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COMMERCE ACT 1986: BUSINESS ACQUISITION SECTION 66: NOTICE SEEKING CLEARANCE

Date: 15 December 2006

The Registrar
Market Structure Group
Commerce Commission
PO Box 2351
WELLINGTON

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

PART I: TRANSACTION DETAILS

1.	What is the business acquisition for which clearance is sought?

1.1 The business acquisition for which clearance is sought is the acquisition by BOC Limited or its nominee (**Applicant** or **BOC**) of Shell New Zealand Limited's (**SNZ**) LPG business and Shell New Zealand Holding Company Limited's (**SNZH**) shareholding in Liquigas Limited (**Liquigas**). The LPG business and the shareholding in Liquigas are collectively referred to in this notice as **Shell's LPG Portfolio**.

1.1.1 More specifically, Shell's LPG Portfolio offered for sale is:

(a) all of Shell's existing and current LPG customer contracts. Customers include industrial purchasers, reticulated distributors and third party distributors;

(b) all of Shell's LPG assets, including tanks, pumps, cylinders, trucks and land/depot facilities except those LPG assets located on Shell company controlled branded service stations;

(c) 100% of the shares in The Gas Company Limited (**TGC**), a wholly owned subsidiary, operating as a wholesaler and retailer of LPG around the Christchurch area;

(d) an 18.75% shareholding in Liquigas. Liquigas provides LPG storage and distribution services;

(e) **[ ]** supply contract for the Shell retail network of approximately **[ ]** service stations; and

(f) a supply contract for LPG with Shell (Petroleum Mining) Limited (**SPM**) **[ ]**.

1.2 The Applicant is not acquiring the service station arm of Shell's current LPG activities, which comprises of the retailing of LPG via bottle fill and autogas facilities through Shell company controlled branded service stations. These are to be retained by Shell.

1.3 The acquisition is conditional on clearance by the Commerce Commission. **[ ]**

PUBLIC VERSION

The Person Giving Notice

2.	Who is the person giving this notice?

2.1 This notice is given by:

BOC Limited
Attention: Anthony Smith
Position: LPG Business Manager
988 Great South Road
Penrose
Private Bag 93300
Otahuhu
Auckland
Telephone: 09 571 9509/027 293 9413
Facsimile: 09 571 9510
Email: anthony.smith@boc.com

2.2 All correspondence and notices in respect of this application should be directed in the first instance to:

Simpson Grierson
195 Lambton Quay
PO Box 2402
WELLINGTON
Telephone: (04) 499 4599/0275 924 340
Facsimile: (04) 472 6986
Attention: Elisabeth Welson/Tanya Thomson
Email: elisabeth.welson@simpsongrierson.com
tanya.thomson@simpsongrierson.com

Confidentiality

3.	Do you wish to request a confidentiality order?

3.1	Do you wish to request a confidentiality order for the fact of the proposed acquisition?

No.

3.2	Do you wish to request a confidentiality order for specific information contained in or attached to the notice? If so, for how long, and why?

3.2.1 The Applicant has provided two versions of the notice to the Commission:

- one copy marked "Confidential Version", in which the confidential information the Applicant wishes the Commission to withhold is highlighted in square brackets; and
- one copy marked "Public Version", in which the confidential information has been deleted.

3.2.2 The foregoing request for confidentiality is made not only in relation to this application, but also for all additional information of a similar nature that the parties provide to the Commission.

PUBLIC VERSION

3.2.3 The Applicant requests that the confidential information identified in the Confidential Version or any additional information provided be subject to a confidentiality order for an indefinite period, or until the applicant advises the Commission that it may disclose the information concerned.

3.2.4 Confidentiality is sought under section 100 of the Commerce Act 1986. After the expiry of such an order, confidentiality is sought under section 9(2)(b)(ii) of the Official Information Act 1982 on the grounds that:

(a) the information is commercially sensitive and its disclosure would be likely to unreasonably prejudice the commercial position of the parties;

(b) the Applicant believes that there are no other considerations which render it desirable in the public interest to make the information available under the Official Information Act 1982.

Details of the Participants

4.	Who are the participants?

4.1 The Acquirer is:

BOC Limited
988 Great South Road
Penrose
Private Bag 93300
Otahuhu
Auckland
Telephone: 09 525 5600
Facsimile: +64 9 571 9510
Attention: Anthony Smith
Email: anthony.smith@boc.com

4.2 The Vendor is:

Shell New Zealand Limited
3 Queens Wharf
Wellington
Telephone: +64 4 498 0355
Facsimile: +64 4 463 4026
Attention: David McGuire
Email: david.mcguire@shell.com

4.3 All correspondence and notices for SNZ and SNZH in respect of this application should be directed in the first instance to:

Minter Ellison Rudd Watts
88 Shortland Street
PO Box 3798
AUCKLAND
Telephone: (09) 353 9700
Facsimile: (09) 353 9701
Attention: Andrew Matthews/Oliver Meech
Email: andrew.matthews@minterellison.co.nz
oliver.meech@minterellison.co.nz

PUBLIC VERSION

5.	Who is connected to or associated with each participant?

5.1 Acquirer group/associates:

The Applicant is part of The Linde Group. Its ultimate parent company is Linde AG which has its registered office in Weisbaden, in Germany, following the merger on 5 September 2006 of Linde AG and The BOC Group plc. The Linde Group is involved in industrial gases and engineering in around 70 countries.

Appendix I sets out a corporate structure diagram for The Linde Group companies operating in New Zealand. This consists of BOC Limited, a wholly owned subsidiary of BOC New Zealand Holdings Limited and BOC New Zealand Holdings Limited, which is owned by BOC Holdings, a company incorporated in England.

5.2 Target company group/associates:

Shell is part of the Royal Dutch/Shell group of companies. It is ultimately owned by Royal Dutch Shell plc.

Royal Dutch/Shell companies are involved in activities relating to oil and natural gas, chemicals, electricity generation and renewable resources in more than 135 companies.

SNZ is a subsidiary of SNZH (99.999% interest) and SPM (0.001% interest). SNZ and SNZH are together referred to as Shell. SNZH also holds an 18.75% interest in Liquigas.

The only other relevant subsidiary is TGC which is wholly owned by SNZ.

Other Royal Dutch/Shell Group companies operate in New Zealand in the petroleum exploration and production sector and are producers of LPG. The Applicant is unaware of the detail of the corporate structures of these Royal Dutch/Shell Group companies and the Commission is requested to make enquires of Shell directly in this regard should it consider further detail is required.

6.	Does any participant, or any interconnected body corporate thereof, already have a beneficial interest in, or is it beneficially entitled to, any shares or other pecuniary interest in another participant?

6.1 Neither the Applicant nor any of its interconnected bodies corporate has any beneficial interest in shares or other pecuniary interest in SNZH or any of its interconnected bodies corporate.

6.2 As far as the Applicant is aware neither SNZH nor any of its interconnected bodies corporate has any beneficial interest in shares or other pecuniary interest in the Applicant or any of its interconnected bodies corporate.

