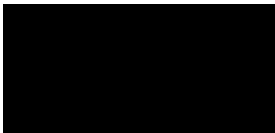


26 June 2019



By email only:



Dear



### Official Information Act #18.207 - Liquigas Limited

1. We refer to your request received on 28 May 2019 for a copy of an article from Communique magazine about the Commerce Commission's (Commission) settlement with Liquigas Limited in 2003<sup>1</sup> and the Deed of Settlement etc from that matter.
2. We have treated this as a request for information under the Official Information Act 1982 (OIA).

### Our response

3. We have decided to grant your request.
4. **Attachment A** to this letter is a copy of the Communique article from June 2003 about the Commission's settlement with Liquigas.
5. **Attachment B** to this letter is a copy of the Commission's public report on the Liquigas matter dated 18 December 2002, with Deed of Settlement attached.
6. We do not consider that "etc" meets section 12(2) of the OIA, in that it is not sufficiently particular to enable us to identify the scope of your request.
7. If you are not satisfied with the Commission's response to your OIA request, section 28(3) of the OIA provides you with the right to ask an Ombudsman to investigate and review this response. However, we would welcome the opportunity to discuss any concerns with you first.

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<sup>1</sup> <https://comcom.govt.nz/news-and-media/media-releases/archive/commerce-commission-highlights-for-2003>

8. The Commission will be publishing this response to your request on its website. Your personal details will be redacted from the published response.
9. If you have any questions in regarding to this request, please do not hesitate to contact us at [uia@comcom.govt.nz](mailto:uia@comcom.govt.nz).

Yours sincerely

*Mary Sheppard*  
OIA Coordinator

Released under Official Information Act 1982

## Commission settles with Liquigas



**Geoff Thorn,**  
Director, Business  
Competition Branch

The Commission has entered into a settlement with the four shareholders of Liquigas Limited, the national distributor and wholesaler of Liquid Petroleum Gas (LPG), to change what the Commission considers was anti-competitive behaviour within that market.

The shareholders, National Gas Corporation Limited, Shell New Zealand Limited, Todd Energy Limited and Rockgas Limited, deny there was any anti-competitive behaviour.

A Commission investigation revealed that during 1998, Liquigas' shareholders endorsed a strategic plan for Liquigas' future operations, which was developed and adopted by the Board of Directors. In 1999, the Board partially implemented the strategic plan, which included assumptions about prices of goods and services expected to be provided by Liquigas to wholesalers of LPG. The shareholders, or their related companies, are also the wholesalers of LPG and some purchase or have purchased goods and services from Liquigas.

"The Commission considered that in endorsing the strategic plan, the shareholders, as competitors, were breaching the price fixing provisions of the Commerce Act," said Director of Business Competition, Geoff Thorn.

Mr Thorn said the Commission was satisfied that the settlement achieved a substantial change in behaviour and would create a more competitive environment in the relevant markets. He said the new arrangements meant that the prices of Liquigas' goods and services would be set independently of the purchasers of those goods and services.

The Commission's settlement will see the creation of a pricing committee and appointment of an independent director, who will chair the pricing committee. The committee will determine Liquigas' prices.

The shareholders have also agreed to pass special resolutions recognising that the pricing of goods or services supplied by Liquigas is exclusively a matter for consideration and decision by the company's directors and that the directors are not to act as agents for the shareholders.

"What we have achieved through settlement is a structural change within Liquigas' operations, which will have a beneficial impact on the company's behaviour in the future.

"The Commission's investigation uncovered there was nothing about the pricing proposals that indicated collusion in the partially implemented strategic plan. The documents were widely circulated amongst Liquigas' shareholders, and the matter was openly referred to in the Board's minutes."

"The difficulty here was with the shareholders endorsing the prices for products and services. It is the role of Liquigas' directors to set the prices. Commerce Act issues arose once the shareholders, who were also the purchasers and who are in competition with each other, became involved in setting the prices." ■

Section 30 of the Commerce Act prohibits price fixing, which is when people or businesses that are in competition with each other agree to control, fix or maintain the prices for the goods or services they supply.

