price offers.
- 11 Where a customer wishes to switch because they are paying a high price for LPG with their existing supplier, the terms with a new supplier may very well be broadly similar over time. The prospect of future price increases may also be a deterrent to switching.
- 12 The ability of LPG suppliers both to charge customers individual rates and to discern how liable customers are to switch makes switching less likely,

by enabling the existing supplier to tailor its offer to each customer so as to retain them.

- 13 Customers considering switching supplier may face search costs as it may be difficult to find out all the elements of the deals on offer from alternative suppliers. These comprise tank installation charges, tank standing charges, tank removal charges, LPG price in each of the different years of the contract and thereafter, with the LPG price also dependent on world oil prices, and any other special offers such as quantities of free gas.
- 14 Another deterrent to switching is the length of contracts, many of which are for three or five years, and which often cannot be terminated early without customers incurring further charges. One of the companies said that, should a customer wish to terminate prior to the end of their contract, it would not normally seek to enforce the full length of the contract. However, it is not clear that their customers are aware of this policy.
- 15 Customers are required to give notice (typically three months) of terminating their LPG supply agreement. Lengthy notice periods also make switching less likely by affording the existing supplier time to make its customers an offer sufficiently attractive to retain them. In some cases termination of the contract by the supplier (and removal by it of its tank) may take place after the expiry of the notice period. It is also possible that the supply of LPG might be disrupted in the course of bringing a new supplier's tank into use. However, the companies who responded to our request for information said that they conformed to the LP Gas Association Code of Practice, which regulates the procedure with a view to ensuring no such breaks in supply occur.
- 16 The level of switching by LPG customers, both to other LPG suppliers and other fuels, is low. We estimate that less than 1 per cent of domestic users switch to other LPG suppliers every year. This compares with switching rates of 12-15 per cent p.a. by customers of mains gas and 20-22 per cent p.a. by electricity customers.<sup>4</sup>

---

<sup>4</sup> *Domestic Competitive Market Review 2004 A review document* published by the Office of Gas and Electricity Markets (April 2004).

- 17 High switching costs form a barrier to entry when many customers are contracted to companies, as is the case with domestic bulk LPG. In this case, an entrant will have to price at a substantial discount to the incumbent to attract business away from them. It will incur substantial costs in subsidising tank charges and discounting the initial price of LPG sufficiently to outweigh switching costs and attract customers. Moreover, those customers that do switch to the entrant may be of little value, having the highest propensity to switch and being liable to change supplier again if the entrant raises the price it charges them.
- 18 This barrier to entry may reduce competitive pressures and average prices may be higher than in a similar market without switching costs acting as a barrier to entry. To win business in this market firms must subsidise tank charges as well as offering an attractive initial price for the LPG itself, so that the effect of what competition there is on average LPG prices is correspondingly lower.
- 19 High switching costs, in conjunction with the significant proportion of contracted customers, comprise a feature of the market for the supply of LPG to domestic bulk tanks which may prevent, restrict or distort competition in that market. To the extent that customers face search costs, this may also adversely affect competition. The effect of search costs is similar to that of switching costs: it increases the cost of changing supplier. Other obstacles to switching also act as barriers to entry and expansion in these circumstances and are features which may similarly prevent, restrict or distort competition in this market. These include long contracts and further charges for terminating contracts early; the ability of LPG suppliers to discern how liable customers are to switch and to charge customers individual rates; and long notice periods. Any entrant must overcome barriers to expansion sufficiently to attain a critical mass of customers.

## **Appropriateness of a reference**

- 20 The OFT guidance states that, when dealing with a suspected competition problem, the OFT will consider a reference to the CC in one of two circumstances: first, when it has reasonable grounds for suspecting that there are market features which prevent, restrict or distort competition but not to establish a breach of the Competition Act prohibitions, or secondly 'when action under [the Competition Act] has been or is likely to be ineffective for dealing with the adverse effect on competition identified'.<sup>5</sup> Given the breadth of issues arising in relation to domestic bulk LPG, the OFT does not currently consider that action taken under the Competition Act, or under Articles 81 or 82 of the EC Treaty, as appropriate, if a breach of one or more of the relevant prohibitions were established, would be effective in resolving all the adverse effects on competition which it has identified.
- 21 The OFT has the power, under section 154 of the Enterprise Act, to accept undertakings instead of making a reference to the CC. However, in the period of consultation with the parties which began on 13 May 2004 the OFT did not receive offers of undertakings which it considered to be clear-cut and easily implemented and which provided for a comprehensive remedy to the adverse effects on competition described here. The OFT therefore does not consider that it would be more appropriate to address the problems identified in the course of its review of this market by means of undertakings in lieu of a reference.