7.	Identify any links, formal or informal, between any participant/s including interconnected bodies corporate and other persons identified at paragraph 5 and its/their existing competitors in each market.

PUBLIC VERSION

7.1 Except for the matters listed in paragraph 7.3 the Applicant does not have any links, formal or informal, with Shell, or any other competitor in New Zealand in any of the markets affected by the proposed acquisition.

7.2 Except for the matters listed in paragraph 7.4, the Applicant is not aware that Shell has any links, formal or informal, with any other competitor in New Zealand in any of the markets affected by the proposed acquisition. The Commission is requested to make inquiries directly of Shell in this respect.

7.3 BOC is a member of the Liquified Petroleum Gas Association of New Zealand (Inc) (**LPG Association**).

7.4 The Applicant understands that Shell is a member of the following associations:

- Petroleum Exploration and Producers Association of New Zealand (Inc); and
- the LPG Association.

As identified in section 5, SNZH has an 18.75% interest in Liquigas. Other shareholders in Liquigas are Todd Petrogas Limited (Todd), Rockgas Limited and Vector Limited, all of whom are wholesalers of LPG. SPM and Todd (or their interconnected bodies) are producers of LPG.

Liquigas has a contract to purchase LPG from the Maui Mining Companies (comprising SPM, Todd and OMV Limited), and sells delivered LPG to wholesalers from its Auckland storage terminal. Liquigas also owns terminals at Christchurch and Dunedin and provides distribution and storage service to wholesalers, who pay a tolling fee for this service.

8.	Do any directors of the 'acquirer' also hold directorships in any other companies which are involved in the markets in which the target company/business operates?

8.1 No directors of the Applicant are directors of any other companies that are involved in the distribution, wholesale and retail LPG markets in New Zealand.

9.	What are the business activities of each participant?

Shell

9.1 The primary activities of Shell (and its related New Zealand companies) include:

(a) the exploration for, and production of, oil and gas, including holding significant shareholdings in the Maui, Kapuni and Pohokura fields;

(b) the production and distribution of chemicals, including petrochemicals and detergents;

(c) the production and distribution of commercial products, including marine and aviation fuels, and lubricants;

PUBLIC VERSION

(d) the operation of Shell controlled branded petrol stations, with approximately 300 retail locations nationwide; and

(e) equity investments in NZRC (17.1%), Fulton Hogan Limited (37.6%) and Loyalty New Zealand Limited (25%).

9.2 Shell's LPG activities in New Zealand (including its related companies) involve:

(a) the production of LPG through interests in the Maui and Kapuni fields;

(b) SNZH has a 18.75% interest in Liquigas;

(c) supplying LPG to large industrial end users, reticulation companies, third party distributors and independent service stations under the Shell and Allgas brands. Under the Allgas brand, cylinders are refilled and a cylinder swap system is offered to residential, smaller/light industrial and commercial enterprises in the upper South Island;

(d) distributing LPG through its wholly owned distributor TGC. TGC operates the "Shell Gas Swap" distribution to Shell outlets in Christchurch, servicing residential and commercial customers in Canterbury; and

(e) the retailing of LPG bottle fill and autogas facilities through Shell owned or operated service stations. This area of activity is excluded from the proposed acquisition.

BOC

9.3 The primary activities of BOC include the provision of:

(a) large on-site supply solutions for companies involved in various industries, for example the metals, chemicals and petroleum sectors;

(b) welding products which encompasses welding machines plus a comprehensive range of consumables and accessories. Welding products are sold through Gas 'n' Gear centres and agents;

(c) industrial and specialist products which cater for customers needing smaller volumes of gas, delivered in cylinders or small vessels; and

(d) safety products which includes a full range of safety and personal protective equipment.

9.4 BOC's LPG activities in New Zealand involve supplying delivered LPG in 9kg, 18-22kg, and 45kg LPG cylinders to end-users. BOC's business division "Gas 'n' Gear' also operates a 9kg cylinder fill service. BOC has filling stations in Invercargill, Christchurch, Blenheim, Napier, Tauranga and Auckland.

10. What are the reasons for the proposal and the intentions in respect of the acquired or merged business?

10.1 The Applicant views the acquisition of Shell's LPG portfolio as an opportunity to expand its presence in the market from that of retail only into wholesale (through the acquisition of assets) and distribution (through the acquisition of shares in Liquigas). At a retail level the acquisition will allow BOC to diversify its presence through the addition of new and complementary market segments in most of the retail market regions in New Zealand.

10.2 For Shell, the divestment of the LPG business is consistent with Shell's global strategy of managing its portfolio to deliver maximum value to customers and shareholders. While the LPG business is a robust business with growth prospects, it is no longer considered core to Shell New Zealand's downstream business.

PUBLIC VERSION

PART II: IDENTIFICATION OF MARKETS AFFECTED

Horizontal Aggregation

11. Are there any markets in which there would be an aggregation of business activities as a result of the proposed acquisition?

11.1 Are there any markets in which the acquirer (and/or any interconnected or associated company as identified in question 5.1.1 - 5.1.4), and

- the business to which the assets relate, or
- the 'target company' (and/or any interconnected or associated company identified in question 5.2.1 and 5.2.2 above)

are both engaged?

11.1.1 For the purposes of this application, the Applicant has adopted the market definitions previously identified by the Commission in previous clearances in relation to LPG. The relevant markets are:

- the national wholesale LPG market;
- the national LPG distribution market; and
- the various regional retail LPG markets.

11.1.2 Aggregation of business activities will not result in the wholesale LPG market as BOC currently has no presence in this market and simply replaces Shell.

11.1.3 Aggregation of business activities will not result in the LPG distribution market as BOC currently has no presence in this market and simply replaces Shell. Post acquisition BOC expects to self supply the LPG it currently acquires from On Gas when its contract with On Gas terminates at the end of its current term. This is expected to result in a small increase (approximately **[ ]**) to BOC's wholesale market share.

11.1.4 Some level of aggregation of business activities will occur in all retail LPG markets except Northland and Waikato. The level of aggregation is generally minor. The only markets where material aggregation will result are Wanganui/Manawatu, Upper South Island, Canterbury and Southland. All of these, excepting Southland, are within the Commission's safe harbours.

PUBLIC VERSION

Please identify for each market:

- the product(s), functional level, geographical area and (where relevant) timeframe;
- the specific parties involved;
- the relationship of those parties to the acquirer or the target company as the case may be.

Product Market

11.2.1 The Commission has previously defined LPG as a separate product market and concluded that all forms of LPG sales comprise a single product market, although there are a number of different market segments.[1] The Applicant accepts this definition but notes that other energy sources, while only substitutable in limited circumstances (as outlined at section 13.3.2), do impose constraints on LPG prices.