## **Report on Alleged LPG Price Fixing Arrangements**

### **Summary**

1. In May 2000, the Commission received information that Rockgas Limited (Rockgas), Shell New Zealand Holding Company Limited (Shell) and Natural Gas Trading Limited (NGC), as shareholders of Liquigas Ltd (Liquigas) and wholesalers of LPG, had agreed on a price at which they would purchase LPG from Liquigas at its Auckland marine depot. The information suggested that the agreement breached s30 of the Commerce Act 1986 (the Act).
2. The four shareholders and wholesalers of Liquigas each have one of their nominees, as their representative, on the Liquigas' board of directors.
3. The Commission found that in 1998 the directors and four shareholders agreed a strategic plan for Liquigas and that in 1999 there was an agreement by Liquigas' directors to implement the strategic plan.
4. The strategic plan contained the prices that Liquigas was to charge for its LPG and tolling services to, amongst others, the four shareholders in their role as wholesalers of LPG.
5. The focus for the Commission was whether the involvement of the four shareholders in agreeing the strategic plan, and hence the prices for LPG and tolling services, amounted to a contravention of s30 of the Act. Section 30 prohibits arrangements between competitors that fix, control or maintain prices.
6. The Commission found that there was a contravention of s30. The Commission considered that this contravention did not warrant prosecution in the circumstances. Todd, Rockgas, Shell and NGC all denied they had contravened s30.
7. The Commission sought to achieve an outcome where there was a robust separation between the directors' roles as directors and their roles as agents for their shareholder employers. Liquigas, Todd, Rockgas, Shell and NGC agreed to amend Liquigas' constitution in a manner that achieved the Commission's outcomes. The Commission resolved its investigation by entering into a settlement deed with the parties on 4 December 2002.

### **The Parties**

#### **Liquigas**

8. Liquigas is a distributor of LPG throughout New Zealand. Its shareholders are Todd Petrogas Limited (Todd), Rockgas, Shell and NGC. Its physical assets are four marine depots at Auckland, New Plymouth, Christchurch and Dunedin. These depots comprise storage tanks and facilities used to transfer LPG from ship

to storage tank and from storage tank to road tanker to allow LPG to be transported to consumers.

9. Liquigas has a contract to purchase LPG from the Maui Mining Companies and it sells delivered LPG to wholesalers at its Auckland terminal. At its Christchurch and Dunedin terminals, the wholesalers pay a tolling fee to Liquigas for Liquigas to deliver the LPG purchased by the wholesaler from a North Island producer to the two locations in the South Island.

#### **The Wholesalers of LPG**

10. Shell, NGC, Rockgas and Todd (or related companies) (for the purpose of this report collectively referred to as the LPG wholesalers) wholesale LPG in New Zealand. The function of the LPG wholesalers is to purchase, transport and sell LPG to bulk purchasers (including to retail outlets). Shell, NGC and Rockgas purchase LPG from Liquigas and other LPG producers at its Auckland marine depot. Shell and Todd produce LPG at the Kapuni natural gas field. Rockgas purchases LPG, which is produced at the TAWN<sup>1</sup> natural gas fields. Todd wholesales Kapuni LPG and does not purchase from Liquigas' at present.

#### **The Investigation**

11. The Commission obtained documents from Liquigas, Shell, NGC and Rockgas as a result of notices issued under ss98(a) and (b) of the Act.
12. The Commission also issued notices under ss98(c) and (b) of the Act to executives of NGC, Shell and Rockgas who were members of the Liquigas' board and to the Chief Executive of Liquigas. The Commission interviewed certain executives under s98(c) of the Act.
13. The most relevant material disclosed to the Commission included:
  - minutes of the Liquigas' board meetings;
  - details of a strategic plan developed by Liquigas' management and agreed by its directors and shareholders in May and June 1998 (the strategic plan); and
  - details of an April 1999 document, which was an agreement by Liquigas' directors to partially implement the strategic plan, which had been previously endorsed by Liquigas' shareholders (the implementation agreement).

#### **The Strategic Plan**

14. The strategic plan and the implementation plan determined the price Liquigas was to charge for LPG at Liquigas' Auckland marine depot and the price for the provision of tolling services at Liquigas' Christchurch and Dunedin marine depots. Subsequent to the strategic plan, LPG was purchased by NGC, Shell and

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<sup>1</sup> Tariki/Ahuroa/Waihapa/Ngaere.

Rockgas from Liquigas at the prices stated in the strategic plan and the implementation agreement.

## Consideration of Ingredients of Section 30 in respect of the Strategic Plan.

### Introduction

15. Section 30 of the Act prohibits any person from entering into any contract, arrangement or understanding which has the purpose, effect, or likely effect of fixing, controlling, or maintaining the price for goods or services which are supplied or acquired by the parties to the contract, arrangement, or understanding, in competition with each other.
16. The Commission asked two questions to help establish whether a provision or arrangement might fall within s 30 of the Act, namely:
  - (a) Is the provision part of a contract, arrangement or understanding between competitors (or persons who would be in competition but for the provision)? and
  - (b) If so, does the provision have the purpose, effect or likely effect, of fixing, controlling or maintaining the price of goods or services (or does it provide for the fixing, controlling or maintaining the price of goods or services)?
17. If the answer to both questions is yes, s 30 deems the provision to substantially lessen competition.