## **Proportionality**

- 22 The OFT Contract Regulation Unit (CRU) has been concerned about unfair terms in the contracts with consumers used by suppliers of LPG to domestic bulk tanks. Using its powers under the Unfair Terms in Consumer Contracts Regulations 1999 (the Regulations), it has secured revisions to the terms of contracts used by six suppliers so that they are more balanced and transparent. Under these agreements, consumers and suppliers typically now have more equal rights to cancel where the other party is in breach of their obligations, and consumers will be informed at the outset of the charges arising. CRU has also challenged terms that

---

<sup>5</sup> Paragraph 2.3.

allow unrestricted increases in the price of LPG. Some suppliers are now limiting or capping price increases, while allowing consumers the right to cancel if the price rises above these limits.

- 23 CRU continues to take appropriate enforcement action under the Regulations against unfair terms but cannot take action against core terms such as the duration of the contract or the prices that are charged (for example, charges for tank installation). Terms that describe the subject of the contract or set the price can only be challenged as unfair where they are not in plain and intelligible language. Although CRU has challenged penalty clauses that allow excessive cancellation charges, it has taken the view that charges for tank removal may not be considered unfair under the Regulations where these are reasonably incurred in removing the tank.
- 24 Terms which may be considered reasonable from the point of view of the Regulations may nevertheless comprise features of supply which may prevent, restrict or distort competition. Thus a reference to the CC could address competition problems that OFT enforcement action under the Regulations could not.
- 25 The OFT guidance identifies three factors as relevant to whether an adverse effect on competition is significant, and thus whether a reference to the CC is appropriate.<sup>6</sup> These three criteria are met by the supply of domestic bulk LPG. Firstly, the size of the market is significant: we estimate the supply of LPG and related services to be in excess of £100 million p.a. Secondly, a significant proportion of the market is affected by the features that may prevent, restrict or distort competition, as is suggested by the low levels of switching and the nature of these features, which exist throughout the market. Thirdly, the features identified as adversely affecting competition appear to be persistent.

---

<sup>6</sup> Paragraph 2.28.

## Remedies

- 26 If the CC decides that there are one or more adverse effects on competition it must take action to 'remedy, mitigate or prevent' the adverse effect on competition and to 'remedy, mitigate or prevent any detrimental effects on customers' so far as those effects have resulted from the adverse effect (section 138 of the Enterprise Act). In order to achieve this, the CC may accept undertakings from appropriate persons or may make an order under section 161 of the Enterprise Act. Such an order may contain anything permitted under Schedule 8 of the Enterprise Act, as well as supplemental provisions. Schedule 8 provides the CC with wide-ranging powers falling within the following general areas: general restrictions on conduct, general obligations to be performed, acquisitions and divisions, and the supply and publication of information.
- 27 The OFT therefore believes that the wide range of remedial powers available to the CC, with or without any 'supplementary consequential or incidental provisions', should be capable of providing appropriate remedies to the spread of concerns raised, if the CC finds similar concerns.



## The consultation procedure

28 Section 169 of the Enterprise Act requires the OFT to consult any person on whose interests a proposed reference is likely to have a substantial impact. On 13 May 2004, therefore, the OFT wrote to 15 LPG supply companies listed on the LP Gas Association website ([www.lpga.co.uk](http://www.lpga.co.uk)) informing them that it was minded to make a reference and asking for comments on this proposal.

29 We now summarise the main points made by participants in the consultation and our response to these points:

- On **safety**, it was argued that to ensure safety it was necessary for the supplier of LPG to a tank also to own and have control of and responsibility for the tank. We were also told that the use of adaptors to supply other companies' tanks was unsafe.

