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COMMERCE COMMISSION

DECISION NO. 310

Determination pursuant to the Commerce Act 1986 (the Act), and in accordance with a delegation given in terms of section 105 of the Act, in the matter of an application for clearance of a business acquisition involving:

ROCKGAS LIMITED

and

GAS AGAIN SUPPLY CORPORATION LIMITED

- The Commission:** T G Stapleton
K M Brown
- Summary of Proposal:** The acquisition by Rockgas Ltd of the LPG business and all related assets of Gas Again Supply Corporation Ltd
- Determination:** Pursuant to s 66(3)(a) of the Act, and in accordance with a delegation given in terms of section 105 of the Act, the Commission determines to give a clearance for the acquisition.
- Date of Determination:** 2 October 1997

AUT/BA-R9/4
M2353

MEMORANDUM

To: Terry Stapleton
Kate Brown

From: Jo Bransgrove
David Ainsworth

Date: 2 October 1997

Subject **APPLICATION FOR CLEARANCE FOR
ROCKGAS LTD TO ACQUIRE THE LPG
BUSINESS AND ALL RELATED ASSETS OF GAS
AGAIN SUPPLY CORPORATION LTD**

Notes:

Confidential material in this report is contained within square brackets.

Working day 10 6 October 1997

THE ACQUISITION

- 1 Rockgas Ltd (Rockgas) has given notice dated 18 September 1997 in terms of section 66(1) of the Commerce Act 1986 (the Act) seeking clearance for the acquisition of the LPG business and all related assets of Gas Again Supply Corporation Ltd (Gas Again) by way of an Agreement for Sale and Purchase of Business.
- 2 The assets to be acquired comprise all stock, debtors, fixed assets, sales contracts and the goodwill of the business and the fixed assets to be acquired are shown in Appendix One.
- 3 The application was registered on 22 September 1997. The matter therefore requires a decision by 6 October 1997.

THE PARTIES

Rockgas Ltd

- 4 Rockgas is an LPG wholesaler and retailer. Its ownership is 50% Boral Gas Industries Ltd and 50% Caltex Gas New Zealand Ltd.
- 5 There is an ownership chain from Boral Gas Industries Ltd to the ultimate Australian parent, Boral International Pty Ltd. Caltex Gas New Zealand Ltd is a subsidiary of Caltex New Zealand Ltd, an owner, operator and lessor of service stations.
- 6 Rockgas has two 50% owned subsidiaries, Gas Call Ltd (Gas Call) and Alpine Gas Ltd. These firms are located in Wiri, Auckland and Timaru respectively and are LPG re-sellers. The other owners of Gas Call are private individuals. Alpine Gas Ltd is a joint venture between Rockgas and Alpine Energy Ltd, the local power company. Rockgas also has a 8.5% shareholding in Liquigas Ltd, the national LPG distributor.
- 7 Rockgas wholesales LPG to Mobil and Caltex service stations, large consumers with bulk storage tanks and LPG re-sellers. It also has a retail division of the company which has retail outlets in six South Island centres and in Hamilton and Auckland (Gas Call).
- 8 The purpose of the acquisition is to increase the presence of Rockgas in the

largest retail LPG market in the country.

- 9 Rockgas has previously obtained clearances to acquire Christchurch Gas Ltd¹ and part of the LPG business and related assets of BP Oil NZ Ltd²

Gas Again Supply Corporation Ltd

- 10 Gas Again is an LPG re-seller. It is 100% owned by a private individual, Mr W L Eatson. Gas Again has no subsidiaries. Mr Eatson has no other interests in the LPG industry.

THE NEW ZEALAND LPG INDUSTRY

The Product

- 11 LPG is a fuel whose composition comprises either 100% propane (C₃H₈), 100% butane (C₄H₁₀), or any mixture of the two. The physical properties of the two gases are such that, alone or as a mixture, they can be liquefied under moderate pressures and at normal temperatures.
- 12 The most common composition of LPG consumed in New Zealand is a 60 % propane 40% butane mix although the use of 100% propane is increasing.