### Contract, Arrangement or Understanding

18. In this case, one of the main issues was whether the strategic plan (and implementation agreement) was a contract arrangement or understanding between the Liquigas' shareholders. The strategic plan did not appear to be a contract between the Liquigas' shareholders, i.e. enforceable at law. The question was whether there was an arrangement or understanding.
19. The Act does not define arrangement or understanding. The terms are considered in a number of cases as meaning something less than a formal contract. In the English case, *Re British Basic Slag Ltd's Agreements*<sup>2</sup> where the facts were very close to the present case, the test for the existence of an arrangement was stated in the following terms:

.an arrangement involves:

- a meeting of minds between two or more persons;
- mutuality in that each party would regard himself as being under a moral duty, to conduct himself in a particular way;

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<sup>2</sup> (1962) LR 3 RP 178; [1962] 3 All ER 247; affirmed on appeal (1963) LR 4 RP 116; [1963] 2 All ER 807.

- communication between the parties in some way; and
  - as a result of the communication each party has intentionally aroused in the other an expectation that he will act in a certain way.
20. The *British Basic Slag* test has been accepted in New Zealand and Australian cases. In the present case, to paraphrase the words in *British Basic Slag*, the strategic plan, which was the creation (approved by each in writing) of the Liquigas' shareholders, operated as an inducement to each member company to enter into identical contracts with Liquigas for the purchase of LPG and tolling services at the same price.
21. There was communication between the Liquigas' shareholders. There cannot be an agreed strategic plan approved by the Liquigas shareholders without communication. The mutuality of obligation is the common LPG purchase contract with Liquigas.
22. The Liquigas' constitution requires the shareholders' agreement to any matter affecting the value of the company. The strategic plan affected the value of the company. Therefore, it was not enough for merely the directors to agree to the strategic plan (although the directors did agree), approval of the strategic plan had to be, and was, given by the shareholders.
23. The Commission found that there was an understanding or arrangement established by the following facts:
- the price charged to Shell, NGC and Rockgas was the same;
  - a senior executive told the Commission that the price for LPG set at 33 and a half cents was set by the strategic plan;
  - Liquigas' board minutes record the expectation that prices would be set at board level;
  - in May 1998 the directors resolved to seek shareholders' approval;
  - in 1999, a proposal for partial implementation of the strategic plan recorded that:  
*"In June 1998 Liquigas' shareholders endorsed the strategic plan for implementing a partial tolling regime as summarized under cover of Memorandum dated 6 May 1998 and Liquigas Letter to Directors dated 18 May 1998."*; and
  - in March 2000, minutes of meetings between the directors indicated that the directors were acting not as directors but as representatives of their companies.
24. The Commission found that there was an inextricable interweaving of the roles of shareholders, directors, and purchasers of LPG and tolling services. The Commission considered that an arrangement or understanding came into effect by each wholesaler communicating to Liquigas in the presence of each other and by them observing and interpreting the other's behavior.

**Purpose, Effect, or Likely Effect of fixing, controlling, or maintaining the price for goods that are supplied or acquired by the parties**

25. From the strategic plan and the further evidence described above, the effect of the arrangement or understanding was to fix, control or maintain the price at which Liquigas sold LPG and supplied tolling services.
26. If there was no arrangement between the LPG wholesalers the Commission would expect to find evidence of each wholesaler attempting to negotiate the price of LPG and the price for use of Liquigas' facilities. There were negotiations about the hire of tankage at Liquigas' marine terminal, the quantities each wholesaler was to take from the Auckland marine depot and the purchase of LPG from Liquigas ex the Oaonui production station. The only evidence of the wholesalers negotiating or attempting to negotiate with Liquigas in respect of the prices included in the strategic plan was Todd's attempt in 2000 to achieve a lower price for LPG ex the Auckland marine depot. Liquigas met this attempt with blanket refusal. There is no evidence of the other three wholesalers negotiating in respect of the prices determined by the strategic plan.

**In competition with each other**

27. The Commission has previously found<sup>3</sup> that there is a national LPG wholesale market. Nothing has subsequently occurred to require that market definition to be changed.
28. The Liquigas' shareholders compete with each other in that market. Their operations include the supply of LPG from either Liquigas' marine depots or the LPG production stations at Oaonui, Kapuni and TAWN<sup>4</sup> to bulk consumers of LPG and to retailers of LPG.<sup>5</sup> Shell, Rockgas and Todd are active in both Islands but NGC has only a minor presence in the South Island.
29. With the exception of Todd, the LPG shareholders compete in this market for the purchase of wholesale distribution services and wholesale LPG from Liquigas.

**Conclusion on a *prima facie* breach of section 30**

30. The Commission concluded that there was sufficient evidence to demonstrate a contravention of s 30. There was sufficient evidence to show that the Liquigas' shareholders, in agreeing on the strategic plan for Liquigas, entered into an arrangement that had the effect of fixing the purchase price of LPG and the price of tolling services in the national LPG wholesale market.