**OFT response:** we note that many LPG suppliers have a small number of customers who own their own tanks. In responses to a questionnaire we sent to companies in our initial inquiry prior to consultation, some companies also told us that they would supply LPG to a customer with their own tank if proof of ownership and a valid test certificate were provided; in some cases an inspection by the company was also stipulated. One small company explicitly allows customers to own their own tanks: it even offers to sell them to customers, and the majority of its customers own their own tanks. The position of one large supplier also seems to contradict the companies' argument on the necessity for the LPG supplier to retain ownership and responsibility for maintenance of the tank. It leaves to the customers who own their own tanks responsibility for the costs and upkeep of the vessel. Seemingly there is no provision for inspection, periodic testing, provision of an emergency call-out system for leaks and repairs, nor for annual cleaning and upkeep of the vessel.

We also note that at least one large supplier uses third party contactors to install and remove tanks and that these contractors may carry out work for different companies.

Moreover, the Health and Safety Executive (HSE) has told us that safety regulations do not require the supplier of LPG to a tank to be the tank owner. The main safety provisions and their effects are listed in Annexe B. The LPG supplier must ensure, so far as is reasonably practicable, the health and safety of its employees and those affected by its undertaking (e.g. the householders). They can only be sure that it is safe to fill the tank if they can be confident that a suitable maintenance and examination programme is in place to ensure the integrity of the installation, and that all safety features are present and in good working order prior to filling. They may choose to discharge this duty by insisting on a suitable written scheme of examination and a periodic examination by a competent person. There is nothing in law which prevents an LPG supply company filling a domestic bulk LPG tank owned by someone else but they would need systems in place that gave them assurances of safety.

The question of how safety would be affected by any alteration to arrangements for LPG supply and tank ownership would be for consideration by the CC in the course of its inquiry. This could involve consideration of the practical compatibility of different companies' tankers and tank valves. It could also consider whether using adaptors to overcome differences was less safe than using ordinary connectors; just as the latter can leak and must be checked, adaptors used would also need to be properly made and maintained.

- On **switching costs**, it was argued that switchers from other LPG companies (as opposed to customers at sites that had not previously been supplied with LPG) frequently were not charged for tank installation. It was also argued that companies paid some of the tank removal charges which customers incurred in switching from a competitor, and gave some of these customers a gas credit.

**OFT response:** no figures were provided to support these arguments.

It is not clear why companies would subsidise switchers more than customers at properties that had not previously been supplied with LPG, particularly given switchers' proven proclivity to switch, i.e.

the higher probability that they might switch again, if this were done on a systematic basis.

It should also be noted that the average tank removal charge which the companies told us that they levied might be expected to be higher were it not for the fact that it included some customers who did not pay removal charges at all. As one large company told us, these were often those who were leaving the market altogether, e.g. because they were moving house, rather than switching.

Arguments about subsidy of tank installation and removal charges presuppose that it is necessary for tanks to be changed whenever customers change supplier. It is not self-evident to us that this is the case. If tanks did not need to be changed when customers switched supplier, competition among the companies might bear down more on the LPG price.

It will be for the CC to investigate in depth all the issues surrounding switching costs.

- On **low switching rates between LPG companies**, it was argued that LPG companies faced competition from mains gas and heating oil. Whenever mains gas became available, customers invariably switched as its price was approximately half that of LPG. Heating oil was cheaper than LPG (17p/18p per litre compared with 24p/25p per litre for LPG); it was more widely available from a large number of suppliers whose product could be easily co-mingled; it was safer (because it was not pressurised, so that delivery tanks, storage etc were not subject to the same requirements); it was of comparable efficiency; and the costs of switching to it were low.

**OFT response:** the rate at which customers switch to other fuels (and other LPG suppliers) is low (see Annexe A). Switching to heating oil may reflect the obstacles to switching between LPG supply companies and adverse effects on competition in the supply of LPG to domestic bulk tanks identified earlier.

- On **contract length**, it was argued that contracts of three years or more meant that the companies could recoup the costs of tank installation through variable charges over the period of the contract, rather than as lump sum charges. It was also argued by one LPG supply company that it resorted to court action to ensure customers adhered to contracts only in exceptional circumstances. In addition it was argued that in practice customers might be able to negotiate new terms, typically including a lower LPG price, in the third year and also that many customers were outside their initial contract period and were therefore free to switch supplier.

**OFT response:** the argument that lengthy contracts are needed to recoup tank installation charges for customers switching supplier presupposes that it is necessary for tanks to be changed whenever customers change supplier. It is not self-evident to us that this is the case. Customers are unlikely to be aware that companies are not enforcing contracts, so there may be as much deterrence to abandoning contracts as if contracts were enforced. To the extent that customers are not constrained by contracts, then contract length does not affect switching by these customers.