11.2.2 In Decision 456, the Commission noted that:

"given the differentiation of sizes and their different applications, the Commission considers the 5kg and 9kg are in a different segment of the LPG market from the 22kg, 45kg, bulk tank and reticulated supply"

11.2.3 The Applicant considers that the market segments are most appropriately categorised as follows:

(a) Autogas (automotive LPG);

(b) Bottle filling (generally provided by service stations);

(c) Industrial/commercial bulk ;

(d) Reticulated supply;

(e) Forklift (18–22kg) cylinders;

(f) Delivered 45kg cylinders; and

(g) 9kg (and under) cylinders.

11.2.4 There are three main channels to market at the retail level, each of which focuses on different market segments although there is overlap between them:

(a) Service Stations – autogas, bottle filling and 9kg and under cylinders;

1. Decision 323 Rockgas Limited and Energy Supply Limited (April 1998); Decision 310 Rockgas Limited and Gas Again Supply Limited (October 1997); Decision 456 Shell New Zealand Limited and the Gas Company Limited (March 2002); Decision 408 Shell Exploration company BV and Fletcher Challenge Energy (October 2000).

(b) LPG companies – bottle filling, 9kg and under cylinders, industrial/commercial bulk, reticulated, delivered 45kg cylinders and delivered forklift cylinders; and

(c) Third party distributors – 9kg delivered cylinders, delivered 45kg cylinders and forklift cylinders.

11.2.5 The LPG market segments have been categorised by the LPG Association in a similar (but slightly different) manner.

11.2.6 Retail competition within each segment is strong. Competition also occurs across segments.

11.2.7 Despite differences in methods of delivery and uses, the Commission has previously considered that the common element of LPG means that they are in the same market, albeit different market segments.[2] The Applicant has for the most part, therefore analysed the retail market as a single product market but has noted where the parties' different presence in different market segments impacts on the competition analysis.

Functional Level

11.2.8 The Commission has previously identified different functional levels of LPG for production, distribution, wholesaling and retailing of LPG.[3]

11.2.9 The Applicant is not currently involved at a wholesale level and no horizontal aggregation will occur as a result of the acquisition. However, out of an abundance of caution the Applicant has addressed the wholesale functional level because its post acquisition market share will effectively increase at the expense of On Gas, the Applicant's current supplier, when BOC's existing contract with On Gas terminates at the end of its current term.

11.2.10 Shell is currently involved via its interest in Liquigas at the distribution level however as the Applicant is not currently involved at this level the acquisition does not result in any aggregation. This functional level has not been considered any further in this application but the Applicant is happy to answer any questions the Commission might have.

11.2.11 The Applicant and Shell are both involved in the market for LPG at a retail level and both operate in all regional markets. The Applicant and Shell primarily operate in different market segments. The Applicant is primarily involved in the delivered 45kg cylinders and the delivered forklift cylinders market segments. Shell is primarily involved in the autogas, service station bottle fill and commercial/industrial bulk market segments. There will, however, be some aggregation in the 45kg and the delivered forklifts cylinder market segment in some regional markets.

2. Decision 456, paragraph 48.
3. Commerce Commission LPG Investigation Report (23 September 1993) page 21, Decisions 408 Shell Exploration Company BV and Fletcher Challenge Energy (October 2000) and 411 Shell Overseas Holdings Limited and Fletcher Challenge Energy (November 2000).

PUBLIC VERSION

Geographic Extent

Wholesale

11.2.12 The Commission has previously identified a single national market for the wholesaling of LPG[4] and the Applicant has adopted this definition for the purposes of this application.

Retail

11.2.13 The Commission has previously identified separate regional geographic markets for retail LPG.[5] The key driver for this was that from a supply perspective, LPG must be stored close to its customers for cost effective and timely supply. From a demand perspective customers were unlikely to travel great distances to purchase LPG. The Applicant agrees with the regional retail market definition previously adopted by the Commission.

Conclusion On Market Definition

11.2.14 The Applicant therefore considers that the relevant markets are:

(a) the national wholesale market for LPG; and

(b) the following regional retail markets for LPG:

(i) Northland;

(ii) Auckland;

(iii) Waikato;

(iv) Bay of Plenty;

(v) Hawkes Bay;

(vi) Taranaki;

(vii) Wanganui/Manawatu;

(viii) Wellington/Wairarapa;

(ix) Upper South Island;

(x) Canterbury;

(xi) Otago; and

(xii) Southland.

4. Decision 323, paragraph 38.
5. Decision 456, paragraph 59.

PUBLIC VERSION

Differentiated Product Markets

12. Please indicate whether the products in each market identified in question 11 are standardised (buyers make their purchases largely on the basis of price) or differentiated (buyers make their purchases largely on the basis of product characteristics as well as price)

12.1 LPG as a product is generally undifferentiated. The main difference is in the packaging and delivery of LPG, which differs for different uses. This differentiation only occurs at the retail functional level. Buyers of LPG for domestic use tend to make purchases on the basis of price. Larger commercial/industrial buyers make their purchase decisions on the basis of price but are also driven by service requirements such as delivery equipment options, safety practices and technical support.

13. For differentiated product markets:

13.1 Please indicate the principal characteristics of products that cause them to be differentiated one from another.

13.1.1 LPG supplied to the market is generally a homogenous product and there is very little product differentiation. The principal characteristics that differentiate the various retail LPG market segments from each other are the quantity of LPG required and the different uses, which dictates the packaging and method of delivery.

13.2 To what extent does product differentiation lead firms to tailor and market their products to particular buyer groups or market niches?

13.2.1 The different marketing and service requirements of the different market segments has resulted in three distinct channels to market developing.[6] Vertically integrated wholesalers generally operate across multiple retail market segments but may not do so directly, choosing to service a particular market segment through a franchise or third party distribution arrangement.

13.3 Of the various products in the market, which are close substitutes for the products of the proposed combined entity? - which are more distant substitutes?

13.3.1 As noted above, LPG supplied to the market is generally a homogenous product and differentiation tends to be in method delivery and packaging. There are areas of overlap between market segments, for example an 18 kg forklift cylinder could be filled at a bottle fill station in the same way as a 9kg bottle. All products supplied by competitors within a segment are equally substitutable.

13.3.2 Other energy sources act as a substitute in a limited number of circumstances. For example, LPG forklifts may be dual fuel and run on either petrol or LPG. All that is required to change the forklift from one form of energy to another is the flick of a switch. Road vehicles are also able to switch from petrol to LPG via the installation of an LPG conversion kit. Once converted they also have dual fuel options.

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6. A fourth channel is reticulation however this is limited to specific geographic areas within only a few regional markets.

PUBLIC VERSION

13.3.3 The Commission has previously determined that smaller cylinders cannot be considered substitutable for larger cylinders as they have different applications.[7] Smaller cylinders have primarily domestic uses whereas larger cylinders are typically employed for large scale domestic and commercial use.

13.4	Given the level of product differentiation, to what extent do you consider that the merged entity would be constrained in its actions by the presence of other suppliers in the market(s) affected?

