



January 1999

**Investigation of Transco's
Connections Operations**

**Preliminary Conclusions and
Consultation**

Contents

	Page
1. Introduction	2
2. Background	6
3. Summary of Ofgas' Findings	12
4. Conclusions	16
Appendix 1 Summary of Ofgas' Survey of Independent Public Gas Transporters and Self Lay Installers	20
Annex Survey form and guidelines	21
Appendix 2 Transco's Published Standard of Service for Connection Activities and Performance Levels Achieved	24
Appendix 3 Notice under Section 29 of the Gas Act 1986	25
Annex 1 Draft of Proposed Order under Section 28 of the Gas Act 1986	28
Attachment 1 Compensation Scheme for Late Responses by Transco to Requests for Quotations	30
Attachment 2 Compensation Scheme for Failure by Transco to Quote in Accordance with its Published Methodology	34
Annex 2 Report on Investigation	36
Annex 3	
Part 1 Summary of Transco's Submissions	54
Part 2 Ofgas' Views on the Report, on Transco's Submissions and on the need for an Enforcement Order	57
Part 3 Notes on the Proposed Order	59
Annex 4	
Part 1 Ofgas' Conclusions in Relation to the Gas Act 1986 and Licence Breaches	60
Part 2 Ofgas' Conclusions in Relation to the Competition Act 1980	62
Annex 5 Quality Systems ISO 9001	64

1. Introduction

1.1 The Purpose of this Document

Ofgas has conducted an extensive investigation of Transco's connections operations following a number of complaints about allegedly anti-competitive practices by Transco. This document sets out Ofgas' findings and preliminary conclusions following the investigation. The investigation has resulted in Ofgas issuing notice under section 29 of the Gas Act 1986 of a proposed enforcement order against Transco under section 28.

Ofgas is seeking views on the matters arising from the investigation of Transco's connections operations. Views are specifically invited on the form of, and need for, the enforcement order now proposed.

1.2 The Process so Far

In the course of 1997 and the early part of 1998 Ofgas received a number of complaints about potentially anti-competitive practices by Transco in relation to its connections operations. In March and April 1998 Ofgas surveyed independent Public Gas Transporters (PGTs) and self lay installers to obtain a better understanding of the nature and extent of the matters complained of (see Appendix 1). As a result of that survey Ofgas decided that it was necessary to conduct a fuller investigation.

On 23 July 1998 Ofgas formally required Transco to furnish information to Ofgas to facilitate the investigation. Between July and early December, Ofgas staff, along with external solicitors and accountants, visited eight local Transco offices and examined several thousand pages of documents relating to connections quotations.

On 25 September 1998 Ofgas provided Transco with an interim report containing its provisional findings as to the facts established by its investigation. On 20 October 1998 Transco submitted a detailed response to Ofgas' interim report. Transco submitted further information to Ofgas on 4 November 1998 and on 17 December 1998.

1.3 Outline of this Document

Chapter 2 sets out the regulatory background to this investigation. Chapter 3 summarises the findings of the investigation. Chapter 4 sets out Ofgas' preliminary conclusions and requests views from interested parties. Appendix 1 covers Ofgas' March/April 1998 survey of independent PGTs and self lay installers. Appendix 2 gives details of Transco's standards of service for connection activities and of its record of performance against those standards during the period between August and November 1998. Appendix 3 contains Ofgas' notice under section 29 of the Gas Act 1986 of its intention to make an enforcement order against Transco under section 28 that Act. A draft of the proposed order is at Annex 1 to Appendix 3. Annex 2 to Appendix 3 provides a detailed report of Ofgas' findings following our investigation of Transco's connections operations. Annex 3 to Appendix 3 is in three parts: part 1 summarises Transco's submissions provided in the course of Ofgas' investigation; part 2 gives Ofgas' views on Transco's submissions and provides Ofgas' detailed reasoning on the need for an enforcement order; part 3 sets out some notes on the proposed order. Annex 4 to Appendix 3 is in two parts: part 1 provides Ofgas' conclusions in relation to Gas Act and licence breaches by Transco and part 2 provides Ofgas' conclusions in relation to the Competition Act 1980. Annex 5 to Appendix 3 describes Quality Systems ISO 9001 to which Ofgas is proposing to require Transco to adhere.

1.4 Summary of Findings and Conclusions

Ofgas' investigation found:-

- ◆ shortcomings in the administrative systems in Transco's offices;
- ◆ cases of inconsistency in the preparation of quotations;
- ◆ failure to respond to requests for quotations within Transco's own standards of service;
- ◆ instances of significant over-quoting; and
- ◆ some instances of significant under-charging.

Ofgas has concluded that Transco is in breach of obligations under its licence and under the Gas Act.

Ofgas proposes to take enforcement action which will require Transco:-

- ◆ to obtain certification that it has good quality systems for the provision of quotations for connections. To this end Ofgas will require Transco to obtain ISO 9001¹ certification for its connection quotation activities;
- ◆ to introduce a compensation scheme for persons given late or wrong quotations; and
- ◆ to arrange independent audit of its performance in providing quotations for connections.

Ofgas also proposes to bring forward proposals to separate fully Transco's connections and system extensions business from its main transportation business as soon as possible.

1.5 Next Steps

A 28 day consultation period now applies during which time representations may be made to Ofgas on the matters arising from Ofgas' investigation of Transco's connections operations, including on the form of, and the need for, the enforcement order against Transco now proposed by Ofgas.

Subsequently Ofgas intends to publish a further consultation document covering issues which still need to be addressed in order to secure effective competition. In particular, Ofgas will make detailed proposals for the complete unbundling of Transco's connections and system extensions activities from its other businesses to be effective at the earliest possible date.

If you wish to comment on the issues raised in this document, or any related matter, it would be helpful to receive your reply by 8 February 1999. Responses should be addressed to:

Dr Eileen Marshall CBE
Deputy Director General
Office of Gas Supply
Stockley House
130 Wilton Road
London SW1V 1LQ.

¹ See Annex 5 to Appendix 2 for details of ISO 9001.

We intend to place the replies to this consultation in our library. It is open to respondents to mark all or part of their responses as confidential. However, we would prefer, as far as possible, that responses were provided in a form that can be placed in Ofgas' library. If you have any queries concerning this document either Sean O'Hara on 0171 932 1637 or Philippa Pickford on 0171 932 1640 will be pleased to help.

2. Background: The Regulatory Framework

BG Transco (Transco) is a PGT which owns and operates the main gas transportation system in Great Britain. Transco also provides a variety of connections and system extensions to its extensive gas transportation network in order to facilitate the transportation of gas to individual premises (large and small), to new multi-premise developments and in-fills not previously served by gas, to third party pipeline systems and to gas processing and storage facilities.

Provisions in the Gas Act 1986 (as amended by the Gas Act 1995) and conditions in the PGT licence are designed to enable competition to develop in the provision of connections and system extensions. The Director General of Gas Supply (DGGs) also has powers under general competition legislation.

The following sections summarise the main aspects of the regulatory framework which are relevant to the present investigation.

2.1. The Gas Act 1986

a) The Director General's Duties

The DGGs has the duty to exercise the functions assigned to him under the Gas Act 1986 in the manner which is best calculated to meet the objectives described in section 4 of the Gas Act. These objectives include securing effective competition:

- ◆ in the conveyance of gas through pipes to pipeline systems and to areas to which it has not previously been so conveyed;
- ◆ in the supplying and laying of service pipes; and
- ◆ in activities which are ancillary to the shipping and supply of gas.

b) The Director General's enforcement powers

Under section 28 of the Gas Act 1986, where the DGGs is satisfied that a licence holder is contravening, or is likely to contravene, any licence condition or certain

statutory requirements, he shall, by a final or provisional order, make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

c) *The Licensing of Public Gas Transporters*

The licensing of PGTs is governed by section 7 of the Gas Act 1986. Broadly speaking, under the Gas Act, the business of PGTs in respect of connections and system extensions is of two types. First, there are supply point connections within a PGT's licence area which would be made between individual premises and the PGT's system and would generally not involve a system extension. The party seeking the connection would have the option of arranging for someone other than the PGT to supply and lay the pipe ("self lay installers"). However, in cases where a self lay connection is made, the PGT is only obliged to make the connection if the pipe is "fit for purpose". In cases where the premises consume less than 75,000 therms a year, the service pipe then becomes the property of the PGT, which must maintain and operate the connection.

The second type involves new developments, in-fill projects and single premises for which a system extension is required. In these cases, in addition to competition from self lay installers, competition will also come from other PGTs.

d) *Duties of Public Gas Transporters*

Under section 9(1) of the Gas Act 1986, a PGT has a duty to develop and maintain an efficient and economical system, and, subject to this, to comply with any reasonable request for a connection if it is economical to do so. Under section 9(2) a PGT also has a duty to avoid any undue preference or undue discrimination in the connection of premises.

e) *Rights to Use a Public Gas Transporter's System*

Persons are entitled to have access to the PGT's pipeline system. This access usually is acquired through negotiation with the PGT, with conveyance on the terms of the PGT's network code. In the event that this negotiation is unsuccessful, an application may be made to the DGGs to give directions as to the terms under which the PGT should enter into an agreement with the applicant to provide such access.

f) *The Public Gas Transporter's Licence - connections*

Two standard conditions of the PGT licence pertain specifically to connections and system extensions. Condition 5 requires the PGT, if so directed by the DGGS, to furnish to the DGGS and publish connection charge policy statements. It also requires that the PGT not charge directly for the first 10 metres it lays in the public highway for any connection to premises consuming less than 2,500 therms a year which are less than 23 metres from a relevant main of that PGT. (This does not apply to charges which are payable under certain regulations or which are supplemental transportation charges.)

Condition 6 makes provision for supplemental transportation charges, such that a PGT may recover the cost of a system extension over time through transportation charges. This charging methodology must have the DGGS' approval.

Transco also has additional special licence conditions. The treatment of connections and system extensions for price control purposes is presently set out in special condition 9C of Transco's PGT licence.

g) *The Public Gas Transporter's Licence – unfair commercial advantage*

Standard condition 11(1) of the PGT licence requires a PGT to conduct its transportation business in the manner best calculated to ensure that neither the PGT or any person related to it, nor any gas shipper, obtains any unfair commercial advantage.

2.2 *Competition Legislation*

The DGGS has concurrent powers with the Director General of Fair Trading under the Fair Trading Act 1973 and the Competition Act 1980. In relation to these concurrent powers, Ofgas works in conjunction with the Office of Fair Trading (OFT) under the terms of an agreement between the DGGS and the OFT. In exercising his functions under the competition legislation, the DGGS must act in accordance with his section 4 duties under the Gas Act 1986 (as amended by the Gas Act 1995). The new Competition Act 1998, which will confer additional concurrent powers on the DGGS, does not take effect until March 2000 and therefore has not been relevant in this investigation.

2.3 Unbundling of Transco's Connections Business

In Ofgas' initial proposals² for Transco's price control (covering the period April 1997 to March 2002) Ofgas said that we placed great importance on the unbundling of Transco's connections and system extensions business, in order better to secure effective competition in these services, in line with the DGGs' duties. However, in the information it provided to Ofgas for the price control review, Transco was unable to identify clearly all the costs of connecting premises to its existing system or extending the system. Transco therefore suggested that the costs and revenues from connections and extensions should initially continue to be covered by the main Transco price control to allow more time correctly to identify the relevant costs. Ofgas accepted this position.

In August 1996³ Ofgas issued a consultation paper on competition in connections which was followed up by a position paper in February 1997⁴. As part of our final proposals for Transco's price control which were summarised in the August document, Ofgas proposed that the unbundling of Transco's new connections and system extension services be targeted for April 1998, subject to further consultation.

BG plc rejected the DGGs' final proposals for the Transco price control and the matter was referred to the Monopolies and Mergers Commission (MMC). The MMC said in its May 1997 report that it was concerned that the unbundling of further activities within the next two years could prove a distraction at a time when the priority was to increase domestic competition. In Ofgas' final price control proposals document⁵ following the MMC's Report we noted that BG plc was concerned that unbundling within the next two years could prove a distraction. However, we reiterated our belief that unbundling was necessary to secure effective competition in connections and system extensions. Taking into account the views expressed, we proposed issuing a separate consultation document covering the unbundling of connections and system extensions with the aim of implementing the new arrangements from April 1999 (as opposed to April 1998 as Ofgas had originally proposed).

² '1997 Price Control Review – British Gas' Transportation and Storage: The Director General's initial proposals', Ofgas, May 1996.

³ 'British Gas Transco: connection and system extensions – Regulating for competition: A consultation document', Ofgas, August 1996.

⁴ TransCo: connection and system extensions. Regulating for competition, Ofgas, February 1997.

⁵ 'BG Transportation and Storage - The Director General's Price Control Proposals – April 1997-March 2002: Notice of Proposed Licence Modification' Ofgas, October 1997.

2.4 Ofgas Connections Steering Group

The Ofgas Connections Steering Group was formed in April 1997 to help resolve issues arising in relation to competitive connections and system extensions and thereby to help secure effective competition in these services. The Group, chaired by Ofgas, comprised representatives of Transco, other PGTs, self lay installers, gas shippers, the Health and Safety Executive, the Institute of Gas Engineers, the Gas Consumers Council, the Energy Intensive Users Group, and the Food and Drink Federation. There have been 17 meetings of the group, the most recent meeting being held in December 1998.

Competition in connections has developed considerably since the Steering Group was formed. There are now six Non-Transco PGTs⁶ which are currently winning over 50% of new housing developments. The self lay installers are mainly concentrating on large one-off connections to premises consuming over 2,500 therms a year. Some self lay installers also act as contractors to Transco and/or other PGTs.