- On **notice periods**, it was argued that three months' notice of switching was required because of the number of different parties involved in removing and installing tanks (including contractors of both companies and a gas fitter) and the need to slot this process into both suppliers' logistical plans. This notice period also allowed the tank to be run down, making the process safer. In addition it gave the customer time to consider any lower offer put forward by the existing supplier and to use this as a negotiation tool with the potential new supplier.

**OFT response:** this argument presupposes that it is necessary for tanks to be changed whenever customers change supplier. It is not self-evident to us that this is the case. If it was not necessary to change tanks whenever customers changed LPG supplier, there might be less need for a three month notice period. To the extent that the process of changing tanks involves some risk, safety would also then be improved. In addition, offers from rival suppliers could be compared at any time.

- On **breaks in supply**, it was argued that procedures for tank removal and installation were in place which meant that it was extremely rare for breaks in supply to occur, the actual exchange of tanks taking less than 24 hours in the vast majority of cases. It was also said this issue did not have a significant effect on switching.

**OFT response:** this argument presupposes that it is necessary for tanks to be changed whenever customers change supplier. It is not self-evident to us that this is the case.

- On **price discrimination**, it was argued that offering customers attractive deals simply reflected competition and companies' response to customers who expressed dissatisfaction.

**OFT response:** it seems that in this case price discrimination may compound other impediments to switching.

- On **search costs**, it was argued that comparing prices across competitors was not difficult and LPG prices of some companies did not vary by location or by distance from a depot.

**OFT response:** LPG pricing has a number of elements. Whether prices vary by location or distance from a depot does not affect the complexity of the prices offered by different companies which a particular customer in a given place will face.

- On **proportionality**, it was argued that the market was not significant at £100 million p.a. as this was much less than other recent references to the CC and that the costs and burden of a reference meant a reference was not warranted.

**OFT response:** the size of other recent references to the CC has no bearing on whether the size of this market is significant.

30 In addition, one small LPG supplier appeared to support the reference. It said that it did not charge for removal and installation of tanks, and that it charged the same price to new and existing customers; it was of the view that a three month notice period was unnecessary and that changing LPG suppliers was an involved process.

- 31 Following the consultation carried out in accordance with section 169 of the Enterprise Act, the OFT is of the view that it should make a reference to the CC for an investigation as detailed in paragraph 1 above, and the reference has been made today.

## **ANNEXE A: MARKET DEFINITION AND MARKET STRUCTURE**

### **Product market**

#### **Demand side substitutes**

- 1 LPG is used for heating, cooking and production of hot water. Customers tend to be based in rural areas and most have no access to mains gas.
- 2 Replies to our questionnaire suggested that LPG companies lose around 3 per cent of their customers p.a. (whether to alternative fuels, to other LPG suppliers or for any other reason). Their replies also suggest that around 2 per cent of domestic LPG users switch to alternative fuels every year. This figure is derived from each company's evidence on the proportion of customers lost over the past five years who were lost to alternative fuels, their total number of customers in 2003 and the number of customers they lost in 2003. (Data for earlier years is either incomplete or, in the case of 2002, affected by Flogas' acquisition of the LPG interests of British Gas.)
- 3 Replies to our questionnaire also suggested that less than 1 per cent of domestic users switch to other LPG suppliers every year. This is derived on the same basis as the number switching to alternative fuels above.
- 4 Thus it appears that customers are captive not only to LPG but also to their initial supplier. In this case, if one were to define the product market on the basis of a SSNIP test (i.e. as the smallest group of products for which a small but sustainable increase in price above the competitive level would be profitable), each individual supplier would comprise a distinct market.

#### **Supply side substitutes**

- 5 It might very well be relatively easy for existing domestic bulk LPG suppliers, and possibly other companies, to take over the supply to other companies' domestic bulk LPG customers, were it not for the need for the companies to replace bulk tanks. This suggests that a product market definition of individual suppliers is an unduly restrictive definition of the product market, which simply reflects the current arrangements for

switching of supplier by customers. We therefore adopt the view that product market definition is at least as wide as domestic bulk LPG.