The Producers

- 13 New Zealand's LPG is produced in the North Island by:
- the Maui Joint Venture. The Maui field currently has the ability to produce up to 200,000 tonnes per annum (tpa) of LPG, but this amount depends on the flows of natural gas to thermal power stations for the production of electricity.
 - the Kapuni field. The Kapuni field has the ability to produce about 35,000 - 40,000 tpa of LPG (once again depending on the volume of gas off-take). NGC is the producer but has contractual commitments to re-sell about 19,000 tpa to the Kapuni Joint Venture partners. NGC retains the balance of Kapuni's LPG production to sell to its wholly owned subsidiary Propane Gas Ltd (PGL), Rockgas, and in the near future to the co-generation plant under construction at Kapuni ; and

- Fletcher Challenge Energy Ltd³ from the Tariki, Ahuroa and Waihapa fields collectively known as TAW. These fields have a production capability of up to 20,000 tpa of LPG (depending on the gas off-take). All TAW LPG is contractually committed to Rockgas.
- 14 The Kupe natural gas field also will produce LPG when it comes into production.

The Distributors and Wholesalers

- 15 LPG is distributed by ship by Liquigas Ltd and sold to wholesalers at marine storage depots in Auckland, Christchurch and Dunedin, by Liquigas⁴. LPG is also distributed by road tanker by Shell New Zealand Ltd (Shell), Rockgas and PGL.
- 16 LPG is sold at wholesale by Shell, Rockgas and BP⁵ in both the North and South Islands. PGL operates only in the North Island. Wholesalers sell bulk LPG to large consumers and LPG retailers such as service stations and LPG re-sellers who fill consumers cylinders and bottles.
- Estimated sales volumes and market shares of the wholesalers provided by Rockgas are as follows:[

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The Retailers

- 17 There are two types of LPG retailer.
- 18 A proportion of service stations have bulk LPG storage tanks and associated pipework installed and such service stations retail LPG for use in vehicle LPG tanks and LPG cylinders for commercial and domestic consumption. Automotive LPG use is approximately 45% of total consumption but is declining at the rate of 10% per annum.
- 19 LPG re-sellers⁶ are retailers whose business is uniquely concerned with the sale of LPG and, in some cases, LPG appliances. This type of re-seller receives LPG into its storage tank from its contracted wholesaler, and dispenses it either on its site to automotive and domestic customers, or by delivered exchange cylinder to commercial and larger domestic consumers. Typical commercial consumers are restaurants, manufacturers who need bulk process heat (and are not reticulated for natural gas) and forklift operators who use LPG inside storage buildings.

- 20 An average throughput service station may retail 100 tpa. Other non-service station retailers may retail more than 10 times that amount.
- 21 Shell, BP, Rockgas and PGL operate in the retail LPG markets. BP and Shell retail through their service station networks. Rockgas and PGL own LPG retailers. There are a significant number of other companies which also operate in the retail market.
- 22 This application concerns the acquisition by Rockgas of a private company operating as an LPG retailer in Auckland.

MARKET DEFINITION

Product Market

- 23 The two possible product markets appear to be that for LPG and that for energy.
- 24 On the supply-side, the limited possibility for supply-side substitution appears to indicate that LPG may form its own product market rather than being part of a wider energy market. LPG is a by-product of natural gas production, and the quantity of LPG produced is dependent on the level of natural gas production.
- 25 On the demand-side, there is a wide variation in the degree to which different consumers can substitute different fuel types. Some applications are dependent on LPG, particularly in the absence of natural gas as an alternative fuel. In other applications, LPG offers significant advantages which limit the cost-effectiveness of substituting a different fuel type.
- 26 Applications involving the production of steam from boilers more readily allow substitution, particularly between LPG and diesel fuel. Conversion of a boiler to allow it to fire either or both of the two fuels is not generally an onerous or expensive task.
- 27 Given the above discussion, staff consider that it is more likely that the relevant product market is for LPG rather than energy. If the acquisition is analysed by use of an LPG product market, that is more likely to reveal competition concerns than if a wider energy market is used. If no competition concerns are apparent using an LPG product market, then it follows that there will be no concerns if the acquisition was analysed in a wider energy market.

Functional Market

- 28 There is no aggregation in the wholesale market as a result of the acquisition. Given the significant presence of Shell, PGL and BP in the wholesale market and the absence of aggregation in that market, staff consider that no issues arise in the wholesale market as a result of the acquisition.
- 29 Gas Again is a retailer. Rockgas has a presence in the retail market. Therefore any aggregation resulting from the acquisition will occur in that market.

Geographic Scope

- 30 The geographic scope of a market attempts to define the range at which market behaviour in one geographic area can be said not to affect significantly the market behaviour in another.
- 31 Gas Again has two retail depots located at Mount Wellington and Henderson in the greater Auckland area. Rockgas's subsidiary, Gas Call, has its retail depot located at Wiri. Rockgas has a further retail depot at Manukau City, a portion of which is leased to Simply Gas Ltd, an independent retailer.
- 32 In respect of the relevant retail market for LPG, it appears that while retail consumers of relatively small quantities of LPG might be persuaded to travel from one side of greater Auckland to the other by a better price, they would not be so persuaded to travel to Whangarei or Hamilton. Similarly, due to the high weight and volume characteristics of LPG cylinders relative to their value, suppliers are not able to service customers who are long distances from their filling depots. That is, travel and transport costs are the most important factor in delineating the market. It is therefore the view of staff that the geographic scope of the relevant market is confined to the greater Auckland area.