The Steering Group has resolved a number of issues, including the circumstances in which Transco should exercise its right to object to applications for licence extensions from other PGTs in respect of areas in which some or all of the premises are within 23 metres of a Transco relevant main; the provision by Transco of its digital asset records (maps showing the location of all of its pipeline networks on CD ROMs) to other PGTs and self lay installers, which should facilitate network planning by those companies. It should also reduce the need for discussion with and information from Transco for the design of system extensions. In addition Transco has implemented, since July 1998, a shallow definition of connection, bringing its policy for charging for reinforcement into line with Ofgas' recommendations in its August 1996 and February 1997 documents on competition in connections. Generally this will result in a significant reduction in the upfront cost to customers of connections to Transco's network which require system reinforcement. Previously the costs of reinforcing the main pipe-line system, as well as the cost of the service pipe would have been charged to the customer. Now the reinforcement cost will be recovered over the life of the pipes through gas transportation charges.

⁶ See Appendix 1 for names of PGT licence holders

2.5 Connection Charging Statement and Standards of Service

Transco publishes a connection charging statement setting out the methodology it uses for deriving quotations for connections. It has a duty to not unduly discriminate against or show undue preference towards any party requesting connections and therefore should apply this charging statement in all quotations it makes. However, as Transco has furnished and published these statements voluntarily it has not been subject to a duty under the terms of its licence to comply with them.

Transco also has published standards of service for returning quotations for connections. Since September 1998 it has provided a report on its performance against standards to the Connections Steering Group on a monthly basis. A summary of these standards and of Transco's performance in relation to them in the period from August to November 1998 is at Appendix 2. There are currently no liabilities attached to failure to meet these standards of service.

2.6 Utilities Contracts Regulations:

The Utilities Contracts Regulations 1996 govern the award of certain contracts by utilities. The regulations are made under the European Communities Act 1972 and give rise to a right of action for damages for persons suffering loss or damage in consequence of a breach of the duty to comply with the regulations. Failure to comply with the regulations could give rise to questions as to whether a PGT was developing and maintaining an efficient system or whether competition was restricted, prevented or distorted.

3. Summary of Ofgas' Findings from the Investigation into Transco's Connections Operations

3.1 Scope of Investigation

Ofgas' investigation concentrated on specific complaints which were made to it or arose from Ofgas' survey of PGTs and self lay installers carried out in March and April 1998. A sample of the transactions complained about were considered in detail at the eight Transco district offices visited by Ofgas. Other complaints were raised with Transco in writing. The complaints received related to, or gave rise to concerns related to, the following areas of Transco's connection activities; these areas therefore were the main focus of the investigation:

1. Transco's office administration and systems for giving quotations for connections

Although no complaint was made specifically about Transco's office administration and systems for giving quotations for connections, it quickly became apparent in the investigation that office administration and systems in Transco offices were variable and of poor appearance. Having inefficient office administration and quotation systems could lead to Transco obtaining an unfair commercial advantage over competing PGTs and self lay installers: they would be made to appear to their customers to be less efficient than they would appear if they were receiving timely, accurate and consistent quotations from Transco.

2. Transco's timeliness in responding to requests for connections

Delayed responses to requests for connections also could lead to Transco obtaining an unfair commercial advantage over competing PGTs and self lay installers: in addition to appearing to their customers to be less efficient than they would appear if they were receiving timely quotations from Transco, some of them might also incur additional expense in hiring extra staff to chase Transco over late quotations.

3. Transco's quoting for connections for PGTs and self lay installers

Over-quoting for connections can deter customers from making a connection to the Transco network. If not corrected, over-quoting can result in customers paying more money than they should do for connections. In addition if one customer was over-

quoted whilst others were quoted the correct level, Transco would have unduly discriminated against the first customer.

4. Charging for connections undertaken by Transco

Under-charging for connections undertaken by Transco may result in an unfair competitive advantage to Transco: its competitors may be unable to offer competitive quotations, resulting in Transco winning contracts which it would not otherwise be awarded.

5. Source pressures offered by Transco

Source pressures are the pressures available at the point of off-take from the Transco network; they govern the design parameters for system extensions. The higher the pressure offered the smaller the diameter of pipes which may be used and therefore the lower the cost of the overall extension. Concerns have been expressed that the source pressures offered by Transco may be inaccurate or differ from the source pressures available at the off-take, possibly resulting in networks being over or under engineered. The first of these is uneconomic and the second could potentially lead to a system failure.

6. Transco's treatment of Mr Andrew Duffield and Exoteric Gas Solutions

Mr Andrew Duffield and his company, Exoteric Gas Solutions Ltd (EGS), a self lay installer have alleged that Transco has deliberately discriminated against them.

7. Transco's procedures for the award of contracts

Mr Duffield and EGS complained that Transco breached section 4(3) of the Utilities Contracts Regulations 1996 in the tendering and award of certain contracts. Although the remedy provided by the regulations for a breach of the regulations is a civil right of action by the person suffering loss or damage in consequence of the breach, Ofgas looked into the complaint for completeness and because it raised possible questions as to whether Transco was maintaining an efficient and economic pipeline system and whether competition in activities ancillary to gas transportation was restricted, distorted or prevented.

3.2 Findings from Ofgas' Investigation

In this section we summarise the main factual findings from Ofgas' investigation. A full report of the complaints and Ofgas' factual findings is provided in Annex 2 to Appendix 3. In summary, Ofgas' investigation found:-

1. Transco's office administration and systems for giving quotations for connections

Transco has been inconsistent in the quotations it gives for connections and this is not restricted to the period immediately after the introduction of competition in connections. While Ofgas accepts that the production of quotations is a complex activity we find that many of the inconsistencies are due to Transco failing conscientiously to apply its own procedures.

2. Transco's timeliness in responding to requests for connections

There has been a failure by Transco to respond to requests for quotations when they are first received and within Transco's own standards of service and this failure is widespread. Transco's reporting has been likely to understate its failure to perform.

3. Transco's quoting for connections for PGTs and self lay installers

There have been cases of significant over-quoting by Transco in relation to connections.

4. Charging for connections undertaken by Transco

The enquiry found two significant cases of under-charging for connections by Transco.

5. Source pressures offered by Transco

Source pressure concerns are currently being investigated by Ofgas in liaison with Transco and the independent PGTs. Ofgas thinks it appropriate to refrain from reaching any conclusion in relation to source pressures pending further work in this area.

6. Transco's treatment of Mr Andrew Duffield and EGS

Although Transco has provided EGS with persistently questionable quotations, Ofgas cannot say that EGS deliberately has been treated consistently worse than other businesses requesting quotations. The transactions about which Mr Duffield complained were transactions to which EGS, rather than Mr Duffield was a party. No evidence emerged on which to reach conclusions in respect of Mr Duffield that differed from those in respect of EGS.

7. Transco's procedures for the award of contracts

Ofgas found no evidence that Transco is failing to maintain an efficient and economic pipeline system for lack of procedures to apply the Utilities Contracts Regulations 1996. Ofgas thinks that no undue restriction, distortion or prevention of competition in activities ancillary to gas transportation can be said to have occurred in relation to the two matters complained of in connection with the Regulations.

Ofgas would welcome any comments from respondents on the areas investigated and the facts found, as summarised in this chapter and set out in full in Annex 2 to Appendix 3.

4. Ofgas' Conclusions

This chapter outlines the breaches of the Gas Act and of Transco's licence and of potential breaches of the Competition Act to which the findings, discussed above, give rise. It also proposes remedies to help prevent breaches from re-occurring. Fuller details are set out in Appendix 4.

4.1 Breaches of the Legislation and Licence

In summary the findings outlined in Chapter 3 give rise to the following breaches of Gas Act or Licence requirements.

1. Section 9(2)(a) of the Gas Act:

Transco failed to avoid undue discrimination towards EGS through over-quoting for a quotation it offered that company whilst not over-quoting other companies requesting the same connection. Transco failed to avoid undue discrimination against AGAS Developments Ltd, a competing PGT, in relation to two sites for which Transco under-charged for connections. Transco also unduly preferred two customers by under-charging for connections to their sites.

2. Standard condition 11(1) of its Public Gas Transporters' licence:

Transco has failed to conduct its transportation business in the manner best calculated to secure that neither Transco itself or any person related to it, nor any shipper obtains any unfair commercial advantage, as required by standard condition (11)(1) of its PGT licence.

Ofgas makes this finding because Transco, by failing to provide responses to requests for quotations for connections in accordance with its published methodology and within the standards it has set, has obtained the unfair commercial advantage of causing competing PGTs and self lay installers to appear to their customers to be less efficient than they would appear if Transco quoted on time and consistently with its methodology. Transco also conferred an unfair commercial advantage on a gas shipper, by under-charging for a connection to a site.

3. Competition Act 1980

Ofgas concludes that by giving quotations for connections which are inconsistent with its methodology for charging for connections, and by failing to provide quotations for connections within the time provided in the standards of service it has laid down, Transco has pursued a course of conduct that has the effect of distorting competition in the provision of connections. However, Ofgas does not consider it expedient to pursue remedies under the Competition Act 1980 in view of the impending repeal of that Act and the action it proposes to take under the Gas Act 1986.

4.2 Ofgas' Proposed Remedies

a) Proposed Enforcement Order

To prevent the breaches described above from re-occurring Ofgas proposes to make an enforcement order against Transco under section 28 of the Gas Act 1986. A draft of the proposed order is set out in Annex 1 to Appendix 3. In summary it orders Transco to:

1. obtain ISO 9001 certification⁷ for its connection quotation operations. In order to achieve certification Transco will need to improve its procedures for issuing quotations and for recording its performance levels. This should help to ensure that the breaches in relation to standard condition 11(1) are stopped.
2. introduce schemes for paying compensation to persons receiving late or incorrect quotations. Transco's performance for returning quotations for connections has been very poor and slow to improve. Ofgas therefore thinks it necessary to introduce incentives to Transco to improve its standards of service and therefore to prevent continued breaches of section 9(2)(a) of the Gas Act 1986 and of standard condition 11(1) of its licence. Details of the schemes Ofgas proposes to order Transco to introduce are set out in Attachments 1 and 2 to Annex 1 to Appendix 3. The scheme for compensation for late quotations is intended to ensure that customers receiving a level of service from Transco as poor as the level which prevailed in August and September 1998, will be able to recover from Transco a sum which is adequate at least to recompense them for additional costs incurred in chasing the quotations requests. It is intended that the sums which are payable will be of a sufficiently substantial level to work as

⁷ See Annex 5 to Appendix 3.

an incentive for Transco to improve its standards. A ratchet has been included in the scheme which will impose greater liabilities on Transco if its standards slip and which will reduce the sums it must pay as performance improves. The scheme for compensation for incorrect quotations is intended to provide an incentive to Transco to give accurate quotations without imposing a burden that is disproportionate to the value of Transco's connections business and to the damage suffered by customers.

3. introduce arrangements for the audit of its performance. The investigation showed that the data on which Transco's reports of its performance in relation to connection quotations were based was not always accurate. In order for the effects of liability schemes and of the order to be assessed, it is necessary to have accurate base data and records for the turn around of quotations, and for the consistency of the application of Transco's charging methodology to be assessed. The proposed audit obligation will serve these purposes.

b) *Obligation to Comply with Published Methodology*

In view of Transco's record in providing quotations in accordance with its charging statement, Ofgas has concluded that, in addition to giving notice of its intention to make an order under section 28 of the Gas Act 1986, it also should formally direct Transco to furnish a statement in relation to connection charges under standard condition 5(3) of its licence. Such a direction will mean that any charge which deviates from the charging statement will attract the possibility of further enforcement action, as well as giving rise to the possibility of a payment being due under the proposed order to the person from whom Transco seeks to recover the charge.

c) *Unbundling of Transco's Connections and System Extensions Business*

Ofgas has repeatedly advocated the full unbundling of Transco's connections and system extensions activities from its main pipeline business, better to secure effective competition. Ofgas considers that such unbundling is necessary to ensure that Transco's connections and system extensions are appropriately costed and that the main transportation business treats BG's own connections and system extensions business in exactly the same way as it treats other PGTs and self lay installers. Ofgas considers that the findings from this investigation confirm the need for the unbundling of Transco's connections and systems extensions activities at the earliest possible date.

As part of Transco's response to Ofgas' present investigation and findings, Transco has suggested unbundling its connections and system extension activities into a separate business unit by the end of 1999. Ofgas will be publishing a further consultation document making detailed proposals for the complete unbundling of Transco's connections and system extensions activities from its other businesses to be effective at the earliest possible date.

Ofgas would welcome comments on the matters raised in this Chapter. In particular we would welcome views on the appropriateness of the proposed enforcement order, which is set out in detail in Annex 1 to Appendix 3, including the proposed levels of payments included in the liabilities scheme to be established under the enforcement order.

Appendix 1 Summary of Ofgas' Survey of Independent PGTs and Self Lay Installers

Summary of Complaints Received Against Transco's Connections Activities

A survey was sent to interested parties asking for details of complaints against Transco in relation to its connections activities. The survey was sent to the members of the Connections Steering Group, all independent PGTs, four shippers, nine self lay installers and two customer representatives. The survey is shown in the Annex to this Appendix.