**Resolution of the Investigation**

31. The Commission considered the nature of the contravention to determine the appropriate response and whether or not to prosecute Liquigas and its shareholders. The Commission considered the nature of the conduct of those

<sup>3</sup> LPG Investigation Report, 28 September 1993, p30

<sup>4</sup> The Tariki, Ahuroa, Waihapa and Ngaere natural gas fields in South Taranaki. The production station is located at the Waihapa site.

<sup>5</sup> Retailers of LPG include service stations and specialist LPG resellers.



involved and the economic impact of the behavior; that is, the detriment caused. The Commission also considered the nature of the remedies or penalties available.

### **Conduct**

32. The Commission took into account the history of Liquigas and the manner in which this contravention had occurred.
33. Liquigas was formed in 1981 by the then industry players and prior to the introduction of the Act. Initially, Liquigas was designed to capture the advantages and economies of scale of a monopoly. Its contracts were authorised as restrictive trade practices under the Commerce Act 1975. As such, its contractual arrangements contained many provisions that contravened the Act. In the early 1990 s the Commission investigated the industry. In 1993 that investigation resulted in changes to Liquigas' contracts with its then shareholders and changes to its constitution. The Commission and the shareholders agreed a settlement that led to the removal of the relevant terms of the contracts.
34. The strategic plan and the prices set out in that plan were prepared by Liquigas' management. It was appropriate for the strategic plan to be approved by the board. The problem that Liquigas fell into was forwarding the strategic plan to the shareholders, who were also customers of Liquigas, for approval and the shareholders providing their agreement. In the circumstances the Commission was satisfied that this was not a deliberate contravention.
35. The Commission also took into account that although the parties involved strongly disputed the Commission's view that there was a contravention of s 30 of the Act, the parties co-operated with the Commission throughout the investigation and were willing to resolve the Commission's concerns rather than enter into protracted litigation.

### **Economic Detriment**

36. The Commission considered that, there was strong competition between the four LPG wholesalers. The Commission considered the likely impact of the arrangement on the price of LPG. The wholesalers' LPG price ranged between 35 and 48 cents/ litre<sup>6</sup>. Participants in the industry reported that wholesale consumers continually changed suppliers and would do so for a price reduction of 0.5 cents/ litres or lower. There was no apparent evidence that competitive behaviour between Shell, Rockgas, NGC and Todd in the LPG wholesale market was affected by Liquigas' ownership structure.
37. What was affected was the base price at which competitive behaviour in the wholesale LPG market begins. That price was Liquigas' selling price.
38. The Commission considered that, in the short-term, there was unlikely to be substantial economic detriment. Liquigas is contractually able to purchase LPG from the Maui Mining Companies at a price that is well below the world market price. Liquigas' purchase price has remained constant during the last decade

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<sup>6</sup> Depending on the size of the wholesale consumer.

because there is no price escalation clause in the Maui – Liquigas LPG purchase contract subsequent to the Commission’s settlement with Liquigas’ shareholders following its 1993 investigation. In accordance with that settlement, the “pricing policy schedule”, which provided for price escalation, was removed from the purchase contract.

39. In addition:

- as a result of the 1994/1995 settlement with the Commission, wholesalers are able to purchase LPG directly from the Maui and Kapuni Mining Companies and by-pass Liquigas;
- the TAWN fields began producing LPG and Rockgas acquired the whole output and was also able to by-pass Liquigas;
- until the last year light fuel oil and diesel has been very competitive in price with LPG for bulk heating applications; and
- Liquigas has been price constrained.

40. The price of LPG in New Zealand is well under the world market price. Before, and during the period of the operation of the strategic plan, Liquigas has had a constant sale price. This consistency of its sale price, along with retail competition has flowed into wholesale and retail sale prices. For example, the retail price of a 9 kilogram bottle of LPG purchased from service stations has remained constant at between \$14 and \$16 for the last 8 years. Further, the range of wholesale prices quoted above is very similar to that identified by the Commission during its 1993 investigation of Liquigas.

41. The Commission notes that, in the absence of the rather fortuitous circumstances described in the above paragraph, there was, and is, the potential for the arrangement as to Liquigas’ sale prices to be used to raise the wholesale prices of LPG at least to the world market prices of LPG.

#### **The Situation Post-Maui**

42. The following sources of LPG will supply New Zealand’s LPG market (currently about 120,000 tonnes per annum) post-Maui:

- Kapuni via NGC and Todd
- TAWN via Rockgas
- Rimu and Kauri via Swift
- Pohokura via Shell, Todd and Preusag

While much of this LPG will be exported, market sources expect that there will be ample LPG to supply the New Zealand market although the price may rise to export parity.