13.4.1 The merged entity would be constrained by other firms given that the product is undifferentiated except as to delivery/packaging and service options and all suppliers are active in each market segment. The retail LPG markets are strongly competitive and will remain so post acquisition. The wholesale and all regional markets are dominated by the two major brands of Rockgas and On Gas, both of whom have a strong presence and well established brands in all regional markets. The Nova brand also provides a strong competitor brand.

Vertical Integration

14.	Will the proposal result in vertical integration between firms involved at different functional levels?

<table><tr><td>14.1</td><td>Are the "acquirer" (or any interconnected or associated company identified in questions 5.1.1-5.1.4) and:

• the business to which the assets relate, or

• the 'target company' (or any interconnected or associated company as identified in question 5.2.1 and 5.2.2)

engaged at different functional levels of the same product market(s)?</td></tr></table>

14.1.1 The Applicant will become vertically integrated as a result of acquiring Shell's interest in Liquigas and its wholesale LPG business.

<table><tr><td>14.2</td><td>Please identify for each market:

• products(s), functional level(s), geographic area(s) and (where relevant) time frames;

• the specific parties involved;

• the relationship of those persons to the 'acquirer' or 'the target company' as the case may be.</td></tr></table>

14.2.1 The Applicant is involved in the regional retail LPG markets. Shell is involved in the regional retail LPG markets, the wholesale LPG market and (via Liquigas) the distribution of LPG.

7. Decision 456, paragraph 50

PUBLIC VERSION

14.2.2 The acquisition will see these levels of involvement reverse. Post acquisition Shell will only be involved in the regional retail markets (although SPM will continue to be involved in the production market) and the Applicant will be involved in all of the regional retail LPG markets, the wholesale LPG market and (via Liquigas) the distribution of LPG.

14.2.3 Currently the volumes acquired by the Applicant for the purposes of its retail activities represents **[ ]** of the total market. Post acquisition wholesale volumes anticipated to be acquired by Shell for the purposes of its retail activities will represent **[ ]** of the total market. The Applicant will supply this volume **[ ]** after the acquisition. **[**

]

14.3 If so, in all subsequent questions about markets affected by the proposal, please give details of **both** (or all) the downstream/upstream markets concerned; and details of existing vertical links between the participants (and/or interconnected or associated companies) in each of these markets, eg supply agreements, long-term supply contracts.

15. In respect of each market identified in questions 11 and/or 14 identify briefly

15.1 All proposed acquisitions of assets of a business or shares involving either participant (or any interconnected body corporate thereof) notified to the Commission in the last three years and, in each case, the outcome of the notification (eg cleared, authorised, declined, withdrawn) and whether the proposed acquisition has occurred.

15.1.1 The Applicant is not aware of any occasion during the previous three years where the Applicant or Shell has formally notified the Commission of any proposed acquisition involving the LPG market.

15.2 Any other acquisition of assets of a business or shares in the last three years which either participant (or any interconnected body corporate) has undertaken in the last three years.

15.2.1 The Applicant is not aware of any occasion during the previous three years where the Applicant or Shell proceeded with any acquisitions involving the LPG market. The Commission is requested to make inquiries of Shell directly in this regard.

PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

Existing Competitors

16. In the market or markets, who are the suppliers of competing products, including imports?

16.1 Please identify the owners of those suppliers (including ultimate owner/s).

LPG Wholesalers

16.1.1 Currently and post acquisition the suppliers of competing products at a wholesale level (in addition to Shell) are, and will be:

(a) Nova Gas, owned by Independent Energy Limited and Todd Petroleum Mining Company Limited, part of the Todd group of companies.

(b) On Gas, owned by NGC Holdings Limited, and ultimately Vector Limited.

(c) Rockgas, owned by Origin Energy Industries Limited.

LPG Retailers

16.1.2 Currently suppliers of competing products at a retail level (in addition to Shell and the Applicant) are:

(a) various branded service stations (owned or operated by BP, Caltex, Mobil, Gull, Gasoline Alley Services and independent dealers);

(b) third party distributors, generally small cylinder delivery businesses that operate in a single geographic region, such as Gas-Pak (Auckland), Gas 'n' More (Whangarei) and Yunca (Dunedin and Invercargill); and

(c) the wholesalers described in paragraph 16.1.1 above, all of whom are vertically integrated and operate in most of the regional retail markets. The Applicant is uncertain of whether or to what extent the wholesalers have a direct presence or supply the product at a retail level through franchisees or distributors in each region.

16.2 What are their estimated market shares, both in terms of productive capacity and of sales?

LPG Wholesale Markets

16.2.1 In summary, this section describes how Shell essentially is replaced by BOC in the wholesale LPG market. The Applicant estimates market shares in the LPG national wholesale market are as follows:

Table 1: Current LPG National Wholesale Market Share

Current WHOLESALE Market Share				
	Shell	Nova	On Gas	Rockgas
NZ Total	[ ]	[ ]	[ ]	[ ]

Table 2: Post Acquisition LPG National Wholesale Market Share

Post Acquisition WHOLESALE Market Share				
	BOC	Nova	On Gas	Rockgas
NZ Total	[ ]	[ ]	[ ]	[ ]

16.2.2 BOC's post acquisition **[ ]** market share will consist of Shell's **[ ]** wholesale market share and, **[ ]**, the gas that BOC currently purchases from On Gas. **[**

]

16.2.3 There will be no aggregation per se of the wholesale market share as BOC does not currently operate in the wholesale LPG market. The Applicant therefore considers that there will be little impact in the wholesale LPG market, but has addressed this market for completeness and in acknowledgement of the change in market shares that will result upon the termination of BOC's arrangements with On Gas.

16.2.4 The Commission has previously stated that vertical integration is primarily only an issue where it results in a firm strengthening or acquiring a substantial degree of marketing power.[8] That is not the case here. The Commission found in Decision 456 that Shell would not have a substantial degree of market power following the acquisition of TGC, i.e. the position it is in now, thus the transfer of Shell's wholesale business to the Applicant cannot result in the Applicant having market power. Neither will the **[ ]** market change as a result of BOC commencing self supply result in any acquisition of market power.

16.2.5 The Applicant believes that existing competition will continue to provide a substantial constraint on the merged entity's ability to exercise unilateral

8. Decision 456, paragraph 99.

market power in the national wholesale LPG market following the proposed acquisition on the basis that:

(a) market concentration will not substantially change as a result of the acquisition;

(b) the number of wholesale providers will remain the same, with BOC standing in the place of Shell;

(c) the Applicant would continue to face a significant competitive constraint from a significantly larger rival in the form of Rockgas, which has a **[ ]** market share; and

(d) the Applicant would continue to face a competitor which is similar in size in the form of On Gas.

16.2.6 The Applicant therefore submits that existing market participants in the wholesale LPG markets provide a strong competitive constraint currently and would continue to do so against BOC following the proposed acquisition.