The non-Transco PGTs licensed by Ofgas as of 1 January 1999 are:

AGAS Developments Ltd (ADL)
 Gas Transportation Company Ltd (GTC)
 Eastern Natural Gas Ltd
 ScottishPower Gas Ltd
 Southern Electric Pipelines Ltd
 British Gas Connections Ltd (BGCL)

Initial responses to survey

The following table shows how many complaints were received by category from specific companies in response to the survey

Company	quotation delay	over-charging	under-charging	poor pressure	connection delay	connection difficulty	other	total
ADL	51		3	12	18	5	23	89
BGCL	12	2		3			1	13
Brickyard Building Company ⁸		1						
EGS		9					5	14

Further complaints received during the course of the investigation

The following table shows additional complaints received from specific companies by category

Company	quotation delay	over-charging	under-charging	poor pressure	connection delay	connection difficulty	other	total
ADL	99	2	1		20	5	1	128
British Gas Connections	60							60
GTC	115	1						116
ECO European ⁹	56							56
Exoteric Gas Solutions	10	15			6		5	36

⁸ A housing developer.

⁹ A self lay installer

Annex to Appendix 1: Survey form and guidelines

Appendix 2: Transco's Published Standards of Service for Connection Activities and Performance Levels Achieved During the Months August to November 1998

WORK AREA	STD	% within standard				Average performance between Aug. and Nov.
		Aug.	Sept.	Oct.	Nov.	
Provide quotation for One Off connections (Desk Top)	D + 3 PPL 95%	63%	67%	63%	72%	66%
Provide quotation for One Off connections (Visit)	D + 8	78%	67%	63%	66%	69%
Provide quotation for connection > 2,500 therms to Shippers	D + 8 PPL 90%	68%	62%	65%	61%	64%
Response to quotation requests from PGTs	D + 8	74%	62%	65%	76%	70%
Response to quotation request for a Self Lay connection	D + 8	86%	78%	44%	60%	65%
Provide quotation for > 2500 infrastructure connection	D + 15	66%	45%	68%	59%	61%
Provide quotation for new housing infrastructure	D + 15	82%	68%	75%	85%	77%
Respond to a land enquiry ¹⁰ from a developer requiring an infrastructure connection	D + 5		66%	86%	77%	76%
Respond to a land enquiry ¹¹ from a PGT	D + 5		64%	77%	73%	71%
Respond to an initial enquiry ¹² from a self lay installer	D + 5		42%	72%	61%	59%
Time between the acceptance of a quotation and the commencement of work on site	D + 15			81%	79%	80%

NB Figures are taken from Transco's publication of connections standards of service information to the Connections Steering Group since August 1998. Where no figures are shown no information is available.

¹⁰ A land enquiry from a developer is generally asking for basic information regarding the feasibility of a connection before a formal quotation request is submitted

¹¹ A land enquiry from a PGT asks for details of the nearest Transco main to the site and an indication of the pressure band available at the point of offtake

¹² An initial enquiry from a self lay installer asks for details of the nearest Transco main and the actual pressure available at the offtake

Appendix 3 Notice Under Section 29 of the Gas Act 1986

Gas Act 1986

Section 29

Notice

To: **BG plc (“Transco”)**

having its registered office at 100, Thames Valley Park Drive, Reading, Berkshire RG6 1PT, the holder of a licence (the Licence) treated as granted under section 7 of the Gas Act 1986 (the Act).

The Director General of Gas Supply (the Director) hereby gives notice as follows.

1. The Director proposes to make an order under section 28(1) of the Act in the terms set out in Annex 1 to this notice (the Proposed Order).
2. The effect of the Proposed Order is to require Transco to—
 - (a) introduce improved systems and training in each of its offices handling requests for quotations for connections to its pipe-line system;
 - (b) introduce a scheme to provide compensation to persons adversely affected by Transco’s failure to respond to requests for quotations for connections within its published time-scales;
 - (c) introduce a scheme to provide compensation to persons adversely affected by Transco’s failure to provide quotations for connections in accordance with its statement of its methodology for connection charges; and
 - (d) arrange for the audit of the timeliness and accuracy of its performance in providing quotations for connections.
3. The relevant requirements or conditions for the purposes of this Notice and the Proposed Order are section 9(2)(a) of the Act and paragraph (1) of standard condition 11 of the Licence.
4. The acts or omissions which in the opinion of the Director constitute contraventions of the relevant requirements or conditions are—
 - (a) in respect of section 9(2)(a) of the Act that Transco,
 - (i) failed to avoid undue discrimination against Exoteric Gas Solutions Ltd in relation to the connection of Surrey Pet Cemetery;
 - (ii) failed to avoid undue preference towards the Welsh Development Agency in relation to the connection of the site of the Lucky Goldstar project in Newport,

- (iii) failed to avoid undue discrimination against AGAS Developments Limited in relation to the connection of the site of the Lucky Goldstar project in Newport,
 - (iv) failed to avoid undue preference towards Scottish Gas with regard to the connection of premises in Crookston Road Glasgow, and
 - (v) failed to avoid undue discrimination against AGAS Developments Limited in relation to the connection of premises in Crookston Road Glasgow.
- (b) in respect of paragraph 1 of standard condition 11 of the Licence that Transco,
- (i) by failing to provide responses to requests for quotations for connections in accordance with the standards which it has set, and by failing consistently to quote in accordance with its published methodology for connection charges, has obtained the unfair commercial advantage of competing independent public gas transporters and self lay installers appearing to their customers to be less efficient than they would appear if Transco quoted on time and consistently with its methodology, and
 - (ii) by quoting and providing connections at less than the rates derived from its published methodology in the case of a development at Crookston Road, Glasgow, thereby giving Scottish Gas, a gas shipper, an unfair commercial advantage,
- has failed to conduct its transportation business in the manner best calculated as required by that paragraph.

5. The other matters which, in the opinion of the Director, justify the making of the order are -

- (a) the facts set out in a report dated December 1998, following an investigation by Rachel Thompson, Delli Mireskandari, Sean O'Hara and Philippa Pickford appointed on 23 July 1998 to require information to be furnished by Transco pursuant to standard condition 16 of the Licence, which is at Annex 2 to this notice;
- (b) submissions made by Transco on 2 and 23 October, 4 and 13 November and on 15 and 17 December 1998 which, to the extent that they are not incorporated in the report referred to in (a) above, are summarised in Part 1 of Annex 3 to this notice;
- (c) the views of the Director on the report and on the submissions referred to in (a) and (b) above, which are summarised in Part 2 of Annex 3;
- (d) the notes on the compensation schemes to be established under the proposed order which are set out in Part 3 of Annex 3;
- (e) the conclusions of the Director as to the occurrence and likelihood of occurrence of contraventions of relevant conditions and requirements set out in Part 1 of Annex 4 to this notice; and

(f) the information set out in Annex 5 to this notice on the application of the standard known as ISO 9001.

6. Representations in respect of or objections to the making of the Order may be made by 8 February 1999 and should be addressed to -

Dr Eileen Marshall CBE
Deputy Director General
The Office of Gas Supply
Stockley House
130 Wilton Road
London SW1V 1LQ.

**Authorised in that behalf by the
Director General of Gas Supply**

7 January 1999

Annex 1 **Draft Order Under Section 28(1) of the Gas Act 1986**

Gas Act 1986 **Section 28(1)** **Order**

To: **BG plc** (Transco)
having its registered office at 100, Thames Valley Park Drive, Reading, Berkshire RG6 1PT, the holder of a licence (the Licence) treated as granted under section 7 of the Gas Act 1986 (the Act).

Whereas the **Director General of Gas Supply** (the Director) is satisfied that Transco has contravened and is likely to contravene the following provisions of the Act and of the standard conditions of the Licence -

- (i) section 9(2)(a) of the Act, and
- (ii) paragraph (1) of standard condition 11 of the Licence.

Now therefore the Director, pursuant to his duties under sections 4(2)(a), 4(2)(b), 4(2)(c)(ii), 28(1) and 28(5) of the Act, having given notice in accordance with section 29 of the Act and for the purpose of securing compliance with the above-mentioned provisions of the Act and of the Licence, **hereby orders Transco as follows.**

1. Except as the Director may otherwise consent in writing where Transco has used reasonable endeavours, by 31 December 1999, to have introduced, in each of its offices handling quotations for connection to its pipe-line system:
 - (a) systems for logging and dating with the date of receipt, each request for a quotation for a connection that it receives,
 - (b) systems for providing quotations for connections in response to requests for them within published time-scales (which shall not be longer than those published as at 1 October 1998, unless agreed by the Director) from the date of their receipt,
 - (c) systems for reporting to Ofgas on its performance in providing quotations for connections in accordance with such time-scales,
 - (d) systems for providing quotations for connections in accordance with the methodology it has published for them, and
 - (e) a programme of initial and continuing training, to be completed by all staff involved in handling quotations for connections, covering at least the matters referred to in sub-paragraphs (a) to (d) of this paragraph, in respect of which certification in accordance with the standard known as

ISO 9001 (or such other standard as may be approved in writing by the Director) has been achieved.

2. By 10 February 1999, to introduce a scheme for paying compensation to persons adversely affected by failure by Transco to respond to requests for quotations for connections within the time-scales referred to in paragraph 1(b) above. The scheme shall provide as a minimum for payments to be made in such amounts in such circumstances and on such terms as are provided in Attachment 1 to this Order; the scheme shall not apply to quotations for connections to premises above 7 bar gauge or with value in excess of £250,000.
3. By 31 March 1999, to introduce a scheme for paying compensation to persons adversely affected by a failure by Transco to provide quotations for connections in accordance with the statement submitted in accordance with standard condition 5 of the Licence, whether Transco shall have been directed to submit that statement or not. The scheme shall provide as a minimum for payments to be made in such amounts in such circumstances and on such terms as are provided in Attachment 2 to this Order.
4. Until certification in accordance with ISO 9001 has been obtained pursuant to paragraph 1 of this Order, to arrange for the quarterly audit, in accordance with generally accepted audit principles, at Transco's expense, by a firm of Chartered Accountants, of
 - (a) the reports to be provided pursuant to paragraph 1(c) of this Order, and
 - (b) the source documents on which those reports are basedand to provide a copy of the report of the person so appointed to the Director within 28 days of its receipt.
5. To arrange for the audit each quarter, in accordance with generally accepted audit principles, at Transco's expense, by a firm of Chartered Accountants, or by other suitably qualified persons approved in writing by the Director, of a sample, selected by the person so appointed, of not less than one of the quotations for connections given by each Transco LDZ in that quarter and to provide a copy of the report of the person so appointed to the Director within 28 days of its receipt.

**Authorised in that behalf by the
Director General of Gas Supply**

....February 1999

Attachment 1 to Annex 1

Compensation Scheme for Late Responses To Requests for Quotations by Transco

Part 1

Obligations of Transco

1. Except as the Director may agree otherwise in writing, Transco shall pay compensation to customers:
 - (i) for all quotations for connections requested in any calendar month delivered outside the standards of service set out in the Table below in respect of any work area set out in the Table where Transco fails in that month to meet the nationally required planned performance levels for those standards of service, and
 - (ii) for all quotations for connections of a work area (as set out in the Table below) requested in any calendar month by a customer of a specified type where Transco fails, in respect of that work area for that customer type in that month, to provide 80% of quotations within the standards of service set out in the Table

provided that Transco shall not pay compensation to any customer in respect of any quotation for a connection under both subparagraphs (i) and (ii) of this paragraph. The specified customer types for the purpose of paragraph (ii) are any gas shipper, any public gas transporter, any self lay installer and other customers; a customer may be treated in any month as being in only one specified customer type. Payments under paragraph (i) shall accrue in respect of quotations issued by Transco after 5.00pm on 10 February 1999 and payments under paragraph (ii) shall accrue in respect of quotations issued by Transco after 5.00pm on 28 February 1999.

2. Transco's performance against the performance levels set out in the table below will be measured from the date of receipt from the customer of the information specified in Part 2 below.
3. Where Transco has to pay compensation in respect of a quotation, the amount of compensation payable by Transco in respect of that quotation will be at the level set out in the column in the Table headed "Stage 1 Liability Payment" in respect of each failure to provide a quotation within the period set out in the column headed "Standard of Service" plus the amount shown in the column headed "Stage 2 Liability Payment" where Transco also fails to provide the quotation within the period set out in the column headed "Stage 2 Standard of Service".
4. Where, in any calendar month, Transco fails to meet the national planned performance level (PPL) for any work area set out in the table, the compensation payments due in that month in accordance with the Table shall be multiplied by the number found by the application of the following formula:

$$PM = 1, \text{ or, if greater, } \left(1 + R \left(\frac{PPL - PLA}{PPL} \right) \right)$$

Where:

PM is the performance multiplier to be applied to the liability payments
R is the number 6,
PPL is the planned performance level of 90%, and
PLA is the aggregate performance level for all the standards of service in the Table achieved nationally in the month in question.

5. Standards of service shall be monitored by Transco for each work area listed in the Table for each customer each calendar month.
6. Liabilities will be calculated on the basis of the number of failures per customer for each calendar month, when the National PPL is not met for that month, for each work area listed in the Table.
7. Transco will calculate its performance against PPL for each calendar month within 42 days of the end of each calendar month.
8. Liabilities incurred will be paid by Transco to each customer within 28 days of the calculation by Transco of its performance against PPL for that month.
9. Payments by Transco may be reduced in accordance with the cap described in Attachment 1.