43. Market sources predict Liquigas will not have a contractual right to any LPG post – Maui and will become solely an operator of marine terminals through which it will toll LPG. The South Island will be supplied through Liquigas’ marine terminals, as it is now. The North Island will be supplied by road tanker and

through Liquigas' Auckland terminal if it can compete on price. If the Auckland terminal is not competitive it will be retained as a strategic asset and used merely for short-term storage of LPG during the winter high demand period.

44. On balance, the current economic detriment was likely to be minimal, but there was the potential for that to change in the future. Furthermore, the presence of competitors at a price-setting forum<sup>7</sup> is inherently an unhealthy situation. Consequently, the Commission considered that the matter needed to be taken further and that the options for further action were:
- retrospective authorisation of the arrangement;
  - prosecution; or
  - administrative settlement.
45. Given the above factors the Commission resolved to seek an administrative settlement. The Commission notified Liquigas and the Liquigas' shareholders of its findings and invited them to offer a proposal to meet the Commission's concerns.
46. The parties responded by offering a settlement that would lead to significant changes to Liquigas' constitution.

#### **The Settlement**

47. The Commission's principal concern was to achieve a separation between the directors acting as directors and acting as representatives or agents for their shareholder principals. The Commission wanted to minimise the risk of shareholders agreeing the prices to be charged by Liquigas.
48. The settlement agreed with the Commission in December 2002 has resulted in the Liquigas' board passing resolutions that:
- each director will act solely in Liquigas' interests
  - a separate pricing committee will be established with a newly appointed independent chairperson with independent powers to set prices
49. A copy of the deed of settlement is attached.
50. The Commission is satisfied that overall the settlement provides a suitable outcome and minimises the risk of shareholders agreeing prices in the future.

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<sup>7</sup> Meetings of Liquigas' board of directors.

Wellington  
J4173

DEED OF SETTLEMENT

**THIS DEED** is made on                      day of                      2002

*BETWEEN*

**THE COMMERCE COMMISSION**, a statutory body incorporated under section 8 of the Commerce Act 1986 ("Commission")

*AND*

**NATURAL GAS CORPORATION OF NEW ZEALAND LIMITED**, a shareholder of Liquigas Ltd ("Liquigas")

*AND*

**NATURAL GAS TRADING LIMITED**, a shareholder of Liquigas

*AND*

**SHELL NEW ZEALAND HOLDING COMPANY LIMITED**, a shareholder of Liquigas

*AND*

**TODD PETROGAS LIMITED**, a shareholder of Liquigas

*AND*

**ROCKGAS LIMITED**, a shareholder of Liquigas

**BACKGROUND**

- A Natural Gas Corporation of New Zealand Limited, Natural Gas Trading Limited, Shell New Zealand Holding Company Limited, Todd Petrogas Limited and Rockgas Limited are shareholders of Liquigas.
- B During 1998 the shareholders of Liquigas endorsed a strategic plan for Liquigas's future operations developed and adopted by Liquigas's Board of Directors. In 1999 the Board partially implemented the strategic plan. The strategic plan and its partial implementation included, among other things, assumptions about prices of goods and services expected to be provided by Liquigas to wholesalers of liquefied petroleum gas ("LPG") in New Zealand. The shareholders (or companies related to them) are wholesalers of LPG in New Zealand and some purchase, or have purchased, goods and services from Liquigas.

- C Having conducted an investigation under section 30 of the Commerce Act 1986 ("Act"), the Commission formed the view that the strategic plan and its partial implementation, were a *prima facie* breach of section 30 of the Act. The shareholders vigorously denied any such breach, *prima facie* or otherwise.
- D The shareholders, and Liquigas's Board, are, nevertheless, willing to create a Pricing Committee and to appoint an Independent Director.
- E As an alternative to litigation the Commission and the shareholders enter into this Deed to resolve all past issues and matters of a kind referred to in paragraph C.

**BY THIS DEED THE PARTIES AGREE AND COVENANT WITH EACH OTHER AS FOLLOWS:**

1. Natural Gas Corporation of New Zealand Limited, Natural Gas Trading Limited, Shell New Zealand Holding Company Limited, Todd Petrogas Limited and Rockgas Limited undertake to amend the Constitution of Liquigas by passing, as special resolutions, the shareholders' resolutions contained in the document annexed as "A" to this Deed by no later than 60 days after the date of this Deed.
2. Natural Gas Corporation of New Zealand Limited, Natural Gas Trading Limited, Shell New Zealand Holding Company Limited, Todd Petrogas Limited and Rockgas Limited undertake that they will advise the Commission when the amendment of the Constitution is completed, when the directors' resolutions referred to in resolution 4.1 of the shareholders' resolutions are passed, and when the Independent Director is appointed.
3. If:
  - (a) the amendment to the Constitution and the said directors' resolutions are not passed within 60 days after the date of this Deed; or
  - (b) the Independent Director is not appointed within 120 days after the date of this Deed; or
  - (c) there is any contravention of this Deed by a shareholder or frustration of the effectiveness or integrity of this Deed in any way by a knowing or reckless act or omission of a shareholder (other in either case than under compulsion of law); or
  - (d) the shareholders' resolutions cease to be in force under resolution 6.2 of those resolutions,