LPG Retail Regional Markets

16.2.7 In summary, post acquisition:

(a) BOC's market share in all of the regional retail markets will be within the Commission's safe harbours, with the exception of Southland;

(b) Aggregation only occurs in certain market segments, as Shell and BOC currently principally operate in complementary market segments;

(c) Shell will retain a substantial presence in the retail market; and

(d) the regional retail markets for LPG are highly competitive.

Current Retail Business

16.2.8 BOC currently operates in the delivered cylinder segment of the retail market (9kg and 18 – 22kg and 45kg cylinders) and has filling stations at Invercargill, Christchurch, Blenheim, Napier, Tauranga and Auckland.

16.2.9 The proposed acquisition only incorporates part of Shell's LPG retail operations and therefore the overall number of firms in the retail market will not decrease. At the retail level BOC will acquire Shell's delivered cylinder business and commercial/bulk business. Shell will retain the service station retail segments of its business and obtain wholesale LPG from BOC (as purchaser of its wholesale business) **[ ]**.

General Analysis of all LPG Retail Regions

16.2.10 As the activity in the market operates in various segments and through three different distribution channels, there are a number of ways analysing market share information. In order to provide as complete a picture as possible, the Applicant has presented the market share information for before and after the acquisition (with the exception of

PUBLIC VERSION

table 6 which only shows current information) in a number of ways, as follows:

(a) table 3 illustrates the Applicant's estimates of the market shares of Shell and BOC in the retail markets by region;

(b) table 4 shows the national retail market shares split according to the three main retail sales channels, namely direct retail by LPG companies, LPG sales through service stations and LPG sales by third party distributors;

(c) table 5 shows all of the market participants' market shares by region; and

(d) table 6 illustrates overall retail market shares by market segment. Third party distributors are included within their relevant wholesaler's retail share (as the applicant does not have separate information for them by category). In general, each wholesaler only has a single distributor in each region and the distributor generally services market segments into which the wholesaler does not sell directly in any significant quantity. As a result of these third party volumes not being separated, the retail market looks more concentrated than it actually is.

All percentages are rounded to the nearest whole percent.

16.2.11 The Applicant believes that the appropriate measure for market share is volumes sold. There is very little publicly available market share data for LPG markets. The retail and wholesale market share information provided in these table represents management estimates only. The Applicant discusses this point in more detail in section 16.3.

Table 3: LPG Regional Retail Market Shares of BOC and Shell

Region	Current retail market share		Retail market share % acq. by BOC	Post acq. market share of BOC
	Shell	BOC		
Northland	[	[	[	[
Auckland				
Waikato				
BOP				
Hawkes Bay				
Taranaki				
Wanganui/ Manawatu				
Wellington/ Wairarapa				
Upper South Island				
Canterbury				
Otago				
Southland	]	]	]	]

* [ ]
** [ ]

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Table 4: LPG Combined Regional Markets Analysis by Retail Sales Channels

Combined Regional LPG Market Shares			
	Retailer and Owner	Volume	Market Share*
Service Stations	Shell BP Caltex/Mobil **	[	[
Direct retailers (LPG Companies)	Shell BOC Ongas Rockgas Nova		
Third party distributors	Various		
Total		]	]

* The market share is calculated as a percentage of the total volume.

** The Applicant is unable to provide any meaningful estimate of volume breakdown between Caltex and Mobil

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Table 5: Current Market Shares and Safe Harbour Analysis

	CURRENT MARKET SHARES								POST ACQ.	
Region	Shell	BOC	BP	Caltex and Mobil	Third party distributors	On Gas	Rockgas	Nova	Post acq. market share of BOC	CR3
Northland	**[**	**[**	**[**	**[**	**[**	**[**	**[**	**[**	**[**	**[**
Auckland										
Waikato										
BOP										
Hawkes Bay										
Taranaki										
Wanganui/ Manawatu										
Wellington/ Wairarapa										
Upper South Island										
Canterbury										
Otago										
Southland	**]**	**]**	**]**	**]**	**]**	**]**	**]**	**]**	**]**	**]**

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Table 6: Combined Regions Market Share by Market Segments

Gas 'n' Gear (bottle filling)	Service Station (forcourt bottle filling)					Service Station (autogas)						Commercial/Industrial Bulk					
BOC	Shell	Nova	On gas BP	Rockgas (Caltex/ Mobil)	Segment Total	BOC	Shell	Nova	On gas BP	Rockgas (Caltex/ Mobil)	Segment Total	BOC	Shell	Nova	On gas	Rockgas	Segment Total
[																]	
					[ ]						[ ]						[ ]
Reticulated						Delivered 45KG cylinders						Delivered Forklift cylinders					
BOC	Shell	Nova	On gas	Rockgas	Segment Total	BOC	Shell	Nova	On gas	Rockgas	Segment Total	BOC	Shell	Nova	On gas	Rockgas	Segment Total
[																]	
					[ ]						[ ]						[ ]

This table shows the various wholesalers selling into the retail market segments. All volumes identified as BOC volumes are On Gas wholesale volumes. The table does not show third party distributors as BOC does not have this information available for market segments.

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16.2.12 The following conclusions on the competitive impact of the acquisition can be drawn from these market shares:

(a) In general the aggregation that is occurring is between businesses that are strong in complementary market segments. BOC and Shell operate in essentially different customer segments and aggregation is unlikely to reduce overall competition in the market. In fact, by merging these complementary businesses the Applicant will be able to provide a stronger market-wide balancing competitive force to Rockgas and On Gas;

(b) Levels of aggregation in all retail regional markets will be low for the following reasons:

- BOC's current retail market share is **[ ]** in all regions and the market share being acquired is **[ ]** in all but four regions and **[ ]** in all but two regions;
- In the regions where Shell's market share is highest (Wanganui, Upper South Island and Southland) BOC's market shares are very small;

(c) Shell is retaining a significant portion of its current retail market share in all regions because the Applicant is not acquiring the LPG bottle fill and autogas facilities operated by Shell-owned service stations. Shell will continue to be a strong competitor in the retail LPG market and to compete with BOC in relation to its bottle fill business;

(d) In terms of the different supply channels, BOC is not acquiring any market share in the service station or third party distributor channels (other than TGC), only the direct retail supply channel. Shell and BOC both tend to be minor players in the direct retail supply channel. The retail volumes being acquired by BOC represent approximately **[ ]** of total market volumes;

(e) In terms of market segments, there is no aggregation in the service station, autogas, commercial/industrial bulk or, reticulated segments as BOC does not currently compete in these segments. There is very minor aggregation in the bottle filling segment and the delivered 45kg and forklift cylinders segments. In the 45kg segment, BOC and Shell are minor players compared to Rockgas and On Gas. Similarly, in the delivered forklift cylinder segment Rockgas is the major player. BOC's second place will not change and it will remain substantially smaller than Rockgas.