Work Area	Standard of Service	National PPL	Stage 1 Liability Payment	Stage 2 Standard of Service	Stage 2 Liability Payment
One Offs < 2,500 <i>Desktop</i> (CSOS1)	D + 3	90%	£30	D + 10	£40
One Offs < 2,500 <i>Visit</i> (CSOS2)	D + 8	90%	£30	D + 15	£40
Single Connections > 2,500 (CSOS 3, 5, 6, 7) (No Reinforcement)	D + 8	90%	£50	D + 15	£65
Single Connections > 2,500 (CSOS 3, 5, 6, 7) (Where reinforcement is required)	D + 12	90%	£50	D + 25	£65
New Housing (CSOS 4)	D + 15	90%	£50	D + 25	£65
Land Enquiry (CSOS 8, 9)	D + 5	90%	£30	D + 15	£40
Initial Enquiry (CSOS 10)	D + 5	90%	£30	D + 15	£40
These standards do not apply to quotations for connections above 7 bar gauge or with value in excess of £250,000					

Part 2

Information to be provided by Customer

The minimum information required to provide a Land Enquiry

The minimum information required to provide a Land Enquiry response is as follows:

- * end user name and address;
- * the type of connection required;
- * Supply Hourly Quantity (SHQ) in kWh;
- * site name;
- * site address and postcode;
- * location/Ordnance Survey Map reference (either a location or site address is acceptable for a green field site);
- * the capacity in which the customer is acting (e.g. as a shipper, PGT, self lay company or end user's agent).

The minimum information required to provide a Quotation

The minimum information required to provide a quotation is as above, plus:

- * Annual Quantity (AQ) or Connected System Annual Quantity (CSAQ);
- * load factor;
- * Daily Quantity (SOQ) (DM sites only);
- * first gas date;
- * plan showing position of service termination; in relation to existing geography if necessary, any site anomalies;
- * any construction period constraints;
- * any enhanced facilities required e.g. twin stream offtake facilities, metered bypass.

Budget Indication

A budget indication will be provided in the following circumstances:

- * the quotation will take more than eight hours to prepare, or

- * part of the costs rely on significant certainty that cannot be resolved during the period within which a response is required. (e.g. special crossing of a railway or river), or
- * due to the likely costs of the work (or other particular facts), it is unlikely that a firm quotation will be required and customer agrees the budget indication is sufficient, or if, due to works unrelated to the quotation (e.g. general reinforcement), the lead time is greater than 12 months, or
- * if the customer requests a budget indication.

Attachment 2 to Annex 1

Compensation Scheme for Failure by Transco to Give Quotations for Connections in Accordance with its Published Methodology

1. The errors referred to in this Appendix are errors in relation to what is quoted to be charged by Transco to the customer, not errors in the costing of what Transco actually intends to construct. Transco has duties with regard to the development of an efficient and economical pipe-line system and in pursuance of those duties may decide to construct facilities of greater capacity than those required to meet the needs of the individual customer. The balance of the cost is borne by Transco.
2. Transco shall provide to customers seeking quotations for connections a statement of the key assumptions on which the quotation is based, including, as appropriate:
 - route
 - surface condition
 - method of pipe-laying
 - pipe diameters
 - pipe material specification
 - variable cost elements that cannot be accurately determined at the quotation stage, such as easement costs.
3. Subject to paragraphs 4, 5 and 7(ii) below and except as the Director may agree otherwise in writing, Transco shall make the payments set out in paragraph 6 below to customers seeking quotations for connections in good faith to whom Transco provides quotations that are excessive because they
 - (i) are not based on a reasonable engineering judgment, or
 - (ii) are not calculated in accordance with Transco's published methodology for charging for connections.
4. There shall be rebuttable presumptions
 - (i) that Transco has not used a reasonable engineering judgment where Transco's original quotation exceeds 120% of the amount which would have resulted from the application of its published methodology for connections to an alternative engineering judgment agreed between Transco and the customer or determined in accordance with paragraph 7(iii) below; and
 - (ii) that Transco has provided a quotation that is in accordance with Transco's published methodology for charging for connections where the quotation does not exceed 120% of the amount which would have been found by the proper application of Transco's published methodology for charging for connections to the engineering judgment adopted for the quotation.

5. Errors arising from failure by the customer to provide the information set out in Part 2 of Appendix 1 above or to provide that information accurately shall be excluded from giving rise to a compensation payment.
6. The payments referred to in paragraph 3 shall be 20% of the value of the difference between the original and the revised quotation given by Transco following the application of the procedures described in paragraph 6 below, subject to a minimum of £50 and a maximum of £5,000 per quotation. The payments due under this paragraph shall accrue in respect of requests for quotations received by Transco after 5.00pm on 31 March 1999.
7. The following procedure shall apply to the submission of claims for compensation.
 - (i) Claims must be submitted in writing to the LDZ which issued the original quotation within 60 days of the date of issue of the quotation and, if it is accepted, within 10 days of the date of acceptance, with a statement of the reason why the quotation is thought to be excessive and an estimate of the excess.
 - (ii) If, before the expiry of five working days from the submission of the claim the quotation is adjusted by Transco so that the reason why it was thought to be excessive has been addressed to the reasonable satisfaction of the person who submitted the claim no compensation shall be payable by Transco.
 - (iii) If, at the expiry of five working days after the submission of the claim to that LDZ the claim has not been resolved it may be submitted to Transco's head office at, 31 Homer Road, Solihull, West Midlands, B91 3LT marked for the attention of the Commercial Manager.
 - (iv) If, within 28 days after being referred to Transco's head office the claim has not been resolved it may be referred by either party to an independent person acting as an expert and not as an arbitrator, who may be nominated, in default of agreement between the parties, by the Director on the application of either party, and whose costs shall be paid, in default of agreement between the parties, as he may direct.
8. Claims shall be paid by Transco within 30 days of their final determination.
9. Payments by Transco in accordance with Attachment 1 and Attachment 2 to this Order shall be subject to a total aggregate cap of £4 million per calendar year. For this purpose:
 - (i) monthly payments due will be monitored on a cumulative basis throughout each calendar year,
 - (ii) if the amount of such claims in any month would result in the cap described in the sub-paragraph (iii) of this paragraph being exceeded, those claims shall be reduced pro-rata so that in aggregate they equate to the level of the cap; and
 - (iii) the cap shall be the said sum of £4 million less the aggregate of monthly payments due in the calendar year up to and including the previous calendar month divided by the number of months remaining in the calendar year, including the current month.

Annex 2 Report on Investigation into Allegations of Anti-Competitive Practices in Connections by Transco

1. INTRODUCTION

In the course of 1997 and the early part of 1998 Ofgas received a number of complaints about potentially anti-competitive practices by Transco in relation to its connections activities. The leading complainants were Mr Andrew Duffield and his company, Exoteric Gas Solutions Ltd (EGS), and AGAS Developments Ltd (ADL), an independent public gas transporter. In March and April 1998 Ofgas surveyed the members of its Connections Steering Group and the independent public gas transporters and self lay installers known to Ofgas to be involved in the activity of gas connections to obtain a better understanding of the nature and extent of the matters complained of.

Following that survey Ofgas decided that it was necessary, in the light of its obligations under section 31 of the Gas Act 1986, to conduct a fuller investigation. On 13 July 1998 Ofgas formally required Transco, pursuant to standard condition 16 of its licence, to furnish information relating to this matter to personnel drawn from Pannell Kerr Forster, Simmons & Simmons and from Ofgas' own staff dealing with connections.

In the period from 14 July to 20 August 1998 visits were made to eight local Transco offices, twenty district office staff were interviewed and copies of over 7000 pages of documents were taken. Transco head office staff were present at all the visits. Written requests for information also were made. A complaint in respect of the Utilities Contracts Regulations 1996 was raised with Transco by letter.

On 25 September 1998 Ofgas provided Transco with an interim report containing its provisional conclusions as to the facts established by its investigation with a view to testing them with Transco. Transco submitted a detailed response to Ofgas' interim report on 20 October 1998. The interim report and Transco's response were considered at meetings between Ofgas and Transco on 2 and 23 October 1998. Transco submitted further information on 4 and 18 November 1998. On 1 December a site visit was made to Newport to inspect the route of the pipe supplying the site of the Lucky Goldstar project described in section 7 of this report. Ofgas produced a draft final report on 2 December 1998. This was discussed with Transco at a meeting on 15 December 1998. Transco made further representations in writing on 17 December 1998.

This report sets out Ofgas' final conclusions as to fact in relation to this matter. These conclusions are based both on the material obtained by Ofgas in the course of its visits to Transco's offices and on other material received, including the information submitted by Transco since the meeting on 23 October 1998 and information received from other sources.

The report first summarises the main findings as to fact arising from the enquiry. It then gives a brief statement of the overall context in which the matters considered by the enquiry occurred and sets out the facts which are established by the enquiry and the basis for them under the following headings:

- (i) office administration and systems,
- (ii) responses to requests for connections,
- (iii) over-quoting for connections,

- (iv) under-charging for connections done by Transco,
- (v) source pressures,
- (vi) Mr Andrew Duffield and Exoteric Gas Solutions, and
- (vii) the Utilities Contracts Regulations 1996.

2. SUMMARY OF OFGAS' CONCLUSIONS AS TO FACT

2.1 Office administration and systems

Transco has been inconsistent in the quotations it gives for connections. Transco's quotation inconsistencies are not restricted to the period immediately after the introduction of competition in connections. Ofgas accepts that quoting for connections is complex and that difficulty may be caused by customers submitting unclear specifications. Ofgas also accepts that this report relates to matters which have occurred in a period of change. However Ofgas finds that many of the inconsistencies observed are due to Transco failing conscientiously to apply the systems and methods for providing quotations that Transco had developed. To the extent that Transco's failure to provide consistent quotations is not caused by others but is caused by factors other than those identified in the interim report, it is due to factors for which Transco is responsible.

2.2 Responses to requests for connections

There has been a failure by Transco to respond to requests for quotations when they are first received and within Transco's own standard of service and this failure is widespread. Transco has failed on occasions to retain on file copies of requests for quotations that predated the request that actually received a response. Transco is not in every case measuring its performance from the date when requests for connections first were received. Transco's reporting therefore has been likely to understate its failure to perform. It is too early to conclude that these problems have been rectified.

2.3 Over-quoting for connections

There have been cases of significant over-quoting by Transco in relation to connections.

2.4 Under-charging for connections done by Transco

The enquiry found two significant cases of under-charging for connections by Transco. One case gives rise to a strong suspicion of anti-competitive intent by Transco. The other case demonstrates a notable lack of awareness among Transco staff of the requirements of competition law.

2.5 Source pressures

Ofgas thinks it appropriate to refrain from reaching any conclusion in relation to source pressures pending further work in this area.

2.6 *Mr Andrew Duffield and Exoteric Gas Solutions*

Although Transco has provided EGS with persistently questionable quotations, Ofgas cannot say that EGS deliberately has been treated consistently worse than other businesses requesting quotations.

2.7 *Conformity with the Utilities Contracts Regulations 1996*

Ofgas found no evidence that Transco is failing to maintain an efficient and economical pipeline system for lack of procedures to apply the Utilities Contracts Regulations 1996. Ofgas thinks that no undue restriction, distortion or prevention of competition in activities ancillary to gas transportation can be said to have occurred in relation to the two matters complained of in connection with the Regulations.

3. CONTEXT

Transco has provided the information set out in the table below in relation to the period from 1 April 1997 to 31 March 1998. This information is the number of requests received by Transco for quotations to connect to its system, on a self lay basis, for premises taking over 75,000 therms per year, and for other pipe-line systems, and the outcome of those requests in that period.

Connection type	Number of quotations requested	Responses by Transco	Final connection by Transco	Non-Transco pipe laying
Self lay connections	831	766	152	152
Exceeding 75,000 therms	1904	1893	401	5 (plus 16)
CSEP connections	3833	3601	727	727

Transco suggested on 17 December 1998, that the matters dealt with in this report should be set against a wider background with additional market segments, including one-off connections (estimated at 100,750), new housing multiple infrastructure quotations (16,140) and infrastructure quotations for premises taking 2,500 to 75,000 therms per year (26,542). Ofgas notes that some of the quotations it examined could be categorised as falling into the latter two categories. However, none of them could be put in the one-off connections category and, in Ofgas' view they all fit into one of the categories shown in the table. Ofgas therefore thinks that the figures in the table above provide an adequate statement of the overall background to the report.

Transco acts, in relation to connections, in at least four relevant capacities. Transco provides gas mains and service pipes in competition with other providers of these facilities. Transco is the source and provider of information that is vital to persons (including Transco itself) involved in the business of laying mains and pipes. Transco is the provider of connections to its system. Transco also may lay service pipes for self lay companies.

The connections market is growing in percentage terms but it is not large. Transco has estimated that in 1997 it received £2.055 million from self lay companies for work

carried out for them for arranging connections for end users and shippers. This is an incomplete view of the market but it represents a significant proportion of it.

4. OFFICE ADMINISTRATION AND SYSTEMS

4.1 *Complaint and interim findings*

166 matters were complained of to Ofgas. A common element of many of the complaints was the variability of some aspects of quotations given by Transco for connections, particularly in relation to the time taken to quote, the level of quotation and pressure availability. It became apparent early in the enquiry that office administration and systems in Transco offices generally were variable and of poor appearance. Systems for the preparation of quotations appeared not to be consistently applied. It was thought that deficiencies in Transco's office administration and systems might have contributed to some of the problems experienced by complainants.

In relation to office administration and systems and record keeping, Ofgas was minded provisionally to conclude that, in almost every office visited (Edinburgh provided a marked exception), the standard of record keeping was poor. There was inconsistent use of progress sheets within and between offices. Ofgas was critical of the recording of telephone conversations and referred to an absence of formal standard procedures.