the Commission expressly reserves the right to re-institute its investigation into, and take such further action concerning, the issues and matters referred to in paragraph C of "Background" which occurred prior to the date of this Deed as it deems appropriate in respect of the shareholders or that shareholder (as the case may be). Otherwise, all issues and matters between the parties up to the date of this Deed are resolved by this Deed.
4. The Commission agrees that no act or omission:
  - (a) of Liquigas; or

(b) of a shareholder of, an officer (including the Independent Director) of, an employee of, or a contractor or advisor to, Liquigas,

(persons of a kind described in (a) and (b) all together "relevant persons") pursuant to, in accordance with, and consistently with, the resolutions referred to in clause 1 is to be the subject of, or taken into account or referred to in, any action under section 30 of the Act in connection with the price (or the terms and conditions of the supply) of goods and services by Liquigas. This Deed is a complete bar to, and defence of, any such action. Each relevant person has the benefit of, and may rely on and enforce, this clause 4.

5. This Deed is not confidential. The Commission may in its sole discretion publicise the facts of this settlement and its associated undertakings, or may subsequently refer to them, to the extent that it deems appropriate. The Commission will ensure that all the facts set out in "Background" are included in the publicity. The shareholders and Liquigas respectively have corresponding rights and obligations.

Executed under the name and seal of  
**THE COMMERCE COMMISSION**

---

John Belgrave  
Chair

and signed by  
**NATURAL GAS CORPORATION OF  
NEW ZEALAND LIMITED**

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in the presence of:

Witness:  
Occupation:  
Address:

and signed by  
**NATURAL GAS TRADING  
LIMITED**

\_\_\_\_\_

in the presence of:

Witness:  
Occupation:  
Address:

and signed by  
**SHELL NEW ZEALAND HOLDING  
COMPANY LIMITED**

\_\_\_\_\_

in the presence of:

Witness:  
Occupation:  
Address:

Released under Official Information Act 1982

and signed by  
**TODD PETROGAS LIMITED**

\_\_\_\_\_

in the presence of:

Witness:  
Occupation:  
Address:

and signed by  
**ROCKGAS LIMITED**

\_\_\_\_\_

in the presence of:

Witness:  
Occupation:  
Address:

Released under Official Information Act 1982



"A"

**LIQUIGAS LIMITED****SHAREHOLDERS' RESOLUTIONS**

(Passed, as special resolutions, pursuant to Clause 10.3 of the Constitution)

**Background**

Each of the shareholders has received a letter dated 26 July 2001 from the Commerce Commission which alleges that Liquigas Limited's ("the Company") strategic plan and the partial implementation of that plan is an arrangement for the price of LPG and of tolling services provided by the Company which is, in the Commission's view, *prima facie* in breach of section 30 of the Commerce Act 1986.

The Commerce Commission suggested that the shareholders, and their respective executives, offer proposals to the Commission to settle the matter.

Having taken advice, each of the shareholders and executives denies and will deny any breach of section 27 of the Commerce Act (or of any other section of that Act) whether by virtue of section 30 or otherwise.

Like the Commerce Commission, the shareholders are willing to enter into an arrangement in order to settle the matter.

**Resolutions**

The shareholders unanimously, and as special resolutions, resolve as follows:

**1 Directors' Duties**

1.1 The shareholders' respective economic interests in the Company, which are represented by our shareholdings, are best advanced by each director seeking at all times to fulfil the objectives and principles referred to in clause 4.1.4 of the Head Agreement and, when making decisions, exercising his or her judgement and skills as provided for in clause 10.1 of the Head Agreement.

1.2 It follows that we expect and anticipate that each director will observe and perform in respect of the Company the duties of directors which are specified in the Companies Act.

**2 Pricing of Goods and Services**

2.1 We recognise and agree that the pricing of the goods and services supplied, or available for supply, by the Company is exclusively a matter for consideration and decision by the Company's directors, acting under the Head Agreement, or by a person or committee acting under delegated authority from the Board and in accordance with that authority.

3 *No Agency*

3.1 A director is not, is not to consider him or herself to be, and is not to purport to act as, an agent of a shareholder in performing his or her functions and duties as a director of the Company.