The Safe Harbours

16.2.13 The merged entity will be within the safe harbours in all of the retail regional markets with the exception of Southland. Although the safe harbours are not definitive they provide a good indication that acquisition is unlikely to have a significant impact on competition in any of the regional retail markets. The merged entity will have **[ ]** market share in all of the LPG regional retail markets with the exception of Wanganui/Manawatu and Southland (which are discussed further below).

PUBLIC VERSION

16.2.14 The Commission has previously considered the Canterbury, Wellington and Auckland retail LPG markets and found them to be highly competitive.[9] The Applicant considers that the market dynamics are similar in all retail regions and accordingly this finding applies equally to all of the regional retail markets for LPG.

16.2.15 The Applicant therefore believes that existing market participants in all of the regional retail LPG markets provide a strong competitive constraint against BOC and Shell and would continue to do so following the proposed acquisition.

16.2.16 The two regions in which the merged entities market share will be greater than **[ ]** are analysed below.

Specific Analysis of the Wanganui/Manawatu Region

16.2.17 In the Wanganui/Manawatu region BOC currently has a **[ ]** market share. Post acquisition the Applicant will have a **[ ]** market share with a CR3 of **[ ]**. There will, however, be no aggregation in any of the submarket segments.

16.2.18 [

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Specific Analysis of the Southland Region

16.2.19 [

]

16.2.20 Shell operates in the service station bottle fill and industrial/commercial bulk market segments. **[**

] BOC's primary activity in this region (as in most regions) is bottle refills through its Gas 'n' Gear channel and delivered 45kg and forklift cylinders. Shell will be retaining the service station bottle fill segment and accordingly there is no aggregation in any of the submarket segments.

16.2.21 In addition to Shell and BOC, there are a number of retail competitors in this regional market. These include all of the service station channels, Rockgas, On Gas and Yunca (a third party distributor). Market shares are shown at table 7.

Table 7: Southland Regional LPG Market Shares

9. Decision 456, Decision 323 and Decision 310 respectively.

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Southland Regional LPG Market Shares			
	Retailer and Owner	Volume	Market Share*
Service Stations	Various	[	[
Direct retailers (LPG Companies)	Shell BOC Ongas Rockgas		
Third party distributors	Yunka (Shell distributor) Other (Nova distributor)		
Total		]	]

16.3 Please indicate the source of the data provided, and where they are estimates, the likely degree of accuracy.

16.3.1 The Applicant has estimated the wholesale market share data from information publicised by the LPG Association and believes that it is very reliable.

16.3.2 The Applicant has sourced the retail market share data provided on competitors, with the exception of Shell, from a recent internal study. Shell provided the Applicant with its market share information. The Applicant believes that the retail market share information is reasonably accurate.

16.4 Where available, please provide data in the form of the table above for any or each of the past five years, as well as for the most recent year.

16.4.1 Historical market share data is not readily available.

16.5 Please identify any firms that are not currently producing the product in the market, but could enter the market quickly (using essentially their existing productive capacity) in response to an attempt by suppliers to raise prices or reduce output or quality ('near entrants').

16.5.1 There are a number of producers of LPG in New Zealand and this is becomingly increasing diversified as the New Zealand gas industry becomes less reliant on the Maui and Kapuni gas fields as the principal sources of supply of both gas and LPG. There are, and increasingly will be, opportunities for potential new entrants to the wholesale market as the number of suppliers of LPG increases. Currently, in addition to Shell and Todd other sellers of LPG include Swift Energy and with the developments of the Kupe and Turangi gas fields, additional LPG volumes will be available to the market in the short to medium term.

16.5.2 It is relatively unlikely that "near entrants", in terms of another LPG retailer or wholesaler, currently exist. If, however, prices were to be raised or output or quality reduced, it would be possible and not inconceivable for one of any number of smaller upstream producers to consider entry into some, if not all, market segments.

16.6 Estimate the productive capacity that such near entrants potentially could bring to the market.

PUBLIC VERSION

Not applicable because not operating at the production functional level.

16.7	Please indicate the extent to which imports provide a constraint on domestic suppliers. What costs are incurred by importers that are not incurred by domestic suppliers? How sensitive is the domestic price of imports to changes in the New Zealand dollar exchange rate?

16.7.1 LPG is a globally traded and priced commodity. Historically New Zealand has been insulated from global prices due to the legacy Maui gas field supply arrangements with Liquigas. The effect of these arrangements will lessen substantially over the next 18 months or so and imports will increasingly provide a significant constraint on domestic LPG suppliers.

16.7.2 The bulk of LPG sold in New Zealand is produced domestically from the major producing gas fields (located in the Taranaki region). The number of gas fields producing LPG is increasing and likely to continue to increase in the short to medium term as well as the longer term. Currently LPG is only imported when there is a domestic product shortage. This usually occurs when heating demand is at its highest (in the peak periods of June to September). In 2005, LPG imports accounted for less than 10% of total LPG sales.[10]

16.8	To what extent is the product exported?

16.8.1 LPG exports in 2005 were 0.9PJ[11] (10% of total domestic production). LPG is exported by producers to the extent that it is not required to meet domestic demand.

16.9	Please indicate whether the 'target company' could be described as a vigorous and effective competitor, taking into account its pricing behaviour, its record of innovation, its growth rate relative to the market, and its history of independent behaviour.

16.9.1 Shell's total sales volumes **[**

]

Conditions of Expansion

17.	The following listing gives different types of market conditions that may affect the ability of existing firms to expand: • Frontier entry conditions eg tariffs, quarantine requirements, international freight costs. • Legislative/regulatory conditions eg meat licensing, Resource Management Act requirements, health and safety standards.

10. MED Energy Data File January 2006
11. MED Energy Data File January 2006

- Industrial/business

  eg access to raw materials, critical inputs, economies of scale, access to technical knowledge requirements, capital requirements (and capital market's perception of the risk and return), sunk costs (ie irrecoverable or exit costs), influence of branding and sales promotion, technical specifications.

- Other

  eg responses to expansion by major firms; lack of additional productive capacity; additional productive capacity has a relatively high cost.

Which, if any, of the conditions identified above do you consider would be likely to act as a barrier to the expansion of existing competitors, where they have the incentive to do so in response to a sustained effort by the combined entity to raise price, or to lower service or product quality?

Please provide evidence, where available, of expansion by existing competitors in the relevant markets during the past five years.

Wholesale

17.1 Availability of LPG for wholesale is the main constraint on wholesale expansion. Availability of domestic LPG in any period is tied to the offtake of natural gas, and to a far lesser extent the production of oil.[12] Wholesalers have the ability to import LPG when domestic production is insufficient to meet demand but there has historically been a price differential between imported and domestically-produced LPG due to the Maui legacy arrangements discussed at section 1.7. Consequently imports have only been viable when domestic production has been insufficient. However, a number of factors in the production market mean that access to product at a wholesale level is likely to be increasingly less of a barrier to expansion than it has been in the past. This is because there are increasing numbers of alternative producers of LPG as more gas fields are being developed and as the Maui LPG legacy arrangements start to decline and terminate completely in 2009. At this time, imports will provide a complete constraint on the activities of wholesale suppliers.