In relation to the quality of quotations Ofgas noted that no person interviewed mentioned the existence of a manual, different offices appeared to use different methods and the Estimator computer package was sometimes used and sometimes not used. There were different approaches in different offices for deciding when projects should be referred to a senior officer for checking. Transco's connections charges statement was not always applied and overall there is considerable scope for improving the quality of the quotations that Transco gives in response to enquiries about connections

Ofgas summarised its conclusions in this area as being that, in the Transco offices that administer connections, there is a lack of consistency and of quality in the systems that are used and in the application of those systems, leading to a risk of inconsistency in quotations and inefficiency in the pipe-line system.

4.2 *Transco response*

In relation to office administration and systems and record keeping, Transco agreed that the systems and processes used, quality of records and record keeping varied between its former district offices. Transco noted Ofgas' comments about file jackets and inconsistent use of progress sheets but disagreed that this makes any material contribution to efficiency or consistency. Transco agreed that there are references to telephone conversations in correspondence which are not noted, but disagreed that these amounted to "many".

In relation to Ofgas' reference to a lack of formal procedures, Transco said that financial authority levels existed for all districts and submitted copies of its delegated authority policy as issued on 24 July 1996 and of its policy on control of expenditure and income dated 21 May 1998.

In relation to the quality of quotations, Transco said that there is a siteworks manual and that there are notes on procedures relating to self lay connections to which all staff have access. Transco suggested that staff did not mention these things in interview because

they were not asked about them. Transco said that whether or not Estimator was used, the same methodology was used to build up quotations; for some types of connection, Estimator was inappropriate.

Transco agreed that a limited number of examples of errors in applying its published statement had been identified and said two of these occurred in the earliest stages of competition in connections. Transco attributed these cases of failure to apply its methodology to human error and said that it considered that inadvertent errors in applying the charging statement do not necessarily amount to undue discrimination or preference. Transco noted that problems had emerged due to the precision of cost reflectivity sought in connections charges and quotations and referred to the inherent fallibility of the necessary human element.

Transco submitted that quoting for connections is complex and that difficulty often is caused by customers submitting unclear specifications.

In summary, Transco agreed that at the time the files were examined there were varying practices for administering connections activities. It did not agree that, of itself, this led to, or to a risk of, inconsistency in quotations or inefficiency in the pipeline system and asserted that the interim report does not support that allegation.

4.3 *Review of Transco submissions and of further information*

Ofgas accepts that differences in file jackets and inconsistent use of progress sheets may not make any material contribution to efficiency or consistency. However Ofgas regards them as a symptom of a general lack of control within and across offices, which is evident from a number of matters described below.

In relation to telephone conversations referred to in correspondence but not noted in writing on the file, Ofgas counted 16 in the papers available to it. These papers come from merely a sample (but one which Transco has not sought to argue is unrepresentative) of the many files held in Transco's offices. Transco has not disputed the interim finding that its staff generally appeared not to be aware of the need to record telephone conversations. Ofgas regards the number of instances of failure to record telephone calls as too many. Ofgas notes that Transco has not disputed that the enquiry found instances where copies of letters and faxes appeared to be missing from the file.

Ofgas is not impressed by Transco's suggestion that staff did not mention the siteworks manual and notes on procedures in interview because they were not asked about them. At most offices visited questions were asked about how quotations were prepared, sometimes generally and sometimes in relation to specific cases. Transco staff who were interviewed were by no means the most junior and could be expected to know what facilities were available to them. Ofgas thinks that a lack of awareness of, and a lack of regular instruction to use, these facilities is a much more likely cause of the reticence of Transco staff in relation to them than failure by the investigators to ask about them.

Transco said that whether or not Estimator was used, the same methodology was used to build up quotations. Transco also said that for some types of connection, Estimator was inappropriate. Ofgas thinks that Transco has an underlying obligation to use its methodology consistently. Ofgas appreciates that failure to use the Estimator system need not necessarily result in failure to use the appropriate methodology. However, Ofgas finds that Transco's assertion that the same methodology of building up the quotation cost was always used is not true. The quotations mentioned in the sections below dealing with over-quoting and under-charging provide several examples of

Transco's failure to use its published methodology. Ofgas found a number of other cases in which Transco used a different methodology to build up quotation costs.

Ofgas agrees that two of the examples referred to below occurred in the earliest stages of competition in connections. However, Ofgas notes that the Crookston Road quotation was given in September 1997 and Surrey Pet Cemetery in October 1997. These quotations were not given in the earliest stages of open competition. They post-date considerable discussion of difficulties with quotations on the Ofgas Connections Steering Group (in the context of discussion of the need for a matrix to assist in the calculation of charges) and they post-date the making of a number of complaints by EGS. Ofgas finds that at the time these quotations were given Transco had had an adequate opportunity to put systems in place to give quotations in accordance with its methodology and to make clear to all its staff the importance of applying that methodology.

Transco's attribution of quotation errors to human error led Ofgas to ask, at the meeting on 23 October 1998, if the reason for the occurrence of errors in quotations by Transco was the inadequacy of the training given by Transco to its staff involved in quotations or the recent reduction in the number of its staff involved in connections work.

Transco has submitted details of some of its training effort in relation to connections, including copies of:

- (i) a 219 slide presentation on siteworks processes given to staff in November 1995,
- (ii) a 164 slide presentation on siteworks processes given to staff in May 1996, and
- (iii) a 56 slide presentation given to approximately 400 staff in the period November 1996 to February 1997.

Transco has referred to its Siteworks Manual being distributed in October 1994, being revised in July 1995 and September 1996 and being available via "TransNet" in September 1997. Transco also has submitted details of its Improvement Programme, including copies of its newly prepared Transco Connections Policy Manual.

Ofgas recognises that a significant training effort has been made by Transco. However Ofgas notes that Slide 34 in the second presentation is in a section of that presentation which dealt with connection charges to be applied from 1 June 1996. It sets out uplift rates for overheads which, though they may have been true when the slide was prepared, were incorrect very soon after the slide came to be used.

It is not clear what further effort had been made, prior to the commencement of Ofgas' investigation, to keep staff aware of Transco's connections charges methodology and updated with regard to changes in it, apart from a mention in the Ten Year Plan published in August 1996 and making the Siteworks Manual available on "TransNet". However, Ofgas feels able to conclude from the errors that have occurred, and from the absence of awareness of the Manual shown by Transco staff in response to questions, that up until July 1998 Transco's efforts had been inadequate. It is to be hoped that the Improvement Programme and the new Transco Connections Policy Manual will contribute significantly to an improved knowledge and application of Transco's connections charging methodology. However, it is too early to assess their effectiveness.

In relation to staffing, Transco has advised Ofgas that it does not have historic information on the numbers of staff dedicated to its connections activity readily available as this activity was not previously separated out in Transco's organisation.

Transco therefore cannot answer Ofgas' question about the numbers of staff who have left this activity.

With regard to the precision of cost reflectivity sought in connections charges and quotations and to the inherent fallibility of the necessary human element, Ofgas notes that the methodology for connections charges was devised by Transco. Ofgas regards the avoidance of human error in the application of Transco's methodology as an ordinary management responsibility that it is entirely reasonable to expect Transco to discharge. The errors that have occurred speak for themselves: the responsibility has not been discharged satisfactorily.

Ofgas notes Transco's view that inadvertent errors in applying the charging statement do not necessarily amount to undue discrimination or preference. However they may have that effect and Ofgas also notes that Transco has not sought to argue that these errors do not give rise to the risk of undue discrimination or preference.

Ofgas accepts that Transco has financial authorisation procedures. Ofgas' point in relation to an absence of formal standardised procedures was directed at an absence of procedures for technical decisions. A reference was made to monetary considerations being used to trigger referral from junior to more senior staff because financial criteria were found to be applied in some districts in the absence of any other criteria. Transco suggested on 17 December 1998 that a trigger based on technical considerations would simply be impracticable. Ofgas notes that both the delegated authority policy of July 1996 and the policy on control of expenditure and income give considerable scope for discretion within prescribed maximum levels.

4.4 Ofgas' Conclusions

Transco has been inconsistent in the quotations it gives for connections. Transco's quotation inconsistencies are not restricted to the period immediately after the introduction of competition in connections. Ofgas regards the poor quality of record keeping in Transco offices as a symptom of an approach to quotations which lacks the attention to detail which is necessary to ensure consistency in giving quotations. Ofgas accepts that quoting for connections is complex and that difficulty may be caused by customers submitting unclear specifications. Ofgas also accepts that this report relates to matters which have occurred in a period of change. However Ofgas finds that many of the inconsistencies observed are due to Transco failing conscientiously to apply the systems and methods for providing quotations that Transco had developed. An inconsistent application of the discretion in Transco's financial authorisation procedures, or a lack of awareness of them, will not have helped. To the extent that Transco's failure to provide consistent quotations is not caused by others but is caused by factors other than those identified in the interim report, it is due to factors for which Transco is responsible, such as insufficient effective training: no organisation or person other than Transco is responsible for Transco's errors in Transco's quotations.

5. RESPONSES TO REQUESTS FOR CONNECTIONS

5.1 *Complaint and interim findings*

Ofgas received 54 complaints from ADL that Transco responded to requests for quotations for connections considerably outside its 8 day standard of service for providing quotations. Ofgas looked at files in respect of a sample of 10 of these complaints and prepared an analysis of 120 quotation request documents relating to ADL that had been copied in the enquiry.

Ofgas provisionally found that there is a tendency by Transco not to respond promptly in all cases so that reminders have to be sent, that where this occurs the original request for the quotation is not always retained by Transco and that the problem was not confined to ADL. In summary, Ofgas said that there was a widespread failure to respond to all requests for quotations for connections when they are first received and a failure on occasions to retain on file copies of requests for quotations that predate the request which actually received a response.

5.2 *Transco response*

Transco acknowledged that there may be instances where requests for quotations have been received and have been lost. It denies that any such requests have been removed from files. Transco suggested that there is unreliability in ADL's records and that there is no justifiable basis for preferring ADL's record to Transco's file information.

Transco questioned the analysis of ADL's quotation request documents carried out by Ofgas both as to its accuracy and whether it was based on a representative sample. Transco said it was not satisfied that the fault in every case lies with it. Transco disagreed with the use of the word "widespread" and on Ofgas' ability to conclude that documents have been lost or removed. Transco agreed that the potential for miscommunication between it and its customers existed and commented that such miscommunication is not conducive to efficient administration either of Transco's or its customers' businesses.

In relation to the example of a quotation to EGS, cited by Ofgas to illustrate that the problem is not confined to ADL, Transco said that the point made was not the same issue and refuted any suggestion that it did not set its response in motion in that case until it was reminded or had logged the request.

5.3 *Review of Transco submissions and of further information*

Because of the suggestion by Transco of unreliability in ADL's records, ADL was visited on 27 October 1998 and its records for three quotation requests, for Ashbourne Road, Greystone Place and the Former Sawmills were considered in detail.

In relation to Ashbourne Road, ADL accepted that its fax dated 09 April 1998 may not have been transmitted effectively. This would mean that the ADL database record showing a fax sent on 09 April 1998 may be incorrect. In response to Transco's statement that a fax from ADL to Transco dated 5 May 1998 was not logged on ADL's system, ADL said that its database is not intended to track every piece of paper sent by Transco. The database tracks standard of service information. ADL has a copy of the fax dated 5 May 1998 on its files.

In relation to Greystone Place Transco said three quotation requests were sent and that this is not reflected on ADL's data entry screen. ADL accepted this but stated that its normal practice is to keep only one data entry screen per site, even if more than one quotation request is sent. Moreover, it is possible to see from ADL's files what it says has happened. ADL also accepted that it cannot be conclusively proved that the first request sent on 20 May 1998 was received by Transco. However ADL has a copy of a fax dated 20 May 1998 and it is ADL's normal practice to enter dates of documents which are entered on its database on the date when they are sent. Transco accepted that a request was received for job 235457 on 5 June 1998 and it is notable that this is the date recorded on ADL's system as the date on which it chased Transco. There would be no need to chase if a document had not first been sent. In relation to job 235529a Transco said that ADL sent its request to the wrong fax number at Transco. ADL has produced a Transco list which includes that number as a number to be used for quotations.

In relation to the Former Sawmills, ADL accepted that there is no evidence (other than the date shown on its copy of the fax and the date entered on its database) to show that the request first was faxed to Transco on 25 March 1998. ADL suggested that the absence of entries on its database is not significant because it is not intended to log all communications with Transco. In response to Transco's suggestion that the quotation cannot have been sent before 1 April 1998 because that is the internal ADL transmission date of a plan with Transco's record of ADL's request, ADL pointed out that it has two copies of this plan, one of which has an internal ADL fax transmission date of 17 March 1998. ADL suggested that it was this plan which was used on 25 March 1998 and that the inference that Transco has drawn is not true.

In relation to Transco's reference to a date on an ADL fax to Ofgas of 10 September 2012, ADL could offer no explanation.

Subsequent to the programme of visits to Transco offices, Ofgas received further detailed complaints from ADL, British Gas Connections Limited (BGCL), the Gas Transportation Company Ltd (GTC) and ECO European Ltd (ECO) of considerable delays by Transco in responding to land enquiries and requests for connections and of a need to send reminders. These complaints have been put in the context of the overall number of land enquiry and quotation requests made to Transco by the complainants in the period to which their complaints relate. A summary of the complaints has been supplied to Transco. Transco's standards of service are to respond within 5 days for land enquiries and within 8 days for quotation requests.