## **Geographic market**

- 6 The probable low level of switching between suppliers by customers in response to a price rise notwithstanding, we believe there to be a series of (generally) overlapping chains of distribution around depots. However, certain parts of the country may constitute separate geographic markets.
- 7 The distance from depot to customer can be very high, up to about 145 miles in parts of Scotland, for example. However, the vast majority of customers served by a depot are within 50 miles of that depot. The cost to a company of supplying domestic customers varies according to how far those customers are from the company's nearest supply depot.
- 8 These differences in the cost of serving customers in different areas may be pronounced where population density is too low to support many LPG depots. Given also that these areas may be served by only one or two companies, there may be some places (e.g. parts of Scotland) where the chain of substitution breaks down. Northern Ireland may also be a separate geographic market because of the costs involved in supplying from depots in Great Britain.
- 9 The OFT is referring the supply of domestic bulk LPG in the UK. It will be for the CC to determine what the relevant markets are.

## **Market structure**

- 10 The supply of LPG to domestic bulk tanks is a heavily concentrated industry with the top four companies together accounting for approximately 90 per cent of the market. The larger companies have made acquisitions in the last few years. Calor and BP have acquired smaller LPG supply companies and DCC plc (the ultimate parent company of Flogas) acquired the LPG interests formerly owned by British Gas in 2002. There are a few areas of the UK served by only one or two suppliers.



## **ANNEXE B: MAIN LAWS AND REGULATIONS AFFECTING SAFETY**

- 1 The Health and Safety at Work etc Act 1974 (HSWA) places duties on employers and the self-employed to ensure the health and safety of their employees and those affected by their undertaking. Thus the LPG supplier and tank owner, if different, have legal duties to ensure that the tank is safe to fill and use, provided they fall within the scope of the HSWA.
- 2 The Gas Safety Installation & Use Regulations 1998 (GSIUR) places duties on the following people:
  - a) the installer of a tank to site it at a place where it can be used, filled and refilled safely;
  - b) the installer of the service pipework to provide a notice at the emergency control valve giving information on the procedures to be followed in the event of a gas leak; suppliers who subsequently supply the LPG are required to check the information and amend as necessary so as to make sure that that information is given. (Where, in exceptional cases, a meter is provided, a duty rests with the gas supplier to provide the emergency notice on or near the meter);
  - c) the supplier, when informed of a gas escape, to prevent the gas escaping (requiring the supplier to make arrangements to receive and respond to reported emergencies 24 hours a day);
  - d) the person who causes gas to be supplied from a tank to ensure there is a regulator to control the pressure of the gas and that there are safety devices to prevent under- and over-pressure of downstream gas fittings. (The identity of the person responsible for meeting this requirement varies in particular circumstances. It may be the gas supplier and/ or someone else in control of the gas installation who allows gas to flow from the tank to the downstream gas fittings; for instance this might be a consumer owning their own tank and governing their supply.)

It should be noted that where the gas is to be provided by a landlord for use of tenants in premises other than buildings, e.g. for caravans, the landlord assumes the duties of the gas supplier.

- 3 The Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR) also cover those who fill such domestic bulk storage tanks as part of a work activity.
- 4 The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004 place requirements on drivers to comply with other relevant legal safety provisions and not to unload if there are deficiencies that might affect the safety of unloading. The driver must be convinced that the tank is safe to receive the load. It follows from these regulations and DSEAR that those persons supplying LPG to a domestic bulk LPG installation should first ensure that the tank is safe to be filled.
- 5 The Pressure Systems Safety Regulations 2000 (as amended) (PSSR) place some responsibilities on the 'user' of an LPG tank with regard to in-service issues such as safe installation, maintenance and examination in accordance with a written scheme of examination by a competent person. (The 'user' is defined as the person who has control of the operation of the pressure system and this would be contractually defined.) However, it is the opinion of HSE that PSSR do not apply to bulk LPG installations used in the home (which includes a large proportion of the installations considered for the purposes of this reference) because the pressure system is not used or intended to be used at work. Clearly there is a work activity when the bulk LPG tanks are installed and filled, but these activities fall within the scope of HSWA and DSEAR and not PSSR.
- 6 In addition the Consumer Protection Act 1987, which implements in the UK Council Directive 85/374/EEC on Liability for Defective Products, was brought to the attention of the OFT in the course of the consultation process. The Consumer Protection Act sets up a regime for liability for damage caused by defective products.