17.2 Expanded wholesale activity would require capital investment including additional trucks, additional cylinders and filling plant.

Retail

17.3 The barriers to the expansion of existing competitors are likely to be low. The major barrier for new entrants has been identified by the Commission as the ability to gain access to suitable land on which a bulk tank and filling facilities can be situated.[13]

17.4 Whether existing firms seeking to expand are likely to have access to suitable land depends on the retail market segment in which they operate. Land availability is likely to only be an issue for urban services

12. Decision 408, paragraph 295.
13. Decision 310, paragraph 41.

PUBLIC VERSION

stations and retail outlets such as Gas 'n' Gear. Access to land will be less of an issue for those seeking to expand or enter the industrial and commercial market segments, where supply infrastructure is not so critical and can be located at industrial zoned sites.

17.5 Availability of product has not been an issue for retailers seeking to expand market share.

17.6 Rules and regulations relating to the cartage and sale of LPG are not likely to act as a barrier. Retailers can easily contract transportation providers, which mitigates any effect of cartage rules and regulations.

18. Please name any business which already supplies the market – including overseas firms – which you consider could increase supply of the product concerned in the geographic market by any of the following means:

- diverting production into the market (e.g. from exports)
- increasing utilisation of existing capacity
- expansion of existing capacity.

Specify in each case which of the above three points applies.

18.1 The Applicant considers that Rockgas may increase the wholesale and retail supply of LPG to the relevant markets. Rockgas is seen to be seeking to expand its market share through an active marketing campaign and has communicated to the market generally that it is seeking to expand.

19. Of the conditions of expansion listed above, which do you consider would influence the business decision in each case to increase supply?

19.1 Existing LPG wholesalers are likely to be influenced by long term availability of supply to support expansion. Imports will increasingly become an economically efficient option as a source of supply as will alternative sources of domestic supply from new gas field producers.

19.2 None of the conditions of expansion identified in relation to the retail market is likely to provide any significant deterrent to expansion by an existing retailer, with the exception of service stations and other urban retail operations who are likely to be constrained by the availability of land.

20. How long would you expect it to take for supply to increase in each case?

20.1 The Applicant believes a certain level of retail expansion could take place as retailers can manage increased business through increasing deliveries and frequency of tank fills. A more substantial level of expansion may require additional filling station infrastructure which could be achieved in upwards of six months. A distributor could expand its operations in a much shorter timeframe as the only physical requirement is a delivery vehicle which could be sourced in a much shorter time frame.

21. In your opinion, to what extent would the possible competitive response of existing suppliers constrain the merged entity?

21.1 The Applicant considers that existing wholesale and retail suppliers could constrain the merged entity from increasing prices because the markets are strongly price-driven such that price increases of 5% or more are likely to drive customers (including resellers) to switch suppliers.

22. Looked at overall, and bearing in mind the increase in market concentration that would be brought about by the acquisition, to what extent do you consider that the merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected?

22.1 The merged entity will be significantly constrained by the conduct of existing suppliers because:

(a) the merged entity will continue to face real competitive constraint from the two larger wholesalers (Rockgas and On Gas) and to a lesser extent Nova;

(b) in the retail markets the merged entity will continue to face constraints from a variety of competitors including the service stations and third party distributors in addition to the vertically integrated wholesale suppliers operating in the retail markets;

(c) customers are price-sensitive and are likely to switch suppliers if the merged entity increases prices beyond the market price; and

(d) other fuel prices, including electricity pricing and (in some situations) natural gas prices provide a constraint in LPG prices – while these are not considered close substitutes for LPG, they are an alternative for some market segments especially for new customers additional purchasing decisions e.g. decision to purchase a new car, fuel decisions for new subdivisions etc.

Coordinated Market Power

23. Identify the various characteristics of the market that, post-acquisition, you consider would either facilitate or impede coordination effects.

23.1 The Applicant believes that the following market conditions, which have previously been identified as applying to the LPG market,[14] exist which render collusion unlikely:

(a) moderate seller concentration;

(b) price conscious consumers;

(c) limited excess capacity; and

(d) potential new entrants.

14. Decision 456, table 4.

23.2 In these circumstances the Applicant considers that the retail and wholesale LPG markets are unlikely to facilitate collusion.

24.	Identify the various characteristics of the market that, post-acquisition, you consider would facilitate or impede the monitoring and enforcement of coordinated behaviour by market participants.

24.1 The Applicant considers that because collusion is unlikely, it is not strictly necessary to address monitoring and enforcement. However the Applicant would be happy to provide further details on this if required.

25.	Indicate whether the markets identified in paragraph 9 above show any evidence of price co-ordination, price matching or price following by market participants.

25.1 The Applicant is not aware of price co-ordination, price matching or price following by any market participant. The Applicant believes the market is highly competitive and this has been previously acknowledged by the Commission in relation to the Christchurch, Wellington and Auckland regional markets.

26.	Please state the reasons why, in your opinion, the transaction will not increase the risk of co-ordinated behaviour in the relevant market(s).

26.1 The Applicant refers the Commission to its response at section 23 and 24.

PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION

Conditions of Entry

27. The following listing gives different types of market conditions that may affect the ability of new firms to enter the market:

- Frontier entry conditions
  eg tariffs, quarantine requirements, international freight costs.
- Legislative/regulatory conditions
  eg entry licensing, Resource Management Act requirements, health and safety standards.
- Industrial/business conditions
  eg access to raw materials, critical inputs, economies of scale, access to technical knowledge requirements, capital requirements (and capital market's perception of the risk and return), sunk costs (ie irrecoverable or exit costs), influence of branding and sales promotion, technical specifications.
- Other conditions
  eg responses to expansion by major firms.

Which, if any, of the conditions identified above do you consider would be likely to act as a barrier to the entry of new competitors, where they otherwise would have the incentive to do so in response to a sustained effort by the combined entity to raise price, or to lower service or product quality?

27.1 The Applicant considers that existing competition in the retail markets for LPG will continue to be sufficient to satisfy the Commission that there is no substantial lessening of competition, as was found to be the case in Decision 456. Potential competition and the threat of new entrants is therefore not necessary to constrain the merged entity in the retail LPG markets.

27.2 Further, the Applicant considers that the constraint from existing competition in the wholesale market for LPG is sufficient to constrain the merged entity. The threat of new entry is therefore also not necessary to constrain the merged entity in the wholesale market for LPG.

27.3 However, for completeness the Applicant has briefly considered constraints imposed by potential competition in the wholesale market and retail markets for LPG.

Wholesale

27.4 Small wholesalers may be constrained if it is not practicable to purchase through Liquigas (due to minimum volume requirements). However, it would be open to such wholesalers to build supply relationships with upstream firms such as Todd, Swift Energy and Greymouth Petroleum. Imports will increasingly be an option for a new entrant as the effects of the legacy Maui LPG arrangements reduce.