The table below has been prepared on the basis of these recent complaints, which were received between September and early November 1998, and the information supplied with them. It shows Transco's performance against its standards of service. The complaints relate to the period from July to October 1998, but not all of each complainant's figures may relate to all of this period.

Complainant	Number of complaints	Percentage outside standard
ADL (Quotations only)	98	56
GTC (Quotations only)	115	56
ECO Land Enquiries	49	80
ECO Quotations	7	88
BGCL (Quotations only)	60	Unclear
Total	329	

In connection with the submission of these latest complaints,

- (i) BGCL advised Ofgas that in relation to 27 of its 60 complaints it was told by Transco that BGCL's enquiry had not been received or had been lost, and
- (ii) GTC advised Ofgas that Transco told it on a number of occasions when it chased Transco that Transco had not received its fax; on some of these occasions Transco in fact had acknowledged receipt of the fax.

An analysis of ADL's and GTC's complaints by LDZ shows that poor performance is apparent:

- (i) in relation to ADL in the Southern, South Western, East Midlands, West Midlands, North Western LDZs and
- (ii) in relation to GTC in the East Anglian, East Midlands, North Eastern, Northern, North London, North Western, Southern and South Western LDZs.

Transco's own recent reports, to the Ofgas Connections Steering Group, of its performance against its standards of service show a failure to provide acceptable response times in relation to quotation requests in a number of LDZs. These reports have been available for periods from August 1998. However, there has been discussion of quotation delays at meetings of the Group over many months, as summarised in the table below.

Date of Meeting	Discussion
30 May 1997	In response to discussion of quotation delays Transco agreed on the need for standards and suggested that they would take four months to introduce.
16 June 1997	Discussion of standards of service for returning quotations.
22 July 1997	In response to discussion of quotation delays, Transco said that the issue would be resolved by the end of the year.
5 September 1997	Connection costs and standards of service discussed.
25 November 1997	Transco said that its restructuring is expected to enable consistent standards of service to be applied in all districts.
16 January 1998	Discussion of the fact that no standards of service were in place. Transco said it was striving to improve accountability and standards of service and that a service level should be in place by April.
10 February 1998	Transco said that its forthcoming reorganisation should result in a standard by April.
10 March 1998	Transco said that the target for reorganisation including standards of service was 1 June 1998.
6 May 1998	Transco said it would produce standards of service as soon as reasonably practicable and said that it would come up with something by the end of the following week.
9 June 1998	Transco distributed a list of siteworks standards of service and said that new standards were being developed. Members of the Group reported significant delays and that the situation had been detrimentally affected by the reorganisation of Transco districts.
22 August 1998	Draft scheme for monitoring performance against standards distributed by Transco
22 September 1998	First report by Transco of its performance against its standards.
5 November 1998	Second report by Transco of its performance against its standards.

Information supplied by Transco on 18 November 1998 shows that in relation to quotations to independent PGTs and self lay installers, in the period from the beginning of August to the end of October it responded within its standards in 67% of cases. These figures are poor. The figures for October 1998 itself contain some appalling levels of performance: for example, only 44% of self lay quotations were within standard.

Transco has submitted communications from ECO and ADL as evidence of recent improvement: from 16% to 32% and from 45% to 53% within target respectively. It is notable that Transco's customers' measurements of Transco's performance give worse indications of levels of service than those given by Transco's measurements, apparently for the same standards of service.

In its submissions on 17 December 1998, Transco questioned the accuracy with which Ofgas can draw conclusions from ADL's records and has pointed out that the basis upon which Transco and its customers monitor response times is often different and that the treatment of certain jobs may not be consistent between them. Transco also suggested that the table above recording discussion in the Ofgas Connection Steering Group should mention the discussion, on 12 August, 22 September and 5 November 1998 of its draft scheme for monitoring its standards of service, for nominations to work on the development of the package and for priorities in connection with it. Transco said that it had had no response from members of the Group to these requests.

Ofgas notes that, when it suits Transco's case, Transco is prepared to quote ADL's figures. Ofgas also is of the view that Transco's criticisms of its customers' information would carry more weight if Transco had been a source of consistently reliable information. Ofgas' experience, particularly in relation to the Lucky Goldstar project, is that, despite assertions of co-operation, this has not been the case. Ofgas is not surprised that after so many missed targets by Transco in dealing with these issues, there was reluctance by Connection Steering Group members to respond to Transco.

Transco has also pointed out that it has new procedures in place for recording requests for quotations and soon will have computerised fax servers that will log the receipt of all faxed requests for quotations. It therefore suggests that there is no basis for concluding that it is likely to understate any future failure to perform.

5.4 Ofgas' conclusions

Ofgas is mindful of the points made by Transco in relation to the complexity of many requests for quotations and of its submission that the fault does not in every case lie with Transco. Nevertheless, the weight of evidence leads Ofgas to conclude that there has been a failure by Transco to respond to requests for quotations when they are first received and within Transco's own standard of service and that this failure is widespread.

In relation to Ofgas' interim finding that Transco has failed on occasions to retain on file copies of requests for quotations that predated the request that actually received a response, Ofgas finds, on the basis of the poor quality of record keeping in Transco offices, of the further information received from visiting ADL's offices and of the further information received from BGCL, that this has been occurring.

In relation to Transco's submissions on the example given by Ofgas to illustrate that the problem of poor responses to quotations is not confined to ADL, Ofgas accepts that the example it gave can be said to relate to a different issue, namely the accuracy of Transco's reporting on its performance against standards of service. Ofgas also accepts that the events referred to occurred in April 1998 and not in July 1998. However, it appears from the document referred to by Transco (document 465) that, after receiving a quotation request on 17 April 1998, the matter was not entered on Transco's SW4 system that tracks performance against targets, until 24 April 1998. Transco's performance record therefore will show its performance as being, in this case, five days better than it actually was.

In relation to Transco's recording of its performance against its standards of service Ofgas therefore concludes, on the basis of this case, of the generally poor quality of record keeping in Transco offices and of the information subsequently received from ADL and BGCL, that Transco was not in every case measuring its performance from the date when requests for connections first were received. Transco's reporting therefore

has been likely to understate its failure to perform. It is too soon to conclude that these problems have been rectified.

6. OVER-QUOTING FOR CONNECTIONS

6.1 *Complaint and interim findings*

Mr Andrew Duffield, his company EGS and ADL complained that Transco over-charged in quotations to them for providing connections. Ofgas considered the requests made for quotations and Transco's response to them in four cases, Surrey Pet Cemetery, Meriden Business Park, Saxon Business Park and the Airman public house. Ofgas' conclusion, in summary, was that there are cases of significant over-charging by Transco in quotations for connections.

6.2 *Transco response*

Transco said that Ofgas has identified cases of over-quoting rather than over-charging. Transco pointed out that different engineering approaches may be adopted in relation to a project and said that as a result of correction to quotations in response to errors being pointed out, no actual over-charging occurred. Transco said that each of the requests for quotations was made at a time when Transco staff were first learning how to deal with self lay organisations.

At a meeting on 2 October 1998 Transco argued that providing quotations that were too high was not anti-competitive because it gave an opportunity for self lay organisations to investigate the quotation and obtain a better price for the customer¹³. Transco asserted that ADL was not prevented from competing and made reference to ADL's use of standard condition 6 of its PGT licence for its pricing methodology.

Transco did not consider that the interim report supported a general finding that, given the findings in relation to Transco's administrative systems, it probably is to be expected that Transco regularly fails to follow its published charging statement.

At the meeting on 23 October 1998 Transco sought to argue that Ofgas' interim report on its investigation did not identify the causes for the errors that had occurred in Transco's quotations and to attribute them simply to human error.

On 17 December 1998 Transco disagreed with the suggestion that there is an expectation that it will fail regularly to follow its published charging statement because of the procedures and training it has implemented.

6.3 *Review of Transco submissions*

Ofgas is aware of one case in which Transco made a repayment to EGS of £187.63 following payment in respect of an excessive quotation. However, Ofgas accepts that in the cases considered in detail in relation to this aspect of its enquiry, what has occurred is over-quoting rather than over-charging. Ofgas agrees that over-quoting by Transco's may provide a market opportunity for those with specialist knowledge such as self lay installers but regards this as an extremely unattractive and unimpressive argument for

¹³ Transco has said that this is a misrepresentation of its comments and that it was questioning the impact of over-charging rather than seeking to justify it. Ofgas is of the view that it has presented a fair record of what was said.

Transco to advance in its defence. It illustrates an approach that shows little regard for customers without specialist knowledge who may be over-charged.

Ofgas rejects the submission that each of the requests for quotations was made at a time when Transco staff were first learning how to deal with self lay organisations. This clearly is not the case in relation to the Surrey Pet Cemetery quotation.

Ofgas does not accept that Transco can be discharged from responsibility for errors of the type which have occurred on the basis that they are due to human error. It is a responsibility of the management of businesses like Transco's to minimise the risk of human error occurring through good system design and training. The training material which Transco has produced, if not corrected on a company wide basis in relation to the inclusion of excavation and the percentage overhead mark up to be applied, gives rise to the expectation that Transco would fail regularly to follow its published charging statement. Whether the procedures and training Transco has implemented will remedy the problem will become clear over the coming months.

6.4 Ofgas' conclusions

There have been cases of significant over-quoting by Transco in relation to connections.

7. UNDER-CHARGING FOR CONNECTIONS DONE BY TRANSCO

7.1 Complaint and interim findings

ADL complained that Transco under-quoted and subsequently under-charged customers for connections that it had undertaken, thereby preventing ADL from competing for this connections work. Ofgas examined in detail quotations given by Transco in relation to the Lucky Goldstar factory in Newport, Wales and a housing development at Crookston Road, Glasgow, and concluded that there are cases of very significant under-charging for connections done by Transco.

7.2 Transco response

In relation to the Lucky Goldstar connection Transco asserted in its response dated 20 October 1998 that the interim report does not support the allegation that Transco's connection showed elements of under-charging. It also said that a 25% uplift was incorrectly added to the governor cost.

In the further information submitted on 4 November 1998 Transco says that "when the quotation of £290,000 plus the subsequent charging arrangements for variations are compared with the actual expenditure incurred in relation to the original specification (plus an uplift of 25%) the shortfall amounts to less than 3%".

The 4 November 1998 information goes on to state that "the resulting easement costs then fell to Transco unexpectedly". These costs amount to 12.5% of the contract price or 9.6% of the total sum billed. The 5 November 1998 information also shows that no overheads were added to variation sums which should have added a further 3.4% of the initial contract price or 2.6% of the total sum billed.

In its 4 November 1998 information, in the same paragraph, Transco asks Ofgas both to rely on one of the Welsh Development Agency (WDA)'s sets of minutes (of the meeting

held on 25 June 1997) as accurate and to reject another of the WDA's sets of minutes (of the meeting held on 17 December 1997) as inaccurate.

In relation to Crookston Road, Transco acknowledges that errors were made.

Transco summarised its position on 20 October 1998 by suggesting that the position on under-charging is less clear cut than suggested by the interim report.

7.3 Review of Transco submissions

Certain aspects of Transco's response prompted Ofgas to visit Newport on 1 December 1998 to walk the route of the pipe. This visit revealed that Transco's statement on 23 October 1998 that the methodology used by the Estimator package always was applied was incorrect in relation to the Lucky Goldstar project. It also revealed that no adjustment to the contract price was made when the route of the pipe was changed to include an additional road crossing and that other aspects of the information provided by Transco in relation to the connection were questionable.

Ofgas finds Transco's submissions in relation to the Lucky Goldstar project in the period prior to 1 December 1998 to have been inconsistent, inaccurate, unhelpful and unconvincing. Transco under-charged. Ofgas finds the WDA's minutes of the meeting held on 17 December 1997 to be quite clear.

Ofgas accepts that Transco may have added 25% to the cost of a governor, but this is not relevant: the governor was not a chargeable item.

Reference back to these papers has drawn Ofgas' attention to document 3951, a fax dated 15 February 1997 which appears to have been sent by the WDA to all persons tendering for the connection, including Transco. It states that Transco suggest "that they are not providing future maintenance and Health/Safety work for pipelines laid by other companies in respect of gas supplies" to the Lucky Goldstar project.

Transco has strongly denied any anti-competitive intent in relation to the Lucky Goldstar project. This denial would be more credible if Transco had given a more helpful and accurate initial response to the questions arising in relation to this connection.

Ofgas is grateful for Transco's more straightforward response in relation to Crookston Road, but notes an apparent lack of awareness among Transco staff of the requirements of competition law.

7.4 Ofgas' conclusions

Ofgas concludes that these are two very significant cases of under-charging for connections by Transco. In relation to the Lucky Goldstar project the WDA fax dated 15 February 1997 and the WDA's minutes of the meeting held on 17 December 1997 give rise to a very strong suspicion of anti-competitive intent by Transco. The Crookston Road case demonstrates a notable lack of awareness among Transco staff of the requirements of competition law.

8. SOURCE PRESSURES

8.1 *Complaint and interim findings*

ADL complained about the variability of source pressures offered by Transco for connections to its system. The enquiry looked at a number of files and in most of them differences in Transco's response to different applicants for connections could be attributed to assumptions as to gas load made by applicants. However, Ofgas concluded that there is at least one case (Baswich Lane) in which a competitor has been at a significant disadvantage to Transco as a result of being offered a lower source pressure than Transco made available to itself.

8.2 *Transco response*

Transco said that no quotation for Baswich Lane had been accepted and all quotations have now expired. Therefore no party has actually been disadvantaged or enjoyed any material advantage.