Conclusion on Market Definition

- 33 Therefore, staff consider that the acquisition is best analysed using the retail market for LPG in the greater Auckland area (the greater Auckland retail market).

COMPETITION ANALYSIS

- 34 The suppliers to the greater Auckland retail market consist of service stations and LPG re-sellers. The total amount of LPG retailed by service stations is around [] tpa while other LPG retailers sell around [] tpa .
- 35 The four major oil companies compete in the greater Auckland retail market at a total of 102 sites. There are 13 other LPG retailers also competing in that market.
- 36 Although Rockgas does not currently have any direct financial interests in service stations, it is 50% owned by Caltex New Zealand Limited. Of the above amount of LPG retailed in Auckland service stations, [] tpa is retailed in Caltex service stations.
- 37 Rockgas currently has a 50% interest in Gas Call which retails about [] tpa of LPG. Gas Again has annual sales of about [] tpa.
- 38 Presently Gas Call and the Caltex service stations hold about a []% share of the greater Auckland retail market. Post-acquisition that figure would increase to about []%.
- 39 Consequently, the aggregation of market share as a result of this acquisition does not appear to raise dominance concerns.
- 40 Rockgas appears to face a significant constraint at the retail level from retailers owned by Shell, BP and PGL. These three companies are, like Rockgas, vertically integrated through the distribution, wholesale and retail LPG markets and appear to constrain the ability of Rockgas to extract monopoly profits at any level.
- 41 In terms of new entrant re-sellers, the barriers to entry in establishing a re-selling business appear to be relatively low, with the major constraint being the ability to gain access to suitable land on which a bulk tank and filling facilities can be sited. A new entrant should be able to access LPG from either Shell, Rockgas or PGL. Furthermore, new or existing retailers may be able to vertically integrate into wholesaling by obtaining direct supply from the producers or Liquigas. The potential for new entry also constrains the ability of Rockgas to extract monopoly profits at the retail level.
- 42 The impact of new entry in the greater Auckland retail market is illustrated by Mr Eatson's statement to staff that after establishment of his LPG business in 1988, his sales rose rapidly to a level of about [] tpa, but have remained relatively static since PGL entered the market in 1991.
- 43 Finally, all LPG retailers face some constraint from the varying ability of consumers to switch to a competing fuel if LPG is priced less competitively than at present.

CONCLUSION

- 44 Staff have had regard to the information discussed above and the factors set out in section 3(9) of the Act and are satisfied that the acquisition would not result, and would not be likely to result, in the acquisition or strengthening of a dominant position in the retail market for LPG in the greater Auckland area.

RECOMMENDATION

- 45 It is recommended that, in terms of section 66(3)(a) of the Act, the Commission give clearance to the acquisition.

Investigator

Manager

DETERMINATION ON NOTICE OF CLEARANCE

We agree with the recommendation.

We are satisfied that implementation of the acquisition would not result, and would not be likely to result, in any person acquiring or strengthening a dominant position in a market.

Accordingly, pursuant to s 66 (3) (a) of the Commerce Act 1986 (the Act), and in accordance with a delegation granted under section 105 of the Act, we hereby give clearance for the acquisition by Rockgas Ltd of the LPG business and all related assets of Gas Again Supply Corporation Ltd.

In terms of section 66(5) of the Act this clearance shall expire 12 months after the date of this notice. Brief particulars of this clearance will appear in the Commission's public register.

This clearance is given only to the proposed acquisition described in the notice seeking clearance dated 18 September 1997.

Dated at Wellington this day of October 1997

T G Stapleton
Member

K M Brown
Member

¹ In August 1995.

² In May 1996.

³ Along with other minor shareholders.

⁴ Liquigas also distributes small quantities of LPG by road to Hamilton and about Taranaki.

⁵ BP now only wholesales to its own branded service stations. It contracts the LPG deliveries to Rockgas.

⁶ The term “re-seller” is an LPG industry expression used to describe the business of retailers other than service stations. The Commission considers that both service stations and re-sellers operate in the retail market and no distinction between the two types of retailer will be made subsequently in this report.