3.2 When, where and to the extent the consent or approval of a shareholder of the Company is required under the Head Agreement or Constitution, that consent or approval cannot be, and is not to be, given by a director, but rather will be dealt with and given by another person separately authorised by a shareholder for the purpose.

4 *Pricing Committee*

4.1 The shareholders support the creation of the Pricing Committee ("*Pricing Committee*") by the Company's board of directors ("*Board*") and the delegation by the Board to the Pricing Committee of powers and duties concerning the pricing of the goods and services supplied, or available for supply, by the Company on the basis of the Appendix to proposed resolutions of the directors, a copy of which has been made available to us and initialled by us for identification purposes.

5 *Independent Director*

5.1 In order to facilitate the operation of the Pricing Committee in accordance with its delegation, and whilst the Pricing Committee remains in existence, the shareholders will ensure that there is an Independent Director in office as a director of the Company as provided for in, and in accordance with, the arrangements set out in the Schedule to these resolutions.

5.2 The shareholders authorise the Board from time to time to consider and set guidelines for the remuneration of the Independent Director and, also from time to time, to authorise the Chairperson of the Board to negotiate and agree the remuneration of the Independent Director and the basis of its payment consistently with those guidelines. An agreement as to his or her remuneration between the person who is appointed as the Independent Director and the Chairperson of the Board of Liquigas is to be valid and binding even if not strictly in accordance with the Board's remuneration guidelines. The Independent Director may recover all his or her reasonable out-of-pocket expenses from Liquigas as provided in the Schedule. Clause 12.7 of the Constitution is disapplied to the extent necessary in order to allow for the remuneration of, and the recovery of out-of-pocket expenses by, the Independent Director.

6 *Status*

6.1 These resolutions, and the Schedule, are to come into force on the date stated below.

These resolutions are to remain in force until the date they cease to be in force by unanimous agreement of the shareholders.

Signed for and on behalf of each of the shareholders in the Company on  
2002 at Wellington.

Natural Gas Corporation of  
New Zealand Limited by:

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Natural Gas Trading Limited by:

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Rockgas Limited by:

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Todd Petrogas Limited by:

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Shell New Zealand Holding  
Company Limited by:

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Released under Official Information Act 1982

## SCHEDULE

### INDEPENDENT DIRECTOR

#### 1 *Selection of Independent Director*

- (i) Each of the shareholders may nominate one or more individuals as a candidate or candidates to be the independent director ("*Independent Director*") of Liquigas Limited ("*Liquigas*"). Each nominee must be an individual who, in the genuinely and reasonably held view of the shareholder, has the characteristics referred to in clause 2 (*Characteristics*) below. Each nomination is to be made in writing sent to Liquigas' company secretary at its head office (and copied to each other shareholder) no longer than 30 days after the nomination date. No late nominations may be made. An individual may not be nominated unless he or she has first agreed in writing to act as the Independent Director if selected as such and has accepted the Board's remuneration guidelines.
- (ii) The shareholders are to consider and consult concerning the nominees. If they are able to, they are to select an individual to act as the Independent Director unanimously. If they are unable to reach unanimity within 60 days of the nomination date then the selection is to be made pursuant to (iii).
- (iii) If this paragraph applies, any shareholder may request Sir Duncan McMullin, failing whom another retired Judge of the High Court or Court of Appeal of New Zealand appointed for the purpose by the President for the time being of the New Zealand Law Society, to select an individual as the Independent Director from among the nominees. In connection with that selection, the former Judge is to:
- select the nominee who, in the former Judge's view, best fits the characteristics referred to in clause 2 (*Characteristics*) below; and
  - consult with all the shareholders (but without in any way being bound by their respective views).
- (iv) The former Judge's fees are to be paid by Liquigas. The former Judge has no liability to Liquigas or to its shareholders in connection with his or her selection or for that person's performance as Independent Director. These promises are for the benefit of the former Judge.

#### 2 *Characteristics*

The ideal characteristics of the Independent Director are that the selected individual:

- (i) is of undoubted personal integrity;
- (ii) has skills and experience, at a senior level, in governance and also in one or more of the following fields: commerce, law, and economics, in each case in, or in connection

with, competitive commercial markets and substantially, and most recently, in the private sector;

- (iii) is actually, and is reasonably perceived to be, independent of any shareholder, of Liquigas or of any existing director. Without limitation this includes that the individual:
- is none of a director, partner, trustee or employee of a shareholder (or of any associate of a shareholder), of Liquigas, or of any existing director;
  - has no direct or indirect financial interest, whether legal or beneficial, in a shareholder or an associate of a shareholder other than a mere, and minor, passive interest as an investor; and
  - is not closely associated, by blood, affinity or otherwise, with any existing director or with any senior executive of any shareholder (or associated company of a shareholder);
- (iv) is under the age of 65 upon appointment; and
- (v) is a person to whom none of clause 12.4(b), (c), (d), (e), (f) and (g) of the Constitution applies upon appointment.