8.3 *Review of Transco submissions*

Ofgas accepts that no quotation for a connection at Baswich Lane has been accepted and that the quotations which have been given have expired. Ofgas is not convinced that this means that no party has been disadvantaged: it is possible that had ADL been offered the pressure Transco assumed for itself, ADL might have found Transco's quotation acceptable.

Ofgas notes that an enquiry is in progress involving Transco and other PGTs into Transco's capability to deliver the source pressures it has contracted to provide at connected system exit points.

8.4 *Ofgas' conclusions*

Ofgas thinks it appropriate to refrain from reaching any conclusion on this aspect of its enquiry. It will reconsider the issue when the results of the enquiry into this issue by Ofgas Transco and other PGTs are available.

9. MR ANDREW DUFFIELD AND EXOTERIC GAS SOLUTIONS

9.1 *Complaint and interim findings*

Mr Duffield and EGS complained that Transco was acting in a way that was deliberately anti-competitive towards them. Particular reference was made to an internal Transco Email dated 27 March 1997 from Area Directors to Managers of District Operations, referring to the receipt of a complaint about EGS and asking them to ensure that they and their staff have no dealings with EGS or Mr Duffield until further notice.

The enquiry found that EGS has received a poor and obviously questionable standard of service from Transco. There was one clear example (Surrey Pet Cemetery) of EGS being over-charged compared to others competing for the same project. There were several

examples of quotations being significantly reduced when challenged by EGS. On the other hand, the 27 March 1997 Email had been withdrawn on 17 April 1997 and there were cases where EGS clearly had been given the same quotations as other persons competing for the same work. The enquiry found other evidence that Transco is trying to treat EGS properly, even in the period before the withdrawal of the 27 March 1997 Email.

Ofgas concluded that on balance, although Transco has provided EGS with persistently questionable quotations, it is not apparent that EGS has been treated consistently worse than other businesses seeking requests for quotations.

9.2 *Transco response*

Transco noted Ofgas' comments and said that it has persistently advised LDZ offices both verbally and in writing to ensure that Mr Duffield and EGS are not treated differently to any other customer.

9.3 *Review of Transco submissions and further information*

Transco's response is noted. Ofgas also has considered the EGS complaint in relation to the Utilities Contracts Regulations described below. In the course of its work Ofgas received further complaints from EGS, including the complaint that Transco provides EGS with a service that is significantly worse than the service provided to the market in general. Each of these complaints was taken up with Transco.

9.4 *Ofgas' conclusions*

Ofgas concludes that on balance, although Transco has provided EGS with persistently questionable quotations, it cannot say that EGS deliberately has been treated consistently worse than other businesses seeking requests for quotations.

10. THE UTILITIES CONTRACTS REGULATIONS 1996

10.1 *Complaint and interim findings*

Mr Andrew Duffield and EGS complained that Transco was in breach of its duties under section 4(3) of the Utilities Contracts Regulations 1996 in relation to the award of work to two installers in two different areas. Mr Duffield referred to discrimination against EGS in the tendering and award of contracts covered by "the EU Directive".

The Regulations set up a framework under which breach of the obligations they establish gives rise to a right of action by persons adversely affected by such a breach. It is not for Ofgas to decide if there has been a breach of the Regulations; Ofgas' interests in this matter are whether Transco is maintaining an efficient and economical pipeline system and whether competition in activities ancillary to gas transportation is restricted, distorted or prevented.

Because the complaint was concerned with Transco's central approach to contracting, rather than with the activities of individual offices, Ofgas dealt with this issue by correspondence with Transco's head office rather than in the course of its visits to district offices. Transco's response had not been received at the time the interim report was prepared and that report did not deal with this issue.

10.2 Transco response

Transco has provided Ofgas with reports on the allocation of work in the first area (Area 1) to one contractor (Contractor 1) and on the allocation of work in the other area (Area 2) to the second contractor (Contractor 2). Transco has provided details of its procedures for compliance with the Regulations and with earlier Regulations.

Those procedures were followed in relation to the letting of the District Engineering Period Contract for the Area 1 in the summer of 1995. In 1997 the contractor appointed experienced difficulty in finding labour to meet its commitments under the contract. Because of those difficulties Transco, in September 1997, invited tenders from five contractors for the provision of labour only, to work under Transco supervision, for six months, renewable for six months. EGS was not among the companies included in this tender. Contractor 1 was successful in that tender and worked under the contract awarded pursuant to it from 6 November 1997 until May 1998.

Transco's procedures for procurement in accordance with the Regulations also were applied to award a District Engineering Period Contract for Area 2 in January 1996 to a third contractor (Contractor 3). Because of that company's performance a further tender was conducted at the end of 1996, resulting in a one year contract for connections work being awarded to a fourth contractor (Contractor 4) in March 1997. On 19 February 1998 Contractor 4 went into receivership. The District entered into a short term arrangement with Contractor 2 to meet its immediate need to deal with a backlog of work. Transco said that this decision was based on local knowledge. No other company was considered. At the end of February 1998 the District asked for this arrangement to be formalised by Transco's Purchasing and Contracts section which considered rates it previously had obtained from other contractors. In March 1998 Contractor 3 pulled out of its contract, in Transco's view in breach of its terms. In the same month a short term contract was entered into with Contractor 2 which continued until September 1998 when a contract entered into pursuant to a tender conducted in accordance with the Regulations was awarded.

Transco takes the view that the procedures it has followed in relation to the work awarded to Contractor 1 and Contractor 2 are permitted by Regulation 16 of the 1996 Regulations.

10.3 Ofgas' review of Transco submissions

Ofgas notes that Regulation 16(1)(d) of the Regulations provides that a utility may seek offers in relation to a proposed contract without a call for competition for reasons of extreme urgency. Ofgas notes that many businesses might argue, like EGS, that they have been excluded.

10.4 Ofgas' conclusions

Ofgas found no evidence that Transco is failing to maintain an efficient and economical pipeline system for lack of procedures to apply the Regulations. Ofgas thinks that no undue restriction, distortion or prevention of competition in activities ancillary to gas transportation can be said to have occurred in relation to the two matters complained of.

Annex 3

Part 1

Summary of Submissions made by Transco on 23 October 1998 and 4 November 1998

(to the extent that they are not incorporated in the report at Annex 2)

At meetings on 2 and 23 October, and in submissions made in writing on 20 October and 4 November 1998, Transco acknowledged the concerns of Ofgas and market participants about the quality of its performance in relation to connections. It set out details of the action it had taken and was continuing and planning to take to demonstrate its commitment to remedying the issues raised and to secure the delivery of high quality services. Transco argued that steps that it has taken, is taking and is prepared to take mean that enforcement action by Ofgas is unnecessary, unjustified and not the best way forward. The following is a summary of Transco's submissions.

CONTEXT

Connections is a new activity. Competition in connections started in 1996, with the role of self lay installers not dealt with in the Act or licences. Transco now deals with around 150,000¹⁴ requests for connections or quotations each year and more than 4,500 quotation requests in relation to PGT and self lay connections.

Connections is a complex business, as acknowledged by Ofgas, with several engineering solutions to any connection enquiry. It requires accurate information from applicants. A number of quotations are frequently sought in relation to the same premises.

Competition has become established with 25,000¹⁵ connections made by competitors of BG in the last nine months. It is not Transco's policy to frustrate competition. Transco has had to prioritise the management and allocation of its resources to deliver significant programmes of change to very tight time-scales to introduce domestic gas competition.

TRANSCO'S PROGRAMME OF IMPROVEMENTS FOR ITS CONNECTIONS ACTIVITY

Action already taken

Transco's 32 districts have been restructured into 12 LDZs. A team has been established to ensure consistency across Transco. Each LDZ has prepared its own Action Plan identifying issues to be addressed to meet new service standards. A new Connections Policy Manual has been introduced, monthly briefings of Transco's Asset Managers take place and a new version of Estimator is being introduced. New draft standards of service are being applied from August 1998 and since December 1997 technical guidance notes have been published within Transco.

¹⁴ This is a Transco supplied figure for all connections including "one-off connections" for premises within 23 metres of its mains.

¹⁵ Transco figure, apparently including customers on independent networks.

Further Action Proposed

Further action will include improved training and competence assessment, and briefings to staff on the new manual. Computerised fax receipt, despatch and logging facilities will be introduced and there will be industry consultation on improved standards of service.

Organisational change

Recent organisational change involves the "macro-level" change of reorganisation into LDZs and the separation of the functions of Asset and Operations Managers. It also involves "micro-level" changes to increase personal accountability for performance. Future organisational development will result in a separation of contestable connections activity.

Details of the Improvement Programme

Transco introduced its new Connections Policy Manual on 30 September 1998 and supplied copies of it to Ofgas with its submissions. The Manual runs to over 40 pages with policies for connections, construction, costing and charging, together with prescribed forms and process maps. It is available on Transco's intranet system, TransNet, and staff are to be briefed on it. Transco says that a clear set of mandatory procedures has now been implemented across all LDZs to ensure better record keeping and greater consistency in the provision of quotations.

For competence assessment and training Transco is about to implement a National Competency Framework for its staff, based on a safety and technical competency framework previously introduced. Training in priority skills is due to be completed by the end of March 1999.

To ensure consistency in the provision of quotations a new version of the Estimator system, Estimator 1.5, was developed and rolled out in all offices by 5 October 1998. Other quotations related Transco wide systems remain in place and are being improved. Transco is to create a connections "Help" desk and is introducing a connections issues notes system using Lotus Notes.

On 17 December 1998 Transco advised Ofgas that in cases where the use of Estimator is not appropriate, staff have access to an alternative system, Estimating, and have received guidance on Transco's Costing and Charging Policy which is clearly set out in the Transco Connections Policy Manual.

To improve the handling and logging of faxes, Transco is to introduce a Network Fax Server system in all offices receiving connection quotation requests. This will be operational by the end of 1998. Telephone calls are to be logged in accordance with the requirements of the Connections Policy Manual. Transco has agreed two standards of service with shippers and has commenced monthly reporting against these and other standards. It has processes for assessing its own performance against these criteria. LDZs have their own action plans which are consistent; implementation is centrally monitored. A table of standard source pressures has been developed for issue by the end of October 1998 so that unrealistically low pressures are avoided in quotations. Transco has drawn to the attention of LDZ managers the procedures in its Policy on Control on Capital Expenditure and Income relating to referring matters to senior management.

Industry Consultation, reporting and audit

Transco would like to consult on how improvements could be made in further areas and proposes to report monthly on the implementation of its proposals in addition to current standard of service reporting. The new central Implementation and Support team will fully audit Transco's operation of its connections business.

Transco says that it is confident that its improvement programme will improve its standards of performance and meet the reasonable expectations of its customers. Transco thinks that it also will further improve the competitive climate in connections.

STANDARDS OF SERVICE

Following the meeting on 2 October 1998, Ofgas provided Transco with a draft of the sort of enforcement order which it might consider making if it was to find that the provisional findings in its interim report should be confirmed and that there was a contravention of a relevant condition or requirement, or a likelihood of such a contravention, which required remedy. That draft included the provision of incentives on Transco to avoid being in breach of its obligations in the form of a set of compensation payments to be paid by Transco if it failed to meet reasonable standards of service. Compensation payments by Transco were proposed for failure to quote in a reasonable time and for failure to quote in accordance with Transco's methodology. Ofgas also proposed an obligation to offer to attend to commence connections work within a stipulated period from the acceptance of a quotation and compensation payments for failure to attend to start work at the time stipulated.

On 23 October 1998 Transco tabled an alternative compensation package which Transco has argued provided for earlier higher payments with fewer restrictions than Ofgas had suggested. However the package included liabilities only for late quotations. Transco proposed dealing with compensation for failure to achieve a gas-on date through its Siteworks General Conditions of Contract and suggested that the application of further conflicting liabilities was not needed. Transco said that failure to quote in accordance with its methodology would be most effectively provided for by its improvement programme and its Connections Policy Manual and that it is important that its processes were not undermined by the introduction of a divisive regime which encourages multiple and spurious claims.

On 4 November 1998 Transco submitted alternative draft liabilities for standards of service for discussion with the industry. This draft included liabilities for failure to meet quotation response times, liabilities in relation to the commencement of works and liabilities in respect of the accuracy of charges quoted in accordance with Transco's connection charging statement.

Annex 3

Part 2

Views of the Director on the Report, on the Submissions Summarised in Part 1 and on the Need for Enforcement Action

Ofgas welcomes Transco's proposals to improve the service that it provides to customers seeking connections and quotations for connections. Each of the proposals made should contribute to a better service to Transco's customers. Ofgas recognises that a very significant effort has been made to produce the Transco Connections Policy Manual and will continue to be required to train staff, to introduce the proposed new fax facilities and to make all the other improvements which have been proposed by Transco. This effort represents a significant financial undertaking on Transco's part.

Ofgas has no doubt that the industry will welcome the proposals that Transco now is putting forward and implementing.

Ofgas recognises that Transco has been going through a period of major change and that it has had to give priority to very significant projects, particularly the demerger of Centrica and the introduction of competition in domestic gas supply. Nevertheless, Ofgas concludes that Transco has been in breach of two relevant conditions or requirements in a number of respects and is likely to remain in breach of them if the improvements it is making do not deliver shorter response times and greater accuracy to its quotations and a better understanding of its obligations. Ofgas recognises that the restructuring of Transco area offices and other measures should bring benefits but it notes that Transco's response times for quotations remain unacceptably long.