27.5 The Commission has previously identified that existing retailers may be able to vertically integrate into wholesaling by obtaining direct supply from LPG producers or from Liquigas.[15]

Retail

27.6 When considering the constraint by potential competition in the retail LPG markets the Commission has previously identified that the barriers of entry in establishing a retailing business appear to be relatively low. The major constraint was the ability to gain access to suitable land on which a bulk tank and filling facilities can be situated.[16]

27.7 The Applicant considers that in relation to the retail markets there are no significant barriers to entry. LPG product can be easily accessed. Further, legislative and regulatory requirements are unlikely to provide a significant barrier to entry.

28. Please name any businesses (including overseas businesses) which do not currently supply the market but which you consider could supply the relevant market(s) by:

- investing in new production facilities to produce the product;
- overseas companies diverting production to New Zealand;
- domestic companies expanding, or changing the utilisation of, existing capacity to produce the relevant products (where this would involve substantial new investment)

Specify for each named business which of the above three might apply.

28.1 The Applicant considers that it is possible for any firm to enter the market for wholesale LPG or the retail LPG markets although in the current environment entry into New Zealand is not seen as particularly attractive.

29. What conditions of entry do you consider would most influence the business decisions to enter in each case?

Please refer to 27.

Likelihood, Sufficiency and Timeliness of Entry

30. How long would you expect it to take for entry to occur, and for market supply to increase, in respect of each of the potential business entrants named above?

Wholesale

30.1 The Applicant is unable to estimate how long entry would take as there has been no recent wholesale entry.

15. Decision 310, paragraph 41
16. Decision 310, paragraph 41.

Retail

30.2 In the retail markets for LPG a third party distributor could enter the market in the time it takes for the entrant to purchase a delivery truck and negotiate a LPG supply contract with a wholesaler. Historically, third party distributors are 'Mum and Dad' type business and often have grown from an agency relationship with an LPG company. In this instance the third party distributor is likely to be able to move quickly to become a new entrant as they have the necessary knowledge, access to LPG supply and access to cylinders and trucks (whether they previously owned them or rented from LPG companies).

30.3 An independent retailer looking to enter the delivered cylinder segments would need to establish a filling station and associated infrastructure (including cylinders). This is likely to take 6 – 8 months.

30.4 Entry into the urban retail markets segments (i.e. service stations and domestic bottle fill) will take longer due to the constraints of locating a suitable urban site and obtaining the necessary resource consents.

31.	Given the assessed entry conditions, and the costs that these might impose upon an entrant, is it likely that a potential entrant would consider entry profitable at pre-acquisition prices?

31.1 The Applicant considers that a potential new entrant to the wholesale market or retail LPG markets would consider entry profitable at pre-acquisition prices.

32.	Would the threat of entry be at a level and spread of sales that it is likely to cause market participants to react in a significant manner?

32.1 The threat of entry would be at a level and spread of sales such that it is likely to cause market participants to act in a significant manner.

33.	What conditions of entry do you consider would influence the business decision to enter the market by setting up from scratch, ie de novo entry?

33.1 The Applicant refers the Commission to its response at section 27.

34.	How long would you expect it to take for de novo entry to occur?

34.1 Please refer to section 30.

35.	In your opinion, to what extent would the possibility of de novo entry constrain the merged entity?

35.1 While it is probably realistic to say that the main constraint on the merged entity is seen to be existing competition, the threat of new entry would also be viewed as a significant constraint on the merged entity, particularly in the domestic and smaller commercial market segments where entry could occur quickly and from almost anywhere. Because the product is undifferentiated between suppliers (including new entrants) and associated equipment is standardised there is little or no incumbency advantage and no reason why customers would not switch to a new entrant.

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PART V: OTHER POTENTIAL CONSTRAINTS

Constraints on Market Power by the Conduct of Suppliers

36.	Who would be the suppliers of goods or services to the merged entity in each market identified in questions 11 and/or 14?

Wholesale

36.1 **[**

]

36.2 **[**

]

37.	Who owns them?

37.1 Liquigas is currently owned by Shell, Vector, Todd and Rockgas. Potential suppliers also include all gas field producers, many of which have multiple potential sellers of LPG due to the frequent joint venture nature of gas field production.

38.	In your opinion, to what extent would the conduct of suppliers of goods or services to the merged entity constrain the merged entity in each relevant market?

38.1 Suppliers of LPG constrain the merged entity to the extent that sufficient LPG must be available. The increasing number and diversity of suppliers will provide an effective constraint on the merged entity.

Constraints on Market Power by the Conduct of Acquirers

39.	Who would be the acquirers of goods or services supplied by the merged entity in each of the markets identified in questions 11 and/or 14?

39.1 Large industrial customers, wholesalers, reticulation companies, distributors, the general public and service stations.

40.	Who owns them (where appropriate)?

Not appropriate.

41.	In your opinion to what extent would the conduct of acquirers of goods or services to the merged entity constrain the merged entity in each affected market? How would this happen?

41.1 The Applicant believes that acquirers, particularly those that own their own cylinders and reticulation systems, have a significant degree of countervailing power. Approximately one third of the total market sales volume is represented by customers that own their own cylinders. They can switch suppliers easily and without significant cost. It is still possible, although slightly more difficult for acquirers who have fixed storage facilities to switch suppliers.

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41.2 A recent example of switching occurred when BOC, as a customer of Shell, switched to On Gas **[ ]**.

41.3 The Applicant believes that acquirers provide a significant competitive constraint on market participants through the ability to switch LPG suppliers. Customers are very price driven and if the price/service mix is not a competitive offer, there is little or no brand loyalty and customers will switch. Larger volume purchasers also have a significant degree of countervailing market power.

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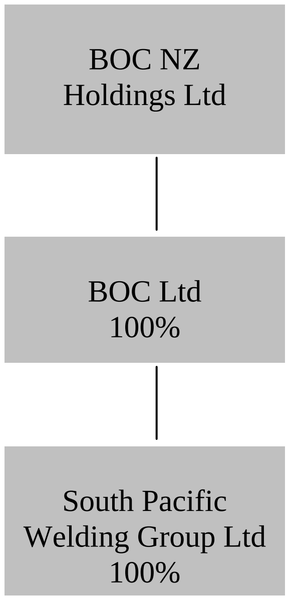
APPENDIX I

Corporate Structure – BOC



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THIS NOTICE is given by **ANTHONY MICHAEL FRANCIS SMITH** on behalf of **BOC LIMITED**

I am the LPG Business Manager of BOC Limited and am duly authorised to make this application.

I hereby confirm that:

- all information specified by the Commission has been supplied;
- all information known to the Applicant which is relevant to the consideration of this application has been supplied;
- all information supplied is correct as at the date of this application.

BOC Limited undertakes to advise the Commission immediately of any material change in circumstances relating to the application.

Dated this day of 2006

Signed by**:**

Anthony Smith
LPG Business Manager
BOC Limited