### 3 *Mode of Appointment*

- (i) The person selected by the shareholders, or by the former Judge, to be the Independent Director is to be appointed a director of the Company by the shareholders as described in resolution 5 of the Shareholders' Resolutions of 2002. While those resolutions remain in force:
- clause 12.1 of the Constitution is to be read as if the maximum number of directors specified were 11, and not 10;
  - for the purposes of clause 12.3 of the Constitution a person selected as Independent Director in accordance with clause 1 (*Selection of Independent Director*) is to be appointed by notice in writing given to Liquigas by any one or more of the shareholders;
  - for the purposes of clause 12.3 of the Constitution the Independent Director may only be removed from office under, and in accordance with, clause 4 (*Term of Office and Rights as Director*) below;
  - clause 12.4 of the Constitution is not to apply to the Independent Director and clause 4 (*Term of Office and Rights as Director*) below is to apply in its stead;
  - the Independent Director is not eligible to be appointed the Chairperson of the full Board of Directors of Liquigas whether under clause 15.1 of the Constitution or otherwise; and
  - if and whenever a provision of the Constitution is inconsistent with, overrides, or limits or restricts the application of this Schedule, this Schedule is to prevail and be given effect.

- (ii) For clarity and the avoidance of any doubt, the roles and duties of the Independent Director are as provided for under clause 5 (*Role and Duties*) below and the Companies Act. The Independent Director does not represent, and owes no special or particular duties to, a particular shareholder.

#### 4 *Term of Office and Rights as Director*

- (i) Subject to (ii) and (iii), the Independent Director is appointed for a term of 3 years with effect from the date of his or her appointment to the Board of Liquigas. The shareholders, acting unanimously, may reappoint a person to be the Independent Director for a further term of 3 years with effect from the expiration of that person's first term of office as Independent Director. Such a reappointment may be made during, or after, that person's first term of office. Despite the expiration of a person's term of office as Independent Director the Board, acting unanimously, may resolve that a person continue (and that person is to continue) in office as the Independent Director until a new person is appointed to be the Independent Director by the shareholders, but the Board may not exercise that right in any case to which (iii) below applies.
- (ii) Clauses 12.4(b) to (g) of the Constitution apply in respect of the person appointed as the Independent Director.
- (iii) A person who is the Independent Director may be removed from office as such by a unanimous resolution of the shareholders, in which case (unless, at the same time, a new permanent Independent Director is appointed in accordance with this Schedule) the shareholders are promptly to institute the procedures provided for in clause 1 (*Selection of Independent Director*) above.
- (iv) The Independent Director has no vote at a meeting of the full Board of Liquigas, but may attend, receive papers and information and fully and freely participate in all the proceedings of that Board and is entitled in every way to the rights of, and to be treated as, a director of Liquigas.
- (v) The Independent Director and the Chairperson of the Board of Liquigas are to agree (and Liquigas must pay) the remuneration of the Independent Director and the basis of its payment. This agreement is a determination pursuant to, and as required by, clause 12.7 of the Constitution. In addition the Independent Director may recover from Liquigas (and Liquigas must pay) all his or her reasonable out-of-pocket expenses of, and in connection with, the performance of his or her duties as a director and as a member of the Pricing Committee, including (without limitation) insurance (unless, and to the extent not, arranged by Liquigas), travel, accommodation, sustenance, secretarial assistance, and advice. These promises are for the benefit of the Independent Director.

#### 5 *Role and Duties*

- (i) The role of the Independent Director is:
- to act as a director of Liquigas and to familiarise him or herself with its business; and

- to act as the Chair of the Pricing Committee.
- (ii) The duties of the Independent Director include:
- those specified in the Companies Act;
  - to comply with the Constitution and Head Agreement and, in particular, clause 4.1.4 and clause 10.1 of the Head Agreement; and
  - to observe and act consistently with the Board's delegation to the Pricing Committee.
- (iii) The Independent Director:
- is to be insured and indemnified in respect of his or her acts and omissions as provided for by clause 13 of the Constitution; and
  - is not responsible to, or liable to, Liquigas or any shareholder in respect of his or her acts or omissions as relate to or affect Liquigas, other than for his or her deliberate default or misfeasance. This promise is made for the benefit of the Independent Director.

6. *Repetition*

- (i) These arrangements concerning, among other things, the selection, appointment and role and duties of the Independent Director of Liquigas are to apply if and whenever that is required.
- (ii) For these purposes the nomination date referred to in clause 1 (*Selection of Independent Director*) above is:
- the first date upon which this Schedule comes into force;
  - any subsequent date upon which the person in office as Independent Director dies, ceases to perform as such, or is disqualified.