The key question for Ofgas now is whether Transco's actions and proposals are enough to enable Ofgas to conclude that enforcement action is unnecessary and that the best way forward is to leave it to Transco, without more, to deal with its failure to provide a satisfactory standard of service through its improvement programme. It is relevant, in relation to this question, that Transco has provided a significant measure of co-operation with Ofgas' enquiry.

Ofgas has decided that it should proceed further with the use of its enforcement powers, by giving notice under section 29 of the Act of a proposal to make a final order under section 28, and that it should take a final decision in the light of responses to this process.

The reasons why Ofgas has reached this view are as follows:

1. Transco's performance in providing quotations has been so poor that Ofgas has concluded that Transco is likely to remain in breach of a licence condition and a Gas Act obligation if the improvements it is making do not deliver shorter response times and greater accuracy in its quotations and a better understanding of its obligations.
2. Although Ofgas has considered in detail only two cases of discriminatory pricing they are a matter of grave concern.
3. Transco has had clear warnings of difficulties in this area of its business over many months. It has been a constant topic of discussion on the Ofgas Connections Steering Group. EGS has consistently pointed out the difficulties it

has experienced over a period of more than a year. The matter was raised by Ofgas with Transco at a senior level a number of months ago.

4. It appears to Ofgas that Transco was only galvanised into action by the arrival of investigators at its offices, demonstrating Ofgas' readiness to use its powers to the full to establish the facts and to force improvements if necessary.
5. Ofgas is not confident that if the use of its powers is relaxed, Transco will deliver what it has proposed within the time-scales it has proposed.
6. This view is reinforced by Transco's initial attitude to the liabilities package proposed by Ofgas and by the structure of the package which Transco itself proposed in response to Ofgas. Transco sought initially to reject two elements of the first package proposed by Ofgas as conflicting and divisive and (in respect of one element) also as encouraging multiple spurious claims. When Ofgas expressed dissatisfaction Transco put forward a package that was better but less than adequate. That package professed the aim of simplicity. It then proposed a system for reducing Transco's liabilities on the basis of whether the customer has provided all due information Transco requires. This was not simple. It also appeared to involve a judgment by Transco as to what was due, which was at odds with the aims of clarity and easy measurement. Transco also proposed withdrawing the design assistance that it currently provides and the introduction of an administration charge for requests for connections of loads expected to take over 2,500 therms per year. Ofgas agreed that it is appropriate to consult on these issues but saw no reason for the introduction of liabilities to be made conditional on that consultation or to be delayed whilst it takes place. In relation to liabilities for incorrect quotations, Transco proposed that these would be accompanied by changes to introduce standardisation in its connections charging statement. Ofgas was left with the impression that despite Transco's expressions of willingness to co-operate, and the measures it proposed introducing, Transco was not facing up fully to the nature of its failings and of its responsibility for them.
7. Ofgas noted further that a number of the things Transco suggested it may do, for example, the introduction of a liabilities package, were expressed to be subject to significant conditions, such as consultation, changes to the connections charging methodology and the introduction of new charges. For the purpose of section 28(5)(aa) of the Gas Act, Ofgas is concerned with steps which Transco "has agreed to take and is taking". A conditional preparedness to take steps, without more, is not enough for those steps to be considered under the section.
8. When Transco accepted that the issue of a notice under section 29 of the Gas Act 1986 was inevitable, discussion between Ofgas and Transco on the form of the liabilities package became much more positive and Ofgas appreciates the constructive suggestions made by Transco as to how it should be framed. However Ofgas doubts if it can be said that Transco has agreed to the liabilities package.

Annex 3

Part 3

Notes on the Proposed Compensation Schemes

1. The draft schemes initially were based on the proposals submitted by Transco on 4 November 1998 (in response to earlier proposals by Ofgas) with the conditions and discretions suggested by Transco removed from them. It has been developed in discussion with Transco since 4 November 1998.
2. Ofgas has decided against the imposition of liabilities for failure to attend to do connections work, as this may be dealt with contractually, through the existing siteworks contract, and as Ofgas' investigation does not provide a sufficient basis for Ofgas now to impose these liabilities. However, this is an issue on which Ofgas proposes to consult.
3. The scheme for compensation for late quotations is framed with the intention of ensuring that customers receiving the poor level of service from Transco which prevailed in August and September 1998 will be able to recover from Transco a sum which is adequate at least to recompense them for additional costs incurred in chasing the quotations requests. It is hoped that the sums which are payable will be of a sufficiently substantial level to work as an incentive for Transco to improve its standards.
4. A ratchet has been included in the scheme which will impose greater liabilities on Transco if its standards slip and which will reduce the sums it must pay if performance improves.
5. The scheme for compensation for incorrect quotations is intended to provide an incentive to Transco to give accurate quotations without imposing a burden that is disproportionate to the value of Transco's connections business and to the damage suffered by customers.
6. The overall level of liabilities payable by Transco under the schemes is capped at £4 million per year.
7. Both compensation schemes provide that exceptions to them may be made in writing by the Director. The schemes incorporate this flexibility provision because it is possible that they may give rise to practical difficulties in their operation which were not foreseen when they were drafted, for which some adjustment is necessary; it may also enable modifications recommended by the industry, as the market and Transco's services change, to be made.

Annex 4

Part 1

Conclusions in Relation to the Occurrence and the Likelihood of Occurrence of Contraventions of Relevant Conditions and Requirements Following a Report on an Investigation into Allegations of Anti-Competitive Practices in Connections by Transco

These conclusions are to be read in conjunction with the report on an investigation by Ofgas into allegations of anti-competitive practices by Transco in relation to connections to its pipeline system which is at Annex 2. Section 28 of the Gas Act 1986 (the Act) requires the Director to make provisional or final orders when satisfied that the holder of a licence issued under the Act is contravening or is likely to contravene a relevant condition or requirement. A relevant condition is any condition of a licence holder's licence. A relevant requirement is one of a number of provisions of the Act listed in section 28(8), including sections 9(1) and 9(2).

GAS ACT 1986 SECTION 9(1)(A).

Under section 9(1)(a) of the Act it is the duty of a public gas transporter as respects each of its authorised areas to develop and maintain an efficient and economical pipe-line system for the conveyance of gas. Ofgas finds that the systems which Transco has established for providing quotations

- (i) produce quotations which are inconsistent in their application of Transco's methodology for providing quotations,
- (ii) give rise to delays in responding to quotations which often are significantly longer than those permitted in the standards of service which Transco has set, and
- (iii) are inefficient.

Ofgas thinks that it can be argued that Transco's pipe-line system may be said to include business systems associated with its administration, including systems for providing quotations for connections to the system, and that accordingly Transco has been in contravention of section 9(1)(a) of the Act.

However, in view of the findings in respect of section 9(2)(a) of the Act and standard condition 11(1) of the Licence set out below, Ofgas finds it unnecessary to form a view on this issue.

GAS ACT 1986 SECTION 9(2)(A).

Under section 9(2)(a) of the Gas Act 1986 it is the duty of a public gas transporter to avoid any undue preference or undue discrimination in the connection of premises to any pipe-line system operated by him.

Ofgas concludes that Transco –

- (i) failed to avoid undue discrimination against Exoteric Gas Supplies Ltd in relation to the connection of Surrey Pet Cemetery;
- (ii) failed to avoid undue preference towards the Welsh Development Agency in relation to the connection of the Lucky Goldstar project in Newport,
- (iii) failed to avoid undue discrimination against AGAS Developments Limited in relation to the connection of the Lucky Goldstar project in Newport,
- (iv) failed to avoid undue preference towards Scottish Gas with regard to the connection of premises in Crookston Road Glasgow, and
- (v) failed to avoid undue discrimination against AGAS Developments Limited in relation to the connection of premises in Crookston Road Glasgow.

in each case in contravention of section 9(2)(a) of the Gas Act 1986.

In the light of how these failures have occurred in the past and in the light of Transco's record to date in putting right its failures in relation to connections, Ofgas thinks that, even with the Improvement Programme that Transco has started to introduce, there is a likelihood of future contravention by Transco of its obligations under section 9(2)(a) of the Act.

TRANSCO'S PUBLIC GAS TRANSPORTER LICENCE SPECIAL CONDITION 8A(2)

Special condition 8A of Transco's public gas transporter licence provides that Transco shall arrange for the M.D. Transco in the course of discharging his responsibility under paragraph 1(1) (of special condition 8A of the Licence, for the conduct of the Transportation and Storage Business) to be provided from time to time with –

- (a) the service of such persons;
- (b) such accommodation, equipment, recorded information and facilities; and
- (c) such finance,

as may be required to enable the Licensee to comply with its duty under section 9(1)(a) of the Act.

Ofgas has not decided whether or not Transco is complying with its duties under section 9(1)(a) of the Act. That Transco may be complying with section 9(1)(a) of the Act does not preclude a finding that there has been a contravention of special condition 8A of the Licence. However, Ofgas is unable to conclude from the inefficiency that has been observed, that BG plc has failed to make available to the M.D. Transco adequate personnel, resources and finance. Transco's shortcomings in relation to connections, in Ofgas' view, are the result of the poor management of the available personnel, resources and finance, rather than of the failure to provide them.

PUBLIC GAS TRANSPORTER LICENCE STANDARD CONDITION 11(1)

Condition 11(1) of the standard conditions of gas transporters' licences requires Transco to conduct its transportation business in the manner best calculated to secure that neither-

- (a) Transco (as licensee) or any (related person), nor
- (b) any gas shipper or gas supplier

obtains any unfair commercial advantage including, in particular, any such advantage from a preferential or discriminatory arrangement, being, in the case of such an advantage accruing to the licensee, one in connection with a business other than its transportation business.

Ofgas is persuaded by the argument in the complaints from the independent public gas transporters and self lay installers which compete with Transco that they are made to appear to their customers to be less efficient as a result of delays by Transco in providing quotations than they would be if Transco quoted in accordance with the standards which it has set. Independent public gas transporters and self lay installers also may be made to appear to their customers to be inefficient as a result of Transco failing consistently to quote in accordance with its published methodology for connection charges. As a result Transco has the advantage of its competitors appearing to be less efficient than they would appear if Transco quoted on time and consistently. This advantage results from Transco's inefficiency and is unfair.

In the case of Crookston Road, Transco was involved in an arrangement designed to give Scottish Gas the right to carry out all gas related work within the whole development. Scottish Gas, a gas shipper, obtained a commercial advantage. This was unfair because it was a deviation from Transco's connections charging statement that was made available only for Scottish Gas.

Ofgas therefore concludes that Transco has failed to conduct its transportation business in the manner best calculated as required by standard condition 11(1) of its licence.

In the light of Transco's record to date in putting right its failures in relation to quotations for connections, Ofgas thinks that, even with the Improvement Programme that Transco has started to introduce, there is a likelihood of future contravention by Transco of its obligations under paragraph (1) of standard condition 11 of the Licence.

Part 2

Conclusions in Relation to the Competition Act 1980

The Competition Act 1980 makes provisions in relation to the pursuit by a person of a course of conduct which, of itself or when taken together with a course of conduct pursued by persons associated with him, has or is intended to have or is likely to have the effect of restricting, distorting or preventing competition in connection with the production, supply or acquisition of goods in the United Kingdom or any part of it or the supply or securing of services in the United Kingdom or any part of it.

Although compliance with the Competition Act 1980 is not a relevant requirement for the purposes of section 28 of the Gas Act 1986, Ofgas concludes that-

- (i) by giving quotations for connections which are inconsistent with its methodology for charging for connections, and
- (ii) by failing to provide quotations for connections within the time provided in the standards of service it has laid down,

Transco has pursued a course of conduct that has the effect of distorting competition in the provision of connections.

Ofgas further concludes that in relation to the Lucky Goldstar and Crookston Road projects, Transco not only pursued a course of conduct which distorted competition in the provision of connections but appeared to do so with the intent of having that effect.

However, Ofgas does not consider it expedient to pursue remedies under the Competition Act 1980 in view of the impending repeal of that Act (when any undertakings given would lapse) and the action it proposes to take under the Gas Act 1986.

Annex 5

Quality Systems – ISO 9001

ISO 9001 is one of a series of standards developed by the International Standards Organisation and recognised by the British Standards Institute against which business systems can be compared. Systems which meet the standard can be certified as complying with it. Certification in accordance with ISO 9001 indicates that the systems which have been certified are of good quality and contain controls to ensure that they are maintained and applied.

Application of the ISO 9001 standard will require Transco (among other things) to:

- document its quality policy for the administration of connections and ensure that this is understood, implemented and maintained;
- define and document the responsibility (for quality) of personnel who manage and work within the units administering and producing quotations;
- provide adequate personnel and resources for management, performance of work and verification duties;
- appoint a manager with authority to establish, implement and maintain quality systems and to report on their performance;
- establish, document and maintain a quality system;
- implement quality system procedures;
- regularly review and record the operation of the quality systems;
- establish procedures to control and verify the design of connections;
- establish and maintain procedures to control all documents and data;
- establish and maintain procedures for implementing corrective and preventative action;
- establish and maintain procedures for collection, indexing and storage of quality records;
- establish and maintain procedures for internal quality audits, implementing and recording audits, identifying and following up corrective action; and
- ensure staff are competent to carry out the tasks allocated, identify training needs, deliver and record training.

Transco already has systems in place to administer its connections business. It is taking steps through its Improvement Plan to overhaul these systems. The specification for the Improvement Plan does not mention ISO 9001. Application of the ISO 9001 standard to the processes set out in the Improvement Plan should deliver a significant and enduring improvement to standards. Transco as part of its procurement policy, specifies and assesses some of the quality systems it requires of its suppliers by reference to ISO 9001.